

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1267 OF 1996

ALONGWITH

ORIGINAL APPLICATION NO.1196 OF 1998
ALLAHABAD THIS THE 9th DAY OF September ,2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

A.P. Rawat,
S/o Late Shri P.D. Rawat,
355, Nai Basti,
Jhansi.Applicant

(By Advocate Shri A.K. Dave)

Versus

1. Union of India,
through the Member (Posts),
Postal Service Board,
New Delhi.
2. The Director Postal Services,
Agra.
3. The Senior Superintendent
of Post Offices,
Jhansi Division,
Jhansi.Respondents

(By Advocate Km. S. Srivastava)

ALONGWITH

ORIGINAL APPLICATION NO.1196 OF 1998

Ambika Prasad Rawat,
S/o Late P.D. Rawat,
aged about 59 years,
R/o 355 Nai Basti,
Jhansi.Applicant

(By Advocate Shri O.P. Gupta)

Versus

1. Senior Superintendent of Post Offices,
Jhansi Division,
Jhansi-284001.
2. Director Postal Services,
Agra Region, U.P. Circle, Agra



in the office of Post Master General,
Agra Region Agra-282001.

3. The Member (D),
Postal Service Board,
Department of Post,
Dak Bhawan, Sansad Marg,
New Delhi -110001.

4. Union of India,
through Secretary to the
Ministry of Communication,
Government of India,
New Delhi. Respondents

(By Advocate K.M. S. Srivastava)

ORDER

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

Both the O.A.s have been filed by the same applicant and since the facts in both the O.A.s are similar, they are being decided by a common order. The leading O.A. being 1267/96.

O.A. No. 1196/98

In this O.A. the applicant has challenged the Punishment order dated 27.06.1994 (Annexure A-3) passed by respondent no.1 i.e. Senior Superintendent Post Offices, Jhansi show cause notice of-10-1994 (Annexure A-5), Appellate order dated 10.11.1994 passed by Respondent no.2 i.e., D.P.S. Agra Region (Annexure A-7) and the revisional order dated 20.07.1998 passed by Member Postal Services Board (Annexure A-9). The applicant has prayed for quashing the above orders and to direct the respondents to pay difference of salary to the applicant immediately treating him as if no punishment was imposed on him.

2. The facts, in short, are that while working as

Dy.- Post Master, at Jhansi, Head Post Office on 06.09.1989,
^{memo} sanctioned the transfer of Jhansi, Head Post Office two six
years NSC of denominations of Rs.10,000/- and Rs.5000/-, standing
in the joint names of Shri Sant Lal Agrawal and Shri Ashok
Kumar to Shri N.C. Jain and Smt. Anuradha Jain unauthorisedly.
This resulted in fraudulent payment of Rs.18,120/- on
18.04.1990. The applicant was served with minor chargesheet
dated 31.01.1994 and after completion of the disciplinary
proceedings he was awarded with the punishment of recovery
of Rs.3000/- by respondent no.1. He filed an appeal before
Director Postal Services Agra, the Appellate Authority. The
Show cause notice was issued to him for enhancement of
punishment by letter dated-10-1994 (Annexure A-5)
~~for enhancement of the punishment.~~ The applicant made
representation and the appellate authority i.e. respondent
no.2 enhanced the punishment by order dated 10.11.1994
(Annexure A-7) for reduction in pay by two stages for a
period of two years without cumulative effect. in addition
to the recovery of Rs.3000/-. The applicant filed a petition
dated 02.02.1995 before the revisionary authority/by order
dated 20.07.1998 (Annexure A-9) upheld the punishment
awarded by respondent no.2. This O.A. has been contested.
by the respondents by filing Counter Affidavit.

O.A. NO. 1267 OF 1996

In this O.A. the applicant has prayed for quashing the
Punishment order dated 23.06.1994 awarding the punishment
of recovery of Rs.1600/- and the order of the Appellate
authority dated 07.12.1994 (Annexure A-2) enhancing the
punishment of reduction by two stages in the pay for a period /



of two years with cumulative effect, besides recovery of Rs.1600/- already imposed. The punishment was to be effective w.e.f. 10.11.1994. The applicant has prayed for quashing of all the orders with consequential benefits as well.

