

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 302 and 303 of 2003.

Date of Order : 9.03.2010.

CORAM:

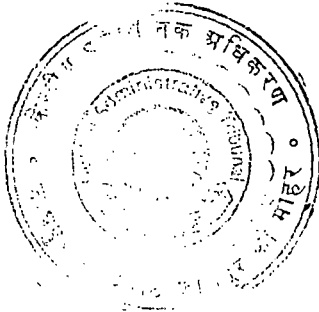
**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER**

R.L.Patel S/o Shri Hem Chand, aged 41 years, Inspector Group 'B', Inspector of Post Offices, Udaipur, Resident of Q. No. 16, Sector 5, Postal Colony, Udaipur.

....Applicant in OA No. 302 and 303 of 2003.

For Applicant Mr. Vijay Mehta.

VERSUS



- 1- Union of India through the Secretary, Ministry of Communication (Department of Post), Sanchar Bhawan, New Delhi.
- 2- The Superintendent of Post Offices, Dungarpur.
- 3- Director, Postal Services, Southern Region, Rajasthan, Ajmer.
- 4- Chief Post Master General, Rajasthan Circle, Jaipur.
- 5- Shri R.L. Meena, Superintendent of Post Offices, Beawar.

..Respondents in both the OAs.

**COMPARED &
CHECKED**

For Respondent Mr. M. Godara proxy for Mr. Vineet Mathur.

**ORDER
(PER DR. K.S.SUGATHAN)**

The legal issue involved in both these OAs are identical. The parties to the dispute are also the same. Therefore both these OAs are disposed of through this common order.

**FACTS of the CASE:
OA302/2003.**

- 2- The applicant is working as Inspector of Post offices at Udaipur. When he was working as Inspector of Post offices at

-2-

Dungarpur, a memo was issued to him on 23.10.2000 under Rule 16 of CCS (CCA) Rules for failure to carry out 15% of inspection in the first quarter of the year 2000 and also for delayed preparation of Inspection report as well as for doing inspection of three post offices located on the same route, on different dates. The applicant submitted his explanation on 14.3.2001 in which he explained the reasons for not achieving the target. He particularly cited the election duty for which he was detailed for 22 days during that quarter. After considering the explanation submitted by the applicant the respondent No.2 by order dated 28.6.2001 imposed the penalty of reducing his pay from the stage of Rs.6725 to Rs.6550 for a period of one and half years with further direction that the applicant will not earn increments during the period of reduction and that on the expiry of the period the reduction will not have the effect of postponing his future increments of pay. (A/1). The applicant filed an appeal against the said penalty. The appellate authority modified the penalty as stoppage of one increment without cumulative effect (A/6). In the revision petition filed by the applicant, the order of the appellate authority was upheld. (A/8). The applicant has sought quashing of all the three aforesaid orders of penalty. The arguments advanced in support of the prayers of the applicant are that (a) the penalty imposed is a major penalty and therefore it could not have been done without holding a regular departmental enquiry; (b) since the Inspector of Posts has become a Group B post by letter dated 8.1.2002 (A/2) the respondent No.2 is not competent to impose the penalty; (c) The points made him in his response to the charge



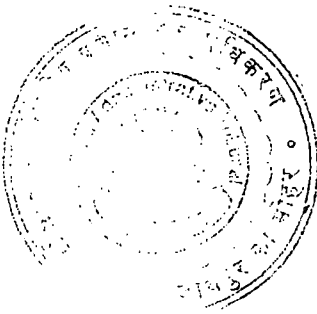
-3-

25

sheet has not been considered by the disciplinary authority and (d) the respondent No.2 had a prejudice against the applicant as the applicant did not accede to the demand for bribe for releasing the second instalment of his home loan.

OA303/2003:

3- The applicant is the same person as in OA302/2003. In this OA he has challenged the penalty of reduction in pay from Rs.6900 to Rs.6725 for a period of one year with a further direction that the applicant will not earn any increment during the period of the penalty and that on expiry of the period the reduction will not have the effect of postponing his further increments of pay. The penalty order is dated 31.5.2001.(A/1) The alleged misconduct for which the penalty was imposed was different as compared to OA302/03, though the date of the charge sheet is the same i.e. 23.10.2000 and the rule under which it is issued is also the same i.e. Rule 16 of CCS (CCA) Rules. In the present OA the charge is that the applicant did not submit the monthly statement of posting of test letters for the period 5/1998 to 2/2000 as required under the provisions of Rule 294 of Post and Telegraph Manual Vol VIII. In this case also the applicant submitted his explanation on 14.3.2001. The penalty was imposed on 31.5.2001. An appeal was submitted by the applicant and in the appellate order the penalty was modified as reduction of pay from Rs.6900 to Rs.6725 for a period of one year without cumulative effect (A/6). The applicant submitted a revision petition. The penalty was further modified as "Censure" by the revision authority (A/8). The applicant has sought



42

-4-

quashing of all the three penalty orders. The grounds taken by the applicant are more or less identical with those in OA302/03, i.e. it is a major penalty and therefore a regular departmental enquiry was necessary; the respondent No.2 is not competent to impose the penalty and the respondent No.2 was prejudiced for the reason cited supra.

