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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A. No.407 of 1993 in
O.A. No. 79 of 1991

1. Hon'ble Mr. J.P. Sharma, M(J) 25th Feb. 1994
2. Hon'ble Mr. B.K. Singh, M(A)

Tara Chand Sharma,
Ex-ED Employee, Gurgaon Postal Division,
Village & Post Office,
Nangal Sirohi,
District Mahendergarh

Applicant

Address at Delhi: C/o Shri Sant Lal,
Advocate,
C-21(B), New Multan Nagar,
Delhi-56.

By Advocate: Shri Sant Lal

Versus

1. Union of India, through
Secretary,
Ministry of Communications,
Department of Posts,
New Delhi.
2. The Post Master General,
Haryana Circle,
Ambala Cantt.
3. The Senior Superintendent of Post Offices,
Gurgaon Division,
Gurgaon.

Respondents

By Advocate: Shri P.P. Khurana.

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A))

This R.A. No.407/93 has been filed in O.A. No.79/91 in which the judgment was delivered on 10.9.93. Notices were issued to the parties on this review application on 3.11.93. The learned counsel for the applicant and the departmental representative were present on 3.1.94 when the departmental representative was asked to file reply to the RA and the learned counsel for applicant was asked to file rejoinder within two weeks. The reply to the RA has since been filed. Arguments were heard and concluded on 23.2.94. Shri Sant Lal, Advocate, represented the applicant and Shri P.P. Khurana, Advocate, represented the respondents.

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As per directions of the Court the file relating to departmental proceedings has also been produced before us. The entire OA along with the RA was reheard by the division bench and the learned counsel for the applicant was allowed to advance his arguments in regard to the OA No. 79/91 which he did. He raised the following points.

2. The first argument that he raised was that the SDI(P) Narnaul, was not competent to issue charge sheet to the applicant. The I.O. and the P.O. were appointed simultaneously along with the issue of ~~the~~ charge sheet which should not have been done. It is further argued that in this particular case the Inspector is complainant and is an interest witness and he had a personal stake and as such he could not be a disciplinary authority in the instant case. He cited Rule 3-A of the Service Rules for EDAs and stated that the appointing authority for each category of employees has been indicated in the schedule annexed to the rules. Rule 3-A reads as under:-

"The powers of the appointing authority in the matter of awarding any of the penalties specified in Rule 7 may be exercised by an authority which has been shown in the Schedule annexed to these rules or by any other authority empowered in this behalf by a special order of the Head of the Circle under circumstances to be recorded in writing:

Provided that that in no case, the authority so appointed shall be lower in rank than the authority who originally appointed the ED Agent".

A perusal of these rules will indicate that it is almost on par with CCS(CCA) Rules. The proviso to Rule 3 amplifies it.

3. During the course of arguments it was admitted that while delivering judgment ~~the remark regarding~~ submission of ~~unwritten~~ written arguments by the learned counsel for the respondents ~~is not correct.~~ The learned counsel for the

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respondents had produced the records of the departmental proceedings and this was considered as a submission of the arguments on behalf of the respondents. On the 22nd and 23rd February the records were called for and were produced before the court and the learned counsel for the applicant was allowed the privilege of going through the records to supplement his arguments since the RA was being heard along with the OA. The learned counsel for the applicant declined to do so saying that the Court should not go beyond the pleadings on record. When a departmental file is called for it is meant to assist the Court to arrive at a correct decision.

4. ~~xxxxx~~ The learned counsel for the applicant stated that the charge-sheet has been issued by an authority who is a complainant in this case. He cited the ruling of the case CS Dwivedi Vs. UOI 1989m(4) SLJ CAT 1992 Patna where it has been held that if the competent authority has a personal stake, he should not issue charge-sheet. He cited another ruling of ~~Savinder Singh~~ Vs. UOI 1991 (1) ATJ page 58 CAT Chandigarh. The propriety of issuing orders of appointment of I.O. and P.O. along with the charge-sheet was, according to him, an irregularity.

