

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1213 OF 2004

day, this the 27th day of April, 2007

**Hon'ble Mr. Justice Khem Karan, Vice Chairman,
Hon'ble Mr. K.S. Menon, Member Administrative**

Raj Nath S/o Sri Bhonu Ram R/o Village Kushumura, P.O. Baragaon, District Varanasi.

Applicant

By Advocate Sri B.N. Singh

Versus

1. Union of India through the Secretary the Ministry of Posts India, New Delhi.
2. The Director Postal Services, Bareilly Region, Bareilly.
3. The Sub Record Officer, Railway Mail Service, B.L. Division, Moradabad.

Respondents

By Advocate Sri Saumitra Singh

ORDER

By K.S. Menon, Member (A)

In this O.A. the applicant is challenging the Order dated 19.12.2003 (Annexure No.1) passed by the respondent no.2 in the appeal preferred by him in compliance of the Order dated 17.09.2003 passed in O.A. No.164 of 1998 by this Tribunal. The applicant has sought the following reliefs: -

- {a} Issue an order or direction in the nature of certiorari quashing the Order of dismissal dated 03.02.1998 passed by the respondent no.3 and appellate order dated 19.12.2003 passed by respondent no.2 (Annexure No. X compilation no.1)
 - (b) Issue an order or direction in the nature of mandamus commanding and directing the respondents not to interfere in the functioning of the applicant as Sorting Assistant, R.M.S.
2. The applicant was admittedly selected as Sorting Assistant in the Railway Mail Service and after verification of testimonials, submitted by him, was sent for training in 1991, and thereafter given appointment. It is said that he was also confirmed vide letter dated 02.09.1994 (A-III). He says that the respondent No.3 dismissed him from service vide order dated 03.02.1998 (A-I), without holding any formal disciplinary proceedings or without giving him any opportunity of hearing, on

the basis of some secret inquiry, held without notice to him. He says it is wrong to say that he secured employment, by producing fake and forged educational certificates. He alleges in paragraph no.4.xi that he passed Purva Madhyama Exam. in 1983 with roll no. ⁷⁷⁰³ ~~1983~~, Uttar Madhyama in 1985 with roll number 14994 and Shastri Pariksha in 1987 with roll no. 15846-B, from Sampurnanad University, Varanasi and secured the appointment on the basis thereof but the respondents got the verification done on the basis of wrong roll numbers. He clearly alleges in paragraph no.4.xvii that he was never served with any charge sheet, nor had knowledge of appointment of Enquiry Officer or pendency of disciplinary proceedings. He says in paragraph no.4.xviii that entire proceedings referred to in order dated 19.12.2003, were held behind his back and without giving him any show cause notice or opportunity of hearing.

3. It appears aggrieved of dismissal order dated 03.02.19098, he filed one O.A. No. 164 of 1998, which this Tribunal disposed of, vide Order dated 17.09.2003 (annexure A-VIII) giving liberty to the applicant to file departmental appeal. He preferred the appeal, which the respondent No.2, dismissed vide Order dated 19.12.2003 (annexure A-2). According to the applicant, the respondent No. 2, did not consider the matter properly and the order passed by him is non-speaking order.

4. On the other hand, the respondents have come with a case that the educational documents, submitted by the applicant, for securing the appointment, were on verification from the University concerned, were found forged and bogus and getting this information, a charge sheet was issued to the applicant under Rule 14 of CCS (CCA) Rules, 1965, which the applicant received on 15.11.1995 (A-2) and he attended the departmental proceedings on about 10 dates, which is evident from his signatures on daily order sheet. They have further pleaded in the same paragraph no.10 of the reply that one Sri R.B.L. Awasthi, a retired S.S.P.Os was appointed as his Defence Assistant and in proof of all this photocopies have been annexed as annexure 3 A to 3 J. They go on to plead in paragraph no.11 that one Suraj Singh, the then Office Superintendent conducted joint enquiry, into the charges and after holding inquiry as per rules, submitted his report (annexure A-4) and in turn the Disciplinary Authority sent its copy to the applicant asking him to have his say in the matter and in reply thereto, the applicant submitted his written representation dated 12.04.1997 (A-5 to the reply). The sum and substance of their reply is that dismissal order has been passed, after conducting formal proceedings under the Rules of 1965 and after giving the applicant a reasonable opportunity of hearing. As regard the acceptance of final report, by the Magistrate, it has been said in paragraph no.13, that it was got accepted by putting some other person in place of real first informant

Satya Prakash. They say that the mark sheets referred to in paragraph no.4.xi of O.A., were neither produced during departmental proceedings nor mentioned in earlier O.A. No.164 of 1998.

