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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 103 OF 1986.
~~FA No.~~

DATE OF DECISION 29-10-1986

M.J. NINAMA Petitioner

Mrs. K.A. MEHTA Advocate for the Petitioner(s)

Versus

THE POST MASTER GENERAL Respondent s

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

7
(7)

J U D G M E N T

OA.NO. 103 OF 1986.

Date: 29.10.1986.

Per: Hon'ble Mr.P.M. Joshi, Judicial Member.

The petitioner, Mr. M.J. Ninama of Ahmedabad (working as Upper Division Clerk in the Office of the Post Master General) has challenged the validity of following two orders in this application under section 19 of the Administrative Tribunals Act 1985. Firstly the order dated 15.5.1986 passed by Mr. K.P.Biswas, Postmaster General, Gujarat Circle, Ahmedabad (Ahn.'C') in appeal filed by the petitioner and secondly the order dated 15.5.1986 passed by Mr. U.P.Derasari, Asstt. Postmaster General (Staff) Gujarat Circle, Ahmedabad (Annexure 'D').

No. 1

Memo No.Staff 4/MJ Ninama/85 dated at Ahmedabad
the 30-4-1986
15-5-1986

"Punishment of compulsory retirement awarded to Shri M.J. Ninama, Ex. UDC Circle office, Ahmedabad is modified as under :

Shri Ninama is reduced to the lower post of LDC until he found fit, after a period of 5 years from the date of this order, to be restored to the higher post of UDC. The seniority of Shri Ninama, on repromotion, may be fixed at what it would have been but for his reduction.

No. 2

Memo No. Staff/20/2-/X dtd. at Ahmedabad 15-5-86.

"In pursuance of appellate orders issued vide PMG Ahmedabad Memo No. STAFF/4/MJNinama/85 dated 15-5-86 Shri M.J. Ninama Exh U.D.C. Circle office Ahmedabad who was compulsorily retired from govt. service w.e.f. 4-6-85 is appointed as Lower Division Clerk in O/o. the Director Postal Services, Rajkot Region, Rajkot in the pay scale of Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400 with immediate effect.

The petitioner while seeking a direction to quash or set aside the impugned orders of punishment and posting, it is, inter-alia, contended that the order dated 3-6-1985 imposing a penalty of compulsory retirement on the petitioner by the disciplinary authority was bad in law as the inquiry officer had exonerated him. It is further contended that he being a direct recruit, can not be reverted to the post of L.D.C. inasmuch as it was not the substantive post which he was holding. More over it was contended that in view of the guidelines provided in the circular issued by the Directorate, P & T, New Delhi, he can not be transferred against his wish in the Regional Director of postal services at Rajkot and Baroda.

The facts of the case in brief are that the petitioner was working as a time scale clerk at Ahmedabad and Gandhinagar. He and other persons working in time scale cadre having minimum five years service were selected after passing examination for the post of Upper Division Clerk. Accordingly, the petitioner was appointed as U.D.C. in the Office of the Post & Telegraph, Ahmedabad on 21.3.1973. In the year 1977, a departmental inquiry was held against him, wherein it was alleged that he demanded and accepted bribe of Rs.800/- from one candidate Mr. B.K.Ninama and was caught red-handed while accepting Rs. 150/- as part of the bribe by CBI Squad on 17.11.1976, under Rule 14 of the CCS (CCA) Rules, 1965. The disciplinary authority being dissatisfied with the findings of the inquiry officer remanded the matter twice to him and on the last occasion when the Inquiry Officer submitted his report on 6.1.1981, the disciplinary authority inflicted penalty of removal from service with immediate effect vide Memo No. Staff/A/8/440/II dated 19-12-1981. The postmaster general in appeal modified

9
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the punishment to that of compulsory retirements vide his order dated 13.8.1982. The said order, ~~was~~ however, when challenged in Special Civil Application No.4053/82, was set aside by the High Court of Gujarat vide judgment and order dated 16.2.1984. Accordingly the petitioner was reinstated in service vide order dated 6.4.1984 but the department decided to continue the inquiry against the petitioner from the stage of the submission of the third inquiry report dated 6.1.1981, in light of the observations made by the High Court. The copies of the inquiry report and a detailed Note of the disagreement with the findings of the officer, were served to the petitioner vide memo dated 11.4.1985. The petitioner was served with the show-cause notice dated 11.4.1985. But the petitioner having received the said notice on 3.5.1985, failed to submit his defence or representations by 18.5.1985. He only sought extension of time for one month under his letter dated 19.5.1985 stating that he is moving the High Court against the memo dated 11.4.1985. Thereafter the disciplinary authority ordered that the petitioner be compulsorily retired from service with immediate effect under his order dated 3.6.1985. The Postmaster General in appeal dated 24.6.1985 filed by the petitioner modified the punishment of compulsory retirement to that of the reduction of the petitioner to the lower post of L.D.C. for a period of five years as referred earlier. In accordance with the said order the petitioner was ordered to be posted as L.D.C. in the Office of the D.P.S., Rajkot vide memo No. Staff/20/2/X dated 15.5.1986. The petitioner also preferred representations dated 20.6.1986 which remain undecided so far.