5. The applicant was removed from service vide SSPOs Gurgaon Memo No. A/Nangal Sirohi dated 13.11.88 under the provision of Rule 7 of EDAs (Conduct & Service) Rules 1964. It is not disputed by the learned counsel for the applicant that the SDI(P), Narnaul was competent to issue charge-sheet to the applicant being his appointing authority. What he challenged is that he was a complainant and a witness in the present case and also that he had stakes in it. It is not understood why appointing authority can be divested of

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his/her power to issue a charge-sheet even though there was an altercation between him and the applicant. The SDI(P) has been declared as appointing authority under the provision of DG (P&T) New Delhi Instruction No. 6 below Rule 8 of EDAs (Conduct & Service) Rules, 1964. There is no bar for proceedings to be initiated by the appointing authority but where he has a stake he has only to refrain from passing a final order. This has also been clarified in DG (P&T) Instruction No. 3 vide letter No. 43/42/78-Pen./Disc.II dated 22.6.79. The relevant portion is extracted below:

"It will be observed from Rule 8 of the ED Agents (Conduct & Service) Rules, that the term 'Disciplinary Authority' has not been used in the matter of imposition of penalties. It is laid down that the appointing authority will be competent to impose penalties. The Ministry of Law has advised that even though there is no provision for appointment of ad hoc disciplinary authority, the difficulty can be overcome if an authority, senior to the appointing authority, exercises the power of the disciplinary authority (i.e. of the appointing authority) provided that this authority senior to the normal authority is not the appellate authority himself. No specific delegation has been made in respect of appellate authorities but it is laid down in Rule 10 ibid that the authority to which the authority imposing the penalty is immediately subordinate shall act as the appellate authority. Accordingly it would not be necessary to issue any general or special orders for appointment of ad hoc disciplinary authorities when the normal appointing authority is not in a position to process the disciplinary case.

In view of the ruling of the Ministry of Law, the authority immediately senior to the prescribed appointing authority would process the disciplinary case and pass the necessary orders."

This is only a clarification of Rule 3-A for providing any authority empowered by a special order of the Head of Circle exercising power for awarding penalties. This clarification makes it abundantly clear that orders of Head of Circle are not required in view of the specific instructions of DG. The only bar is that the disciplinary authority imposing the penalty should not be lower than the appointing authority.

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In the DG's Instructions No. 4 issued vide letter No. DG/P&T/151-4/77-Disc.II dated 19th February 1980, it is laid down that:

"The discretion of appointing Presenting and Inquiry Officers is vested with the disciplinary authority and it is for him to exercise these powers. Accordingly, any order appointing Presenting or Inquiry Officer has necessarily to be issued by the disciplinary authority and not by any authority lower or superior to the disciplinary authority. However, the difficulty pointed out can be solved if the Inspector of Post Offices appoints the Presenting and/or Inquiry Officer in consultation with the Divisional Superintendent. It is not, however, obligatory that in all cases, the Presenting and Inquiry Officers should be appointed. However, it is a matter to be decided by the respective disciplinary authority."

6. The instructions issued by the DG(P&T)/^{vide} letter No. 15/5/81-Vig.III dated 16.12.81 lays down that there is no bar for proceedings to be initiated by the appointing authority but final orders should be passed by the appropriate authority under the Constitution. It reads as follows:-

"The prescribed appointing authority is competent under Rules 7 and 8 of the EDAs (Conduct & Service) Rules to initiate disciplinary proceedings. There may not, therefore, be any objection if the prescribed appointing authority issues the charge-sheet and also orders an enquiry in a major disciplinary case for satisfying the requirements of Article 311(1) of the Constitution. It would be sufficient if the penalty of dismissal or removal from service is not awarded to an EDA by an authority lower than the authority which is to be treated as the appointing authority for the purpose of this Article of the Constitution. There will be no violation of Art. 311 of the Constitution if the prescribed appointing authority issues the charge sheet and ultimately the penalty awarded by the ad hoc disciplinary authority. It may, however, be desirable to appoint an ad hoc disciplinary authority even before the issue of the charge-sheet."

7. Thus it is not disputed that the SDI(P), Narnaul was fully competent to issue charge-sheet as per the provision of DG (P&T) quoted above under Rule 8 of the EDAs (Conduct and Service) Rules 1964. The prescribed appointing authority was fully competent under Rule 7 and 8 of the EDA (Conduct & Service) Rules to initiate disciplinary proceedings against the applicant.

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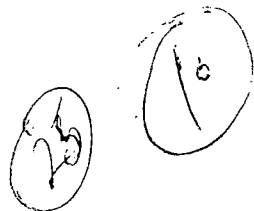
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Thus the charge of the learned counsel for the applicant objecting to the prescribed authority issuing charge-sheet and ordering inquiry into the major disciplinary case like this cannot be sustained. The Inspector of Post Offices can appoint Inquiry Officer and Presenting Officer in consultation with the Divisional Superintendent. The Departmental file clearly indicates that the approval for appointment of Inquiry Officer and Presenting Officer was obtained from the Divisional Head and the same was conveyed to SDI(P), Narnaul vide letter No. H-2/Misc. dated 6.9.87. The appointment of Inquiry and Presenting Officers was done according to the prescribed procedure. Thus there is no irregularity involved in the initiation of proceedings as per the procedure laid down in the Service Rules for the EDAs.

