

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 26.5.2000.

O.A. No. 391/1997

Govind Das S/O Shri Hera Das, Extra Departmental
Branch Post Master, Khinawari, Teh : Jaitaran,
District Pali.

... Applicant

Vs

1. Union of India through Secretary, Sanchar
Bhawan, Ministry of Communication, New Delhi.
2. Director, Postal Services, Rajasthan Western
Region, Jodhpur.
3. Superintendent Post Office, Pali Division,
Pali Marwar.
4. Shri P.M. Shankla, Westend ASP, C/O Supdt.,
Post Office, Division Jodhpur, Distt. Jodhpur.
5. Shri B.L. Vaid present Officer, ASP Bhilwara,
District Bhilwara.
6. Shri Hasam Khan, B.P.M. Post Office, Khinswari.

... Respondents

Mr. D.C. Sharma, Counsel for the Applicant.

Mr. Vineet Mathur, Counsel for the Respondents.

CORAM :

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

Hon'ble Mr. Gopal Singh, Administrative Member

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(HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant Govind Das

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has prayed for setting aside the impugned order dated 08.8.1996 at Annexure A/1 and for a direction to the respondents to take the applicant on duty with all consequential benefits and to conduct a fresh enquiry.

2. Applicant's case is that he was appointed as Extra Departmental Branch Post Master (EDBPM) on 09.2.72. The applicant remained absent from duty from 08.8.1994 to 31.5.1995, and this period was regularized by grant of leave by the respondents. During the period of absence of the applicant, his son worked in the Post Office as substitute. The applicant was issued a charge-sheet on 27.6.1995, since the chargesheet could not be served upon the applicant, an ex parte enquiry was held and on conclusion of the enquiry, the Disciplinary Authority imposed the penalty of removal of service upon the applicant vide order dated 29.12.1995 (Annexure A/3). The appeal against the orders of the Disciplinary Authority was rejected by the Appellate Authority vide order dated 08.8.1996. Feeling aggrieved the applicant has filed this O.A. on the grounds that (i) Charge sheet was not served upon the applicant, (ii) enquiry was held ex parte, (iii) copy of the enquiry report was not made available to the applicant, (iv) the applicant has been charged with misconduct for the period for which leave was sanctioned, and that the orders of the Disciplinary Authority and Appellate Authority are non-speaking order. The applicant has also alleged mala fide against R/3 to R/6.

3. In the counter, the respondents have stated that the applicant was granted leave for 144 days from 08.8.94 to 31.12.1994. Thereafter, the applicant remained absent

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from 01.1.1994 to 31.5.1995. Thus, the total absence of the applicant came to be of 275 days which is in excess of 180 days and as per rule 5 of EDA's (Service & Conduct) Rules, 1964, leave upto 180 days only can be granted to an EDA. Therefore, the applicant was served with a charge-sheet. Since the charge sheet could not be served upon the applicant, notice was published in the local newspaper twice calling upon the applicant to attend the enquiry proceedings. The applicant did not attend the enquiry and, therefore, the enquiry was finalized ex parte. The Enquiry Report was sent to the known address of the applicant, but the same could not be served upon him and hence a notice was published in the local newspaper on 15.11.1995. There was, however, no response from the applicant. In the circumstances, the Disciplinary Authority imposed the penalty upon the applicant vide his order dated 29.12.1995 (Annexure A/3). The Appellate Authority rejected the appeal of the applicant vide order dated 08.8.1996. The Appellate Authority was not required to elaborate detailed reasons for rejecting the appeal. It has, therefore, been averred by the respondents ^{that} the applicant had been given amply opportunity to defend his case and as such, they have not committed any irregularity or illegality. It has, therefore, been prayed by the respondents that the application be dismissed.

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

5. A perusal of records reveal that the applicant had absented himself for more than 180 days and in terms of EDA's Conduct & Service Rules, an EDA can be granted maximum leave upto 180 days in a stretch and where the

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absence including leave exceeds 180 days in a stretch, the EDA can be removed from service after following the prescribed procedure. Undoubtedly, the applicant has absented for more than 180 days including the sanctioned leave. Thus, treating this absence (including sanctioned leave) of more than 180 days as misconduct under EDA Conduct & Service Rules is not illegal or against the rules.

