

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1017/93

New Delhi, this the 28th day of January, 1999.

Hon'ble Mrs. Laskshmi Swimanathan, Member(J)
 Hon'ble Mr. N. Sahu, Member(Admnv)

Balwan Singh,
 Son of Shri Niadar Singh,
 R/o C/o Sh. Sant Lal, Advocate,
 C-21(B), New Multan Nagar,
 Delhi-110056.

...Applicant

(By Advocate Shri Sant Lal)

-Versus-

1. The Union of India,
 through the Secretary,
 Ministry of Communications,
 Department of Posts,
 Dak Bhawan,
 New Delhi-110001.
2. The Director Postal Services,
 Delhi Circle,
 Meghdoot Bhawan,
 New Delhi-110001.
3. The Senior Superintendent
 of Post Offices,
 New Delhi West Division,
 N.I. Estate,
 New Delhi-110028.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Hon'ble Mr. N. Sahu, Member (A):

This O.A. is filed against the order of removal from service dated 31.1.92 by Respondent No.3 and the rejection of the appeal against the said order by Respondent No.2. The admitted background facts are that the applicant while working as a Postman, Tilak Nagar Post Office, New Delhi did not take delivery of a service Registered letter on a Saturday and informed the SPM that he would only take delivery on the next Monday. He was chargesheeted under Rule 14 for the conduct of allegedly slapping Sh. S.C. Asthana the SPM on the same date, namely,

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16.6.84 at 4.00 p.m. He was accused of acting in a manner unbecoming of a Government servant violating Rule 3(i) (ii) and (iii) of CCS Conduct Rules, 1964. The initial punishment Order of reduction of pay by two stages dated 24.2.87 having been enhanced to dismissal by the appellate authority by his Order dated 26.11.87, was set aside by the CAT on 29.11.90 directing the disciplinary authority to proceed from the stages where the I.O. submitted his report. The copy of the enquiry report was handed over to the applicant along with a dissent note by the Senior Superintendent of Post Offices. The findings of the IO were to the effect that there was no evidence to prove the incident of slapping. The SPM Sh. S.C. Asthana himself deposed before the I.O. that he was slapped and this was confirmed by two other witnesses Sh. Sharma and Sh. Manjeet Singh. The disciplinary authority believed that no responsible person would unnecessarily impute and accuse of assault without evidence. The SSPO accordingly held that Sh. Asthana was slapped by the applicant. The disciplinary authority also found contradiction in the IO's report which upheld part of the charge that the applicant created indiscipline without endorsing the finding that he slapped Sh. Asthana. The disciplinary authority also took into account the circumstantial evidence of Sh. Asthana submitting a report to the Divisional Office as well as to the police about the incident besides the evidence of Sh. Manjit Singh and Sh. Sharma. He (R-3) awarded the punishment of removal from service. The following findings were extracted:

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" The sequence of events and circumstances under which Police was called to the P.O. prove the incident of slapping. I find many witnesses have backed out from the earlier statements which they say were given under pressure. In earlier statements they had stated having witnessed the various events of the incident of slapping of Shri Asthana, SPM by Shri Balwan Singh Postman. The way they had changed their stand make me to doubt if they were later on pressurized to save Shri Balwan Singh who was an active worker of some union from expected punishment.

I too do not agree with the findings of the Inquiring Officer that charge of slapping Shri S.C. Asthana by Shri Balwan Singh was not proved. If there was no such incident, what was the basis for the Inquiring Authority to say that charge of creating indiscipline and obstruction to Govt. work was proved. It is not difficult to feel the pains agony of a person holding a responsible position such as an SPM of a Post Office if he is handled or slapped in the office by his own junior subordinate official. Such an official who dares to take law into his hands, wilfully acts to humiliate and assault his superior breaking all cannons of discipline, decency, good character, attitude and behaviour; deserves no sympathy and has no legitimate right to be retained in Govt. service".

2. The appellate authority held that evidence of Sh. Asthana SPM was fully admissible even though he was not cited as one of the witnesses at Annexure-4 of the chargesheet. It was also stated that the applicant did not place on record his objections against the deposition of Shri Asthana. On the contrary the defence assistant on behalf of the applicant cross examined at his instance Shri Asthana. The appellate authority further relied on the evidence tendered by Sh. L.K. Arora and Sh. Changuri Lal. As assault of a superior during office

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hours in a public office was an instance of extremely grave misconduct. he enhanced the penalty to that of dismissal. A further appeal was preferred under Rule 23 of the CCS (CCA) Rules by Annexure A-7 to the Director, Postal Services who by the order dated 11.3.93 rejected the appeal.

