

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 222 of 1988

Mukut Nath

...

Applicant

Vs.

Union of India and 2 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This petition u/s.19 of the Administrative Tribunals Act XIII of 1985 was filed by the applicant on 26.2.1988 for setting aside the appellate order with a direction to reinstate the applicant on the post of Postal Assistant (for short PA) with consequential benefits including arrears of pay. By way of an amendment, he sought to get the last line of the subsequent appellate order dated 23.3.1988 quashed.

2. The relevant facts of this case are that the applicant had joined the Postal Department on some lower post in 1952 and was promoted as PA in 1959. It is alleged that the respondent no.4 now posted as Senior Superintendent of R.M.S.Gorakhpur and has been impleaded in his present capacity, had developed some personal prejudices against the applicant when he was posted as Complaint Inspector in the Postal Department in Gorakhpur Division, Gorakhpur as he frequently expected personal and monetary favours from the applicant which the applicant was unable to do. Subsequently, on the appointment of the respondent no.4 as Sr.Superintendent of Post Offices (for short Sr.SPO) Gorakhpur on adhoc basis, when the applicant was serving as PA Maharajganj, Gorakhpur, he became revengeful against the applicant and got an opportunity to harass^{him}. It is further alleged by the applicant that during the tenure of the respondent no.4 as Sr.SPO, the applicant came to know about serious

lapses, embezzlement and misappropriation to the tune of about 7 lakhs committed by him by abusing his official position and the applicant brought the same to the notice of the Post Master General U.P. by telegram dated 31.8.1984 and 6 subsequent letters, last being of 5.11.1984. He also lodged First Information Report against the respondent no.4 on 11.9.1984 with the Superintendent Special Police Establishment (for short SSPE) C.B.I., Lucknow and endorsed a copy of letter dated 5.11.1984 to the Prime Minister of India *and also addressed another letter dated 5.12.1984 to the Prime Minister.* In order to harass the applicant, the respondent no.4 promoted his juniors and on 14.12.1984 he served the applicant with charge sheet dated 12.12.1984 containing 2 charges to the effect that by sending the letter dated 5.12.1984 to the Prime Minister, the applicant had violated rule 614 of P&T Manual Vol.II and rule 11 of Central Civil Service (Conduct) Rules, 1964 and the applicant had exhibited gross indiscipline by sending letter dated 5.11.1984 and was guilty of violating rule 3(i) and (iii) of the CCS (Conduct) Rules, 1964. It appears that after the respondent no.4, his successor the respondent no.3 appointed an inquiry officer on 31.12.1984 to conduct the inquiry against the applicant.

3. The allegation of the applicant is that the inquiry officer did not afford any opportunity to the applicant to defend himself and as the applicant was lying ill and unable to move, he had been sending applications for adjournment. The inquiry officer ultimately, concluded the

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prosecution evidence on 17.6.1985 without informing the applicant and fixed 20.6.1985 for his evidence. As the applicant was not afforded an opportunity to cross examine the prosecution witnesses, there was no question of his producing any evidence in defence and the applicant requested the inquiry officer to treat his letter dated 31.6.1985 as his statement. The inquiry officer held the applicant guilty of the charges levelled against him except the charge of violating rule 11 of the CCS(Conduct)Rules and submitted his findings to the respondent no.3 on 13.8.1985. The copy of the report of the inquiry officer was not given to the applicant by the disciplinary authority before passing the order of punishment and the respondent no. 3 vide his order dated 28.8.1985 passed the order of compulsory retirement of the applicant by way of punishment. The correctness and validity of the punishment order is challenged on behalf of the applicant on the grounds that he was not afforded adequate opportunity by the inquiry officer to defend himself and in the absence of copy of his report, the applicant could not dispute its validity before the disciplinary authority. It is also alleged that during the pendency of the inquiry the applicant had informed the inquiry officer that on his request, the competent authority had sanctioned the prosecution of the respondent no.4 under sections 120-B/420/467/468 471 IPC and S.5(1)(d) of the Prevention of Corruption Act in March 1985. Before granting the sanction for prosecution, the competent authority had made a preliminary inquiry about the allegations against the respondent no.4 and the order of punishment was passed by the respondent no.2 as a measure of revenge. The

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applicant alleges that the criminal prosecution of the respondent no.4 was sanctioned on the basis of his complaint dated 5.11.1984 and as a copy of the same was endorsed to the higher authorities, he had committed no misconduct and was not liable to be punished under the rules.

4. The applicant had filed a writ petition ^{in the High Court} against the order of his compulsory retirement which was received by transfer to this Tribunal on its establishment. The said writ petition was decided by a Bench of this Tribunal on 20.8.1987 and the applicant was directed to file a departmental appeal. On the appeal being filed by the applicant, the appellate authority- respondent no.2 decided the same on 10.2.1988 which was communicated by the respondent no.3 with his letter dated 18.2.88. The appellate authority ^{too bound} ~~held~~ the appellant guilty of the charges levelled against him but by setting aside the punishment of compulsory retirement, the applicant was reduced in rank as a Post Man for a period of 2 years. The appellate authority by his subsequent order dated 23.3.1988 again substituted the punishment of reduction in rank for 2 years by a punishment of reduction for a period of 1 year only with immediate effect. The applicant challenges that the last line "the penalty comes into force with immediate effect" of the punishment order dated 23.3.1988 be quashed as the same is incorrect."

