

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.1382 of 1993

New Delhi this the 27th day of April, 1994

(a)

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member(A)

Shri Jai Singh
R/o Village Daryapur,
Delhi-110039.

...Applicant

By Advocate Shri Sant Lal

Versus

1. The Union of India through the Secretary, Min. of Communications, Department of Posts, Dak Bhawan, New Delhi-110001.
2. The Director Postal Services, O/O the C.P.M.G. Delhi Circle, Meghdoot Bhawan, New Delhi-110001.
3. The Senior Superintendent of Post Offices, Delhi North Division, Civil Lines, Delhi-110054.

...Respondents

By Advocate Shri R.B. Sharma

ORDER

Mr. Justice S.K. Dhaon, Vice-Chairman

On 31.08.1992, the Senior Superintendent of Post Offices, Delhi, North Division (Shri Shailender Dashora) acting as the disciplinary authority imposed a punishment of removal from service upon the applicant. He preferred an appeal. During the pendency of the application, he came to this Tribunal by means of this O.A. praying that the said order of the disciplinary authority may be quashed. The Director, Postal Services on 22.11.93 dismissed the appeal. Now both the orders are being impugned.

2. Between 08.04.1986 and 11.04.1986, the petitioner was deputed as a Postman at Ashok Vihar Head Office and was allotted beat No.17. He was subjected to disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 (the Rules). On 22.07.1987, the enquiry officer gave his report and found

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therein that out of the three charges levelled against the applicant, two stood proved. On 14.08.1987, the Senior Superintendent of Post Offices (Shri G.C. Ahuja), dismissed the applicant from service. He disagreed with the inquiry officer and held that charge No.3 also stood proved. The applicant remained unsuccessful in appeal as well as in the revision which were dismissed on 30.03.1988 and 13.09.1988 respectively. The applicant challenged the aforesaid three orders in this Tribunal by means of O.A. 2279 of 1988 which was disposed of on 22.11.1990. Relying upon a Full Bench ^{decision of this Tribunal} in Prem Nath K. Sharma Vs. Union of India & Others, decided on 06.11.1987, this Tribunal quashed the aforesaid three orders on the short ground that the applicant was not furnished with the report of the inquiry officer by the disciplinary authority before it passed the order of punishment. The Tribunal directed that the applicant will be reinstated in service within a period of 2 months from the date of receipt of a copy of its order and would be entitled to all consequential benefits subject to his certifying that he was not gainfully employed during the period from 14.08.1987 till he is reinstated. The Tribunal further observed: ".....but we make it clear that it will be open to the respondents to initiate fresh proceedings against the applicant, if they so choose".

3. In the counter-affidavit filed, it is stated that in pursuance of the aforesaid judgment and order of this Tribunal, the applicant was reinstated in service vide order dated 29.05.1991 and he joined duty on 05.06.1991 as a Postman. He was paid a sum of Rs.71,622/- and was also given bonus for the years 1986-87 to 1991 amounting to Rs.1088, Rs1324, Rs1388, Rs1534 and Rs1577 respectively.

4. Vide Office Memo dated 07.11.1991, the applicant was supplied with a copy of the inquiry officer's report which was received by him on 11.11.1991. On 25.11.1991, the applicant submitted his explanation to the inquiry officer's report. After considering the representation dated 25.11.1991, the inquiry officer's

report and other connected documents, the disciplinary authority on 31.08.1992 awarded the punishment of dismissal from service. In appeal, the order of the disciplinary authority has been varied in so far as the penalty of removal from service had been modified to compulsory retirement from service.

5. The contents of the charge-sheet given to the applicant and the statement of imputation of misconduct and misbehaviour annexed thereto, are as follows:-

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ARTICLE OF CHARGE 1

Shri Jai Singh Postman while working in beat No.17 of AVHO from 08.04.86 to 11.04.86 was entrusted with 95 packets and 20 letters on the date & time as listed in the Annexure A & B. He did not deliver them and instead detained unauthorisedly in Jhuggi situated in the court yard of M/s R.J. Industries C-16/2 Wazirpur Ind. Area Delhi-52. As such he is alleged to have contravened rule No.701, 709 and 711 of P&T Manual Volume I Part III.

ARTICLE OF CHARGE 2

The said Shri Jai Singh Postman while working as Postman AVHO from 8.4.86 to 11.4.86 carried 8 articles listed at Serial No.4,13,19,27,65,75 in the enclosed Annexure 'A' and at Sl.Nos. 13 and 27 in Annexure 'B'. All these articles did not belong to this beat. Thus he unauthorisedly carried and detained these articles in contravention of Rule No.711 and 701(2) of P&T Man. Vol. VI Part III.