3. The grounds taken by the applicant before the appellate authority were:

- (i) The disciplinary authority did not follow the directions of the C.A.T. by its order dated 29.11.90 wherein it directed him to apply his judicial mind independently and not be swayed by the dissenting note. It is alleged that the dissenting note has been used by the disciplinary authority to award extreme penalty of removal instead of an unbiased reappraisal of the evidence during the enquiry proceedings. Shri Asthana was directly involved and his evidence alone should not have been relied upon. This was particularly so when Sh. Asthana was excluded from the list of witnesses. Taking the witness of Sh. Asthana was not permissible under Rule 14 (15) of the CCS (CCA) Rules, 1965.
- (ii) The prosecution witnesses denied having seen the applicant slapping Sh. Asthana. The disciplinary authority had only relied on the


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statements of the witnesses obtained during preliminary enquiry behind the back of the applicant.

(iii) As per Rule 15 (2) of CCS (CCA), Rules, 1965 the DA should record reasons for disagreement and record his findings on each charge. It should be clear from the findings as to whether the evidence on record was sufficient to prove the charge. It is the claim of the applicant that the findings of the disciplinary authority were based on presumptions, surmises and conjectures.

(iv) There was only one single charge of creating indiscipline and obstruction of Governemnt work which was di^ssected into two charges, one charge was slapping the SPM and the second was the allegation of creating indiscipline. Since the charge of slapping was held by the IO to be not proved, the consequential charge of indiscipline should also be held to be not proved.

(v) It was the contention of the applicant that the "mere refusal to accept the delivery of a registered letter cannot be deemed as an act of indiscipline as alleged". It is alleged that the findings of the enquiry officer in this regard must be held to be perverse. It is the contention of the applicant that no evidence has been produced to prove refusal to



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take delivery of the registered letter and also to prove that there was indiscipline and obstruction of work.

(vi) It is claimed by the applicant that neither the report made to the Police by Sh. Asthana nor the Police Investigation report had been produced in the enquiry. The observations of the disciplinary authority that Sh. Asthana became unconscious was also stated to be not based on facts.

(vii) Finally it is stated that the penalty of removal was exceedingly disproportionate to the alleged misconduct.

4. The learned counsel for the applicant relied upon the following decisions:

(i) Punjab National Bank vs. Kuni Bihari Misra (1998 (2) SCSLJ 117. (ii) Ram Mehar Vs. Delhi Administration (1992 (2) ATJ 278). (iii) Onkar Prasad Chaubey vs. Union of India. 1988 (1) ATR 40).

In the case of Shri Ram Mehar Vs. Delhi Administration & others. 1992(2) ATJ 278 this Court was dealing with a case of departmental enquiry containing two charges of which one was proved in the enquiry. The disciplinary authority disagreed with the findings of the enquiry officer and held that both the charges were proved. He ordered removal from service and the appeal against the

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removal order was rejected. That was a case, however, where a copy of the enquiry report was not supplied and no reasons were given by the disciplinary authority to disagree with the findings of the enquiry officer. The enquiry officer also allowed evidence of additional witnesses who had not been enlisted in the list of witnesses. This court besides other reasons also held that the appellate order was a non-speaking one. The main ground of decision in this case was that a copy of the enquiry report was not supplied before imposing the penalty. Relying on Union of India Vs. Mohd Ramzan Khan, 1990(2) SCALE 1094, this Court quashed the removal order.


In the case of Omkar Prasad Choubey Vs. Union of India and others, ATR 1988(1) CAT 40 the Jabalpur Bench of the Tribunal held that under Explanation to Rule 22(33) of Central Civil Services (Classification, Control & Appeal) Rules, 1965 if the enquiry officer has to deviate and establish any article of charge different from the original article of charge it cannot record a finding on such additional charge unless the Government servant has admitted either on facts on which such article of charge is based or has had a reasonable opportunity of defending himself against it.

In the case of Punjab National Bank and others Vs. Sh. Kuni Behari Misra, 1998 (2)SCSLJ 117 it is laid down by the Hon'ble Supreme Court

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interpreting Regulations 6 and 7(2) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 that whenever the disciplinary authority disagrees with the findings of the enquiring authority on any article of charge and records its own findings, then reasons for such disagreement must be recorded and the delinquent officer must be given an opportunity to represent his case.

5. The respondents' counsel relied on the counter affidavit and stated that as per the directions of the Tribunal the disciplinary proceedings had been restarted from the position where the IO submitted his enquiry report to his disciplinary authority according to the rules. The counsel for the respondents stated there might be technical flaws or lapses in the enquiry and the witnesses might not have come out with the firm statement endorsing the allegation that the applicant slapped the Post Master. But circumstantial evidence and probabilities point out to the probability of the incident. It is submitted that adequate opportunity was given to the charged official to defend his case and the punishment order was issued after considering all the relevant documentary evidence. The applicant was an Office Bearer of a Service Union and he came to discuss the case with another colleague Office Bearer. While disagreeing with the report of the IO the disciplinary authority applied his mind and arrived at his findings with sufficient grounds. The disciplinary authority recorded seven points which




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have come out from the depositions of witnesses during the course of enquiry. All the seven points indicate that the applicant was guilty of creating indiscipline, insubordination and assaulting of his superior.