8. The SSPOs, Gurgaon was fully competent to pass the impugned punishment order of removal from service in respect of the applicant under the provision of DS(P&T)'s Instruction No.3 below Rule 8 of EDAs (Conduct & Service) Rules 1964 which clearly lays down that the authority immediately senior to the appointing authority would process the disciplinary cases and pass necessary orders.

9. Copy of the Inquiry Report was not supplied to the applicant since there was no provision for supply of the same. This provision was introduced subsequently vide Govt. of India, Department of Posts, O.M. No.11012/13/85-Estt (A) dated 26.6.89. The orders of removal were passed on 30.11.88. In the judgment also we have categorically stated that the charge-sheet to the applicant was issued on 9.10.87 and the I.O. and P.O. were appointed on 10.10.87 and this was meant to expedite the departmental enquiry. The departmental

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file indicates that the applicant submitted his defence on 6.1.88 and the regular proceedings in this case were started by the I.O. in February 1988 after receipt of the defence of the applicant. He was given full opportunity to represent his case during the departmental enquiry and there is no averment to the effect that the principles of natural justice were not observed in his case. The principles of natural justice require that the delinquent should be informed of the charges against him and he should be given full opportunity to state his case and that the authority competent must pass a speaking order.

10. All the charges have been dealt with in detail in the judgment in O.A. No.79/91. The departmental file indicates a large number of complaints against the ~~same~~ applicant and these were being inquired into before finalising the charge-sheet. Unauthorised absence on two occasions was one of the charges against the applicant. In this regard, DG (P&T)'s instructions vide letter No. 40-58/78-Pen. dated the 25th April 1981 reads as under:-

"Unauthorised absence/leave, on the other hand, is a period during which an EDA himself does not perform his duties personally but entrusts them to some other person without the approval of the appointing authority (vide Director's Letter No. 43/48/64-Pen. dated 21.4.69). Unauthorised leave/absence even for one day will constitute break in service of an EDA unless regularised as authorised leave, or the break in service on that account is condoned."

11. It is true that the normal period for put-off duty is 120 days only but where there are large number of complaints with concrete instances of irregularities and these are being looked ^{into} and an enquiry is under contemplation, this period of 120 days as envisaged will be deemed to be directory in nature. It is not mandatory and as such since

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there were serious charges against the applicant it did take 7 months to complete the ^{fact finding} inquiry as is evident from the study of the departmental proceedings file submitted before us. We had summoned the proceedings along with the enquiry report of the appointing authority and we have also perused the report of the I.O. and the decision of the superior officer, ^{ie. SSP (S) Gurgaon who} Disc. authority in this case. Since the appointing authority had a stake and was an interested witness and as such the order of removal was passed by the SSP, Gurgaon.

12. The charge of malafide is easy to level but difficult to prove. Hon'ble Mr. Justice Chandrachud has rightly observed that:

"The 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." (K. Nagaraj Vs. State of A.P. (1985) SCC 523.

If the present applicant knew all the relevant facts bearing on the question of bias from before, he should not have participated in the inquiry without protest. If he took a chance of a favourable decision he cannot subsequently make a grievance on the score of bias before the Tribunal. No cogent reasons or concrete instances have been given before us to infer any bias on the part of the SSP who was an adjudicator in this case and who passed the orders of removal being ~~the~~ superior in authority to that of Inspector of Post Offices. The SSPOs Gurgaon, has rightly passed the order of removal on 30.11.88 after taking into consideration all facts and circumstances of the case.

13. After hearing the arguments of the learned counsel for the applicant and perusal of the record of departmental proceedings, we find that the applicant has been given full opportunity even as a holder of a civil post under the Service Rules and also under Article 311(1) and (2) of the Constitution.