5. The case of the applicant has been contested on behalf of the respondents and in the reply filed by the SSPO Gorakhpur respondent no.3, it has been stated that the applicant had sent a letter to the Prime Minister on 5.12.1984 with a copy to the Chief Commissioner Central Vigilance Commission, New Delhi and SSPE/C.B.I Lucknow against the provisions of rule 614 of the P&T Manual. By mentioning the word adhoc in the address of the respondent no.4, he had intended to show disrespect to him and the applicant had committed gross indiscipline and insubordination by sending information to the authorities of other Departments bypassing his superiors in the Department and he was, therefore, rightly charge sheet-ed for the misconduct committed by him. After the receipt of the charge sheet, instead of furnishing any reply thereto, he sent one more letter to the Prime Minister on 17.12.1984 endorsing its copy to the SSPO. The inquiry officer had afforded adequate opportunity to the applicant but the applicant did not care to turn up to make his defence and the inquiry officer, therefore, cannot be blamed for not affording adequate opportunity to the applicant. In the appeal filed by him, the respondent no.2 had considered all the points raised therein against the order of punishment in the light of the directions of the Tribunal after affording an opportunity of personal hearing to the applicant and ~~then~~ taking a lenient view the punishment of his compulsory retirement was set aside and afterwards, the punishment of the applicant was further reduced. All the allegations made by the applicant against the inquiry officer and the disciplinary authority are unfounded and false and the impugned orders were passed in accordance with law after affording due opportunity to the applicant and the allegations made to the contrary are not correct.

6. In the rejoinder filed by the applicant, it was stated by him that on his complaint, a vigilance case was registered against the respondent no.4 and the applicant committed no wrong by addressing the complaint dated 5.12.1984 to the Prime Minister and he did not commit the breach of any rule. He maintained that it was his duty under Regulation 170 of the P&T Manual Volume 5 to report the misappropriation/embezzlement to the head of Circle/ director of Postal Services and the respondent no.4 being actually appointed as adhoc SSPO, the applicant committed no wrong in addressing him like that. The order dated 23.3.1988 was passed by the appellate authority in exercise of his revisional jurisdiction. The direction contained in the last line, as aforesaid, was patently without jurisdiction. It was also stated that the disciplinary proceedings against the respondent no.4 have been initiated and he has been served with a charge sheet proposing major penalty.

7. The main question regarding the procedure followed in the disciplinary inquiry against the applicant in this case is whether the inquiry officer or the disciplinary authority committed any illegalities or irregularities so as to cause prejudice to the applicant in conducting the inquiry against him. The main grievance of the applicant is that he being ill at the time the inquiry was conducted

against him, he should have been afforded more opportunity by the enquiry officer and he could not get full opportunity of defending himself. In our opinion, this contention is wholly unfounded and incorrect. According to the charge sheet, copy annexure 3, the main charge against the applicant was that he made unauthorised communications to the Prime Minister, Chief Commissioner, Central Vigilance Commissioner, New Delhi and SSPE/C.B.I, Lucknow and thereby committed the breach of rule 11 and 3(1)(iii) of the CCS (Conduct) Rules, 1964. It is noteworthy that the applicant admits his having addressed the letter dated 5.12.1984 to the Prime Minister endorsing its copies to the Chief Commissioner, Central Vigilance Commission and the SSPE/CBI. His own annexure 1-A further bears out this fact. The applicant has not denied anywhere about his having addressed this letter to the Prime Minister and other authorities. It further appears from the copy of the charge sheet on record that the prosecution was relying only on this letter of the applicant to establish his alleged misconduct and only in order to prove the fact that he had sent this letter, certain evidence was cited in annexures 3 and 4 to the charge sheet. Nothing else was to be proved against the applicant. Thus the main allegation of misconduct against the applicant was not at all in dispute in this case and it is not known what cross-examination the applicant wanted to make and what defence he wanted to produce in order to demolish the case of the prosecution and prove his innocence. Not only this, the applicant was bold enough to address further complaints to the Prime Minister on receiving the charge sheet and he never expressed any regrets for his conduct. Despite his alleged illness, he had sufficient time and ^{opportunity} ~~evidence~~ to make further complaints against the respondent no.4 and applying for according sanction

for his prosecution as appears from the material on record but he did not like to send his statement of defence to the inquiry officer. It is not known why the applicant was insisting so much for adjournment after adjournment when he was not disputing the sending of the letter dated 5.12.1984 and was throughout trying to justify his action. In our opinion, the facts constituting the misconduct as stated in the charge sheet being never in dispute, there could be no question of the applicant being prejudiced in any manner by denying any opportunity by the inquiry officer to him.

