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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 550 of 1987.
(Civil Misc. Writ Petition No. 10082 of 1979.)

Ishwari Prasad Sagar .... Petitioner.

Versus

Union of India & others .... Respondents.

Hon'ble G.S. Sharma, J.M.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This Writ Petition No. 10082 of 1979, filed in the High Court of Judicature at Allahabad on 21.11.1979, has been received on transfer by this Tribunal under the provisions of Section 29 of the Administrtative Tribunals Act,1985. The petitioner in this case was working as Assistant Superintendent of Post Offices (ASPO), Banda Division, Banda at the time of filing the petition. The respondents are the Union of India through the P&T Board, New Delhi, the Director of Postal Services (K), U.P., Lucknow, the Post Master General (PMG), U.P. Circle, Lucknow, and the Senior Superintendent of Post Offices (Sr.SPO), Allahabad. In this petition, the petitioner seeks to get the order of punishment dated 17.5.1977 passed by the disciplinary authority and the orders of the appellate and reviewing authority in respect of such order of punishment, quashed. He also prays for the quashing of the orders dated 27.4.1979 and 25.10.1979, stated to be orders of promotion of his juniors. He has also sought for a direction to the respondents to promote him to PSS Group 'B' from the date anterior to the promotion of his juniors of the petitioner. These are all the reliefs prayed for in this petition. The petition had been admitted by the High Court and affidavits have been exchanged.

2. The main allegations in this petition are that while

the petitioner was officiating as Post Master (Gazetted) at Allahabad he, being the sanctioning authority, had sanctioned a large number of Medical Reimbursement Bills of Postal employees in his office. These claims had accumulated for want of funds for about six months before March,1973. The funds were made available on 12.3.1973. The petitioner avers that since the Holi festival was approaching on 19.3.1973 the employees and the Unions had put lot of pressure to get their claims passed by the petitioner, who was under orders of transfer and due to be relieved. Therefore, on 13th and 14th March,1973 the petitioner had to pass a very large number of claims of medical reimbursement. It is stated that as a result of certain anonymous complaints made to the higher authorities, some investigations were made. The petitioner was reverted from the post of SPO, Pithoragarh and made to join as Deputy Post Master (Dy.PM), Allahabad and he was also placed under suspension with effect from 15.5.1973. The charge-sheet was allegedly issued, after a delay of two years, in 1975. The petitioner had filed a writ petition in the High Court for quashing the order of suspension. This petition was allowed by the Court and enquiry under Rule 14 of the CCS (CC&A) Rules,1965 was conducted and an Enquiry Officer, viz. Sri S.P. Purwar, Sr.SPO, conducted the enquiry and submitted a report and held that the charges alleged against the petitioner had not been proved. The disciplinary authority, however, did not accept the findings and conclusions of the enquiry officer and directed the enquiry officer to conduct further enquiry and submit a report thereon, which was also done with no different result from the enquiry officer. The petitioner alleges that inspite of all that, the disciplinary authority passed the impugned order of punishment dated 17.5.1977 (Annexure 'IV'), withholding the next increment of the petitioner for a period of two years without cumulative effect. The petitioner preferred an appeal and the appellate authority, viz. the PMG, allowed the appeal in part (Annexure 'VI'), altering the

original punishment to one of withholding the next increment for a period of one year only instead of two years. The appellate authority, however, in the same order rejected the request of the petitioner for payment of full pay and allowances for the period of suspension. The petitioner still feeling aggrieved, submitted a representation to the Chairman, P&T Board. The Board, however, by its impugned order dated 27.7.1979 (Annexure 'VII') upheld the appellate order, but ordered that the suspension period be treated as duty for purposes of leave, increment and pension and that the petitioner shall be paid subsistence allowance equal to 50 percent for the first six months and 75 percent for the period thereafter, of the normal pay and allowances. It is against these orders, referred to above, that the petitioner has sought relief in this case.

