


RESERVED:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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O.A. No. 462 of 1988

Dated : 30, November, 1994.

Vinod Kumar son of late Shri
Prem Chand Sarwan Khanna, Ex-Postman
Bijnor Post Office (Head), Village
and P.O. Bahupura via Kiratpur Bari
District Bijnor Applicants.

(By Advocate Sri R.K.Tewari)

Versus.

1. Superintendent of Post, Bijnor.
2. D.P.S. Dehradun.
3. Postmaster Bijnor.
4. Union of India, through Secretary
Ministry of Communications, New Delhi. Respondents.

(By Advocate Sri N.B. Singh)

Hon. Mr. Justice B.C. Saxena, V.C.
Hon. Mr. S. Das Gupta, Member (A)

(By Hon. Mr. S. Das Gupta, Member (A))

The reliefs prayed for in this Original Application under Sec. 19 of the Administrative Tribunals Act, 1985 are that the order dated 30.6.1987 imposing the penalty on the applicant as well as the appellate order dated 28.11.1987 confirming the penalty of removal from service be quashed and the applicant be ordered to be put back on duty and be paid subsistence allowance for the period from the date of his removal from service till the date of his reinstatement.

2. The applicant, in this case, was ^a permanent

postman in ~~Bijnor~~ Bijnor Head Post Office. He was served with a charge-sheet ^{v. For imputation of major penalty} under ~~Art. 14~~ of the C.C.S (CC&A) Rules, 1965 vide charge memo dated 10.10.1988. and an enquiry was held and the enquiry officer held the charges as proved. The disciplinary authority agreeing with the enquiry officer passed the impugned order of removal from service. The applicant preferred an appeal against the said order but the appellate authority rejected the same by the impugned appellate order.

3. That applicant's case is that the disciplinary action initiated against him was malafide and that it was on account of the fact that he was beaten by a near relation of the respondent no. 3 against which he made a complaint in writing on 30.8.1985. It has been alleged that the respondent no. 3 took no notice of the complaint submitted by the applicant and instead he fabricated a false case against him with the help of Public Relation Inspector and served a charge-sheet on him in order to divert the attention of all concerned from the main issue of the applicant being beaten by ~~she~~ by a near relation of the respondent no. 3.

4. The charges levelled against the applicant relate to non-payment of the money remitted ^{l. l. m. p. h.} to four money orders to the designated

payees. The applicant alleges that out of the 4 payees, one Smt. Rekha Jain did not appear before the enquiry officer and the other 2 payees were not permitted to be cross-examined by the applicant. He has also stated that the statement of 4th payee is not reliable for reasons stated in written brief submitted by him before the enquiry officer which the ^{enquiry} following officer did not take~~s~~ into account. As regards the appellate order, the applicant has alleged that the appellate authority did not take any notice of the points brought out by him in his appeal.

5. In the written statement filed by the respondents, it has been denied that the disciplinary action was initiated against the applicant on account of malice towards him. It has been stated that the Public Relations Inspector Bijnor, who is required to exercise supervision over the outdoor staff including the applicant found during verification of payment of money orders that in respect of 2 money orders, while the amounts were shown to have been paid, the payees thereof, had denied to have received the same and have submitted written statement in this regard. On receipt of this report, the Post Master, Bijnor placed the applicant under

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suspension vide order dated 29.8.1985 and directed the Public Relations Inspector, Bijnor to verify the past work of the applicant during the previous one year. During the verification of the work of the applicant during the previous one year, 5 cases of fraudulent payment of M.O. came to light. In respect of one of these cases, a report was made to the police and the matter is subjudice in the court. In respect of the remaining 4 cases, the departmental proceedings were initiated against the applicant by issuing a charge-memo.

6. The respondents have further submitted that in the enquiry, the charges levelled against the applicant were fully proved and the disciplinary authority after considering all aspects of the case imposed the penalty of removal from service. It has been averred that the applicant was permitted to cross examine two payees who were ~~examined~~ exonerated by the enquiry officer but he simply asked for additional documents and did not avail of the opportunity of cross examining the witnesses. As regards non-examination of Smt. Rekha Jain, it has been submitted that she could not be produced for examination and since the charge with regard to non payment of M.O. to her was not found to have been proved, the point raised

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by the applicant is not relevant.

