

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

Allahabad this the...^{28th} day of ^{April} 1997.

CORAM : Hon'ble Mr. S. Das Gupta, MEMBER (A)
Hon'ble Mr. T.L. Verma, MEMBER (J)

ORIGINAL APPLICATION NO. 1469 OF 1994.

Raghubir Sharan Agarwal,

S/o Sri Bhagawan Das Agarwal,
aged about 49 years, R/o 168 Gopal Nikra Jhansi,
Presently posted as Sorting Assistant in the
Head Record Officer, Jhansi 'X' Division,
District-Jhansi.

..... Applicant.

(By Advocate Shri A.V. Srivastava)

Versus

1. Union of India,
through the Director General (Posts),
Dak Bhavan, Sansad Marg, New Delhi.
2. Director, Postal Services,
Agra Region, Agra.
3. Superintendent of 'X' Division,
Railway Mail Services, Jhansi.

..... Respondents.

(Through Counsel Km. Sadhana Srivastava)

ORDER

By Hon'ble Mr. T.L. Verma, J.M.

1. This application Under section 19 of the Administrative Tribunals Act 1985 has been filed for quashing the order dated 28.1.1994 passed by the Disciplinary Authority holding the applicant guilty and imposing punishment of recovery of Rs 16,776/- in 36 instalment of Rs 466/- per month and reduction of pay by three stages in the same time scale of Rs 1400-2300/- from the stage of Rs 1520/- to 1400/- for a period of three years without

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cumulative effect and order passed by the Appellate Authority ~~up~~ holding the punishment imposed by the Disciplinary Authority

2. On the relevant date, the applicant was working as Sorting Assistant under Superintendent of 'X' Division, Railway Mail Service, Jhansi. In his capacity as such he received one bag of Mail which was delivered to him by a Mail Agent who carried it from Bombay for being ^{taken} ~~carried~~ by the applicant from Jhansi to Lucknow, ^{from where} ~~from~~ it was to be transmitted further to Gonda. It is stated that the applicant failed to closely examine the seal of the said Mail Bag before taking delivery from ^{the} Mail Agent who ^{had} brought the same from Bombay. When the said Mail bag was carried by the applicant to Lucknow for delivery, the concerned Officer refused to take ~~the~~ ^{it} delivery of the bag on the ground that its seal was defective. The applicant, instead of opening the bag for making open delivery, put his own seal below the original seal. When the bag was ultimately opened it was found that the 133 insured covers which were ~~despatched~~ in the said Mail Bag ^{were} missing. After holding preliminary enquiry into the circumstances leading to the loss of 133 insured letters valued at Rs 1,59,555.00 charge sheet dated 7.5.1993 was issued to the applicant which was received by him on 20.5.1993. He submitted his written statement of defence. The disciplinary authority on a consideration of chargesheet, defence statement and documents held that the petitioner was responsible for the loss ~~the~~

of the insured letters kept in the Mail Bag and accordingly imposed punishment as mentioned above. The appeal preferred by the applicant challenging the punishment imposed by the Disciplinary Authority was rejected. Hence, this application for reliefs mentioned above.

3. The impugned punishment has been assailed inter alia on the ground that the material documents were not supplied to the applicant as a result of which he has been materially prejudiced in his defence and also that there has been no violation of any rule and as such no misconduct has been committed by the applicant.

4. We have heard the learned counsel for both the parties and perused the record very carefully.

5. In view of the submissions made, the first question that falls for our consideration is whether copies of material documents of demanded by the applicant, were furnished to him to enable him to submit his written statement of defence or not. The applicant had demanded the copies of 12 documents enumerated in his petition dated 25.5.1993 (Annexure-A-2). The respondents, in para 12 of the counter affidavit, have stated that the documents mentioned in serial no. 1,2,5 and 6 of Annexure-A-2 were shown to the applicant.

in the office of the S.R.M 'X' Division Jhansi and serial no. 3,7,8 and 9 were shown to him at the office of S.S.R.M.O Division Lucknow. The applicant in his rejoinder affidavit, though, has ^{stated} ~~stated~~ that only five of the 12 documents were shown to him and the remaining ~~documents were shown to him and the remaining~~ documents including preliminary enquiry report were not supplied. The respondents admit that the copies of Preliminary Enquiry Report and Maratha Time Test ^{and of} ~~copy~~ ^{prescribed measure} Rules were not supplied. Withholding of Preliminary Enquiry Report has been justified on the ground that the same was privilege document. The Maratha Time Test and copy rules it was stated related to various rules and regulations and the applicant was supposed to know that hence supply of the copies of the same was not necessary.