ARTICLE OF CHARGE 3

The said Shri Jai Singh Postman of AVHO while working as postman from 8.4.86 to 11.4.86 detained and accumulated 95 packets weighing 8 Kg. with intent to seel in the market as 'Raddi and earn premium'. He has, therefore, acted in a manner unbecoming of a Government servant and he failed to maintain absolute integrity and devotion to duty in controvention of Rule No.3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

STATEMENT OF IMPUTATION OF MISCONDUCT
AND MISBEHAVIOUR AGAINST SHRI JAI
SINGH POSTMAN AVHO

ON 11.04.1986 at 0900 AM an anonymous telephone call was received by the undersigned conveying the information that bulky packets of ordinary mails has been dumped in the Jhuggi situated in the court yard of R.J. Industries C-16/2 Wazirpur Ind. Area, Delhi-52. The caller also informed that the dumped bulky packets are sold in the market as 'Raddi'. A raiding

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comprising Shri S.K. Verma (PRIP) AVHO and Shri Roshan Lal Rohalia, Assistant AVHO was rushed to the said Jhuggi to check what the caller told.

The raiding party kept standing nearby the Jhuggi to watch the turns up there and collects the piled up mails. At about 11.50 Hrs. Shri Jai Singh, Postman, working in beat No.17, AVHO arrived there. Unaware of the existence of the raiding party there, as they were standing at a place where sighting was difficult, Shri Jai Singh entered the said Jhuggi and brought out the piled dak. At this point, the raiding party approached the said Postman and seized the mail. A list of these articles which is marked Ex.A&B was prepared. These articles were 115 in number. The packets including magazines were 95 and inland letter cards, postcards and envelopes were 20 in number.

The articles were started to pile up from 08.04.1986. The delivery to which the articles belong and the date of delivery have been mentioned in the list of article (Ex.A&B). The said postman detained the packets and magazines and piled up in the said Jhuggi in contravention of Rule No.701, 709 and 711 of P&T Manual. Vol.VI Part III.

Eight of the articles (Packets) of the so detained mail were missent to the said postman. These articles were listed at Sl.4,13,19,27,65, 75 in Ex. 'A' and at Sl.Nos.13 and 27 in Ex.'B'. The said Shri Jai Singh Postman was required to dispose of the missent dak in the PO itself. He, therefore, acted in contravention of Rule No.711 and 701(2) of P&T Manual Vol.VI Part III.

Carrying missent articles, piling up weight ridden packets and magazines traces the motive of the said Shri Jai Singh. The motive of Shri Jai Singh Postman was to sell the piled up packets which weighed 8 Kgs., in the open market as 'Raddi'. As such, he was failed to maintain absolute integrity, devotion to duty and acted in a manner, unbecoming of a Government servant in contravention of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964".

6. The first question to be considered is whether between 08.04.1986 and 11.04.1986, the applicant was entrusted with 95 packets and 20 letters for delivery. We are examining this question because it has been vehemently contended on behalf of the applicant that there is ^{evidence} ~~no~~ of entrustment in this case and, therefore, the entire case of the Department falls on the ground. We have before us the contents of the statement of the applicant, as recorded by the inquiry officer in the form of Annexure A-8 to this O.A. The first question put to him is: "while on duty on

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08-09 and 10.04.1986 you were entrusted by the clerk concerned of Ashok Vihar H.O. for delivering unregistered mail, please tell if some articles of that mail remained undelivered on these dates and if so, what did you do in respect of the undelivered mail?". The answer is: "no article was kept by me as undelivered on the above mentioned dates". It is implicit in this answer that some articles were entrusted between 08-10 April, 1986 for being delivered. An admission may be express or implied. It is a settled law that an admission is the best evidence unless explained. We have gone through the record and we do not find any explanation having been offered by the applicant that under what circumstances he admitted the entrustment.

7. The inquiry officer in paragraph 26 of his report observed:-

"The case on behalf of the defence side was closed on 27.02.1987. The SPS was ordered to be examined by me on 23.02.1987. During his examination the SPS replied that no mail of his beat remained undelivered on 8.4.86, 9.4.86, 10.4.86 and that no article was kept by him undelivered with him on these dates. On being questioned and as per his statement recorded on 11.04.1986, some packets of back dates could not be delivered by him on 11.04.86 due to excess work with him as a result of double duty. The SPS replied that the said statement was given by him under pressure of the PRI(P) Shri S.K. Verma as he is stated to have threatened him to hand over to the Police in case he did not tender his statement as desired by Shri S.K. Verma. The SPS further stated that no report against the said threatening was made by him to any one afterwards also. When the SPS was shown some wrappers of some packets bearing

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delivery date stamps of Ashok Vihar HO of 08.04.1986, 09.04.1986 and 10.04.1986, he stated that the said packets might have been got date stamped of back dates by Shri Ved Prakash, Postmaster after taking them away from Almirah". (The inquiry officer has described the applicant as SPS).

