

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/739/2015

Order reserved on 25.03.2021

DATE OF ORDER: 08.04.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Birbal Singh S/o Late Shri Inder Singh, Aged about 65 years, By caste Jat, R/o Shiv Sadan, Jat Colony, Piprali Road, Sikar (Raj.) & Retired as Superintendent of Post Offices, Dungarpur Division, Dungarpur on 31.06.2011.

....Applicant

Shri Mukesh Agarwal, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication (Dept. of Post) Sanchar Bhawan, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Patel Marg, Jaipur (Raj.).
3. Post Master General, Rajasthan, Southern Region, Ajmer (Raj.).

....Respondents

Shri Lalit Mohan Bhardwaj, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "(i) By an appropriate order or direction, the impugned order dated 13.04.2015 (Annexure A/1), inquiry proceedings and charge-sheet dated 03.01.2011 (Annexure A/2) may kindly be quash and set aside. The respondents be further directed to release withheld pension to the applicant with interest @ 12% per annum with all consequential benefits.
- (ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Postal Assistant on 18th November 1971 and thereafter promoted on various posts and lastly was working as Superintendent of Post Office w.e.f. 25.02.2006. The respondent No. 2 issued charge sheet dated 03.01.2011, (Annexure A/2), to the applicant alleging various procedural lapses for the period from 11.06.2007 to 04.06.2010, as Superintendent of Post

Offices, Bikaner. On receipt of listed documents, the applicant submitted his defence on 28.02.2011 to the Competent Authority denying the charges levelled against him. Thereafter, Disciplinary Authority appointed Inquiry Officer to conduct the enquiry. The Inquiry Officer submitted his report dated 24.07.2013 to the Disciplinary Authority, wherein out of 5 charges, two were held as not proved and three were proved partly. It was further stated that the Inquiry Officer has only proved the charges towards procedural lapses but not towards his integrity as the charges were not of grave misconduct. A copy of enquiry report was sent to the applicant vide letter dated 29.08.2013, (Annexure A/9), and was asked to submit representation on the said enquiry report. During pendency of enquiry, since the applicant superannuated on 30.06.2011, the enquiry pending against the applicant proceeded under Rule 9 of the CCS (Pension) Rules, 1972. The Disciplinary Authority after receipt of representation of the applicant referred the matter to UPSC for advice of the President. The UPSC in a casual and routine manner, without giving any finding, proposed penalty of withholding 10% monthly pension for two years. The respondents

provided an opportunity to submit his written representation on the advice of UPSC within 15 days vide Memorandum dated 03.12.2014 and the applicant submitted his representation dated 23.12.2014 (Annexure A/12). The Disciplinary Authority i.e. the President imposed penalty of withholding 10% monthly pension for two years and release of gratuity admissible to him, if not required otherwise. Thus, as the penalty imposed upon the applicant is totally illegal and arbitrary and, therefore, it is prayed for quashing and setting aside the impugned order dated 13.04.2015 (Annexure A/1) along with the charge sheet dated 03.01.2011 (Annexure A/2).

3. The respondents vide its reply stated that the applicant after being appointed as Clerk was lastly promoted and posted as Superintendent of Post Offices, Bikaner Division for the period w.e.f 11.06.2007 to 04.08.2010. A complaint was received from Shri Kanhiya Lal Maheshwari as well as from the Postal Directorate, New Delhi against the applicant. During the course of investigation, certain grave misconduct committed by the applicant came to the

notice of the respondents. A charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued to the applicant by the respondents vide Memo dated 03.01.2011 on the basis of preliminary enquiry report and gravity of misconduct. Inquiry Officer as well as Presenting Officer were appointed vide Memo dated 07.06.2011. Thereafter, applicant retired from service on attaining the age of superannuation w.e.f. 30.06.2011 (A/N). Consequently, the case of the applicant with regard to the disciplinary action was proceeded under Rule 9 of CCS (Pension) Rules, 1972. The Inquiry Officer submitted his inquiry report on 24.07.2013. The case of the applicant was finalised by the Postal Directorate, New Delhi vide Memo dated 13.04.2015 under the Presidential order and the applicant was awarded punishment of withholding of 10% of monthly pension, otherwise admissible to the charged officer for a period of two years. As the O.A. filed by the applicant is devoid of merits, baseless and improper, the same is liable to be dismissed.