7. We have heard the learned counsel for both the parties and have gone through the pleadings of the parties.

8. We are unable to accept the plea raised by the applicant that the disciplinary proceedings initiated against him were malafide, since the same appear to have been initiated on the basis of a report made by the Public Relations Officer, regarding non-payment of money orders by the applicant. Although, the respondents have not denied specifically the alleged beating of the applicant by ~~she~~ by a near relation of respondent no. 3, it is difficult to believe that this incident would have actuated the initiation of disciplinary proceedings against the applicant. In any case, the complaint of the applicant is dated 30.8.1985, whereas, he was ^{then} ~~was~~ under suspension on 29.8.1985. Had the order placing him under suspension been subsequent to his complaint in point of time, it would lend some credence to the applicant's contention. Since the complaint made by him is subsequent to the order placing him under suspension in point of time, the allegation that the disciplinary action was initiated only to divert the attention of the authorities concerned from the fact of an beating of the applicant by a relation of the

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respondent no. 3 does not appear to be credible. In any case, since the specific charges were levelled against the applicant and an enquiry was held into the charges, the question as to whether the disciplinary actions were actuated by any malice would become wholly irrelevant.

9. As regards the non-production of one of the main witnesses, we are of the view that this has not materially prejudiced the applicant's case because since the order of penalty is not based on the charge relating to non-payment of M.O. to that witness. As regards the allegation that he was not permitted to cross-examine 2 of the principal witnesses, we are satisfied after going through the record that he was actually given an opportunity which he did not avail. It does not, therefore, lie in his mouth to say that he was denied an opportunity to cross examine the witnesses.

10. As regards the allegation that the witness given by one of the witnesses is unreliable, we have found from the report of the enquiry officer based on this witness's evidence is no way perverse and, therefore, we see no reason to make a fresh appraisal of the evidence. We are satisfied that the conclusions reached by the enquiry officer are quite reasonable on the basis of the evidence on

record and the disciplinary authority having agreed with the findings of the enquiry officer has issued the impugned order of penalty and we find no ^{infirmity} ~~inconfirmity~~ neither in the proceedings nor in the order of the disciplinary authority.

11. So far as the appellate order is concerned, the relevant portion of the order is reproduced below;

* I have gone through the appeal of Shri Vinod Kumar Postman against the orders of removal from service given by the SPOs Bijnor and have come to the conclusion that the punishment is fully justified. The appellant has pleaded that he obtained the signature of the payees on the money orders and that the denial of statement of the payees were not correct. He has also pleaded that the values of money orders were correctly paid to the payees but he could not produce any proof in support to this. The appellant has also pleaded that no findings were given against each articles of charge by the Enquiry officer and that the opinion of the hand writing expert was not obtained irrespect of the signatures of the payees given on the disputed money orders paid vouchers.

I do not agree with these pleas as the enquiry officer in his enquiry report has ~~referred~~ very categorically established the forged payments. The fact alone that the appellant has accepted that he had made payment of ~~the~~ all said MOs but he cannot prove the genuineness, is sufficient to prove the malafide intention of the appellant. Infact,

his own defence in respect of his lapses is most unconvincing and most unreliable. In the light of above, therefore, I do not find it necessary to interfere with the orders given by the disciplinary authority and hereby order that the punishment of removal from service should remain unchanged. The appeal is therefore, rejected.

It would be clear from the extract of the appellate order that the appellate authority has taken into consideration the pleadings of the applicant in the appeal and has communicated that she does not agree with the various points raised. It is a well reasoned order and, therefore, the applicant's plea that the appellate authority did not consider the points raised by him in appeal has no force.

12. In the result, the application fails and the same is dismissed. There will be no order as to costs.

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Member (A)

B. Chakravarthy
Vice-Chairman.

(n.u.)