6. In view of the denial of the applicant that copies of documents mentioned in serial no. 3, 7,8,9,10,11 and 12 of the Annexure-A-2 were not supplied to him, a duty has been ^{cast} ~~set~~ on us to ^{verify} ~~decide~~ whether these documents were given or not. As we have already mentioned above, the documents mentioned at serial no. 8 and 9 of Annexure-A-2 were not supplied. Annexure-A-4 letter from Superintendent of R.M.S 'X' Division Jhansi to the applicant indicates that the applicant was directed to attend the office of S.S.R.M.O Division Lucknow for examination of certain documents. The documents mentioned in the said letter are the same which have been mentioned in serial no. 3,7,8,9,10 and 12 of the request

letter of the applicant. It appears from the averments made in para 4.8 of the original application that the applicant had gone to Lucknow to inspect the documents mentioned in letter (Annexure no. A-4) referred to above. It would thus appear that the averments made by the applicant in his original application as well as the contents of Annexures on the record clearly establish that the copies of the documents mentioned by the respondents in para 12 of their counter affidavit, were either supplied to the applicant or were made available for his inspection. Therefore, the contention of the learned counsel for the respondents that the copies of the material documents were not supplied does not appear to be correct. In view of the discussions made above, we are satisfied that the copies of the 12 documents demanded by him were either supplied to him or were made available for his inspection. We, therefore, find that there has been no breach of the principles of the natural justice as alleged by the learned counsel for the applicant.

7. The learned counsel for the applicant urged that in view of the gravity of the allegations the disciplinary authority ought have held a detailed enquiry Under Rule 16 of the CCS and CCA Rules, 1965 as demanded by the applicant. Failure to hold regular inquiry, it was submitted, has resulted in grave injustice to the applicant. The applicant was served with a minor penalty chargesheet. In minor penalty chargesheet a detailed enquiry is not required to be held.

It is the discretion of the disciplinary authority whether in minor penalty chargesheet also a detailed enquiry should ~~have been~~ held in the circumstances of the case, ~~substantive~~

~~the same~~ From the circumstances of the case as have emerged from the pleadings of the parties, it is clear that the applicant did not challenge the seal of transit bag ^{when it} ~~was~~ was handed over to him by the Mail Guard at Jhansi Station. The obvious conclusion, therefore, that would follow is that the seal of the bag was sound when the same was transferred to the applicant. The Mail Guard at Lucknow, however, refused to receive the Mail Bag on the ground that the seal was defective. The applicant admittedly, instead of making open delivery of the Mail Bag to the Mail Guard Lucknow put his own seal below the original seal of the Mail Bag when the Mail Bag thereafter was opened 133 insured letters the value of which was 1,59,555/- were found to be missing.

In these circumstances of the case, therefore, the decision of the disciplinary authority not to hold the regular enquiry cannot be faulted.

8. We also do not find any substance in the argument of the learned counsel for the applicant that the applicant was not given fair opportunity to defend himself. In a minor penalty chargesheet the delinquent employee is given an opportunity to submit his defence statement. Admittedly, the applicant was given such an opportunity and he did file a written statement of the defence. From the perusal of the order of the disciplinary authority,

we find that the disciplinary authority has considered in detail the grounds taken by the applicant. The disciplinary authority has also satisfactorily met the grounds taken by the applicant that the copies of the documents mentioned in his application dated 25.5.1993 were not furnished to him. It has been clearly mentioned that documents mentioned at serial no. 1,2,4,5 and 6 were made available to the applicant for inspection on 4.8.1996 and documents mentioned at the serial no. 3,7,8, 10, 11 and 12 were inspected by him on 12.10.1993. It would thus appear that the applicant was given fair opportunity to defend himself and that the disciplinary authority gave due consideration to the grounds raised by him in his defence statement.