5. The learned counsel for the applicant has argued that genuineness of letter dated 29.10.1998 (A-VII) is not in doubt, and according to it Rajnath S/o Monu Ram (the applicant) passed Purva Madhyama in 1983 (with Roll No.7703), Uttar Madhyama in 1985 (Roll No.4994) and Shastri in 1987 (Roll No.5846B), with Ist Class from Sampurnanand Sanskrit Vishwavidyalaya, Varanasi, and if it is so, why ^{he} he would have submitted bogus and forged testimonials with different roll numbers, at the time of selection. The learned counsel says there was no proper verification and things were manipulated at the behest of some one, so as to oust the applicant from ^{the} job. We are of the view that we cannot, in exercise of our power of judicial review, examine the correctness of finding of fact, as recorded by Enquiry Officer, Disciplinary Authority and as upheld by the Appellate Authority, we are not sitting in appeal over the conclusion so drawn by them. Moreover, the applicant has come on different grounds. According to him, dismissal order has been passed, without show cause notice, without giving opportunity of hearing etc., whereas the material on record reveals otherwise. A charge sheet under Rule 14 of the Rules of 1965 was served on the applicant, Enquiry Officer was appointed, Defence Assistant was provided, oral enquiry was held and the applicant attended the same on occasions more than ten, witnesses were examined and cross-examined, enquiry report (CA-4) was submitted, its copy given to the applicant and not only this, he gave written reply (CA-5), and only thereafter impugned order of dismissal was passed. It is conceded in paragraph no.23 of the Rejoinder that he received the charge sheet, replied the same and participated in the enquiry. What we want to emphasize is that the applicant tried to conceal the true facts in O.A., about formal departmental proceedings and attempted to give an impression as if dismissal order was passed behind his back, on the basis of some secret enquiry, without giving him even a show cause notice. He dared to say so in O.A., inspite of clear recital in impugned orders, about holding of formal enquiry under the Rules of 1965.

6. The learned counsel for the applicant says that F.I.R. was also lodged against the applicant, on the same allegations, but after investigation Police found no substance therein, so submitted a final report, which the Court accepted. He wants to say that in the face of contrary conclusion of the Police, finding of misconduct, as recorded by the Disciplinary Authority, is not sustainable. We find it difficult to accept this argument. Firstly, the conclusion of Police, cannot be elevated to the status of finding of a competent Court. Secondly, we do not know, in absence of full

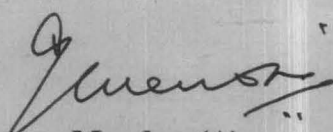
text of that final report, as to how the Police came to that conclusion. It might have said that there was no sufficient evidence to prosecute. That will not be sufficient to say that punishment order is bad. Acceptance of final report by Magistrate, does not amount to recording a finding of fact, after trial. We do not think acceptance of final report, helps the applicant in assailing the punishment order.

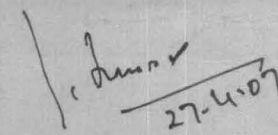
7. The learned counsel for the applicant also placed before us a copy of order dated 25.03.2003, passed by this Bench in O.A. No. 837 of 2002 Rama Shankar Bajpai Vs. Union of India and others, so as to support his contention that punishment order, passed without opportunity of hearing, is not sustainable in law and also to support his argument that verification of mark sheets done, on the basis of incorrect roll numbers, will not be sufficient to dismiss the applicant. We have gone through it, but with due respect to the learned counsel, we find nothing there in, which may help him. There the facts were different.

8. Attempt has also been made to say that testimony of G.S. Misra, P.W.5. should not have been relied on, as the applicant was not given opportunity to cross-examine him. This plea has not been taken in O.A. There an attempt has been made to give an impression as if, no formal enquiry was held. Moreover, the finding of guilt is not based on evidence of Mr. Mishra only.

9. Shri B.N. Singh, the learned counsel for the applicant has argued that the two orders so impugned in this O.A. are non-speaking and do not reflect due application of mind, so deserve to be quashed on this ground alone. We have carefully gone through these two orders. C.A.-6 is the punishment order and (A-II to the O.A.) is the appellate orders. Both the authorities have discussed the matter quite at length and have reasons for coming to one conclusion or the other. These cannot be characterized as non-speaking or non-reasoned, nor it can be said that these have been passed without application of mind.

10. Thus, the O.A. being devoid of merits, is dismissed but with no order as to costs.


Member (A)


27-4-07
Vice Chairman

/M.M./