3. The second grievance in this case is that even after the punishment period was over, the petitioner was not given the promotion to the grade of PSS Gr.'B', even though he was within the eligible zone of promotion. It is stated that he, a Scheduled Caste (SC) officer, has not been promoted, while his junior SC colleagues, viz. S/Sri A.P. Kumar and M.L. Kureel, have been promoted. It is further stated that general candidates of even subsequent batches of recruitment have been promoted ignoring the petitioner's claim. The petitioner is quite aggrieved that even ad hoc promotion, to which he was clearly entitled, was not given. In the writ petition the main contention of the petitioner in regard to the disciplinary proceeding is that the finding of the disciplinary authority was not at all based on any evidence and contrary to facts. It is argued that the disciplinary authority had no jurisdiction to take a different view from that of the enquiry officer. The petition contains a number of factual arguments criticizing the conclusion of the disciplinary authority and reiterating the findings of the enquiry officer. There is an allegation of bias against the disciplinary authority. It is stated that the respondents had no juris-

has argued that S/Sri A.P. Kumar and M.L. Kureel were wrongly allowed to work in HSG I in view of the fact that the petitioner was senior to them. The contention of the petitioner is seems to be that it is not necessary to be promoted to HSG I before being promoted to PSS Gr.'B'. In this connection he refers to Rule 156-A of the P&T Manual, Volume IV, whereas the respondents have referred to the letter dated 19.6.1974 of the Director General, P&T, incorporating the Pay Commission's recommendations introducing two grades, viz. HSG I and II, and prescribing the normal line of promotion (Annexure 'CA-II').

5. The case was heard on 20.10.1989 when Sri J.N. Tewari, learned counsel for the petitioner and Sri K.C. Sinha, learned counsel for the respondents, conducted their arguments.

6. The statement of Article of Charge framed against the petitioner alleged that the petitioner while posted and functioning as PM, Head Post Office, Allahabad, during the year 1973 failed to maintain absolute integrity and devotion to duty and committed misconduct, inasmuch as he sanctioned various irregular Medical Reimbursement Bills submitted by the postal employees of HPO, Allahabad, in most irregular manner without making proper scrutiny regarding their genuineness, on or about 13.3.1973 and thereby contravened Rule 3(1)(ii) of the CCS (Conduct) Rules,1964. The statement of imputation of misconduct in support of the article of charge against the petitioner contained detailed allegations of the facts and events leading to the charge. Briefly, the imputations were that the petitioner had sanctioned a number of claims, which had been earlier rejected by his predecessor. A list of such rejected claims was prepared by the Medical Bills Clerk. The petitioner did not get the bills checked by the APM before sanctioning them. Another allegation was that he had sanctioned certain bills which were supported by Cash-Memos issued by unauthorised Chemists & Druggists. A further allegation was that while sanctioning the irregular claims, the petitioner did not put any date under his

signature. Another allegation was to the effect that whereas the claim was sanctioned by the petitioner on 13.3.1973, the essentiality certificates supporting such claim were found to have been signed by the Doctors concerned on subsequent dates, viz. 14th & 15th March,1973, prima facie showing that the bills were sanctioned in the absence of such essentiality certificates at the time of sanctioning.

7. The Enquiry Officer in his report (Annexure 'II') found none of the allegations proved. As regards the allegation of sanction of rejected claims, the enquiry officer was of the view that the list of rejected claims were not submitted to the petitioner at the time of sanctioning and he had no means of knowing that those claims had already been rejected. As regards unauthorised Chemists, the enquiry officer found that the bills were issued before certain date when such Chemist was treated as unauthorised. The enquiry officer did not attach any importance to get the bills checked by the APM before sanction by the petitioner. As regards the date of essentiality certificates, the enquiry officer doubted the correctness of the date entered on the bills themselves.

8. The learned counsel for the petitioner contended that the charge-sheet invoking Rule 3 of the CCS(Conduct) Rules is of no legal effect, since Rule 3 of the Conduct Rules is a general one which does not specify any particular misconduct. He stated that all the succeeding rules in the CCS(Conduct) Rules,1964 start with the words "No Government servant shall" and they all allege specific acts or omissions which constitute the misconduct.Rule 3,on the other hand, is general and merely says that "Every Government servant shall maintain absolute integrity" and so on. He,therefore,argued that for infringement of Rule 3,no disciplinary action can be taken as there was no misconduct involved. Unless a misconduct is enumerated and listed in the rules specifically, no disciplinary action can be taken and no punishment can be imposed on any Government servant. In this connection he referred to the decisions of the Hon'ble

Supreme Court of India in two cases, viz. A.L.Kalra v. Project & Equipment Corporation of India Ltd. (1984 (3) SCC 317) and M/s. Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut & others (1984 (I) SCC 42).

