

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

* * *

Date of Decision: 7. 4. 93

OA 976/91

SHRI MALIK RAM

... APPLICANT.

vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLR SHRI J.P. SHARMA, MEMBER (J).

HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant ... SHRI A.K. BHARDWAJ.

For the Respondents ... SHRI M.L. VERMA.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This is an application dated 6.3.91 u/s 19 of the Administrative Tribunals Act, 1985, filed by Shri Malik Ram, former Postman, Onkar Nagar Post Office, for setting aside the order dated 9.1.90, passed by the Director of Post Offices, New Delhi, (Annexure-A), reducing the punishment awarded to the applicant from dismissal to compulsory retirement with effect from the date he was dismissed i.e. 23.6.86.

2. The applicant was employed as Postman under the Senior Supdt. Post Offices Delhi w.e.f. 23.7.63. By order

23.6.86 (Annexure-D), he was proceeded against departmentally under Rule 14 of the CCS (CCA) Rules, 1965, on the following three charges:-

"(i) On 9.7.85, while working as Postman, Onkar Nagar PO, Delhi-35, Sh. Malik Ram was ordered by the SPM to be deployed independently in beat No.13 in place of Sh. Satbir Singh Postman, who was deployed as a sorter in leave-arrangement. Sh. Malik Ram refused to note down the order in question. It resulted in dislocation of work. The said Shri Malik Ram thus acted in a manner of unbecoming a Govt. servant in contravention of Rule 3(I), (II), (III) of CCS Conduct Rules, 1964.

(ii) The said Shri Malik Ram managed to lift the attendance register lying on the table of Delivery Clerk and struck his initial by drawing a line. By doing so, the said Sh. Malik Ram did not only destroy an evidence showing his presence in the office but also tampered with the official record un-authorisedly.

(iii) Immediately after having struck the signatures off the attendance register, the said Shri Malik Ram slipped away from the office without leave or any information. By doing so, he abruptly absented the duty and contravened rule 39 of P&T Man. Vol. II.

3. The Enquiry Officer came to the conclusion that charges (i) and (iii) were established while charge (ii) was also proved with suspicion. The Disciplinary Authority dis-agreed with the reasons given by the Enquiry Officer with regard to charge (ii) and held that it also had been fully proved. As regards the penalty, ^{he is} observed that the work in the Post Office was operational and that refusal of order in the operational field may lead to any consequences. The refusal had not only dislocated the work, but also fostered indiscipline in the post office. By any stretch of imagination, such refusal was an act of misconduct which could not

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be taken lightly because it involved refusal of legitimate duty required of a Govt. servant. Holding that it was a case of rare misconduct, which warranted deterrent penalty, the Senior Supdt. of Post Offices imposed the penalty of dismissal on the applicant.

4. The applicant filed an appeal before the Director, Postal Services, New Delhi, who by his order dated 31.3.87, after recapitulating the charges framed against the applicant held that no proper appeal had been made out. It was observed that even if the applicant's letter dated 18.8.86 was to be considered as an appeal, it was addressed to the SSPOs and only endorsed to DPS amongst six others addressees, and was received by the SSPOs on 18.8.86, whereas the punishment order had been received by the applicant on 27.6.86. On this ground, the appeal was treated as time barred, and rejected.

5. Thereupon, the applicant filed OA 690/87 in this Tribunal. The Tribunal heard both the parties and after perusing the materials on record, delivered the judgement on 10.11.89. In that judgement it was held that there was some evidence in support of charges (i) and (iii) made against the applicant. In a case where there was some evidence to sustain the charge, the Tribunal could not sit in judgement over the findings of the Disciplinary Authority.

The Disciplinary Authority's impugned order dated 20/23.6.86 could not, therefore, be called any question on the ground that it was based on no evidence. The Tribunal further noted that the question however arose whether the appeal made by the applicant was considered and disposed of in accordance with the provisions of CCS (CCA) Rules, 1965. The Tribunal held that the Appellate Authority had not complied with the requirements of Rule 27(2) CCS (CCA) Rules, 1965 read with DG P&T's instructions issued thereunder, inasmuch as procedural aspects as well as the justness of the Disciplinary Authority's findings with reference to the admissible evidence had not been discussed; points raised in the appeal petition had not been discussed either; and no objective assessment of the lapses on the part of the punished official had been made to decide whether ^{fair and} the had been established and the penalty was appropriate/adequate or not. As the appeal had been rejected merely on the technical ground that it was time barred, and the points raised in the appeal petition alleging various infirmities in the impugned order had not been fully considered, and moreover as it appeared to the Tribunal that the punishment of dismissal from service was also excessive, the case was remitted to the Appellate Authority to consider the matter afresh and pass a speaking order in the light of the observations made.

