

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN.NO. O.A.519/87.

DATE OF DECISION: 7.9.1992

Tara Singh Saini.

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... Shri Sant Lal,  
Counsel.

For the Respondents.

... Ms Nisha proxy for  
Shri M.L. Verma,  
Counsel.

JUDGEMENT (ORAL)

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

The petitioner, Shri Tara Singh, Saini was holding the post of Sorting Assistant in the R.M.S., Department of Posts. He availed of the L.T.C. facility for himself and family for going to Kanya Kumari and an advance of Rs.4200/- was taken on 05.6.1981. He claims that he travelled by Bus from 18.6.81 to 5.7.81, went to Kanya Kumari and returned back. The final bill was presented in August, 1981 which was scrutinised and sanctioned after adjusting the advance drawn on the 6th of August, 1981. Later, a chargesheet was served on the petitioner dated 13.08.1982 framing four charges. The principal allegation against the petitioner is that he did not, in fact, travel to Kanya Kumari, as stated, and has made a false claim and produced a false receipt to claim the amount towards the

L.T.C. An Inquiry Officer was appointed who held the inquiry and submitted his report on 26.3.1983 holding all the charges proved. Sr. Supdt of Post Offices, Patiala Division, passed an order (Annexure A-3) on 11.12.1984 accepting the Inquiry Officer's report holding the petitioner guilty and imposing the penalty of reduction of pay for a period of three years with effect from 1.12.1984 from Rs.480/- to Rs.444/-. The petitioner challenged the said decision by way of an appeal, which came to be rejected as per Annexure A-2 dated 20.11.1985. He further challenged the same before the Revisional Authority, which also came to be rejected on 15.7.1986 (Annexure A-1). The recovery in pursuance of the orders appears to have commenced in May, 1984. The petitioner filed the Original Application before the Tribunal on 10.4.1987 challenging the aforesaid orders of the disciplinary authority, appellate authority and the revisional authority and obtained stay of recovery on 30.4.1987. It is the validity of the aforesaid orders that has been challenged in the Original Application.

2. Shri Sant Lal, learned counsel for the petitioner, firstly contended that the authority which passed the impugned order, namely, Sr. Supdt of Post Officers, Patiala Division, was not the disciplinary authority under the Rules and was, therefore, not competent to pass the impugned order (Annexure A-3) dated 11.12.1984. So far as the rank of the authority which passed the order is concerned, it is not disputed that it is higher than the disciplinary authority. The petitioner's case, however,

is that Sr. Supdt. of Post Offices, Patiala Division is neither the appointing nor the disciplinary authority of the petitioner. He was not the direct superior authority of the disciplinary authority at the relevant point of time. The respondents have met this case by pointing out that a special order was made by the President under Rule 12 of the CCS(CCA) Rules, 1965 empowering Sr. Supdt of Post Offices, Patiala Division to function as the disciplinary authority as per Annexure R-3 dated 16.5.1984. Rule 12 confers <sup>power on</sup> /the President to empower any other authority to impose any of the penalties specified in Rule 11 on any Government servant. In this case, as the President empowered as per Annexure R-3 the authority who is higher in rank than the authority who initially appointed the <sup>petitioner,</sup> / it is not possible to take the view that Sr. Supdt. of Post Offices, Patiala Division did not <sup>have</sup> /the competence to pass the impugned order (Annexure A-3).

3. It was next contended by Shri Sant Lal, learned counsel for the petitioner, that this is a case where an order for holding a common inquiry should have been passed as contemplated by Rule 18 of the CCS(CCA) Rules, 1965. Sub-rule(1) of Rule 18 which is relevant for our purpose says that 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

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against all of them may be taken in a common proceeding.

It was submitted that the case of the petitioner and that of Shri Mohinder Pal were taken together and common evidence was led, but no order for holding a common proceeding as contemplated by rule 18(1) of the CCS(CCA) Rules, was passed in this case.

