

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Memorandum

O.A.No./T.A.No. 948 of 1989 DATE OF DECISION 10.7.96

-- Vishwanath Yadav -- -- APPLICANT (S)

-- Sri Rakesh Verma -- -- ADVOCATE FOR THE
APPLICANT (S)

V E R S U S

-- U.O.I. G.O. etc. -- -- RESPONDENT(S)

-- Sri M.B. Singh -- -- ADVOCATE FOR THE
RESPONDENT(S)

C O M M

The Hon'ble Mr. A.K. Saxena - Vice Chairman
Member (J)

The Hon'ble Mr. D.S. Bawya - Member (A)

1. Whether Reporters of local newspapers may be allowed to see the judgment? ✓
2. To be referred to the recorder or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgment? ✓
4. Whether to be circulated to all other Bench? ✓

S. Kumar
(SIGNATURE)

M. Mehrotra/-

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 10th day of July 1996.

Original application No. 948 of 1989.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Vishwa Nath Yadav, S/o Sri Jhokri Yadav,
aged about 53 years, R/o Village and P.O.
Maniram, Gorakhpur, Er. E.D.R. Rampur
Gopalpur in account with Fertilizer
Factory, Post Office, District Gorakhpur.

..... Applicant.

C/A Sri Rakesh Verma

Versus

1. Union of India through Secretary
M/o Communication, New Delhi.
2. Sr. Suptd. of Post Offices,
Gorakhpur Division, Gorakhpur.
3. The Sub Divisional Inspector
of Post Offices, East Sub Division,
Gorakhpur.

..... Respondents.

C/R Sri N.B. Singh

ORDER

Hon'ble Mr. D.S. Baweja, AM

The applicant has prayed through this
application filed under Section 19 of the Administrative
Tribunal Act for quashing the impugned order dated
31.12.88 imposing the penalty of dismissal from service
and the appellate order dated 2.6.89 rejecting the

(i)

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appeal. The applicant has also prayed for reinstatement in service and consequential payment of the pay and allowances etc.

2. The applicant joined the service on 5.9.59 as an Extra Departmental Runner of Rampur Gorakhpur Branch Post Office Gorakhpur District. He was issued chargesheet dated 10.2.88. The inquiry was conducted and the disciplinary authority vide order dated 31.12.88 imposing^{ed} the punishment of dismissal from service. The applicant preferred an appeal against the same. The appeal was however rejected by the appellate authority vide order dated 2.6.89. Being aggrieved this application has been filed on 10.10.89 challenging the punishment orders. The chargesheet contains two charges, one relates to disobedience for not carrying out the orders for bringing the letter boxes for painting. The other charge relates to wrong declaration of the date of birth and date of appointment in the application submitted by him for appearing in the group 'D' selection examination.

3. The applicant has made detailed averments bringing out as to how the inquiry officer did not consider the evidence available in arriving at the findings, and denial of principles of natural justice has been done. The main arguments are as under:-

- (i) Right from the beginning the applicant has been raising objection pointing out the ~~bas~~ ^{bas} of the disciplinary authority and he had made a complaint against him regarding demanding money for helping him in passing group 'D' selection examination. He had brought out this fact in the defence statement as well as in the written brief but but no note of the same has been taken. The chargesheet had been issued by him by fabricating the charge No. 2 to cover up his demand for money.

The disciplinary authority, ^{has} thus acted as a judge of his own action.

- (ii) As per duty list of the ~~Runner~~, he was not required to do the job of bringing the letter boxes for painting. No written order was also given as required under Rule 199 of P&T Manual Vol. III extract of which is placed at Annexure A-13. This rule lays down that no order should be issued orally that is ~~are~~ in any way likely to lead to dispute. His explanation was called for and he had suitably explained the position vide letter dated 23.10.86 and it was presumed that his explanation has been accepted. This has been included as charge No. 1 in the chargesheet after a period of more than one year maliciously to support the charge No. 2 in the chargesheet.
- (iii) Personal hearing was not given before deciding the appeal.
- (iv) Disciplinary authority order is not a speaking order as no reasons have been recorded in support of the conclusions arrived at. Under the rules the disciplinary authority is bound to give reasons for arriving at the conclusion. The order of the appellate authority is also not a reasoned and speaking order as ~~well as~~ the points raised in the appeal have not been covered.
- (v) Copy of the inquiry report was not given before imposing punishment.
- (vi) As regards the charge No. 2, ~~the~~ giving of date of birth in the application is immaterial and the same was called for with a malafide intention as the date of birth is to be taken as per the service records.

In view of the above considerations, the impugned orders of imposing punishment and rejecting the appeal are bad in law and deserve to be quashed.

