

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.466 of 1987 Date of decision: 04.09.1992.

Shri Mohinder Pal. ...Petitioner

Versus

Union of India through Secretary, ...Respondents
Ministry of Communication & Others.

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the petitioner Shri Sant Lal, Counsel.

For the respondents Shri M.L. Verma, Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Mohinder Pal was holding the post of Assistant Superintendent in R.M.S., Department of Posts. He drew Rs.5,000/- in advance on 24.4.1981 for himself and other members of his family for making a trip to Kanya Kumari. He submitted his L.T.C. bill for the said journey alongwith the relevant documents. It was scrutinised and passed for payment after adjustment of the bill on 6.10.1981. A disciplinary inquiry was initiated against the petitioner, alleging principally that he and his family members did not perform the journey and had made a false claim and that receipt produced in support of the claim was also a bogus one. An enquiry was held by the Enquiry Officer duly appointed for that purpose. He gave a report on 26.3.1983 holding that were the charges levelled against the petitioner /duly

proved. On receipt of the report, the disciplinary authority, on consideration of the report of the Enquiry Officer and the records, disagreed with the findings of the Enquiry Officer and passed an order exonerating the petitioner of the charges levelled against him as per Annexure A-3. It is necessary to point out that the finding recorded by him is that the petitioner is entitled to the benefit of doubt. The appellate authority issued a notice on 5.3.1984 proposing to review the decision of the disciplinary authority, as in his opinion the evidence on record fully justified the findings that the petitioner was really guilty of both the charges levelled against him. The petitioner gave his representation on 3.5.1984. Thereafter the original notice was amended by substituting the expression 'revision' in place of the word 'review'. A copy of the Enquiry Officer's report was furnished to the petitioner at that late stage. The petitioner on consideration of the report of the Enquiry Officer gave his further representation on 9.6.1984. After considering the cause shown by the petitioner the appellate authority made an order as per Annexure A-1 dated 1.8.1984, imposing the penalty of reduction by two stages in the pay of the petitioner from 1.8.1984 for a period of two years without cumulative effect from Rs.675/- to Rs.630/-. The further appeal by

the petitioner to the Chairman, Postal Board came to be rejected on 18.11.1986. It is in this background that the petitioner has approached the Tribunal for appropriate relief.

2. Shri Sant Lal, learned counsel for the petitioner firstly contended that there is a procedural irregularity committed by the authorities in the matter of holding inquiry. He submitted that without an appropriate order made under Rule 18 of the CCS (CCA) Rules a common enquiry was held against the petitioner. He relied upon the provision of sub-rule (1) of Rule 18 which says where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in common proceedings. This undoubtedly is ^{an} enabling provision to avoid unnecessary waste of time and for the convenience of every one concerned. The respondents are not in a position to demonstrate that any order was made as contemplated by sub-rule ⁽¹⁾ of Rule 18 for initiating common proceedings. It is, however, not possible for us to interfere with the disciplinary proceedings firstly for the reason that no such objection was raised by the petitioner at any stage of the inquiry. It is for the first time in these proceedings that the petitioner is also not prejudiced. he has raised this objection. Hence we are not inclined

to accept the first contention of the petitioner.

3. The second contention of Shri Sant Lal, learned counsel for the petitioner is that the report of the Enquiry Officer was not furnished to the petitioner before the disciplinary authority passed the order and that at any rate before the petitioner was called upon to show cause by the appellate authority. It is not disputed that the copy of the Enquiry Report was furnished to the petitioner only after the notice was issued by the appellate authority, proposing to review the order of the disciplinary authority. But, then it is necessary to bear in mind that the disciplinary authority has exonerated the petitioner of the charges levelled against him, giving him the benefit of doubt. No prejudice was caused to him at that stage on account of non-supply of the Enquiry Officer's report. It is also necessary to bear in mind that before the appellate authority rendered its final decision, a copy of the report of the Enquiry Officer was furnished to the petitioner. It is also necessary to bear in mind that an opportunity to show cause was given to the petitioner and he had availed of that opportunity and submitted his representation on considering the report of the Enquiry Officer. It is only thereafter that the appellate authority has passed the impugned order. It is, therefore clear that before an adverse decision was rendered

against the petitioner he was furnished a copy of the report of the Enquiry Officer and given an opportunity to show cause vis-a-vis the enquiry report. It is, therefore, not possible to hold that the delay in furnishing of the copy of the Enquiry Report has in any manner vitiated the enquiry proceedings.