9. In the circumstance of the case discussed above, we find that the applicant has failed to show either that there has been any procedure illegality in conducting the disciplinary proceedings or that the principles of the natural justice have been violated by denying him opportunity to defend himself.

10. Coming to the arguments of the learned counsel for the applicant that there has been no violation of Rule 81 and 193 of the P&T Manual, it may be stated that Rule 81 P&T Manual Volume V requires that the Mail receipt should be examined and verified immediately and, if any, one of the Mail Bag shows signs of damage or tempering the procedure prescribed in Rule 193 should be followed. Rule 193 requires that the Post Master or Head Sorting Assistance ^{the} ~~should~~ ^{have} open _{the} bag or bundles which _{have} signs of damage

or tempering. For convenience of reference Rule 181 and 193 are as follows :-

81. Immediate examination and verification of mails:-

(1) The immediate examination of the mails received is the most important duty. In post office, the mail assistant and, in section and mail offices, the head sorting assistant or the mail sorting assistant in sets in charge of a selection grade head sorting assistant to whom the duty of receiving mails has been delegated must carefully and closely examine, seal, cord, label and the condition of each bag and satisfy himself that the correct number of bags is received without any signs of damage or tempering. If a mail list accompanies a despatch, the bags actually received should be compared with the entries in the mail list.

Note - If any one of the bags shows signs of damage or tempering the procedure prescribed in Rule 193 should be followed.

(2) If the mail assistant or head sorting assistant of the mail sorting assistant in sets in charge of selection grade head sorting assistant, is whom the duty of receiving mails has been delegated takes delivery of the mails as correct and in good condition and permits the carrier to leave the office without a written explanation for any discrepancies notices or does not question in writing the official in charge of the section from which the mails were received, the carrier of the official will be free from all responsibility, which will then rest entirely on the mail has been delegated, as the case may be, in the event of a bag being subsequently found to be missing or to have been tampered with.

Rule 193 : Postmaster or head sorting assistant to open bags or bundles with signs of damage or tempering :

(i) Cash bags not meant for the office itself are not to be opened but reclosed in protecting bags.

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(ii) Except cash bags, other than those for the office itself, any bag, insured envelope, insured bundle or registered bundle bearing any sign of damage or tempering should be scrutinised by the Postmaster or head sorting assistant and opened by him taking the following precautions :

(a) In the case of B.O. Bags, insured envelopes, insured bundles, insured bags and cash bags for the office itself, opening should be done in the presence of witnesses.

(b) In all cases noted in (a) above, except of B.O. Bags and also in case of all registered articles, the damaged (ones) should be weighed personally, (except in a running section of the R.M.S.) and the ascertained weight in grams recorded.

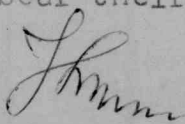
(c) In the case of bags opened, the labels without detaching the cord and seal and bags and, in the case of insured envelopes, registered bundles and insured bundles, the envelopes should be marked clearly with initials and date stamp for future reference. These should be preserved in the event of any damage to their contents. The labels without detaching the cord and seal, and bags in which the damaged article, envelope, bundle or bag was received, should be similarly marked, and preserved in the event of any loss.

(d) The contents should be carefully checked with those invoiced in the mail list, registered list, S.O. or B.O. Daily Account or S.O. or B.O. slip, as the case may be."

12. A plain reading of the rules extracted above clearly indicates that it is incumbent on the sorting assistant or the Post Master as the case may be to examine ^{thoroughly} or verify the mail bags or the bundles received ~~thoroughly~~ and in case there be any sign of damage or tampering it should be opened.

13. The applicant, if was not satisfied with the condition of the seal when the mail bag was received by him at Jhansi, he should have challenged the same and if necessary opened the same in presence of the witnesses. Admittedly, he did not also do so. This omission in our opinion is in clear violation of the rules extracted above. We are satisfied that this omission on the part of the applicant amounts to misconduct.

14. In the facts and circumstances of the case discussed above, we find no merit in this application and dismiss the same leaving the parties to bear their own cost.


MEMBER-J


MEMBER-A