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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

...
O.A. 276 of 1989

Dated at New Delhi, this the 15th day of July, 1994

Hon'ble Mr Justice S. K. Dhaon, Acting Chairman
Hon'ble Mr B. K. Singh, Member(A)

Shri N. K. Grover
R/o Grover Cycle Works
Kishangarh Bas
District Alwar
RAJASTHAN

.. Applicant

By Advocate: Shri V. P. Sharma

VERSUS

Union of India through

1. The Manager(Personnel)
P&T Board, Dak Tar Bhawan
NEW DELHI

2. The Postmaster General
Rajasthan Circle
JAIPUR

3. The Director Postal Services
Rajasthan Eastern Region
JAIPUR

4. The Senior Supdt. of Post Offices
Alwar Division
RAJASTHAN

... Respondents

By Advocate: Shri N. S. Mehta

O R D E R

Shri B. K. Singh, M(A)

This OA N. K. Grover Vs U.O.I. & others
has been filed against the order No.F/4-5/86-87 dated
11.5.89 passed by Senior Superintendent of Post Offices,
Alwar removing the applicant from service(Annexure.A/1).
The charge sheet dated 2.11.88 has been placed as
Annexure.A/7, Appellate order dated 18.8.89 as
Annexure.A/4 and the Inquiry Report dated 25.4.89 as
Annexure.A/6 of the paper book.

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2. The applicant was working as Postal Assistant at Khairthal Post Office and during the year 1988, he was served with a charge sheet under Rule 14 of the CCS(CCA) Rules, 1965. The applicant submitted his show cause against the charge sheet dated 2.11.88 and enquiry was held against him and the Inquiry Officer submitted his report to the competent authority on 25.4.89 who passed the order of removal from service against the applicant. The applicant preferred an appeal against the order of removal dated 11.5.89 (Annexure.A/1) on 10.6.89 (Annexure.A/2). The Appellate authority rejected the appeal of the applicant vide order dated 18.8.89 (Annexure.A/4). Aggrieved by the rejection of the appeal by the Appellate authority, he filed this OA.

3. Although the applicant is a resident of Alwar which is within the jurisdiction of Jodhpur/Jaipur Bench of the Tribunal, the ^{then} Hon'ble Chairman, Principal Bench vide order dated 16.2.90, on the basis of M.P. moved by the applicant, allowed the retention of the OA in this Bench itself.

4. The following reliefs have been sought by the applicant in the OA:

"(i) That the Hon'ble Tribunal may be pleased to allow the application, with costs of the application.

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- (ii) That the Hon'ble Tribunal may be pleased to pass an order declaring the following orders as null and void as the same are against the principles of natural justice, against the mandatory provisions of the CCS(CCA)Rules, 1965, against the facts, passed without jurisdiction:
- i) Impugned order of removal dated 11.5.89 (Annexure.A/1)
 - ii) Impugned Charge Sheet dated 2.11.88 (Annexure.A/7)
 - iii) Enquiry report dated 25.4.89 (Annexure.A/6).
- (iii) That the Hon'ble Tribunal may be further pleased to pass an order directing the respondents to re-instate the applicant in service from the date of his removal from service along with the back wages as the impugned order dated 11.5.89 was not passed at all for all the service purposes as consequential relief.
- (iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be passed to the applicant."

5. A notice was issued to the respondents who contested the application and grant of reliefs prayed for..

6. We heard Shri V.P. Sharma, counsel for the applicant and Shri N.S. Mehta, counsel for the respondents at great length and perused the record of the case.

7. The learned counsel for the applicant argued that the applicant was not supplied with the copies of all the documents which are relied upon and that this is a mandatory requirement of CCS(CCA)Rules, 1965. It is further argued that the applicant was not given

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the copy of the preliminary enquiry report and he was not given reasonable opportunity to defend himself and that he was also not given opportunity to produce defence witnesses and further that the Presenting Officer was allowed to produce additional witnesses whose list has not been given to him and that he was not given the copy of the documents which were permitted to be produced by the Inquiry Officer. It was further argued that the Inquiry Officer was biased and that the Appellate authority did not apply his mind to the various issues raised by the applicant in his appeal dated 10.6.89. It was further argued that the venue fixed for hearing on 22.3.89 at Alwar was shifted to Kishangarh with a view to deprive the applicant of proper opportunity to defend himself and also to put the blame on him for non-appearance in the enquiry.