9. The first contention, referred to above, that the wording of Rule 3 vis-a-vis succeeding rules, ipso facto, proves that the said Rule 3 is merely a pious pontification which can be infringed with impunity, is not borne out by the wording of the succeeding rules. The wording of Rule 18 regarding movable and immovable property - a very important rule indeed - is worded just like Rule 3 beginning with the words "Every Government servant shall", and not with the words "No Government servant shall"; so also does the equally significant Rule 22 regarding consumption of intoxicating drinks and drugs. So much for the argument on wordings of the rule.

10. The case of A.L. Kalra (Supra), heavily relied on by the learned counsel for the petitioner in this case, relates to labour and industrial jurisprudence. Paras 21 and 22 of the judgment of the Hon'ble Supreme Court in that case relate to the Project and Equipment Corporation of India Ltd. Employees (Conduct, Discipline and Appeal) Rules,1975. It is seen that Rule 4(1) of these rules is exactly like the Rule 3(1) of the CCS (Conduct) Rules,1964. But here the similarity seems to end. It is stated in para 21 of the above judgment that Rule 5 of the 1975 Rules prescribes the various misconducts for which action can be taken against an employee governed by the rules and bears the heading "Misconduct". It is obvious that the 1975 Rules specified the misconducts for which action could be taken. In other words, all the misconducts for which action could be taken seem to have been listed in Rule 5 and contravention of Rule 4 was not one of the listed misconducts. Similarly in the case of M/s. Glaxo Laboratories (I) Ltd. (supra) also, the misconducts for which action could be taken are those listed in the Standing Orders. It was, therefore, very rightly held, if one

may say so with respect, that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto,would not expose the workman to a penalty. The position in regard to CCS (Conduct) Rules,1964 is, however,vastly different. Rule 3 itself is (now) by no means entirely so general. Thus Rule 3(2)(ii) states that "No Government servant shall act otherwise than in his best judgment except when he is acting under the direction of his official superior". Similarly, clauses (iii) & (iv) relate to specific prescribed acts and requirements in regard to oral directions. There is no rule corresponding to Rule 5 of the 1975 Rules, referred to above, in Kalra's case, which lists misconducts of various kinds under that heading. Rule 4 onwards deal with particular acts and omissions and requirements. The CCS (Conduct) Rules,1964 are entirely restricted to laying down the rules of conduct specifically and generally. Action to be taken for infringement of these rules, or for other misconduct, is prescribed to be taken in a different set of rules, viz. CCS (CC&A) Rules,1965. Considering all the circumstances, it is felt, with respect,that cases like the present one under the CCS (Conduct) Rules,1964 are quite distinguishable from those like Kalra's or Glaxo's,referred to above. The same issue was considered by this Bench of the Tribunal in Review Application No.94 of 1987 in O.A. No. 36 of 1987 (Anurudh Prasad Srivastava v. Union of India & others) in the order dated 25.9.1987. In that case the decisions in the case of M/s. Glaxo Laboratories and A.L. Kalra were referred to, discussed and distinguished, vis-a-vis similar provisions in the Railway Servants (Conduct) Rules. In another case, viz. Durga Prasad Tiwari v. Union of India & others (ATR 1989 (2) CAT 291), again, similar contentions were considered in regard to Rule 3(1) of the CCS (Conduct) Rules, 1964. It was felt that these rules are distinguishable from the rules on the industrial side. It has been further stated :

> "What we are concerned with is that as long as a Court has not declared Rule 3 of the CCS (Conduct)

Rules,1964 as ultra vires, its purview and jurisdiction would remain and we have to interpret the ramifications of this rule as it is."

With respect, we agree with the views taken in these cases and hold that the contention of the learned counsel for the petitioner in regard to Rule 3 is not correct. We may also observe here that this contention was raised during the oral arguments and not in the pleadings.

11. The next major contention of the learned counsel for the petitioner is that the disciplinary authority had a bias against him, inasmuch as he did not agree with the findings of the enquiry officer and ordered a supplementary enquiry, and even after that, did not accept the final findings of the enquiry officer, and differing from the enquiry officer, imposed the penalty. As regards the legal position it is clear that the disciplinary authority is quite empowered under Rule 15(1) of the CCS (CC&A) Rules, 1965, to remit the case for further enquiry. Similarly, under Rule 15(3) of the Rules the disciplinary authority is entitled to make an order imposing a penalty after recording its reasons for disagreement with the enquiry officer under Rule 15(2). The allegation of bias simply on the basis of such disagreement is untenable. The learned counsel for the petitioner argued that in view of the clear findings of the enquiry officer, there was no scope for taking any disciplinary action against the petitioner and that the disciplinary authority had no basis for disagreeing with the conclusions of the enquiry officer. He contended that this is a clear case of no evidence. A perusal of the impugned order dated 17.5.1977 of the disciplinary authority shows that the above contention of the learned counsel is not correct. The disciplinary authority has painstakingly and elaborately analysed the charges and the enquiry report and given a cogent and reasoned finding in regard to the charges. He has clearly brought out the basis for differing with the views of the enquiry officer. A sample of his reasoning may be reproduced here :