2. The facts of the case, in short, are that the applicant was working as Sub-Post Master in the Grade of Rs.1650-2900/- at Jhansi Post Office. The applicant's grievance is that he would have retired at the pay stage of Rs.2200/- at the time of retirement. But he has been subjected to irreparable financial loss by the impugned order dated 07.04.1994 by imposing a ^{penalty} of reduction of pay for two years operative from 10.11.1996. Since the applicant was to retire on 30.04.1997 and the impugned appellate order dated 07.12.1994 would have run till 10.11.1998 i.e. more than 18 months after applicants due date of retirement, the order dated 07.04.1994 is illegal. The applicant filed this O.A. challenging the legality of the same. This has been contested by the respondents by filing counter affidavit.

3. Sri A.K. Dave, learned counsel for the applicant submitted that the impugned order dated 07.12.1994 is illegal because no punishment could be effective after the applicant retired on 30.04.1997. In the impugned order dated 07.12.1994 the appellate authority has specifically mentioned that the reduction in pay by two stages would be operative from 10.11.94 as the currency of the appellate order dated 10.11.1994 passed in O.A. No.1196/98 would have been over on 09.11.1996. The learned counsel for the applicant submitted that no enquiry was held to establish the charges against the applicant which is required under Rule 16(14) of CCS (CC4) Rules 1965. The learned counsel for the applicant also submitted that as per the

Duty Chart it is counter clerk who was responsible for omissions/mis-conduct and the applicant was not at all responsible.. The entire action of the respondents is illegal and arbitrary.

4. Learned counsel for the applicant further submitted that the sanction memo for transferring NSCs was being done by his predecessor and this became a practice and procedure. The applicant acted as per practice and procedure. The learned counsel submitted that as per Rule 528 of P&T Manual VOL-IV part II, this work can be delegated. Since it was being done by his predecessors it is presumed that there would have been delegation of this work. Therefore, the applicant acted in good faith.

5. Another ground taken by the applicant's counsel is that in the notice of appellate authority for enhancing the punishment, no ground has been given. He has relied upon the judgment of Hyderabad Bench of this Tribunal in the case of N. Ramarao Vs. President Council of Scientific and Industrial Research, New Delhi, ^{reported in (1987)5 ATC 575.} In this case the appellate order was quashed on the ground that no reason was given in the enhancement notice. The appellate authority has used the word 'inadequate' which is not enough. Applicant gave the detailed reply but order of the appellate authority is non-speaking and it has certainly been passed without application of mind. The action of the appellate authority does not fulfil the requirement of rules. The learned counsel for the applicant also placed reliance on the judgment of Bangalore Bench of this Tribunal in the case of J. Doddanjaiah Inspector of Central Excise, Cantonment Division, Bangalore Vs. Collector of Central Excise, Bangalore and Ors reported in (1987) 5 ATC 807. Learned counsel for the applicant further submitted that the O.A. was admitted on 10.12.1996. Under Section 19(4) of Administrative Tribunals Act 1985, since the matter was sub-judice the Revisionary Authority could not pass

the impugned order dated 14.07.1998.

6. Resisting the claim of the applicant Km. S. Srivastava, learned counsel for the respondents submitted that the chargesheet can be read in two parts i.e., (i) unauthorised sanction and (ii) Sanction not in prescribed form. The applicant has not been able to place any evidence that he was authorised to sanction the transfer memo. Besides, it is established that the transfer memo was not in the prescribed form.

7. The learned counsel for the respondents further submitted that in case of minor penalty chargesheet, no enquiry is mandatory. Thus, Rule 16 of CCS (CCA) Rules 1965 shall not be applicable in this case. The applicant never asked for a detailed enquiry and, therefore, there was no question of holding enquiry in this case.

8. The respondent's counsel also submitted that since the APM had retired disciplinary proceedings were not initiated against him and the contention of the applicant that APM was exonerated is mis-conceived.

9. The learned counsel for the respondents finally submitted that the court should intervene in the matter if there has been violation of principles of natural justice which is not so in this case.