4. It was next contended by Shri Sant Lal, learned counsel for the petitioner that the appellate authority had issued a notice proposing to review the order made by the disciplinary authority. He submitted that it is only later on that the mistake was corrected and the expression 'revision' was substituted for the expression 'review'. It is necessary to point out that the appellate authority correctly invoked Rule 29 (1) (v) of the CCS Rules (CCA) which confers power of revision and not power of review. It is, therefore, clear that it is only a clerical mistake in mentioning it as 'review' and not 'revision' and that mistake was corrected well in time. We, therefore, do not find any good ground to interfere on the basis of this inadvertent error.

5. It was next contended by Shri Sant Lal, learned counsel for the petitioner that no reasons have been given in the proposal to revise the order. The notice given to the petitioner says that on consideration of the evidence the appellate authority is satisfied that there is material to hold the petitioner guilty of the charges levelled against him and that he proposes to revise the order of the disciplinary authority. It is,

therefore, clear that the petitioner was made known that it is on consideration of the evidence produced in the case that the appellate authority is inclined to disagree with the view of the disciplinary authority that the charges are not held proved. The petitioner had ample opportunity which he made proper use of by submitting his representation. No prejudice has been caused to the petitioner as is clear from the manner in which he raised his contention before the revisional authority.

6. It was next contended by Shri Sant Lal, learned counsel for the petitioner that Shri Har Pal Singh, one of the witnesses, examined on behalf of the department had produced certain documents which were shown to the inquiring authority and which were allowed to be taken back from him. He, therefore, submitted that it was not proper to rely upon the documents which were not actually produced and made part of the record of the disciplinary inquiry. Though there is a reference to the said witness having pointed to the records which he had brought, it is not clear as to whether it was only for the purpose of refreshing his memory. There is a more authentic evidence about this aspect which has been accepted by the appellate authority. SW-5 has given evidence that an enquiry was made as per letter exhibit S-7 to the State Transport Authority about the name of the persons in whose names Bus No.2929 stood registered and also the particulars of special permit No.3806 dated ✓ 15.6.1981 and the list of passengers who travelled in

that Bus for a trip to Kanya Kumari during the month of June and July 1981. The State Transport Authority recorded the reply on the back of the letter marked as exhibit S-7. According to the reply given under the signature and stamp of Assistant Secretary, State Transport Authority, Delhi, special permit No.3806 was issued in respect of vehicle No.DEP 1205 for Delhi to Tijara (Rajasthan) w.e.f. 26.7.1981 and that special permit No.2516 was issued in respect of vehicle No.DEP 2929 for Delhi to Kanya Kumari from 5.6.1981 to 27.6.1981 to the registered owner of the vehicle M/s. Bakshi Transport Company, Delhi and the names of persons who are mentioned in the letter under reply did not exist in the passengers list of permit No.2516 as per office record. The witness has approved the reply given in exhibit S-7. There was thus authentic evidence from an independent source about the falsity of the petitioner's case. It is, therefore, not possible to take the view that the inquiry is vitiated for the reason that the witness did not actually produce the documents which he adverted to during the course of his evidence.


7. It is necessary to bear in mind that this is not a case of no evidence. This is a case where adequate evidence was produced by the department in support of the charges levelled against the petitioner. As many as 11 witnesses were examined and 7 documents were marked as documentary evidence. The charge in the inquiry which the petitioner was required to face was about the


genuineness of the receipt produced by him in regard to the journey said to have been performed to Kanya Kumari after availing of the LTC advance. He had to prove that he in fact performed the journey and also that the receipt produced by him is genuine. The department has produced sufficient evidence to show that the petitioner did not perform the journey as stated by him to Kanya Kumari. There is also material to show that the receipt produced by the petitioner is not a genuine one. The Tribunal is not required to function as an appellate authority and to reappreciate the evidence produced during the course of the inquiry. The appellate authority has applied its mind to the evidence on record and the findings are based on records. We will, therefore, not be justified in interfering with the findings of the appellate authority.

8. It was next contended by Shri Sant Lal, learned counsel for the petitioner that this is a case of double jeopardy. The learned counsel for the petitioner submitted that the amount of advance taken by the petitioner by way of LTC advance is being recovered in instalments with penal interest. There is no doubt a prayer in the petition made against such recovery. But it is not possible to accede to the contention that this amounts to double jeopardy. The findings recorded by appellate authority and affirmed by the higher authority are that the petitioner did not in fact perform the journey after availing of the LTC advance. Therefore, he was not entitled to retain that amount which ^{he} had received for performing the journey under LTC. As regards the

contention that penal interest is being recovered, we will not be justified in examining it in the absence of averments in this behalf.

9. For the reasons stated above, this petition fails and is dismissed. No costs.


(I.K. Rasgotra)
Member (A)


(V.S. Malimath)
Chairman

san.

September 4, 1992.