It was, therefore, submitted that the procedure followed is contrary to law and it has also caused prejudice. Sub-rule (1) of Rule 18 is only an enabling provision which empowers the authority to direct a common proceeding being held. It is not obligatory that it should be done in every case. Hence, failure to make an order for common proceedings under Rule 18 does not vitiate the proceedings. So far as the case regarding prejudice is concerned, we fail to see how the petitioner can make out such a case. No objection was raised at any stage of the proceedings or even before the Appellate or Revisional authority. As the petitioner has failed to raise such an objection at an earlier stage, we would be justified in declining to permit this contention being raised before us. Even otherwise we are satisfied that no prejudice has been caused in this case.

The evidence is common in regard to the two cases ~~is~~ because the petitioner as well as Mohinder Kumar, both claim that they travelled by the same bus run by the same operator. Hence, common evidence in regard to this aspect of the matter, for the sake of convenience was permitted to be adduced and parties in both the cases were permitted to cross-examine the witnesses in this behalf. It is, therefore, not possible to take the view that

any prejudice has been caused to the petitioner. Shri Sant Lal, learned counsel for the petitioner, however, maintained that the prejudice in this case has been caused for the reason that in Mohinder Pal's case, the appellate authority, who is higher than the Sr. Supdt. of Post Offices, Patiala Division, who passed the order in this case, passed an order imposing penalty against Mohinder Pal on a date earlier than 11.12.1984. Hence, it is submitted that there is a possibility of the Sr. Supdt. of Post offices, Patiala Division being influenced by the appellate order passed by the Superior Authority in the case of Mohinder Pal. On the face of it, there is nothing to indicate that there is any possibility of the Sr. Supdt. of Post Offices being influenced. On the contrary, we see so far as the case of Mohinder Pal is concerned, there is penalty of reduction of pay by two stages whereas there is penalty of reduction of pay by three stages in the case of the petitioner. In our opinion, there is hardly any scope for the Sr. Supdt. of Post Offices, Patiala Division being in any manner influenced by the decision in the other case. It is, therefore, not possible to take the view that the petitioner has suffered any prejudice.

4. It was next contended that the petitioner has been discriminated against as he is required to suffer higher punishment than Shri Mohinder Pal. It is well settled law

that the punishment has to be imposed on assessment of the facts and circumstances of each case. As the two cases are different and the circumstances are different, it is not possible to accept the contention of the petitioner in this behalf.

5. It was next contended by Shri Sant Lal, learned counsel for the petitioner, that the documents produced by SW-3 were permitted to be taken away by him which caused prejudice to his case and that this is a serious infirmity. The counsel for the respondents pointed out the evidence of the witness wherein it is recorded that the documents produced were inspected by all the parties which includes the petitioner as well. Hence, it is not possible to take the view that any prejudice has been caused. Besides, we notice that SW-5 has spoken about the information furnished by S-6/S-7. We are satisfied that there was good and satisfactory material in this behalf and no prejudice has been caused.

6. It was next contended that no reasons have been given in the order of the Sr. Supdt. of Post Offices, Patiala Division, Annexure A-3. It is well settled law that when the disciplinary authority agrees with the findings of the inquiring authority it does not have to record elaborate reasons. It is enough for the said authority to express that it is in general agreement with the findings recorded by the inquiring authority. Hence, we do not find any infirmity in this behalf.

7. It was next contended by Shri Sant Lal, learned counsel for the petitioner, that the Inquiry Officer's report was not furnished to the petitioner before an order imposing penalty was passed as per Annexure A-3. In support of this statement, he relied upon what is stated at the bottom of the order Annexure A-3 which directs the records being sent to the petitioner. It is necessary to point out that no such complaint was made by the petitioner at any stage of the proceedings and not even in the Original Application. Hence we will not permit this contention to be raised for the first time during the course of the arguments.

8. It was lastly contended by Shri Sant Lal, learned counsel for the petitioner, that the order is retrospective in the sense that the order was passed on 11.12.1984 which says that it shall be given effect to from 1.12.1984 in the matter of reduction of pay by three stages for a period of three years. We need not dilate on this point for the reasons that the alleged retrospective effect is only for a short period and we do not feel that justice requires any inter-ferece in this behalf on this ground.

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

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( I.K. RASGOTRA )  
MEMBER (A)

  
( V.S. MALIMATH )  
CHAIRMAN