8. On 13.01.1987, the applicant submitted a written statement of defence. It appears that in the said written statement, he did not make any attempt to explain the earlier statement given by him on 11.04.1986.

9. While dealing with the statement of the applicant dated 11.04.1986, the inquiry officer did not accept the explanation of the applicant that the said statement had been given under duress on the ground that the applicant could have made report to the Police authorities or higher authorities of the Postal Department at any time either on 11.04.1986 or later on, which was not done by him. The inquiry officer has referred to certain rules which are relevant and as contained in Post and Telegraphs Manual Part III. They are: 701(1), which states, that each Postman's beat is fixed by the Postmaster and he must on no account deviate from the beat prescribed. He is required to deliver, if possible, before he returns to the Post Office, all the articles entrusted to him for delivery to persons residing within the limits of his beat. Rule 701(2) states, that if the addressee of an article cannot be found at the given address.....the article should be returned to the postmaster as undelivered. Rule 709(1) states that Postmen are responsible for the correct delivery of all articles. Rule 711(2) provides that Postmen are required to return to the clerks concerned at the hour fixed by the Postmaster, all the articles that they have been unable to deliver. Rule 711(2) posits that undelivered unreistered articles of the letter mail must be returned by the Postman

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to the Postmaster or to the official to whom this duty of the Postmaster has been assigned.

The inquiry officer has considered in detail the depositions of the prosecution witnesses, the documents on record and the deposition of the defence witnesses. He has recorded the following findings, as are material:-

".....From the statement of Shri R.L. Rehalia, P.A., Shri Bal Kishan. P.T. Waterman, Shri Vinod Dutt, P.A., Shri S.K. Verma, PRI(P), it has been confirmed that the said mail was taken into custody from the applicant on 11.04.1986 at about 12-00 Hrs. at C-16/2 Wazirpur Industrial Area, Delhi-52 in their presence by the PRI(P) Shri S.K. Verma of Ashok Vihar, Head Office. One of the defence witnesses Shri Rohtash, Tea Vendor running a tea stall near C-16/2 Wazirpur Industrial Area has also confirmed the same thing. The said mail was taken out from the said Jhuggi by the applicant on 11.04.1986 which was witnessed by a number of witnesses. The mail was brought to Ashok Vihar, Head Office on 11.04.1986 and the same was delivered to the respective addresses on 17.04.1986. This fact is also evident by a number of witnesses.

The applicant did not hand over to the Post Office the undelivered mail on the respective dates and also described 8 articles as missent and mixed up in the mail of the beat."

He concluded that applicant acted in violation of the aforementioned rules and the articles of charge No.1 and 2 have been proved. He, however, opined that article of charge No.3 did not prove."

10. The disciplinary authority passed a detailed order. As already stated, apart from upholding the finding of the inquiry officer upon charges No.1 and 2, he also opined that charge No.3 also stood proved. Apparently,

he disagreed with the findings of the inquiry officer on charge No.3, ~~that~~ without affording any opportunity to the applicant to put forward his view point on that aspect of the matter. However, as it will be seen, nothing will turn in favour of the applicant on account of the said illegality committed by the disciplinary authority.

11. The appellate authority in a well discussed order agreed with the inquiry officer and the disciplinary authority that charges No.1 and 2 had been brought home to the applicant. He, however, disagreed with the disciplinary authority that charge No.3 too had been proved. He agreed with the inquiry officer that charge No.3 was not established. Nonetheless, in the findings recorded, he maintained the order of punishment. However, as stated earlier, he converted the penalty of removal from service into a penalty of compulsory retirement from service.

12. In the departmental proceedings, the rule of evidence applicable is, preponderance of probabilities. We, in this Tribunal, are not sitting as a court of appeal so as to entitle us to reappraise the evidence. What has to be seen is whether the finding of the disciplinary authority is based on some evidence having probative value. We are satisfied that ^{this} requirement is amply fulfilled in this case. That apart, we do not find any irrationality, illegality or irregularity in the approach of the inquiry officer in rejecting the explanation offered by the applicant in relation to the statment of admission made by him on 11.01.1986, i.e., in the preliminary enquiry. The discussion above is enough to dispose of this O.A. However, we shall deal with the submissions made on behalf of the applicant.

