

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 1379 OF 1996**

Present : Hon'ble Mr. B.P.Singh, Administrative Member
Hon'ble Mr. N. Prusty, Judicial Member

Jatindra Nath Barman,
Ex Chief Post Master, Barazar Head P.O.
R/o Vill & P.O. Tatpara, P.S. Alipurduar,
Dist. Jalpaiguri

VS

1. Union of India through the
Secretary, M/o Communications,
Dept. of Posts, New Delhi-1
2. Director General, Deptt. of Posts,
Dak Bhavan, New Delhi-1
3. Chief Postmaster General,
West Bengal Circle,
Jogajog Bhavan, Calcutta-12

..... respondents

For the applicant : Mr. N.Bhattacharjee, Counsel

For the respondents : Mr. B.Mukherjee, Counsel

Heard on : 24.7.02 : Order on : 09.8.02

O R D E R

Nityananda Prusty, J.M.:

Through this application, the applicant has challenged the charge-memo dated 18.10.96 which was served upon him just one day before his superannuation.

2. At the relevant time the applicant was functioning as Superintendent of Post Offices, Cooch Behar Division during the period from 10.1.92 and 3.1.93. By a confidential letter dt. 23.8.94, the Chief Post Master General called for an explanation from the applicant in connection with certain irregularities in the appointments of Branch Post Masters, Pestarjhar and Kushramari BPOs and compilation and declaration of result of Postman Excamination of Cooch Behar Division held on 13.9.93 by dropping the names of successful candidates. The applicant gave his reply on 24.1.95. Thereafter no action was taken and the applicant was given promotion to the IPS (Indian Postal Service) (Group A) in terms of notification dt.



4.4.96. He was also allowed to cross Efficiency Bar w.e.f. 1.5.95, vide memo dt. 20.11.95. The applicant was due to retire on superannuation on 31.10.96. It is his grievance that just a day before his retirement he was served with a major penalty charge-sheet dt. 18.10.96 on 30.10.96. He alleges that this was done in a malicious and vindictive manner in order to harass him at the end of his long service career. As a result of this charge sheet, he has been denied his retirement dues. He has prayed for cancellation of the charge-sheet and to direct the respondents to grant him full pension, DCRG, commuted value of pension and other retiral benefits forthwith.

3. The respondents have contested the application by filing a written reply. It is stated that while the applicant was working as Superintendent of Post Offices, Cooch Behar Division, which was in Group B service, he committed serious irregularities in the matter of appointment of EDBPMs, flouted the orders of superior authorities for cancelling irregular appointments made against the posts of EDBPMs and in the matter of compilation and declaration of results of Postman Examination of Cooch Behar Postal Division held on 13.9.92. The aforesaid irregularities were noticed at the R.O. level investigation and an explanation was called from the applicant vide letter dt. 23.8.94. He gave his reply on 24.1.95. In the meantime, the applicant was allowed to officiate in Group A post, and hence his appointing authority and also disciplinary authority changed and the President became his disciplinary authority. His case was, therefore, submitted before the Ministry and a decision was taken at the Ministry level to initiate disciplinary proceedings against the applicant. Accordingly, the major penalty charge-sheet was issued on 18.10.96. There was a few days delay in serving the charge-sheet on the applicant due to postal strike from 23.10.96 to 29.10.96. It is stated that although explanation was given by the applicant in January 1995, because of his earlier officiation in Group A post and according to his turn, he was given promotion to Group A service and he was also

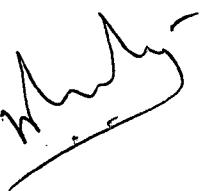


allowed to cross EB before the issue of the charge-sheet as by that time no disciplinary proceeding was pending against him. They have stated that immediately after the disciplinary proceeding was initiated, the applicant moved this Tribunal on 15.11.96 without waiting for a decision and without even giving any reply to the charge-sheet. It is contended that unless and until the applicant is exonerated in the proceeding he cannot be paid his pension and other retiral benefits as per rules.