"An examination of the disputed M.R.Bills clearly shows that the bills were signed earlier by the predecessor of Sri I.P. Sagar and below the signatures, the designation stamp of the PM was affixed, but the signatures were subsequently scored out. Remark "rejected" was noted against entries of the bills in the medical receipt register. The bills were later on sanctioned by Shri I.P.Sagar on 13.3.73 on the same space just over or beside the scored signatures of his predecessor. The scoring out of the previous signatures should have been viewed with suspicion by Sri Sagar and he should have verified genuineness of the bills, or ascertain the reasons for cancellation of his predecessor's signatures. Even if the dealing assistant had not put up medical receipt register and the list of rejected medical bills, Sri Sagar should have called for the same. Moreover the bills were originally sanctioned about a year back. The time lag between the date of sanction of the bills and their presentation for sanction should have been viewed with suspicion and proper enquiries made. The bills were also impressed with rubber stamp having provisions for the initials of the clerk and the APM, through whom they used to be routed. Signatures of the APM on the disputed bills were wanting. This omission clearly indicated deviation from the normal channel and should have aroused the PM's suspicion. The plea that the bills were passed under mounting pressure from the Union, is not at all tenable. Whatever be the circumstances, the prescribed checks cannot be dispensed with and if this was done it must have been done with some motive. I, therefore, hold the charge relating to this item as fully proved, against Sri I.P. Sagar."

He has dealt with other allegations also similarly in his detailed order. One may dis-agree with his conclusions or may arrive at a different conclusion. But it cannot be said that this is a case of no evidence or that the disciplinary authority's findings are perverse and such as no reasonable person will arrive at. In such circumstances, we do not see how this Tribunal can interfere with his order.

Similarly the order of the appellate authority is also elaborate and detailed, showing proper application of mind. In these circumstances, the contentions of the learned counsel, referred to above, have

to be rejected in regard to the impugned orders. There was also an argument, in passing, that the appellate order has not demarcated which of the allegations related to integrity and which related to devotion to duty and, therefore, the punishment order is defective. In the appellate order, it was held that the charge of failure to maintain absolute integrity was not substantiated and that the charge of failure to maintain devotion to duty was proved. There was only one charge though there were a number of imputations leading to the charge. There was, therefore, no question of demarcating the charges into two categories. It is clear that all the imputations in this case formed the basis for the charge of not maintaining devotion to duty. In the circumstances, this specious contention of the learned counsel for the petitioner has to be rejected.

12. As regards the orders regarding the salary for the period of suspension, it is alleged in the petition (paras 23 & 60) and was also urged vehemently during the oral arguments, that no show-cause notice was issued under FR 54(b) (paras 23 & 60 of the writ petition). The learned counsel cited a number of decisions in this regard. The respondents in para 41 of their counter affidavit have averred that a show-cause notice dated 20.6.1977 was issued to the petitioner in this regard. This is admitted in the rejoinder affidavit (para 39). It is thus clear that paras 23 & 60 of the writ petition are clearly wrong and not based on fact. In any case, as pointed out by the learned counsel for the respondents, there is no prayer, also, in the writ petition regarding the salary for the period of suspension; hence no orders are required to be passed in this respect in this case.

13. As regards the promotion to PSS Gr.'B', we have already referred to the contention of the respondents that the petitioner was not entitled to promotion to that grade at the relevant time, since he was not promoted to the level of HSG I. In para 22 of the rejoinder affidavit, the petitioner has indirectly admitted that

the other SC candidates junior to him were promoted to HSG I earlier than the petitioner. The petitioner no-doubt says that they were wrongly promoted. If he had any grievance in this regard, he should have agitated this matter and the other persons mentioned would also have to be impleaded in any proceedings questioning their promotion. After a careful consideration, we do not find sufficient justification for interfering with the promotions already made. It is observed that the petitioner himself was promoted in the year 1979, as observed earlier in this order.

14. In the result the writ petition fails and is dismissed with no order as to costs.

MEMBER (A). MEMBER (J).

Dated: November 6 ,1989.

PG.