

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

...

Original Application No. 1635 of 1999
this the 11th day of August 2004.

HON'BLE MR. JUSTICE S.R. SINGH, V.C.
HON'BLE MR. D.R. TIWARI, MEMBER (A)

J.N. Srivastava, S/o Sri Ram Deen Srivastava, R/o H-17,
Type II, Post & Telegraph Colony, Kanpur.

... Applicant.

By Advocate : Sri S.K. Tyagi

Versus.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Government of India, New Delhi.
2. The Member (Development), Postal Services Board, Dak Bhawan, Sansad Marg, New Delhi.
3. The Director, Postal Services, Office of the Post Master General, Kanpur.
4. The Sr. Supdt. of Post Offices, Kanpur City, Kanpur.

... Respondents.

By Advocate : Sri S.C. Misra.

O R D E R

BY JUSTICE S.R. SINGH, V.C.

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Challenge, herein, is, the validity of the order of dismissal from service dated 10.2.1998 passed by Director, Postal Services, Kanpur and the revisional order dated 23.8.1999 passed by the Member (Development), Postal Services Board.

2. The facts of the case, in short, are that the applicant entered in the postal Service in the year 1962

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as a postman and in the year 1967, he was promoted as Postal Assistant and later in the year 1989, it is alleged, he was further promoted to the post of Sub Post Master. The promotion order in relation to the post of Sub Post Master is not on the record of the case. The appointing authority in relation to the post of Sub-post Master, it is alleged, happens to be Director, Postal Services. For respondents, however, it has been urged by Sri S.C. Mishra that a Postal Assistant when posted in a smaller post office is designated as Sub-Post Master. A Charge-sheet was issued by the SSPO and the punishment order dated 27.09.1996 initially passed by the SSPO, Kanpur City, came to be set aside by the Director, Postal Services, Kanpur vide order dated 02.04.1997 on the ground that SSPO, Kanpur City was not competent to impose the major penalty on an official of HSG-II (BCR) cadre, whose appointing authority is Director, Postal Services as per revised schedule of appointing/disciplinary authority circulated vide letter dated 27.08.1999. After setting aside the order of penalty passed by the SSPO, Kanpur, the Director, Postal Services, however, remitted the case back to SSPO, Kanpur City for taking appropriate action from the stage of issue of punishment order. Consequent upon the said order, the SSPO submitted the entire enquiry report to the Director, Postal Services who by its order dated 10.02.1998 dismissed the applicant from service. Being aggrieved, he filed a revision before the Revisional Authority, which came to be dismissed vide order dated 23.08.1999. Therefore, the applicant has filed the present O.A for the relief(s) aforesated.

3. Sri S.K. Tyagi, learned counsel appearing for the applicant has raised three fold points ; first, that the relied upon documents were not furnished to the applicant and this resulted in denial of opportunity of hearing and, therefore, the penalty order is vitiated by error of law; second, that the SSPO was not competent to initiate the disciplinary proceedings and, therefore, the enquiry conducted at his behest cannot be

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made the foundation for imposing the punishment even by the competent authority namely Director, Postal Services; and third, that some of the findings recorded by the Enquiry Officer were in the favour of the applicant, but no disagreement note was ever furnished to him with a view to enabling him to submit a representation in justification of that part of the enquiry report and Director, Postal Services was not justified in imposing major penalty by ever ruling the findings recorded by the Enquiry Officer in favour of the applicant.

4. Sri S.C. Mishra, learned Standing Counsel representing the respondents has, on the other hand, submitted that the applicant was afforded full opportunity to defend himself and to produce evidence, if any, in support of his defence; the SSPO was competent to initiate the disciplinary proceedings and since the Director, Postal Services had earlier not quashed the entire proceedings, but had simply remitted the matter back to the SSPO for appropriate action, it was quite legal for the Director, Postal Services to proceed on the basis of the chargesheet issued by the SSPO and the enquiry report submitted by the Enquiry Officer appointed by the SSPO; and thirdly that the Enquiry Officer had held proved partly and partly not-proved the charge No. 1 among other articles of charges and, therefore, in the circumstances, it was open to the disciplinary authority to impose punishment on the basis of the part of finding whereby the charge No. 1 was partly proved and it was necessary to record the dis-agreement note.

5. We have given our anxious consideration to the submissions made by the learned counsel across the Bar.

6. So far as the question as to whether the SSPO was competent to initiate disciplinary proceedings against the applicant is concerned, we may refer to the provisions contained under rule 13 of CCS (CCA) Rules 1965, which is being quoted below for ready reference :

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"13 (1) The President or any other authority empowered by him by general or special order may -

(a) institute disciplinary proceedings against any Government servant;
(b) direct a Disciplinary Authority to institute disciplinary proceedings against any Government servant on whom that Disciplinary Authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A Disciplinary Authority competent under these rules to impose any of the penalties specified in clause (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties."

7. It would be evident from sub para (1) of Rule 13 that the disciplinary proceedings may be instituted against any Government Servant by the president or any other authority empowered by him by general or special order.

The disciplinary authority as per the order of the President or any other authority empowered by him by general or special order provided that the disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11. Under sub rule (2) of Rule 13 the disciplinary proceedings may be instituted also by an authority empowered to impose any of the punishment specified in clauses (v) to (ix) of Rule 11. It is not disputed that the SSPO is empowered to impose minor penalties specified under sub-rules (v) to (ix) of Rule 11 and, therefore, in view of sub-rule (2) of Rule 13 no exception can be taken to the disciplinary proceedings initiated by the SSPO.

8. It is true that the SSPO is not empowered to impose a major penalty specified under Rule 11 of CCS (CCA) Rules and that guarantee is also secured by Article 311 (1) of the Constitution of India, which provides that "no person who is a member of a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed." In that view

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of the matter, we find no substance in the submissions made by the learned counsel for the applicant that the very initiation of the proceedings at the behest of the SSPO was illegal. Since it was a case for imposition of major penalty, the SSPO rightly referred the matter to the appointing authority namely Director, Postal Services in view of the order dated 2.4.1997.

9. So far as the point that the disciplinary authority failed to furnish the dis-agreement note to the applicant is concerned. suffice is to say that the order could legally be sustained on the basis of the findings recorded by the Enquiry Officer holding the charges against the applicant as proved. In the circumstances, it was not necessary for the Director, Postal Services to furnish the dis-agreement note to the applicant.

10. Coming to the point regarding non-furnishing of relied-upon documents to the applicant and consequential denial of opportunity of hearing and violation of sub-rule (4) of Rule 14 of CCS (CCA) Rules, 1965, which requires that the Disciplinary authority shall deliver a copy of the articles of charges to the Government servant, the statement of the imputations of mis-conduct or mis-behaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained - requirement mandatory in character, we are of the view that since the relied upon documents were not furnished to the applicant alongwith the chargesheet, the order imposing the punishment of dismissal from service cannot be sustained.

11. Since the order passed by the disciplinary authority is vitiated by error of law and defects were not liable to be cured merely ^{because} the revision preferred before

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the Revisional Authority has been rejected vide order dated 23.8.1999. In our view, both the impugned orders are liable to be quashed.

12. Accordingly, the O.A. succeeds and is allowed. The impugned orders are quashed. The respondent no.3 i.e. the Director, Postal Services, Kanpur shall furnish the relied upon documents to the applicant and take appropriate decision, after considering the representation, if any, that may be filed by the applicant within a period of 15 days from the date of receipt of the relied-upon documents within a period of three months from the date of receipt of such representation. parties are directed to bear their own costs.

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MEMBER (A)

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VICE CHAIRMAN

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