4. The applicant filed rejoinder rebutting the claim of the respondents and further stated that the so called complaint was not bearing signature and was fake as

no complaint was ever received. The Vigilance Officer also in the enquiry did not find any grave misconduct against the applicant and only pointed out certain procedural lacuna/minor irregularities, not involving and questioning integrity of the applicant. Thus, it is clear that Disciplinary Authority without applying his mind, in a mechanical manner issued charge sheet dated 03.11.2011 under Rule 14 of CCS (CCA) Rules 1965 for major penalty. It is the contention of the applicant that Inquiry Officer has taken more than two years in submitting his report and has given no reasons for the said delay and which could be only to deprive the applicant from getting retiral benefits and as per OM dated 29.11.2012, Inquiry Officer should submit his report within six months from the date of receipt of order of his appointment as Inquiry Officer. The respondents, on the one hand, have given appreciation letter and, on the other hand, have issued major penalty charge sheet. The applicant further stated that the respondent No. 2 was not competent to issue major penalty charge sheet upon the applicant even during the service. Hence, the charges framed against the applicant deserve to be quashed.

5. We have heard learned counsels for the parties at length through Video Conferencing and examined the pleadings minutely as well as the judgments cited by the parties and written submissions.

6. The applicant reiterated the submissions made earlier and raised several grounds. The first ground in challenge is that the charges levelled against the applicant are only related with procedural lapses and are not serious nor grave, therefore, major penalty charge-sheet under Rule 14 of CCS (CCA) Rules, 1965 cannot be issued as there was no evidence to prove the charges regarding failure to maintain absolute integrity and violation of Rule 3(1)(i) of CCS (Conduct) Rules, 1964 and, thus, charge sheet does not sustain in the eyes of law. The second ground is that during pendency of enquiry, since the applicant superannuated, the enquiry pending against the applicant deemed to be proceeded under Rule 9 of the CCS (Pension) Rules, 1972, but as per proviso below Rule 9(2)(i), it is clear that where the departmental proceedings are instituted by an authority subordinate to the President, the authority shall submit a report recording its finding to the President and in the

present matter as the disciplinary authority is subordinate to the President, Respondent No. 2 was not competent to call for representation on enquiry report from the applicant. Thirdly, as the applicant has not committed any misconduct, therefore, departmental proceedings for major penalty conducted against him and major penalty of cut in pension does not sustain in the eyes of law as the same can be awarded only in case of grave misconduct or negligence which is not in the present case. Fourthly, as held by the Hon'ble Apex Court in the case of **D.V. Kapoor vs. Union of India & Ors.**, reported in (1990) 4 SCC 314 as well as held by Hon'ble Delhi High Court in the case of **Union of India & Ors. vs. R. P. Sharma** [WP (C) No. 245/2012] vide judgment dated 04.10.2012, in absence of specific finding in the departmental enquiry that the pensioner committed grave misconduct or negligence in discharge of his duty while on duty, the order of President is without Authority of Law to impose penalty of withholding pension as a measure of punishment. As there is no finding by the Inquiry Officer, UPSC and the President about grave misconduct and negligence, the penalty order dated

13.04.2015 does not sustain and deserves to be set aside. Thus, the impugned order dated 13.04.2015, charge sheet dated 03.01.2011 and enquiry proceedings in pursuance of charge sheet are required to be quashed and set aside as the same are illegal and discriminatory.

7. The respondents too reiterated their stand taken earlier. They further added that the punishment is imposed on the applicant keeping in view the gravity of misconduct committed by the applicant. Thus, there deserves no interference by this Tribunal. Though the applicant was awarded the appreciation letter dated 07.05.2010 for excellent performance in the field of opening new Savings Accounts, but the Certificate was not granted to the applicant individually, but the same was awarded to the team work of Bikaner Division. The respondents further state that on receipt of complaint, investigations were carried out through Vigilance Officer, wherein grave irregularities committed by the applicant were detected and, thus, the competent authority ordered to initiate disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 and, accordingly, charge sheet was