Mrs.Ketty Mehta, the learned counsel for the petitioner has raised three-fold contentions. Firstly

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10
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that the conclusions arrived at by the disciplinary authority were untenable and unwarranted when the inquiry officer had thrice exonerated the petitioner. Secondly, the order of reduction from U.D.C. to L.D.C. is anomalous inasmuch as the petitioner was directly recruited to the post of UDC in the year 1972. Thirdly, the order of posting the petitioner at Rajkot was in breach of the instructions contained in Circular issued by the Directorate, P & T, as it was done against his wish. The respondents while opposing the application have denied the averments and allegations made by the petitioner and they have set out the defence in the Affidavit-in-Reply dated 6.10.1986.

It is submitted by Mr. J.D. Ajmera, the learned counsel for the respondents, that the High Court while allowing Special Civil Application had quashed the order of the Postmaster General dated 13.8.1982 on the technical and procedural grounds and the department was, therefore, free to continue with the inquiry. According to him, eventhough there is no express provision in CCS (CCA) Rules 1965 to give a copy of inquiry Officers report and findings of the disciplinary authority, the same were given to the petitioner alongwith the show-cause notice dated 11.4.1985. These facts are not in dispute. It is true that the inquiry officer while submitting his report on three different occasions had held that the charges were not proved. However, the disciplinary authority is entitled to draw his own conclusions on the basis of the evidence brought on record during the inquiry. He may differ from the findings arrived at by the inquiry officers and on the basis of his own conclusion on ^{✓ of} preponderance/evidence, can impose a penalty on the delinquent. On perusal of the detailed order passed

by the disciplinary authority and the appellate authority it can hardly be said that they suffer from any illegality or impropriety in any manner. There is substantial compliance of the Rules in holding departmental proceedings against the petitioner. The Tribunal is not required to consider the propriety or adequacy of the punishment. The petitioner has been afforded an opportunity to make representation but he failed to do so and thus it can not be said that the principles of natural justice or fair play has not been followed as contended.

Now turning to the contention regarding the penalty or reduction from UDC to LDC, it will be in the fitness to look at the nature of the penalties enumerated in Clause (v) & (vi) of the said Rule 11 of CCS (CCA) Rules 1965, which read as under :-

- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay ;
- (vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service ;

Reduction in rank is one of the major punishment mentioned in Article 311 of the Constitution of India. The expression "rank" has reference to a person's classification. The word "rank" can be and has been used in different senses in different contexts. It has no reference to a person's particular place in the same cadre in the hierarchy of the service to which he

12
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belongs (see A.I.R. 1962 S.C. p.170). Now "within the meaning of CCS (CCA) Rules, a Government servant can be reduced to a lower post in another cadre to which he was not initially recruited. The limitation of a general nature have, however, to be observed in cases of reduction to a lower post, e.g., the lower post to which an official is reduced should also be within the control of the authority competent to pass the punishment orders or of an authority subordinate to him, the time scale to which an official is reduced should be one of the existing scale in the relevant office, division, etc. the duties of the lower post should be similar to the post performed by the officer by the higher post and the reduction should not be of a lower post of such a nature that it may not be possible for the official to regain his higher post if work and conduct later justified his promotion" (see Government of India's Instructions No. 18). It is directed under the impugned order that the petitioner will be restored to the higher post of UDC after a period of five years from the date of the order. ^{To} ~~The~~ illustrate the effect, it may be stated that when an employee was reverted from the officiating post of Sub-Inspector to that of Head Constable but he did not hold the substantive post of Head Constable, then the reversion will be construed to mean that he was appointed as Head Constable on a temporary basis and he had no legal right to continue in the post of Head Constable. Thus it can not be said that the impugned order is bad in law. There are no valid grounds to challenge the order whereby the petitioner has been reduced to the lower post of LDC.

With regard to the posting of the petitioner at Rajkot at the outset, it may be stated herē that the

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13
13

petitioner has not produced any copy of the circular containing the guidelines regarding transfer as referred to by him. A copy of the letter dated 1-10-85 shows that some doubt was entertained regarding the question of transferring officials of the Circle office to Regional Office and vice-versa to which it has been stated that they should not be transferred against their wishes. However, it has been clarified that the fresh recruit will have the liability of transfer to Regional Office and vice-versa. Obviously, the instructions containing ~~the~~ in the circular issued by the officer have no statutory force and breach thereof can not give any valid cause of action. In the present case the petitioner was admittedly in the employment since 1973. Hence the instructions issued in the year 1979 would not be applicable to his case. Even otherwise when the post of L.D.C. is not vacant at Ahmedabad and the petitioner has to discharge the duties in the lower rank of LDC, it can not be said that the order of posting is bad in law. The contentions, therefore, canvassed by the learned counsel for the petitioner, fail, as they are devoid of merits.

In the result, no case for intervention has been made out and so, we dismiss the petition. We, however, leave the parties to bear their own costs.

P.H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN

P.M. Joshi
(P.M. JOSHI)
JUDICIAL MEMBER