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The orders of the SSPOs imposing the penalty of removal on the applicant are reasoned and speaking. He has examined each charge and agreed with ^{three} ~~some~~ of the charges and disagreed with others. In totality the charges proved against the applicant ^{considered sufficient to} ~~warrant~~ his removal from service. Neither there is any irregularity in the procedure nor is there any violation of Service Rules for EDAs. There is no arbitrariness or non-application of mind in dealing with the rules and procedures or in imposing the penalty. In the absence of any arbitrariness or irregularity, we do not find any scope for interference especially when the charges regarding return of registered letter No. 1932 dated 24.1.86 pertaining to Smt. and Chameli Devi, ~~wrong~~ delivery of two letters dated 11.10.86 and 6.12.86 causing lot of inconvenience to L/Nk Laxmi Narain have been established after admission by the applicant during the course of departmental enquiry. The ^{4th} ~~charge~~ ^{is} regarding return of M.O. No. 4252 dated 4.11.86 amounting to Rs. 300 sent ~~to~~ ^{to} Smt. Santara Devi and depositing it in the Post Office saying that it is none of his duty to ascertain the correct address. Smt. Santara Devi is a resident of Village and Post Nangal and it is an undisputed fact. Hence this charge was also proved against the applicant. The charge of unauthorised absence on two occasions has also been proved. He was absent on 5.1.87 without any intimation and to cover it up it is said that he submitted a medical certificate about his ~~an~~ sudden illness. The fifth and last charge ^{as} ~~is~~ evident from the record of the departmental proceedings, relates to his indisciplined behaviour resulting in an altercation with the SDI(P). A perusal of the departmental record clearly shows, and there are eye witnesses ~~who~~ ^{who} testified to the fact of altercation.

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14. The learned counsel for the applicant all the time insisted that there was no malefide involved in the action of the applicant in returning the Money Order and in ^{not} ascertaining the correct address or in not delivering the letters to correct addresses or returning the letter of Smt. Chameli Devi. It may not appear to be serious so far as the learned counsel for the applicant is concerned, but it definitely requires a sense of empathy to visualise the condition of those whose money order is returned or whose letters are wrongly delivered causing inconvenience or dislocation in the delivery of 'dak' when one remains on unauthorised leave. These were taken to be serious charges by the department and that is the reason why they imposed the penalty of removal from service.

15. As regards the two rulings quoted by the learned counsel for the applicant, these are not applicable in the present case as is indicated below:

(i) In case of CCS Dwivedi Vs. Union of India, the disciplinary authority i.e. Sr. DCS ^{who} was himself the witness issued the charge-sheet, appointed E.O. who held the applicant guilty and as such it was held that he should have appointed another disciplinary authority. It goes in favour of the respondents since the appointing authority appointed E.O. and P.O. but allowed the superior officer, i.e. SSPOs, to function as disciplinary authority. It is the Sr. Superintendent of Post Offices who removed the applicant from service and not the SDI(P).

(ii) The case of Salvinder Singh Vs. Union of India is also distinguishable. In that case there was only charge of misbehaviour with SDO(Phones) who was the sole witness and

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also the appointing authority. This is not so in the instant case. Misbehaviour with the SDI(P), Narnaul is just one charge for which there were other witnesses who testified about altercation between the two. SDQ(Phones) imposed punishment as appointing authority. In the instant case the SDI(P) only issued memo containing articles of charges gathered over a period of time of which misbehaviour is only one. The rest related to other transactions with which he had nothing to do. Here the appointing authority did not function as disciplinary authority as is the case in the ruling quoted by the learned counsel for the applicant. This ruling has no application to the present case.

15. The Hon'ble Supreme Court has held in a large number of cases that the Tribunal should interfere only when there is arbitrariness or irregularity in procedure or some illegality is involved as a result of breach of statutory rules. None of these ingredients are present in the present case and as such we are not inclined to interfere with the decision of removal taken by the SSPOs and upheld by the superior officers as well. The Tribunal is also not expected to appreciate evidence..

16. This Tribunal is also not competent to look into the quantum of the punishment since the Hon'ble Supreme Court has held in the case of Union of India Vs. Permanand (1989) 10 ATC 30 SC and also in the case of Dev Jani Das Vs. Union of India (1990) 12 ATL 22 that quantum of punishment falls within the domain of the competent authority and the courts should refrain from interfering with it. The proceedings have been conducted according to the Service Rules

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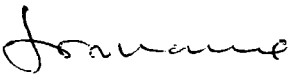
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framed for EDAs and in the light of the Instructions of
DG (P&T) and the applicant has been ^{given} all opportunity to
defend himself and there is no infringement of the
principles of natural justice and as such the O.A. as
well as the RA are dismissed as devoid of any merit and
substance leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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