6. The applicant was issued a charge-sheet that could not be served through 'registered post'. Even the son of the applicant who was working as substitute EDBPM in place of the applicant, returned letters addressed to the applicant undelivered with the remarks that " the addressee has gone out without leaving behind any address. Hence, returned". It is also seen from the records that the applicant had submitted Medical Certificates of doctors residing in Kuchaman City & Jaitaran. Jaitaran is the place of posting of the applicant and Kuchaman City is a nearby town. In view of these facts, return of registered letters addressed to the applicant at Jaitaran-address is incomprehensible. In the circumstances, the respondents had published notices in the local press about the departmental enquiry and also directing the applicant to submit his defence against the enquiry report. We are, therefore, of the view, service of charge sheet and enquiry report should be treated as complete. Thus, the contention of the applicant that (i) charge sheet was ^{not} served upon the applicant (ii) enquiry report was not made available to the applicant and (iii) enquiry was held ex parte are not tenable and, therefore, rejected. In the light of above discussion, the judgments cited by the learned Counsel for the applicant AIR 1998 SC 2722 and AIR 1970 SC 1302 do not help the applicant.

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7. It is also seen from the records that the applicant on seeing the notice in the 'Rajasthan Patrika' dated 15.11.1995, submitted a representation (Annex.A/2) (undated). The enquiry was completed on 27.10.1995. This undated representation of the applicant has been considered in detail by the Disciplinary Authority in his order dated 29.12.1995 (Annexure A/3). We also find that the order dated 29.12.1995 of the Disciplinary Authority is a speaking order and does not call for our interference.

8. We have also carefully gone through the appeal and find that though it runs into six pages, but does not say anything about the charges levelled against the applicant or the grounds on which the penalty should be waived. The Appellate Authority in its order dated 08.8.1996, has mentioned that the applicant has brought out no new fact or issue relevant to the charges which needs to be considered at this stage. We consider it appropriate to extract the order dated 08.8.1996 of the Appellate Authority as under :

"The appellant in his appeal has only repeated what he had already submitted in his representation and which had been considered in a proper manner by the disciplinary authority in his punishment order.

Appellant has brought out no new fact or issue, relevant to the charges, which needs to be considered at this stage.

Therefore, I find no grounds in the appeal to intercede on behalf of the appellant."

The learned Counsel for the respondents has cited the judgment dated 19.9.1995 of Hon'ble the Supreme Court JT 1995 (7) SC 207 wherein it has been held as under :

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"That brings us to the order of the Appellate Authority. Under Regulation 70(2), the Appellate Authority is required to consider whether the findings recorded against the concerned officer are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders confirming enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. This Regulation also does not obligate the Appellate Authority to give any reasons for its order. Assuming, that by necessary implication this Regulation also requires the Appellate Authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by the Grover. In other words, the order clearly demonstrates that the Appellate Authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal."

In the light of above discussion, we are of the view ^{does not} that the order of the Appellate Authority ~~call~~ for any interference by this Tribunal.

9. The applicant has also attributed mala fide against R-3 to R-6 in hatching a conspiracy against the applicant for removing the applicant from service. But there is nothing on record to substantiate the alleged mala fide. On the other hand, we find that that the applicant conducted himself in a mala fide way. The applicant systematically avoided receipt of letters issued to him by the respondents in connection with the charge sheet. We have already discussed this aspect earlier in this order.

C. P. S. J.

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As a matter of fact the applicant has become a victim of his own creations, and he has none else to blame.

10. In the light of above discussion, we do not find any merit in this application and the same deserves to be dismissed.

11. The Original Application is accordingly dismissed with no order as to costs.

Gopal Singh

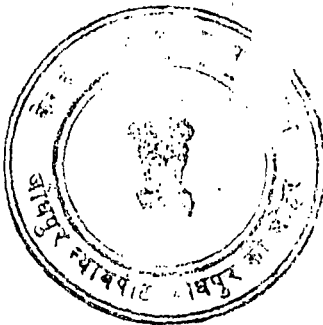
(GOPAL SINGH)

Adm. Member

A.K. Misra
24/5/2000

(A.K. MISRA)

Judl. Member



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