4. The respondents have filed the counter reply strongly contesting the averments made by the applicant. It is stated that the inquiry has been conducted according to the rules and the applicant participated in the same. The inquiry officer having gone through the ^{and} evidence, other connected material on record, concluded

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that the charges levelled against the applicant were proved. The disciplinary authority ^{has} imposed punishment of removal from service vide order dated 31.12.88. The appeal was filed against this order and the appellate authority rejected the appeal as per the order dated 2.6.89.

① Respondent ^{Confend that} The allegations made against the Mail Overseer are false and fabricated. The application for ^{for Group D selection} examination submitted by the applicant along with the enclosures which included the transfer certificate was sent by the Branch Post ^{Master} and the Mail Overseer was not involved in any way. Further unfounded and false allegations have been made against the disciplinary authority ~~on~~ subsequent to issue of ^{the} chargesheet and therefore the same cannot ~~be~~ restrain the disciplinary authority to take decision in the case. The disciplinary authority after due consideration of the facts and evidence and also the findings in the inquiry report has imposed the punishment.

With regard to charge 2, the allegation of the applicant that furnishing of a proof of date of birth and the educational qualification was not necessary and this condition was laid down with malafide intention, ~~it~~ is submitted that the rules on the subject relating to examination required ~~this~~ the applicants to furnish these details. While furnishing these details as stipulated, the applicant has furnished the bogus certificate. For charge No. 1 with regard to non carrying out of instructions of bringing ² letter boxes for painting, the explanation of the applicant was called and he submitted the same dated 23.10.86 but at no stage any decision was conveyed that his explanation has been accepted. The interpretation of Rule 276 of Vol. 8 by the applicant is not consistent

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with the specific requirement of painting of letter boxes. If the applicant was of the view that written order is required for the same, he could have asked for the same.

In view of the facts and circumstances stated above, none of the grounds taken by the applicant are sustainable in the eye of the law and therefore the application is devoid of merits and deserves to be dismissed.

5. Heard the learned counsel for the applicant and the respondents. The counter and the rejoinder affidavits have been filed. We have carefully examined the material placed on the record.

6. We will first take up the various grounds raised by the applicant on which ^{he contends that} the impugned orders deserve to be quashed. The first ground taken is that the respondent No. 2 was not competent to act as a disciplinary authority as there were certain personal allegations against him as brought out in the defence statement and written brief of the applicant. The inquiry officer did not pay attention to this aspect. This issue was ^{also} raised in the appeal also but the appellate authority did not say even a word on the part of corruption of his subordinates.

The applicant in the application has narrated in detail as to how Sub Divisional Inspector, the disciplinary authority and Mail Overseer tempted him to get selected in group D selection by paying money. He has averred that he went to the residence of Prabhu Nath Pandey Sub Divisional Inspector

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Gorakhpur and there the applicant was asked to pay 5000/- Rupees, for helping in the examination. The applicant showed inability to pay such a huge sum at one time. He agreed to pay Rs. 1000/- to Sh. P.N. Pandey and Rs. 500/- to Sh. Narshingh Tiwari Mail Overseer. He went to residence of Sh. P.N. Pandey on 5.4.87 and made payment of Rs. 1500/- in presence of Sh. Vishwanath Gupta and promised to pay the balance of Rs. 3500/- after he was selected. ^{However} ~~Further~~ they continued ~~on~~ pressing the applicant for the payment of the balance of Rs. 3500/- but the applicant could not arrange. On being annoyed for non compliance of the payment, a false and fabricated case has been made against the applicant by issuing a chargesheet on 6.2.88 and putting off duty on 10.2.88.

The payment of Rs. ¹⁰3500/- is stated to be made on 5.4.87. The chargesheet was issued in ^{February} ~~February~~ 1988. The applicant has not made any averment that he made any specific complaint against the Sub Divisional Inspector Sh. P.N. Pandey as well as the Line Overseer Sh. Narshingh Tiwari for the alleged demanding of money and the payment already made. If the applicant was really aggrieved and concerned he should have made a separate complaint before the issue of chargesheet. This allegation has been only made in the defence statement and written brief after the chargesheet had been issued. Even at ^{this} stage no written complaint was made to the concerned authorities. Since the allegations of corruption were against the disciplinary authority the inquiry officer was not expected to go into this issue. It is a matter to be taken note by the competent higher authority who could order an inquiry. This would have ^{been} possible if the applicant

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had made specific complaint. Mere raising this issue in the defence statement and written brief does not imply that the respondent was not competent to act as a disciplinary authority. It is one thing to make allegations which quite often ^{are} ^{easily} made than proved. Vague and casual allegations imputing ulterior motives to certain acts cannot be accepted without proper proof. In view of these facts we are unable to buy the contention of the applicant that disciplinary authority was not competent authority and acted as a judge of his own action.