10. We have heard counsel for the parties, carefully considered their submissions and perused records.

11. The main ground taken by the applicant, challenging the

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punishment as well as appellate order, is that he discharged his duty as per the practice and procedure because these duties were being performed by his predecessors as well. We are not impressed with this argument of the applicant. In fact, one is fully responsible for any action on one's part if it has been done against the rules. The applicant himself has accepted that the transfer memo for NSCs was signed by him. In his reply to respondent no.1 i.e., Senior Superintendent Post Offices, Jhansi, (in short SSPOs) dated 18.04.1994 (Annexure A-2 of O.A. No.1196/98) the applicant has stated that he signed the sanctioned memo but it was done under the orders of Senior Post Master, Jhansi. He has also stated that he being subordinate to the Senior Post Master he was bound to obey his orders. However, the applicant has not been able to produce any such orders nor has he been able to establish that this duty was delegated by Senior Post Master to the applicant.

12. The applicant has taken the ground that no enquiry has been conducted. Since this is a case of disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965, no detailed enquiry was required to be done in absence of any request by the applicant to the disciplinary authority. This point has been raised for the first time only in the appeal. Therefore, we find substance in the submission of the learned counsel for the respondents that Rule 16 shall not be applicable in this case.

13. The applicant has also raised the point that the appellate authority has not given any reason in the notice for enhancement of punishment and has simply used the word 'inadequate' punishment. We are unable to appreciate this point. In a case like this the observation of the appellate authority about the inadequacy of punishment is enough.

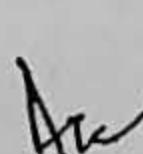
14. There is also no substance in the submission of learned counsel for the applicant that the order of the respondents suffers from manifest illegality because the punishment could not be given which was to exceed beyond the period of super-annuation. We would like to observe that after superannuation of the applicant the punishment automatically came to an end. This cannot be accepted as a good ground for quashing the order. The orders passed by the disciplinary authority, appellate authority and revisionary authority do not suffer from any error of law. The orders passed by the above authorities are detailed and speaking orders and the ground taken by the applicant, that the order of the appellate authority is non-speaking, is flimsy.

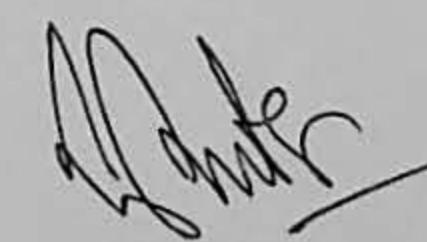
15. The applicant has placed reliance on the case of N. Rama Rao (Supra) which is easily distinguishable. In the case of N. Rama Rao the Reviewing Authority differed with penalty imposed by the disciplinary authority and issued the show cause notice for dismissal without giving any reasons about difference and in this context the Hyderabad Bench of this Tribunal held that the applicant was denied opportunity of making effective representation and, therefore, the representation was held bad. No such issue is involved in this case and, therefore, the case law relied upon by the applicant in the case of N. Rama Rao will not be helpful to the applicant as the same is easily distinguishable. Even the case of J. Doddenhaiah, Inspector of Central Excise, Cantonment Division, Bangalore Vs. Collector of Central Excise, Bangalore and Ors. reported in (1987) 5 ATC 807 decided by Bangalore Bench of this Tribunal, relied upon by the applicant is on a different point of law and, therefore, inapplicable in the present case.

16. Shri A.K. Dave, learned counsel for the applicant in

O.A. No.1267/96 submitted that the Revisionary Authority could not pass the order dated 14.07.1998 because the case was admitted on 10.12.1996 and under section 19(4) of the Administrative Tribunals Act 1985, the same could not be passed, the matter being sub-judiced. We have considered this submission of the applicant's counsel and we are of the view, that even if we quash the order dated 14.09.1998 it would make no effect on the punishment awarded to the applicant and confirmed by the Appellate Authority. However, we would like to observe here that the above point raised by Shri A.K. Dave, applicant's counsel has substance and the Revisionary Authority should have kept the legal position in mind.

17. In the facts and circumstances and our aforesaid discussions, we do not find any good ground for interference in both the O.As. The O.As are devoid of merit and are accordingly dismissed with no order as to costs.


Member-J


Member-A

/Neelam/