6. In the light of the above direction, the Appellate Authority considered the matter afresh, and by his impugned order forwarded vide memo dated 19.1.90, held that the findings of the Disciplinary Authority were fully warranted by the evidence on record, but taking into account the fact that the applicant had served the Govt. for nearly 23 years, held that the punishment awarded was excessive and reduced the same from dismissal to compulsory retirement (with effect from the date he was dismissed i.e. 23.6.86), which was upheld by the Member (P), Postal Services Board on 27.6.91.

7. It is that order, which has now been challenged in this application.

8. The grounds taken in this application are that the Conduct Rules were not properly followed; Rule 39 of the P&T Manual was not reproduced in the findings; the charge-sheet and statement of witnesses was not signed by the Disciplinary Authority; the statement of witness No.6 was not supplied to the petitioner; the appeal petition was disposed of without application of mind; the finding of the Enquiry Officer that there was no eye-witness to substantiate regarding striking off the attendance was ignored; and that the punishment of compulsory retirement is excessive. Reference has particularly been made to rulings of the Hon'ble Supreme Court, particularly Ashok Kumar Vs. UOI (J.I 1988 (1) SC 652), wherein the Hon'ble Supreme Court has held that the imposition of penalty of

termination of service for the alleged misconduct of unauthorized absence from duty was not warranted and, therefore, the same was modified to that of censure.

9. The respondents have contested the application, and stated that the applicant has not exhausted the remedies available to him under the CCS (CCA) Rules, 1965. It has been urged that in accordance with the directions of this Tribunal, after considering all aspects of the case carefully, the penalty of dismissal was reduced to compulsory retirement with effect from the date of the applicant's dismissal i.e. 23.6.86, and the provisions of the CCS (CCA) Rules, 1965 have been fully complied with. The procedure laid down in Rule 39 P&T Manual Vol. IV has been discussed in the findings and punishment order; the charge-sheet and statement of witnesses was signed by the competent Disciplinary Authority; and copies of statement of all the witnesses were supplied to the applicant and he was thus given full opportunity to defend his case. There was full application of mind in disposing of the appeal petition, and the punishment was wholly commensurate with the gravity of the offence.

10. We have heard Shri A.K. Bhardwaj, learned counsel for the applicant, and Shri M.L. Verma, learned counsel for the respondents.

11. As already mentioned above, the Tribunal after hearing both the parties and after perusing the material

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on record delivered judgement in this case on the same facts on 10.11.89 holding that there was evidence in support of charges (i) and (iii) made against the applicant and where there was some evidence to sustain the charge, the Tribunal could not sit in judgement over the findings of the Disciplinary Authority. The Disciplinary Authority's impugned order dated 20/23.6.86 could not, therefore, be called into question on the ground that it was based on no evidence. Just as the Tribunal cannot sit in appeal over the findings of the Disciplinary Authority, this Bench of the Tribunal has no warrant to interfere with the findings of the earlier Bench, referred to above, in so far as it relates to the evidence in support of charges (i) and (iii) made against the applicant. We, therefore, confined ourselves to see whether the directions of the Tribunal given in its judgement dated 10.11.89 have been complied with or not.

12. We note that the impugned order of the respondents dated 9.1.90 is ^{a m} detailed and reasoned one, in which various points raised in the appeal petition have been fully discussed. The Appellate Authority has noted that the applicant was not denied ^{his right to} ~~to write his~~ appeal in the punishment orders or elsewhere and there were no ambiguity in the charges framed against him. The applicant was also given full liberty to refer to the relevant P&T Manual, which contains the rules quoted, and ^{Mis} alleged infirmity in the impugned order of dismissal have been

rejected after full consideration. In so far as the quantum of punishment is concerned, the respondents in their Appellate Order dated 9.1.90, felt that the punishment of dismissal was excessive and reduced the same to one of compulsory retirement with effect from the date of dismissal i.e. 23.6.86.

13. In the case UOI Vs. Parmanand (1989 (2) SCC 177), the Hon'ble Supreme Court have held that the Tribunal should not interfere with the quantum of punishment levied by the Disciplinary Authority in departmental proceedings, and under the circumstances, we would not like to interfere with the order of punishment, more particularly as it has been already reduced after full and mature consideration from that of dismissal to one of compulsory retirement.

14. In the result, the impugned orders warrant no interference, and this application is accordingly dismissed. No costs.

(S.R. ADIGE)
MEMBER (A)

7.4.93
(J.P. SHARMA)
MEMBER (J)