4. The applicant has filed a rejoinder to the reply.

5. We have heard the ld. counsel for the parties and have gone through the documents produced. Ld. counsel for the applicant has argued that the charge-sheet was issued against the applicant with an ulterior motive just a day before his retirement for incidents which took place in 1992-93. He also pointed out that earlier a preliminary enquiry was held for the same incidents and the applicant was asked to show cause for the alleged irregularites. The applicant gave his reply and as will appear from para 9 of the reply that the respondents decided that no further enquiry was necessary. The applicant was also given promotion to Group A post and was also allowed to cross E.B. Thus it was naturally believed by the applicant that the matter regarding alleged irregularites was dropped after his explanation. However, the respondents with a vindictive motive issued the charge sheet just a day before his retirement in order to harass and deprive the applicant of his legitimate retirement benefits. He has further contended that there was inordinate delay in issuing the charg-sheet and on that ground alone, it should be quashed. He has also stated that the charge-sheet was signed by the Desk Officer who is not competent to initiate disciplinary proceeding against the applicant. He has also argued that there was no misconduct on the part of the applicant. At best there could have been some error in decision making process for which he gave his explanation and it was accepted as will be evident from his subsequent promotion.

5. Ld. counsel for the respondents, on the other hand, has



contended that the application is premature as the applicant has approached this Tribunal without waiting for the conclusion of the proceedings. He has supported the charge-memo by contending that competent authority has decided to issue the same based on *prima facie* materials. Furthermore, after the reply was received from the applicant in January 1995, a decision was taken to initiate disciplinary proceeding on considering the materials on record. Thereafter, the applicant was allowed to cross the EB and given promotion in May 1995 and April 1996, as by that time the disciplinary proceeding was not initiated against him. After promotion there was a change in his appointing as well as the disciplinary authority and as such the matter had to be referred to the Ministry. Only thereafter the charge-sheet was issued after completion of the required formalities. Hence there was a delay in issuing the charge-sheet. It is not at all correct to say that the authorities decided to drop the proceeding on receiving the explanation to the notice; Rather the decision was taken otherwise as stated above. Therefore, this Tribunal should not interfere with the same and the disciplinary authority should be allowed to conduct the proceeding as per rules in which the applicant will get all opportunity to prove his innocence. He has prayed for dismissal of the OA.

6. We have considered the rival contentions and also the various documents filed and relied upon by the respective parties. We have also considered the case laws cited by the ld. counsel for the applicant and also those mentioned by the applicant in his OA.

7. About the basic facts there is no dispute between the parties. It is not disputed that the charge-sheet was issued on 18.10.96 and served just a day before the retirement of the applicant for certain incident which took place in 1992-93. It is also not in dispute that a preliminary enquiry was held and the applicant was asked to explain his conduct which the applicant did. He gave his reply on 24.1.95. Thereafter, he was given promotion and was also allowed to cross the EB.



8. The contention of the applicant is that the charge-sheet was issued by an incompetent person i.e. the Desk Officer. Ld. counsel for the respondents has drawn our attention to a circular dt. 3.11.58 (annexure-A to the reply) wherein in rule 2(1-A) it is stated that orders and other instruments made and executed in the name of the President can be authenticated by a Desk Officer in the Ministry. Thus it is contended that there was no irregularity or illegality in issuing the charge-sheet by the Desk Officer in the name of the President while the decision to initiate the disciplinary proceeding was taken by the competent authority. We find force in this contention.

9. It is also contended that the applicant was given promotion as per order dt. 4.4.96 to Group A post because at that point of time the charge-sheet was not issued and until a proceeding is started by issuing charge-sheet, there is no bar in considering an employee for promotion. Thus, it cannot be concluded that with the promotion of the applicant or by allowing him to cross E.B. the respondents were estopped from initiating any proceeding against him for an incident which took place prior to such promotion. Our attention is drawn in this context to an OM dt. 14.9.92 which clarifies this position. The fact that the applicant was given promotion and allowed to cross E.B. go to show that the respondents did not have grudge against the applicant and this demolishes the contention of the applicant that the charge-sheet was issued with a mala fide intention and done in a malicious and vindictive manner.

10. One of the contention of the applicant is that after he submitted his reply to the show cause notice in January 1995, the authorities decided that no further enquiry was needed. Therefore, the charge-sheet could not have been issued against him just before his retirement. It is also contended that there was inordinate delay in issuing the charge-sheet. We have gone through para 9 of the reply wherein it is stated as under :-



" The petitioner submitted his explanation dated 24.1.95 thereto. Since no further aspect of the case was felt to be looked into to arrive at a *prima facie* conclusion, further enquiry was not considered necessary in the case.:

A perusal of this submission does not contemplate that there was a conscious decision not to proceed with the applicant in a disciplinary proceeding. It only says that *prima facie* conclusion has already been arrived and there was no need for further enquiry for the same. It is to be borne in mind that this was a preliminary enquiry and not a departmental enquiry as per DA Rules. A preliminary enquiry is held to ascertain *prima facie* about the involvement of an employee in certain matters. It is not to be equated with a disciplinary enquiry as contemplated under the DA Rules. Moreover, it is contended by the respondents that the incident happened when the applicant was in Group B service when he was under the control of local authorities. But on his promotion to Group A service, his appointing authority and disciplinary authority became the President of India and as such the decision in the matter of initiation of disciplinary proceeding was to be taken at the Ministry level. The case of the applicant was, therefore, sent to the Ministry and only after a decision was taken by the competent authority, the charge-sheet was issued. Be it noted that the applicant gave his reply to the show cause notice on 24.1.95 and the charge-sheet is dt. 18.10.96. Given the procedure to be followed in such matters, the delay of about one year and ten months cannot be considered to be much though the fact remains that the applicant was due to retire on 31.10.96.

11. Ld. counsel for the applicant has relied on a decision of the Principal Bench decided on 11.12.97 in Zile Singh -vs- Delhi Administration reported in 1998(1) ATJ 511. In that case a show cause notice was issued to the applicant in 1987 and reply submitted in 1989. He was given promotion in 1990 and he was due to retire on 31.5.90. Charge-sheet was prepared on 30.5.94 and tried to be served on 31.5.94. The ground of delay was taken and the Tribunal held that



there was inordinate delay in initiating the enquiry and accordingly the charge-sheet was quashed. However, in the instant case, the reply to the show cause notice was given on 24.1.95 and the charge-sheet was issued on 18.10.96. The reason for delay has been explained by the respondents. This case, therefore, does not assist the applicant as in the cited case the unexplained delay in issuing the charge-sheet was about 5 years and in the case in hand there was a delay of 1 year and 10 months, which was because of the change in appointing and disciplinary authority and as because the approval of the Ministry was required before issuing the charge-sheet.

12. Some other decisions have been relied on by the applicant in his application. On a perusal of the same, we are of the view that facts of those cases are distinguishable and are not applicable to the facts of the present case.

13. On the other hand, there are a number of decisions of the Hon'ble Apex Court regarding the scope of judicial review of the charge-sheet. In the case of UOI -vs-Ashok Kacker, 1995 Supp(1) SCC 180, it has been held that when a charge-sheet was issued upon a Government employee, he had full opportunity to reply to the charge-sheet, to raise all the points available to him and at this stage the Tribunal should not entertain an application for quashing the charge-sheet. Till the matter is decided by the disciplinary authority, the application should be considered as premature.

14. Similarly, in the case of Dy. inspector General of Police -vs-K.S.Swaminathan, (1996) 11 SCC 498, it has been held that the High Court erred in setting aside the charge-sheet that was served on the respondent employee in a disciplinary proceedings and going into the merits of the allegation on which the charge-sheet was based even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. It is held that the court or Tribunal should not go into the question of correctness or truth of the allegations made in the charge-sheet and that it is for the disciplinary authority to decide the matter as per law.



14. In the case of New Bank of India -vs- N.P.Shegal, 1991 SCC (L&S) 525, the Hon'ble Supreme Court has held that unless a disciplinary proceeding is initiated, an employee cannot be ignored from consideration of promotion. In that case, a show cause notice was served upon a Bank Officer in respect of certain acts of misconduct alleged to have been committed by him. The officer gave his reply. Subsequently he was promoted. Later on a charge-sheet was served upon him and enquiry was ordered for alleged misconduct prior to his promotion. This was challenged on the ground that after promotion has been given, no proceeding can be initiated on an incident which took place prior to promotion. The Supreme Court held that the charge-sheet cannot be said to be bad in law and cannot be interfered with.

15. In view of this settled legal position, we are of the view that this Tribunal should not interfere with the impugned charge-memo. The applicant will have ample opportunity to defend his case before the appropriate disciplinary authority. It may be possible that the disciplinary authority may exonerate him. The applicant should have waited for the decision of the disciplinary authority and should not have rushed to this Tribunal at the charge-sheet stage. We hold that this is a premature application.

16. During the course of hearing, it was submitted before us that in view of pendency of this application, no progress has been made in the DA proceeding. Since the applicant has already retired, the major penalty proceeding has now to be dealt with under the Pension Rules with the approval of the President. It is true that the applicant is not getting his final pension and DCRG or commuted value of pension even after his retirement in 1996.

17. Considering all aspects of the matter, we dispose of this application with a direction to the respondent authorities to conclude the DA proceeding against the applicant as per rules, if they so desire, as expeditiously as possible, preferably within six months from the date of communication of this order. The applicant shall