8. Now, we come to the implications of the allegations made by the applicant in the letter dated 5.12.84 addressed to the Prime Minister. It appears from the contents of this letter, copy annexure 1-A, that the applicant had addressed this letter as PA and had alleged about the various misdeeds of the respondent no.4 committed during the course of his employment as an officer of the Postal Department. The Prime Minister was not the personal friend of the applicant and he had addressed this letter to him in his capacity as the Prime Minister for taking suitable action against the respondent no.4. This is a detailed letter running into 8 typed pages containing the various details about the working of the Postal Department involving respondent no.4 and some others who were in collusion with him. This clearly amounted to the breach of rule 614 of the P&T Manual Volume II as the Prime Minister was an authority superior to the officer, to whom the applicant was immediately subordinate at the time the letter was addressed to

the Prime Minister by him and he further violated the provisions of rule 3(1)(iii) of the CCS (Conduct) Rules by bypassing his seniors and making serious allegations against his superior in an undignified language by using the word 'ad hoc'. A Government servant may be permanent, temporary or ad hoc but he is not required to be addressed with these adjectives and if anybody addresses a temporary or ad hoc officer/official as such, he certainly does so in order to insult him and lower down his position in the esteem of others. The inquiry officer was fair enough not to find the applicant guilty of the breach of rule 11 of the CCS (Conduct) Rules and he seems to have conducted the inquiry against the applicant with open and unbiased mind after giving him adequate opportunity to defend himself. We, therefore, do not find any force in the contention of the applicant against the procedure followed in conducting the enquiry. We also do not find any force in the contention that by not giving the copy of the report of the inquiry officer, by the disciplinary authority before awarding the punishment, it caused any prejudice to him.

9. Now coming to the allegations made against the appellate orders, we find that the copy of the appellate order dated 10.2.1988 alleged to have been communicated on 18.2.1988, annexure 13, shows that the appellate authority- respondent no.4 had passed his order after considering all the objections raised by the applicant in a judicious manner. Not only this, he was kind and liberal enough to set aside the penalty of compulsory retirement imposed on the applicant and in its place awarding ~~him~~ a much lighter punishment of reduction in rank for two years. The large heartedness and unbiased condition of mind of the appellate authority further appears from his subsequent order dated 23.3.1988 whereby

on his own accord, he had reduced the penalty ~~from~~^{of} reduction in rank of the applicant from a period of two years to one year only after considering the fact that as the applicant was going to retire on 31.3.1989, he may not suffer a disadvantage of fixation of lower pension etc., on his retiring on the reduced post. We are, therefore, of the view that the appellate authority had done full justice to the applicant in deciding his appeal and we find no illegality in the approach of the appellate authority in deciding the same. It appears from the amended petition of the applicant that he challenges only the last line of the appellate order dated 23.2.1988 and does not dispute the finding of guilt recorded by the appellate authority as well as the order of reduction in rank for a period of one year.

10. Regarding the validity of the last line, namely, "the penalty comes into force with immediate effect" used in the order dated 23.3.1988, we are of the view that what to say of this line, this whole order is without jurisdiction. The appellate authority could not revise his order under the law. In any case, even if it be assumed that ^{for the sake of argument} it could do so, we are of the view that this order was passed by the appellate authority, as well as ~~any~~ part of the earlier order, under the wrong assumption that the appellate order, so far as the reduction in rank was concerned, had to take effect from the date of his order, while under the law the entire appellate order had to take effect from the date 28.8.1985 when the applicant was ordered to be retired compulsorily. There could be no gap or vacuum regarding the services of the applicant from the date of his initial punishment till the date of the substitution of another punishment. The applicant should, therefore,

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be deemed to have been reduced in rank as a Postman under the appellate orders from the date he was earlier removed from service by way of compulsory retirement. This being the position, there was no occasion for the appellate authority to review or revise its order dated 10.2.1988 on 23.3.1988. As this order as well as the order dated 10.2.1988 were passed under a misapprehension by the appellate authority that the reduction of the applicant in rank will take effect from the date of its order, we were thinking to remit the matter to the appellate authority to pass a suitable order of punishment. But keeping the circumstances of this case in view, we, ~~however~~^{as} feel that the punishment awarded to the applicant by the appellate authority under its order dated 10.2.1988, though under a misapprehension, may be justified and ^{as} the applicant has to retire within a year, it may not be expedient to prolong the matter by remitting the case to the appellate authority for imposing suitable punishment on him.

11. We accordingly allow the petition in part. Upholding the finding of guilt against the applicant, as recorded by the inquiry officer and confirmed by the appellate authority, we further uphold the punishment of reduction of the applicant in rank as Postman for a period of 2 years as awarded by the appellate authority under its order dated 10.2.1988. This order shall take effect from the date of the earlier punishment imposed by the disciplinary authority. The order dated 23.3.1988 passed by the respondent no.2 is set aside. There will be no order as to costs.

[Signature]
10/6/80
MEMBER(A)

Dated: 10.6.1988
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[Signature]
MEMBER(J)