

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 544/1995
T.A. No.

199

DATE OF DECISION : 12.04.2000.

Dwarka Prasad Petitioner

Mr. J.K. Kaushik, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent (s)

Mr. Vineet Mathur, Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

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

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Judl. Member

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 12.4.2000

O.A. No. 544/1995

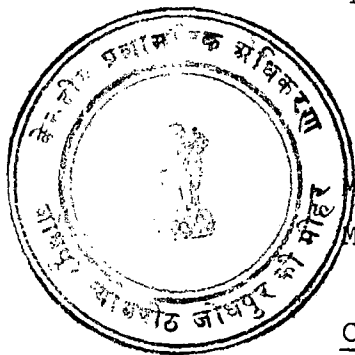
Dwarka Prasad son of Shri Uda Ram by caste Nai, aged 33 years, resident of Pabu Chowak, Gangashahar, at present working as Extra Departmental Mail Peon (under put off duty) at Lalgah sub-office under Head Post Office, Bikaner.

... Applicant.

v e r s u s

1. Union of India through Secretary to Government of India, Ministry of Communication (Department of Posts), Dak Bhawan, New Delhi.
2. The ~~File~~ Superintendent of Post Offices, Bikaner Division, Bikaner.
3. The Sub Inspector of Post Offices, North Sub-Division, Bikaner.
4. Shri Radhey Shyam Sharma, Assistant Superintendent of Post Office, Bikaner.

... Respondents.



Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

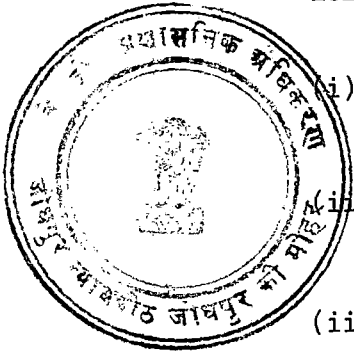
: O R D E R :

(Per Hon'ble Mr. Gopal Singh)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, Dwarka Prasad, has prayed for setting aside the impugned order dated 31.7.95 (Annexure A/1), order dated 5.12.95 (Annexure A/2) and the order dated 29.1.96 (Annexure A/8). The respondents have appointed an enquiry officer vide letter dated 31.7.95, rejected the request of the applicant for change of enquiry officer vide letter dated 5.12.95 (Annexure A/2) and impose the penalty upon the applicant vide order dated 29.1.96 (Annexure A/8).

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2. Applicant's case is that he was initially appointed as Extra Departmental Mail Peon at Lalkar Town Sub Office under the Head Post Office, Bikaner, on 1.12.80. An F.I.R. was lodged against the applicant and one Bhanwar Lal, Messenger, on 12.12.94 with the Police Station, Kote gate, Bikaner, alleging that the applicant scored the entries in the Recurring Deposit Pass Book No. 14079 of Smt. Rameshwari, prepared forged documents and withdrew an amount of Rs. 6826.25 through Messenger. The applicant was arrested on 16.2.95, remanded in judicial custody on 17.2.95 and was enlarged on bail on 18.2.95. Thereafter, the applicant reported for duty with a medical fitness certificate and was taken on duty on 28.2.95. The applicant was placed under 'put off' duty on 3.4.95. The applicant was issued a charge-sheet on 13.6.95 for (i) unauthorised absence from duty with effect from 20.12.94 to 28.02.95 and (ii) failure to inform his controlling office about his arrest and retention in judicial custody and subsequent release on bail. And on conclusion of the enquiry, a penalty of removal from service has been imposed upon the applicant vide order dated 29.1.96 (Annexure A/8). The applicant has challenged the action of the respondents on the following grounds:-



- (i) The applicant was not afforded any opportunity to defend his case.
- (ii) Enquiry officer was biased and the request of the applicant to change the enquiry officer was turned down.
- (iii) The enquiry officer was senior in rank to the disciplinary authority.
- (iv) The punishment has been imposed on the basis of ex-parte enquiry.
- (v) The punishment imposed is disproportionate to the alleged misconduct.

3. In the counter, the respondents have submitted that the application is premature as the applicant has not preferred any appeal against the impugned orders and on this count alone, the application is not maintainable. The contention of the applicant that the applicant was not allowed any Defence Assistant has been countered by the respondents saying that Shri T.N. Chaturvedi proposed by the applicant as Defence Assistant was a legal practitioner and as such he was not allowed. In case of the other two names proposed by the applicant for Defence Assistant, the consent of their controlling officer was not available. The applicant was asked to propose any other name as Defence

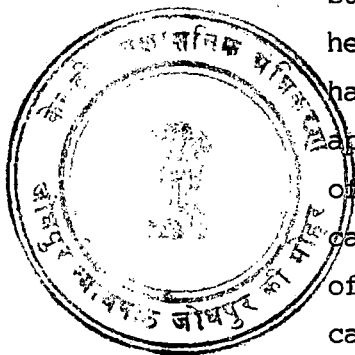
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Assistant, but he did not avail this opportunity. It has further been stated by the respondents that the allegation of bias of the enquiry officer is baseless as there is nothing on record to show that the enquiry officer was biased against the applicant.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It is seen from records (Annexure A/2) that the applicant had attended the enquiry on 1.8.95, 14.8.95 and 2.11.95. Thus, it cannot be accepted that the enquiry was held ex-parte. In regard to appointment of Defence Assistant, the version of the respondents recorded in para 3 above is corroborated by the records. The applicant had proposed the name of one legal practitioner which could not have been allowed by the enquiry officer. In respect of other two names proposed by the applicant, consent of their controlling officers was not available. The enquiry officer had further asked the applicant to nominate another Defence Assistant in the circumstances, but the applicant vide his letter dated 18.9.95 stuck to his earlier option and asked for a period of one week to get the consent of the controlling authority. But no such consent was submitted by the applicant and thereafter, regular hearing of the case commenced. It would thus be seen that the applicant has himself to blame for non-appointment of the Defence Assistant. The applicant has not produced any material so as to prove that the enquiry officer was biased and as such we would not deal with this aspect of the case. It has also been alleged by the applicant that the enquiry officer was superior in rank to the disciplinary authority and this has caused prejudice to the applicant as it would not be possible for the disciplinary authority (lower in rank) to disagree with the findings of the enquiry officer (senior in rank). It is not the case of the applicant that the disciplinary authority was subordinate to the enquiry officer and, therefore, we are not inclined to accept this argument of the applicant. Lastly, the applicant has alleged that the penalty imposed is disproportionate to the alleged misconduct. It is seen from records that an F.I.R. was lodged against the applicant in connection with withdrawal of an amount from the RD Account on one Smt. Rameshwari on forged documents, the applicant was arrested and kept under judicial custody and, thereafter, released on bail. But the applicant did not bring this fact to the notice of his employer, instead he produced a medical certificate and rejoined his duties after he was released on bail. In our opinion, the penalty of removal from service imposed upon the applicant is not disproportionate to the misconduct as narrated

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above. Thus, we are of the firm view that the application is devoid of any merit and deserves to be dismissed.

6. The O.A. is accordingly dismissed with no order as to costs.



Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K. Misra
(A.K. MISRA)
Judl. Member

cvr.