

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1373/90

New Delhi this the 1st day of November, 1993.

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman(A)
The Hon'ble Mr. B.S. Hegde, Member (J)

Suresh Chander Sharma,
s/o Shri Mangal Ram,
Ex-Branch Postmaster Khaleta,
r/o Vill. Khaleta Tehsil Rewari,
Distt. Mohindergarh

...Applicant

(By Advocate Shri Sant Lal)

Versus

1. Union of India through
the Secretary, Ministry
of Communications, Department
of Posts, Dak Bhawan, New Delhi-110001.

2. The Director Postal Services,
O/O the Postmaster General,
Haryana Circle Ambala Cantt-133001.

3. The Senior Superintendent of
Post Offices, Gurgaon Division,
Gurgaon

...Respondents

(By Advocate Shri P.P. Khurana)

O R D E R (ORAL)
(Hon'ble Mr.N.V. Krishnan)

The applicant was an Extra Departmental Branch Post Master whose services were terminated by the Annexure A-1 order of the disciplinary authority, the Senior Superintendent of Post Offices, Gurgaon, respondent No.3, on 7.8.1989 by which the applicant has been removed from service from the Post of BPM Khaleta. An appeal was filed on 16.10.89 (Annexure A-2) to the Director of Postal Services, Haryana Circle, Ambala, the appellate authority (Annexure A-2). As that appeal was not disposed of even after six months had passed, this application was filed in July, 1990 on a number of substantive and procedural grounds. The following reliefs are sought in para 8 of the O.A.

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"1) To set aside the impugned order dated 7.8.89 (Annexure A-I).

2) To direct the respondents to reinstate the applicant in Service;

3) To declare the applicant to have continued in service from the date of his removal from service with due seniority and full back wages.

4) To declare Rule 7 of EDAs (C&S) Rules, 1964 as violative of Articles 14 and 16 of the constitution and invalid;

5) to direct the respondents to issue amended Rule 7 in conformity with Rule 11 of CCS (CCA) Rules, 1965 excluding clauses which are inapplicable to the extra departmental agents keeping in view their Special service conditions."

2. The respondents have filed a reply contending that the applicant is not entitled to any relief. It is stated that the appeal was kept pending when this O.A. was filed in view of the provision of rules 20(4) of the Administrative Tribunals Act, 1985.

3. The matter came up for final hearing and we have heard the learned counsel of both the sides.

4. The charges against the applicant are as follows:-

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"Article-I

That the said Sh. Suresh Chander Sharma while functioning as BPM Khaleta in Account with Khol SO during the period 16-5-88 received one ordinary letter in open/torn condition and without protecting it delivered the same to the addressee, contravening the provision of Rule 66 (2) of Rules for Branch Offices, the said Sh. Suresh Chander Sharma also failed to note this irregularity in the error book as required under rule 36(1) of Rules for Branch Offices.

Article-II

That the said Sh. Suresh Chander Sharma while functioning in the aforesaid office on 14-5-88 received two SB Pass Books from depositors of SB Account No. 198694 and 198742 and sent them to his Account Office Khol, but he failed to issue receipt to the depositors from SB-28 book as required under rule 133(5) of Rules for Branch Offices.

Article-III

That the said Sh. Suresh Chander Sharma while functioning as BPM on 18-7-88, refused to render his statement to Sh. S.B. Malhotra (Inspector of Post Offices Complaints & Public Grievances) in the presence of Sh. Lal Man Mail Overseer Rewari."

5. It is stated by the learned counsel for the applicant that the letter referred to in Article-I was addressed to his brother Shri Subhash Chander Sharma's wife and that the pass books referred to in Article-II belongs to his brother and his brother's wife. It is stated that, as a matter of fact, his brother Sh. Subhash Chander Sharma, had made a complaint against the sub Post Office (and not the Branch office, where the applicant was working regarding the delay in withdrawal of money from the Saving Bank account and tampering with his letters. While looking into this complaint certain facts came to the notice of the respondents who alleged that the applicant did not transmit the open letter by protecting it in an envelope before it was delivered to the addressee and that the applicant had not issued receipt, to the depositors of the saving book pass book and had thus violated the departmental rules. The third charge against him is the failure of the

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applicant to render a statement to the Inspector of Post Offices in connection with the charges, it is contended that the charges are frivolous and at any rate do not call for the removal of the applicant.

6. It is alleged that in the departmental enquiry, the applicant sought the assistance of his brother Shri Subhash Chander Sharma, an employee of the State Govt., as defence assistant. This prayer is stated to have been refused by the enquiry officer on 16.1.89, as mentioned in paragraph 5.2 of this O.A. by stating that the said nomination could not be made under the rules. When the applicant wanted to know the relevant rules, he was informed that they are available in the CCS (CCA) Rules, 1965. The learned counsel submits that there is no such bar in Rule 14 (8) of the CCS (CCA) Rules, 1965. He also pointed out that in respect of enquiry against E.D. Agents it was directed by the D.G. P&T letter dated 16.1.80 (Swamy's Publication refers) that it would be desirable to follow the provision of Rule 14 of CCS (CCA) Rules. The respondents have stated in the reply that Shri Subhash Chand was not permitted to be the Defence Assistant, as he had filed a complaint against the Department.

7. Another major infirmity pointed out by the learned counsel for the applicant is that before the disciplinary authority came to the conclusion that the applicant was guilty of the charges framed against him the applicant was not supplied with a copy of the enquiry report in order to enable him to make a representation against that report. In this connection, he points out that the Department of Personnel and Training had issued office memorandum No.11012/13/85-Estt.(A) dated 26.2.1989 which directed the authorities concerned

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(based on certain judgements referred to therein) that a copy of the enquiry officer's report should be sent to the Govt. servant with an endorsement as mentioned in paragraph-3 of the circular, which permitted the delinquent to make a representation within 15 days. This mandatory direction has not been complied with by the disciplinary authority and without giving him this opportunity, the applicant has been found guilty and a penalty was imposed on him and the enquiry officer's report was sent to him alongwith the impugned Annexure A-1 penalty. The reply points out that the OM could not be complete with as it was received after order had been passed.

8. The learned counsel for the applicant pointed out that there are other infirmities to which he has made a detailed reference in the O.A.

9. We have heard the learned counsel for the respondents also. He pointed out that as the appeal filed by the applicant (Annexure-A-2) on 16.10.89 has not yet been disposed of, it would be fair if the appellate authority is given a direction to dispose of the appeal within a specified period.

10. The learned counsel for the applicant apprehended that in case the appeal is dismissed by the appellate authority, he would again have to approach the Tribunal for relief and that might result in a further long wait before that fresh application is disposed of. He also pointed out that since irregularity has been committed at the level of the disciplinary authority or even at the enquiry stage, it would be proper to quash the penalty and remit the case to the disciplinary authority for further enquiry and disposal in

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accordance with law. In this connection he also pointed out that even assuming that the charges are established against the applicant, the punishment of removal from service was totally disproportionate to the charges. Though he has made a prayer for quashing the provision of Rule 7 of the E.D.A. (Conduct and Service) Rules, 1964 as violative of Articles 14 and 16 of the Constitution, that prayer is not pressed, because since then an amendment has been made to Rule-7, which provides for the levy of lesser penalties in addition to dismissal and removal from service. The point stressed by him was that in case the matter is remanded to the disciplinary authority after quashing the order of penalty (Annexure A-1), it will be possible for the applicant to urge, as a last resort, that the disciplinary authority should consider the imposition of a milder penalty, penalty consistent with the gravity of charges. The learned counsel for the respondents, however, submitted that if that be the purpose of the prayer made, it may not be feasible because according to him, the relevant rule was amended in 1991 and it has only prospective effect and it will be of no use to the applicant against whom the charges were framed much before that date and the penalty was imposed in 1989.

11. We are of the view that it is not necessary for us at this stage to go into the merits of the case because, in our view, the appellate authority should be directed to dispose of the appeal. For, the appellate authority enjoys the wide powers under the CCS (CCA) Rules, 1965 the spirit of which has to be observed by that authority in dealing with the case of Extra Departmental Agents also as laid down by the D.G. P&T letter dated 16.1.80 referred to in para 6 supra. The applicant in his appeal has raised 21 grounds, including the grounds which his learned counsel highlighted before us today.

The appellate authority can reappreciate evidence in dealing with the appeal. In this case, the learned counsel claims that the conclusions drawn by the Enquiry Officer and the disciplinary authority are wrong. We are, therefore, of the view that the interest of justice would be served if the appellate authority disposes of the applicant's pending appeal in accordance with law. In that context, it would be necessary for the appellate authority to consider whether the charges are proved and if proved, what is the gravity thereof. He should also consider whether the amended rules regarding the levy of penalty, including lesser penalties than removal, would apply to this case. If he is of the view that amended rule 7 would apply for the levy of penalty, he should consider what penalty would be appropriate in respect of the charges that he may find proved against the applicant.

12. In the circumstances, we dispose of this O.A. with a direction to the Director Postal Services, Haryana Circle, Ambala Cantt, respondent No.2 to dispose of the appeal dated 16.10.1989 (Annexure A-2) filed by the applicant, keeping in view the observations we have made in this order, as well as the various averments that have been made by the applicant in this O.A, within a period of two months from the date of receipt of this order. We make it clear, that in case the applicant is aggrieved by any order passed by the appellate authority, it is open to him to challenge the same in appropriate proceedings. The O.A. is disposed of, as above. No costs.


(B.S. HEGDE)

MEMBER(J)


1.11.89
(N.V. KRISHNAN)

VICE-CHAIRMAN

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