6. The crux of the argument of the learned counsel for the applicant is that PWs 3, 5, 6, 9 and 10 had gone back on the earlier evidence tendered at the preliminary enquiry stage. Admittedly the disciplinary authority relied on the statements obtained in the preliminary enquiry behind the back of the applicant. It is also stated that Shri Asthana tendered evidence without any summons. He was not included in the list of witnesses given in Annexure-4 of the chargesheet nor was he summoned as additional witness. This was clear violation of Rule 14 (15) of CCS (CCA) Rules, 1965.

7. We have carefully considered the rival submissions. Under Rule 14 (15) of the CCS (CCA) Rules, 1965 the enquiry authority if it is necessary before closing the case may in its discretion allow the Presenting Officer to produce the evidence not included in the list given to the charged official. Since the applicant did not object to Sh. Asthana's evidence and even cross examined him there has been no violation of the CCS (CCA) Rules. It is a fact that witnesses have contradicted their earlier statements made during enquiry and the witnesses have turned volte-face during enquiry proceedings. As a matter of fact Shri Manjeet Singh, Cashier



confirmed part of the initial statement. Shri Manjeet Singh, Cashier stated that he heard some noise and disturbance. Sh. Jhinduri Lal in fact could not say that he has seen the applicant slapping Sh. Asthana but he was one witness who did not deny his earlier statement. His earlier statement was he heard the SPM shout "pakro pakro". He saw the applicant run away. Shri Arora during cross examination had stated that he did not see the applicant slapping the SPM. He stated that he heard the noise and saw the charged official rushing to the back door. Shri B.M. Sharma confirmed that he saw the applicant raising his noise sitting 8 to 9 feet away.

8. The reasons for disagreeing with the findings of the IO have been recorded by the disciplinary authority.

9. To sum up; the witnesses have confirmed during enquiry that they heard lot of commotion, people were running here and there. They all stated that they heard the incident that the applicant slapped the SPM. The disciplinary authority and the appellate authority recorded that the witnesses were later on pressurised to renege on their earlier statements. The applicant could not establish that a false report had been made by the SPM to harass and victimise him. Although the Police investigation report was not produced before the enquiry yet the witnesses mentioned about these reports in the course of examination. Therefore, relying on this aspect of

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the evidence was not improper. Although Sh. Asthana becoming unconscious was not mentioned in the chargesheet, it has been mentioned by one of the witnesses during enquiry.

10. In the case of State of Tamil Nadu vs. S. Subramaniam (1996 SCC (L&S) 627: 1996 (33) ATC 31) it has been held that the Tribunal is not a court of appeal. It cannot re-appreciate the evidence and reach its own conclusion. It cannot set aside the removal order for want of satisfactory proof of the charge. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record a finding whether the charge has been proved or not. It is further laid down by the Hon'ble Supreme Court as settled law that technical rules of evidence have no application to disciplinary proceedings and the Tribunal has no power to trench on the jurisdiction to appreciate the evidence as long as the decision is made after observing the rules of enquiry and the delinquent receives a fair treatment. As long as the disciplinary authority reaches its conclusion on some evidence, the Tribunal is devoid of power to re-appreciate the same. In the case of Kuldeep Singh Vs. State of Punjab (1996 (10) SCC 659) the Supreme Court held that strict rules of the Evidence Act do not apply. The Constable interrogated in that case during investigation into the murder of SP admitted to have links with terrorists and working for them. Although such evidence was not admissible in a Court of law but it was found by the disciplinary authority to have been

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made voluntarily. The Apex Court held that the disciplinary authority rightly acted upon such evidence and the court cannot examine the correctness of such opinion of the disciplinary authority. The Supreme Court only held that the evidence must be relevant and it is immaterial how it was obtained.

11. Keeping in view the law laid down by the Hon'ble Supreme Court in the above two cases we notice:

- (i) No person can normally be expected to complain that he had been assaulted by a subordinate Postman unless it was based on truth. If the SPM wanted to implicate the applicant he could have thought of some other devise. No human being can reduce his self-esteem as to claim that he was slapped, unless he was painfully provoked to do so.
- (ii) The deposition of the witnesses in the preliminary enquiry was voluntary, cogent and recorded independently. Most of the witnesses have gone back on their earlier statements and ~~as~~ the disciplinary authority recorded ^{that} such an act of reneging was under pressure.
- (iii) All the witnesses have confirmed to commotion, running about, frantic calls made and the disappearance of the applicant from the scene by immediately running away and

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also to the complaint filed. Police complaint made confirmed that the applicant in all probabilities had caused consternation by his conduct. There was grave disturbance by way of obstruction to the working of the office.

- (iv) Witnesses have stated ^{with P.E.} although as hear-say evidence about the slapping. ~~But~~ They have all confirmed the resulting commotion.

12. We are satisfied that this is fit case for awarding the punishment of removal from service and the order of punishment does not call for any judicial interference. The O.A. is dismissed. No costs.

N. Sahu
(N. Sahu) 28.1.99.
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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