7. The next issue is with regard to non~~al~~ supply of inquiry report before imposing punishment.

In number of judgements subsequent to Ramzan Khan's case, the Hon'ble Supreme Court has held that the law laid down for furnishing the copy of inquiry report before imposing the punishment in Ramzan Khan's case will have prospective effect. In this case the order of punishment is dated 31.12.88 and the judgement ^{dated} in Ramzan Khan's case is 20.11.90. Therefore non~~al~~ supply of inquiry report before imposing penalty did not vitiate the inquiry.

8. As regards the article of charges, the applicant has stated in respect of charge No. 2 that the applicant is illiterate and Sh. Narsingh Tiwari Mail Overseer made him to sign on the blank application form. He submitted the application and enclosed the bogus transfer certificate for the proof of age with a view to lay a trap for the applicant. Further it

is also averred that the date of birth is already available in records and this stipulation was made with malafide intentions to trap the applicant and frame charges against him. The respondents have countered this ^{by} stating that proof of age was to be furnished as per the laid down rules. However, the respondents have not brought any such rules on record. The applicant has also not quoted any rules as per which this information was not required to be furnished. However from the inquiry report, we find that inquiry officer has stated that as per column 10 of the application, certificate for proof of age was required to be furnished. Further the applicant was not the sole candidate and the same stipulation applied to all the candidate, and therefore this is for-fetched inference drawn by the applicant. On the face of these facts, we are unable to recognise any force in this pleading. Further the submission of the applicant that he was made to sign on a blank application form and the same was submitted by Sh. Narsingh Tiwari, Mail Overseer is not borne by the facts. The inquiry officer has concluded that the application had been submitted by the applicant to the branch Post Master who forwarded the same. The relevant documentary evidence is covered by the list of the relied upon documents furnished to the applicant along with the chargesheet. Keeping these facts in view, the contention of the applicant is not tenable.

9. The entire defence of the applicant for the charge 2 is focussed on the malafides of Sh. P.N. Pandey S.D.I. East Gorakhpur and Sh. Narsingh Tiwari as the applicant had annoyed them by ^{refusing} referring to pay more

money and also demanded the money back which had been paid to them as brought out earlier. It is also averred that defence witness Sh. Vishwanath Gupta testified during the inquiry that applicant had paid Rs. 1500/- to Sh. P.N. Pandey and Sh. Narsingh Tiwari. The charges of corruption/bribery against these official cannot be raised before the inquiry officer. The inquiry officer cannot go into these charges as this was not the scope of the inquiry. The applicant should have made a separate complaint as he had enough time before the chargesheet was issued if felt aggrieved. He cannot raise this serious matter in defence statement when chargesheet is issued. It is ^{also} the responsibility of the applicant that application is filled ^m properly and submitted with the correct relevant documents. Simply stating that he signed the blank form and then put the entire blame on Sh. Pandey and Sh. Tiwari does not absolve the ~~responsibility~~ ^{responsibility} of the applicant. ^{his}

We have gone through the inquiry report. It is quite exhaustive and large number of connected witness from both sides have been examined. Findings are based on the evidence advanced during the inquiry and ~~both~~ ^{No 2 & 4} charges are proved.

10. In respect of charge No. 1, the main plea of the applicant is that no written order was given to bring the letter boxes for painting. This is however admitted that verbal orders were given. If the applicant was not willing to do the job or considered beyond his duty allocated, he should have demanded order in

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writing or ~~at~~ least represented against the same. There is ^{no} whisper of ^{any} averment to this effect in the application. The inquiry officer based on the evidence on record has conclude that ^{this} charge is proved.

11. Another plea taken is that the speaking orders of the disciplinary and appellate authority do not show the application of mind as no reasons have been recorded to support the conclusion arrived at. Further the appellate authority has not covered all the points raised in the appeal. We have carefully perused these orders, and do not agree with the contention of the applicant. Detailed reasons have been recorded and orders exhibit the application of mind.

12. It is well settled that the Court/Tribunal may interfere where the authority held the proceedings against the delinquent employee in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the conclusions or the findings ^{reached} by the disciplinary authority ^{are} based on no evidence. If the conclusion or findings be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusions or the findings and mould the relief so as to make it appropriate to the facts of each case. The disciplinary authority is the sole judge of the facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence has no application and the authority has to consider the material on record.

13. From the above deliberations we do not find ^{that} rules of natural justice are ^{not} complied with or ^{there is} any infringement of statutory rules in conducting the inquiry. Findings are based on evidence. We therefore refrain from reappreciating the evidence which ^{was} pleaded ^{by} the applicant ^{has sought} and arrive at a different decision.

14. In consideration of the ^{above} facts, we find no merit in the application and the same is dismissed with no order to costs.

[Signature]
Member - J

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Member - J

Arvind.