13. The first submission is that the authorities below acted illegally in holding the disciplinary proceedings from the stage of furnishing a report of the inquiry officer to the applicant. It is contended that this Tribunal having quashed the order of the disciplinary authority and it

having directed that the respondents, if they so like, initiate fresh proceedings, really intended that de novo proceedings should be commenced. We are not impressed by this submission for more than one reasons. First, there was nothing to prevent the Tribunal from quashing the entire disciplinary proceedings. It, however, confined itself to the quashing of the order of the disciplinary authority. Secondly, it should be presumed that the Tribunal was well aware of the law that whenever an order in the disciplinary proceedings is set aside on a technical ground, the entire proceedings are not vitiated and the only requirement is that the procedural defect should be rectified. Thirdly, the Tribunal did not go into the illegality, if any, in the furnishing of the charge-memo to the applicant, the enquiry conducted by the inquiry officer and the report submitted by him to the disciplinary authority. Those proceedings were left untouched by the Tribunal.

14. The next contention is that the Post Master concerned (Shri Ved Prakash) who gave the charge-memo to the applicant was not on good terms with the applicant. The inquiry officer has considered this aspect of the matter. He has opined that no reliable evidence has been placed before him in this behalf and whatever evidence is there, it is hear-say. It is to be noted that even in this O.A., Shri Ved Prakash has not been impleaded as one of the respondents. Further, it is to be seen that Shri Ved Prakash was not the authority competent to pass the order of punishment. The order of punishment, as already indicated, was passed by the Senior Superintendent of Post Offices.

15. It is next contended that the disciplinary authority did not consider at all the explanation offered by the applicant to the inquiry officer's report. We find from a reading of the order of the disciplinary authority that he makes a specific reference of the fact that the applicant has filed an explanation. It is true that the disciplinary authority has not dealt with the explanation

of the applicant point-wise. However, reading the order as a whole, it cannot be said that he does not have the explanation of the applicant in mind.

16. It is next contended that the disciplinary authority violated the principles of natural justice while disagreeing with the findings of the inquiry officer on charge No.3. We have already dealt with this matter above.

17. It is next contended that the Post Master (Shri Ved Prakash) was merely an officiating Post Master and, therefore, he was not competent to issue a charge-memo to the applicant. Section 17 of the General Clauses Act, 1897 provides an answer to this submission. It, inter alia, states "that in any Central Act or Regulation, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the function of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed". If Section 17 in terms do not apply, the principles underlying it will surely apply to the facts of this case. An officiating Post Master, therefore, in the eye of law, is a Post Master.

18. The next argument is that no independent witness has been examined in this case. We are not dealing with the criminal trial. In departmental proceedings, different considerations operate. No less than four witnesses have proved the prosecution case. As pointed out by the inquiry officer, that even one of the defence witnesses had corroborated the version of the prosecution witness.

19. It is next contended that the applicant, if at all, committed a cognizable offence under Section 52 of the Post Offices Act. It is now a settled law that even where a delinquent Government servant committed an offence under a penal law, the Department has discretion not to prosecute him in the competent criminal law and to deal with him departmentally.

20. The next contention is that charges No.1 and 2 cannot stand independent of charge No.3. Charge No.3 to be remembered is confined to the ulterior motive of the applicant to sell off the undelivered articles and packets as 'Raddi'. We have already referred to the relevant portion of the Post and Telegraphs Manual upon which reliance has been placed by the inquiry officer. The evidence led by the prosecution in relation to charges No.1 and 2 clearly establishes violation of the said rules. Therefore, the applicant could be charged with having committed misconduct.

21. It is next contended that charges No.1 and 2 are contrary to each other. This is not so.

22. The next contention is that the inquiry officer submitted his report after 4 months of the completion of the inquiry. In our opinion, delay of 4 months is not an inordinate one, so as to vitiate the proceedings.


23. It is next contended that since the applicant was not supplied with the copy of the documents, to which reference has been made in the inquiry officer's report, he was denied reasonable opportunity of defending himself thereby violating Article 311 of the Constitution.


Having considered the matter, we are of the opinion that the applicant was not prejudiced at all by the non-supply of the copy of the documents when we find that the proceedings before the inquiry officer indicate that the applicant was given an opportunity to make notes from the said documents which were available to him for inspections.

24. The last contention is that the charged officer was not questioned by the inquiry officer. This is not correct. The applicant has himself filed a copy of the examination as Annexure A-8 to the O.A. As a corollary to this submission, it is urged that the inquiry officer performed the role of a prosecutor when he subjected the

applicant to a searching cross-examination. We are not satisfied with this submission also. A perusal of the contents of Annexure-A-8 clearly indicates that the inquiry officer merely purported to seek clarification from the applicant.

25. This application is devoid of any merit. It is dismissed but without any order as to costs.


(B.K. SINGH)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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