4- The respondents have filed replies in both the OAs. The principal contentions of the respondents are that the penalty imposed is a minor penalty under rule 11(iii) of the CCS (CMA) Rules; the respondent No.2 is competent by virtue of the clarification issued by the Department on 17.9.2002 stating that even after re-classification of the post of Inspector of Post offices as Group B the appointing authorities/appellate authorities will remain the same as stipulated in the order dated 27.8.1990; there is no prejudice against the applicant and that the penalty has been imposed for negligence of work.

5- We have heard the learned counsel for the applicant Shri Vijay Mehta and the learned counsel for the respondent Shri Godara for Shri Vinit Mathur. We have also perused the records carefully.

6- Following the judgments of the Hon'ble Supreme Court in **BC.Chaturvedi v. Union of India** (1995 6 SCC 749) and **High Court of Judicature of Bombay v. Shashikant Patil** (2000 1 SCC 416) the scope for judicial review in disciplinary proceedings is limited to examination of whether there is a violation of the

52

principles of natural justice or the proceedings have been held in violation of rules and regulations or whether the decision is vitiated by extraneous considerations or whether it is arbitrary or capricious. We have examined the facts of these two OAs from the aforesaid aspects. It is not disputed that in both these OAs the charge sheet was issued under Rule 16 of the CCS (CCA) Rules. The said rule lays down the procedure for imposing minor penalties. Minor penalties are listed at Rule 11 (i) to (iv). Whereas major penalties are listed at Rule 11 (v) to (ix). On a careful perusal of the rules we are of the view that the penalty imposed on the applicant in both these cases is a major penalty as contemplated in Rule 11 (v). Rule 11 (v) reads as follows:



"11(v) save as provided for in Clause (iii) (a), 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".

7- It is also to be noted that the revision authority, the Chief Postmaster General has also candidly admitted in his order at A/8 that "the next plea of the petitioner that he was awarded a major penalty is acceptable to some extent", but he goes on to say that the grievance of the petitioner on this count has been nullified with the modification of the penalty by the appellate authority. That is the crux of the issue. The counsel for the applicant cited a judgment of the Hon'ble apex Court, that subsequent modification of the penalty by the appellate authority cannot make the original order legally valid. In the matter between ***Institute of Chartered Accounts of India v. L.K. Ratna***, it was held by the Hon'ble Supreme Court that "And therefore it seems to us, there is manifest need to ensure that


22

-6-


there is no breach of fundamental procedure in the original proceeding and to avoid treating an appeal as an overall substitute for the original proceeding." (AIR 1987 SC 71).

Judicial review is warranted is when there is a violation of rules. In the present cases the respondents have violated the rule 14 of the CCS (CA) Rules: Rule 14 (1) reads as follows:

**"14(1). Procedure for imposing major penalties -
No order imposing any of the penalties specified in
Clauses (v) to (ix) of Rule 11 shall be made except after
an inquiry held, as far as may be, in the manner provided
in this Rule and Rule 15, or in the manner provided by
the public Servants (Inquiries) Act, 1850 (37 of 1850),
where such inquiry is held under that Act."**



8- The argument of the respondents that the applicant should not have a grievance since the final penalty is a minor penalty cannot be sustained because if the respondents had conducted regular departmental proceeding, it would have been possible for the applicant lead his evidence and try to disprove the charges. No such opportunity was given to the applicant before he was handed down a major penalty. The damage done by a major penalty cannot be completely obliterated by a subsequent modification because the applicant would have been subjected to the consequences of a major penalty in the meanwhile.



9- In view of the aforesaid discussion we are of the considered opinion that the respondents have violated the provisions of the CCS (CCA) Rules in imposing the original penalty. As the original penalty was ab initio void, any subsequent modification cannot be construed as legally valid.

59

10- For the reasons stated above, both the OAs are allowed.
 The penalty orders dated 28/6/2001, 20/5/2002 and 8/8/2003 in
 respect of OA302/2003 (A/1, A/6 and A/8) and penalty orders
 dated 31.5.2001, 18.3.2002 and 29/5/2003 in respect of OA
 303/2003 (A/1, A/6 and A/8) are all quashed and set aside.
 There is no order as to costs.



sd -

(Dr.K.B.Suresh)
 JM

sd -

(Dr.K.S.Sugamant)
 AM

jrm

CERTIFIED TRUE COPY
 Dated 09-3-10

जुद्धाजी जी (न्याय)
 Section 14(1)(b) (Judl.)
 केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 जोधपुर बेंच, जोधपुर
 Jodhpur Bench, Jodhpur.

दिनांक 17/12/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 10/2/16
को भाग-II व III रद्द किए गए।

अनुभाष अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

Per
12/12/15

9
153