served on the applicant by CPMG, Rajasthan Circle, Jaipur. The enquiry report was also supplied to the applicant vide CPMG, Rajasthan Circle, Jaipur in accordance with the provisions contained in Rule 9 (2) (a) of CCS (Pension) Rules, 1972 read with instructions issued under para 1 and 4 in the Postal Directorate, New Delhi's letter No. 11011/02/2006-VP dated 11.12.2006. Thus, the respondents observed that as the charges levelled against the applicant were of grave nature and as he has committed gross irregularities in discharge of his official duties, the penalty awarded to the applicant is just and proper and as per rules and as per the advice of the UPSC. Therefore, the plea of the applicant that charges against the applicant were not of grave nature is imaginary and afterthought. The prescribed procedure was followed and principles of natural justice have been complied with. As per the instructions contained in G.I.M.F. O.M No. F.19 (9)-E.V/66 dated 06.06.1967, final order was issued in the name of the President after consultation with the UPSC vide Postal Directorate letter No. 20-8/2014-Vig dated 07.08.2014 and after its report vide letter No. F3/152/2014-S.I. dated 19.11.2014. The case relied

by the applicant cannot be compared to the present case as facts are different of the said case. Thus, as the case of the applicant was proceeded as per rules, the orders passed by the Disciplinary Authority is just, proper and legal and, therefore, the present O.A. deserves to be dismissed.

8. The question which requires to be adjudicated is whether the action of issuing charge sheet as well as order of withholding 10% of monthly pension for a period of two years in the case of the applicant is justified and as per rules.

9. The factual matrix of the case is that the applicant while working as Superintendent of Post Offices, Bikaner Division during the period from 11.06.2007 to 04.08.2010 was served with a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 vide Memorandum dated 03.01.2011, (Annexure A/2), containing 5 charges. The said charge sheet was issued by Chief Post Master General (CPMG), Rajasthan Circle, Jaipur vide Memo No. Vig. 1-33/2010 dated 03.01.2011 to the applicant on the basis of preliminary enquiry report and gravity of misconduct committed by the

applicant. He was supplied with the copy of documents as desired by him vide letter dated 02.02.2011. After that, applicant submitted his defence on 28.02.2011 to the Competent Authority denying the charges levelled against him. The Disciplinary Authority i.e. CPMG after duly considering the same, appointed Inquiry Officer as well as Presenting Officer to conduct the enquiry vide Memo No. Vig/1-33/2010 dated 07.06.2011. As the applicant retired on attaining the age of superannuation w.e.f. 30.06.2011, the case of the applicant was proceeded under Rule 9 of CCS (Pension) Rules, 1972. The Inquiry Officer submitted his report dated 24.07.2013 to the Disciplinary Authority, wherein charges levelled in Articles I and II were not found proved but the charges levelled in Articles III, IV and V were found proved except the allegations of violation of provisions of Rule 3(1)(i) of CCS (Conduct) Rules, 1964 with regard to failing to maintain absolute integrity. The said enquiry report was served to the applicant by CPMG vide letter No. Vig/1-33/2010 dated 16.08.2013 calling his representation on the enquiry report as per letter dated 29.08.2013 as per provisions contained in Rule 9 (2)(a) of CCS (Pension) Rules, 1972 read with

instructions issued vide Para 1 & 4 of Postal Directorate, New Delhi's letter No. 11011/02/2006-VP dated 11.12.2006, which are reproduced as under:

"Para-1 "in accordance with the provisions of Rule 9 of the CCS (Pension) Rules, 1972, the departmental proceedings instituted against the government servant, while he was in service, shall, after the retirement of the government servant, be deemed to be proceedings under Rule 9 ibid and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service."

Para-4 "The said findings should, invariably, be recorded by the Competent Disciplinary Authority in respect of the charged official, after receipt of representation of the charged official against the IO's report. The findings should be recorded in the same format in which an order of penalty is prepared with the exception of the last para imposing penalty which should contain a recommendation that the misconduct/misbehavior proved against the retired official is grave enough justifying action under Rule 9 ibid, or otherwise, if the proposal is to drop the proceedings. All the points made by the charged official should be discussed in the findings."