8. A perusal of the record clearly shows that the first contention of the learned counsel for the applicant regarding non supply of documents to the applicant, is not borne out by facts. Annexure.R-1 annexed with the counter reply clearly shows that the applicant was supplied with a copy of the proceedings of oral enquiry on 13.12.88. He was allowed to inspect the documents and also the relevant statements as mentioned in the enquiry proceedings, which the applicant signed as a token of having received the copy thereof. This is dated 13.12.88. He has

signed twice to show that he has received photocopies of the documents and also various statements. As a matter of fact, the Inquiry Officer, Shri B.L. Meena adjourned enquiry on 13.12.88 and ordered that the delinquent employee should be permitted inspection of all the documents on 22.12.88 at 1100 hrs. in the office of the Senior Superintendent of Post Offices, Alwar. The Presenting Officer was directed to get all the documents inspected on the date and time and at the venue indicated and a certificate to this effect was to be obtained from the applicant and sent to the Inquiry Officer. The applicant was further allowed to take the assistance of defence assistant, if any, in inspection of listed documents, and he was given further opportunity to submit additional documents, if any, if he so desired, to the Inquiry Officer by 26.12.88 and that he may also submit the list of defence witnesses to be examined on his behalf on the same date. The list of prosecution witnesses is available at page 57 annexed as Annexure-I with the I.O.'s report. They are 22 in number. At Annexure-II, list of defence witnesses is available. They are 4 in number. At Annexure-III page 59 to 61 of the paper book, the list of exhibits of prosecution side is available. They are 82 in number. Annexure-IV at page 62 contains the list of exhibits of defence side. They are 9 in number.

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9. The applicant was charge sheeted under Rule 14 of CCS(CCA) Rules 1965 after denial of charges by him. Shri B. L. Meena was appointed as Inquiry Officer to enquire into the charges levelled against the applicant vide Senior Superintendent of Post Offices, Alwar memo No.F/4-5/86-87 dated 2.11.88. Shri H.S. Sekhawat was appointed as Presenting Officer vide Senior Superintendent of Post Offices, Alwar memo No.F/4-5/86-87 dated 2.2.88. Shri M. D. Saini attended the enquiry as defence assistant on behalf of the applicant. The enquiry started on 13.12.88 and ended on 27.3.89. There were in all 24 sittings. A detailed enquiry report was submitted by the Inquiry Officer. On the basis of the documentary evidence available and also on the basis of the evidence of the prosecution witness, the Inquiry Officer found all the charges levelled against the applicant as proved.

10. The applicant was removed from service by the competent authority because he was found guilty of misappropriation of government money while working as Postal Assistant, Kishangarh Bas S.O. during the period from 23.8.83 to 7.10.86 as a result of which departmental enquiry was conducted against him after due service of charge sheet. In the counter reply it has been categorically stated that all the copies of relevant documents were given

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to the applicant during the oral enquiry at the initial stage. Therefore, it is not correct to say that he was not supplied with the copies of supplied with the copies of the relevant documents. The photocopies of the proceedings dated 13.12.88 has also been filed with the counter which goes to show that he has acknowledged receipt of the documents.

11. The contention of the learned counsel for the applicant was that the enquiry got vitiated because a copy of the preliminary enquiry report was not supplied.

12. The requirement of furnishing of a copy of the preliminary enquiry report to the delinquent employee after the forty second amendment of the Constitution came in the judgement of Md Ramjan Khan's case on 20.11.90. The Constitution Bench comprising of Hon'ble Chief Justice of India, M. N. Venketachalliah, Hon'ble P.V. Samant, Hon'ble K. Ramaswamy, Hon'ble S. Mohan and Hon'ble B. Jeevan Reddy J.J. in their decision in JT 1993(6) SC 1 M.D., ECIL Vs B. Karunakaran delivered on 1.10.93 held that when judicial discretion is exercised to establish a new norm of furnishing a copy of the preliminary report as held in Md Ramjan Khan's case it would apply prospectively i.e. to cases after 20.11.90 and not to past cases. In view of this, there is no merit in the contention of the learned counsel for the applicant that a copy

of the preliminary enquiry report should have been furnished to the delinquent employee. It was ~~was~~ argued by the learned counsel for the respondents that this preliminary enquiry report was only for collection of certain facts for serving the charge sheet and no part of that report was made use of in the enquiry. No reliance is placed on any material in the preliminary enquiry report. The question of the enquiry proceedings getting vitiated does not arise. Thus, this contention of the learned counsel for the applicant has no legs to stand.

13. The learned counsel for the applicant repeatedly argued that there has been violation of principles of natural justice in as much as the copies were not supplied to him and that additional documentary evidence was allowed to be produced before the Inquiry Officer. What particular rule of natural justice should apply to a given case, will depend to a great extent on the facts and circumstances of the case under the framework of the law in which the enquiry is held. The Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case. The soul of the rule is fair play in action. The basic requirements of the principles of natural justice is that the charges may be stated clearly

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and that there should be no vagueness about it, and also reasonable opportunity should be given to the delinquent employee to state his defence and the competent authority must pass speaking orders. All these requirements have been fulfilled in the present case. A perusal of the record shows that the charges are all based on documentary evidence and these have been stated very clearly while serving the same on the delinquent employee. The record further shows that the delinquent employee (applicant) has been furnished with all the documents on which reliance was placed by the prosecution and the competent authority and the appellate authority both have passed speaking orders. In the case of Mahendra Singh Gill Vs. Chief Election Commissioner (1978) 1 SCC p.405 Hon'ble Mr Justice Krishna Iyer has made the following observations:

"Courts must be tempted by the thought, while compromise on principles is unprincipled applied administrative law in modern complexities of government must be realistic, not academic. The myriad maybes and the diverse urgencies are live factors, natural justice should not destroy administrative order by insisting on the impossible."

The enquiry is a detailed one and every charge have been fully discussed by the Inquiry Officer and the disciplinary authority has passed speaking orders i.e. he has given the reasons for the conclusions arrived at by him. The appellate authority while agreeing with the competent authority, has passed well reasoned orders and

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we do not find any lacunae in the procedure or in the orders passed by the competent/appellate authorities. There is no arbitrariness either in the enquiry report or in the orders passed by the competent/appellate authorities.

14. It is not every omission or defect which vitiates the proceedings or invalidates the orders. It is only mandatory condition, which if violated, proves fatal but if a rule is merely directory, its non-observance will not matter. We do not find any violation of rule 14 of the CCS(CCA) Rules, 1965 or any of its sub-rules 14, 15 & 16. It is a well settled law that the principles of the natural justice yield and change with the exigencies of different situations and do not apply in the ^{same} manner to situations which are not alike. They are not immutable but flexible.

15. The last argument of the learned counsel for the applicant was that the I.O. was biased. There are no instances given to substantiate this allegation. As observed by Chief Justice Chandrachud in K. Nagaraj Vs State of A.P. (1985) 1 SCC p.523 (Para.36) :

"Burden to establish malafide is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive, cannot be accepted without proper pleadings and adequate proof."

We do not find any pleadings and proofs





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to substantiate the charge of bias. Therefore, this contention of the learned counsel for the applicant is also not acceptable.

16. The court is not competent to appreciate evidence and is also not required to look into the quantum of punishment which fall within the jurisdiction of the competent authority or appellate authority.

17. In the light of what has been stated above, the application fails and is dismissed but without any order as to costs.


(B. K. Singh)
Member (A)


(S. K. Dhaon)
Acting Chairman

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