Thereafter, the representation of the applicant dated 13.09.2013 against the enquiry report was received in the office of CPMG, Rajasthan Circle, Jaipur on 19.09.2013 and the same was forwarded to Postal Directorate vide letter dated 23.04.2014 under Rule 9 of CCS (Pension) Rules 1972 for finalization under Presidential orders. The case was thereafter referred

to UPSC for advice of the President vide Postal Directorate letter No. 20-8/2014-Vig dated 07.08.2014. The UPSC had submitted their advice vide letter No. F3/152/2014-S.I. dated 19.11.2014. The Commission noted that the charges levelled against the charged officer constitute grave misconduct on his part and considered that ends of justice would be met if penalty of withholding of 10% in monthly pension is levelled against the charged officer for a period of two years and his gratuity be released if not required otherwise and the same was further forwarded to the applicant under Postal Directorate Memo No. 20-8/2014-Vig. dated 03.12.2014 to submit his representation on the punishment imposed. The applicant submitted his written say dated 23.12.2014 on the report of the UPSC directly to the Postal Directorate, New Delhi. The Competent Authority then after careful examination of the submissions of the applicant on the advice of the UPSC, evidence on record and other facts and circumstances of the case conveyed the decision of the President to impose the penalty of "withholding of ten percent (10%) of monthly pension, otherwise admissible to the Charged Officer, Shri Birbal Singh for a period of two (2) years

and release of the gratuity admissible to him, if not required otherwise" vide order dated 13.04.2015 under Rule 9 of CCS (Pension) Rules, 1972.

10. Now, coming to the major grounds raised by applicant towards issue of major penalty charge sheet under Rule 14 of CCS (CCA) Rules, 1965 which according to the applicant cannot be issued as there are no grave charges, also ground raised by applicant that as per proviso below Rule 9(2)(i) of CCS (Pension) Rules, 1972 no report can be submitted by an authority subordinate to the President, was not followed and that as there were no grave charges of misconduct, major penalty and major cut in pension cannot be imposed upon the applicant, cannot be accepted as it is seen by us from the pleadings annexed to the O.A., that the respondents have followed each and every procedure as laid down in the rules and have followed principles of natural justice. As seen from the UPSC Report, it is clear that they have examined the case of the Charged Officer in detail and have not discussed Charge Nos. I & II as they were not held proved by the Inquiry Officer, but the charge Nos. III, IV & V have been discussed with

observations in detail. Therefore, plea of the applicant that UPSC has advised in a casual manner without giving its finding cannot be accepted. After going through the penalty order dated 13.04.2015, (Annexure A/1), it is clear that the order is self-speaking and reasoned where each and every ground raised by the applicant/charged officer is discussed in detail and then the competent authority has reached its conclusion. Thus, it is observed by us that there is no violation of principles of natural justice, also no violation of any procedure or rules is noticed in the present case. Also pertaining to the question of delay in the inquiry proceedings, it is seen that in the facts of the present case, there is no question of any delay attributable to the respondents as it is mere procedural delay wherein in normal circumstance, the same is bound to occur.

11. As observed by various judgments of the Hon'ble Apex Court, the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or

utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution of India. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the Authority. The Tribunal cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

12. We are in agreement with the judgments relied by the respondents in the cases of **Union of India vs. Parma Nanda**, reported in (1989) 2 SCC 177 and **Union of India & Another vs. B.C. Chaturvedi**, reported in (1995) 6 SCC 749, wherein it is clear that High Court/Tribunal, in exercise of judicial review, cannot normally interfere with the punishment

imposed by disciplinary/appellate authority, except where it shocks the judicial conscience in which case it can mould the relief, either by directing the authority to reconsider the punishment/ penalty imposed or in exceptional cases by itself imposing an appropriate punishment recording cogent reasons. On the other hand, the cases relied by the applicant are not applicable to the facts and circumstances of the case in hand as the department has not violated any rules nor procedure and has provided every opportunity to the applicant to defend his case.

13. In view of the observations made above, we are of the opinion that the applicant has not made any case for interference as the O.A. is devoid of any merits. Accordingly, the impugned order dated 13.04.2015, (Annexure A/1), inquiry proceedings and charge sheet dated 03.01.2011, (Annexure A/2), cannot be quashed as the same are just and proper. Therefore, the Original Application is dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER