

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 89/2006

Date of order: 9.4.2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Surya Singh Chauhan S/o Shri Devi Singh, aged about 44 years, resident of Vill. & Post Umbada, Tehsil Garhi, Dist. Banswara (Raj.), last employed on the post of EDBPM under Superintendent Post Offices Dungarpur (Raj.).

...Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Post & Communication, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan, Jaipur.
3. Post Master General, Rajasthan Southern Region, Ajmer.
4. The Director, Postal Services Southern Region, Ajmer.
5. The Superintendent of Post Offices, Dungarpur Division, Dungarpur (Raj.).

... Respondents.

Mr. Vikas Seoul, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant was working as Extra Departmental Branch Post Master (EDBPM) in Umbada Dist. Banswara, Rajasthan. He was appointed in that post in the year 1984. On 10.09.1998, a charge sheet was issued to him for failing to deliver 43

registered letters. The lapse was detected during the inspection on 18.11.1997. Subsequently, an oral enquiry was held in which the charges were held as proved. The applicant participated in the enquiry. A copy of the enquiry report was given to the applicant to enable him to represent against findings of the enquiry officer. After considering the representation submitted by the applicant the disciplinary authority imposed the penalty of removal from service by his order dated 27.12.2000 (Annex. A/2). An appeal was filed by the applicant before the Director of Postal Services. The appeal was dismissed by order dated 02.11.2001 (Annex.A/3). In the revision petition filed before the Postmaster General the appellate order was upheld (Annex.A/4). The applicant has challenged all these penalty orders. It is his contention that the enquiry officer had refused his request for copies of documents, though inspection of documents was allowed. The evidence of a witness (SW1) was recorded in the absence of the applicant. The enquiry officer was changed after some sittings on account of transfer and another enquiry officer completed the enquiry. The prescribed procedure for enquiry was not followed. Fair opportunity was not given to him to prove his innocence. He has served for 16 years satisfactorily without any complaint. He has to look after aged parents and four minor children. The penalty is disproportionate to the gravity of the misconduct.

2. The respondents have contested the prayers in the Original Application and stated in their reply that the applicant was

allowed by the enquiry officer to inspect the documents on 08.01.1999 but he refused on the plea of non-availability of defence assistant. He was given time to engage a defence assistant. In the second sitting also he failed to engage a defence assistant and refused to inspect the documents. On the next date of the proceeding he remained absent without intimating the reasons for his absence. Only one witness (SW1) was examined in his absence. On the subsequent date i.e. on 24.04.1999, the applicant inspected the documents along with his defence assistant. The applicant did not ask for re-examination of SW1. The applicant has failed to discharge his duties. The conduct of the applicant has seriously damaged the image of the Department. The applicant's past conduct is not unblemished. He was put off duty and a penalty of debarring from participating in recruitment examination for postman for three years was imposed on him in 1993 for failure to deliver money orders. The penalty is proportionate to the gravity of the misconduct.

3. We have heard the learned counsel for the applicant Shri J.K. Mishra and the learned counsel for the respondents Shri Vikas Seoul for Shri Vinit Mathur. We have also perused the documents on record carefully. The learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Moni Shankar vs. Union of India and Another** [(2008) 1 SCC (L&S) 819].

4. The scope of judicial review in disciplinary matters is limited to the extent of examining whether there is violation of rules or regulations, whether there is violation of the principles of natural justice, whether there are any extraneous considerations and whether the conclusions are arbitrary or capricious. Those are the principles laid down by the Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. UOI and Ors.** [1996 SCC (L&S) 80] and **High Court of Judicature at Bombay vs. Shashikant S. Patil and Anr.** [2000 SCC (L&S) 144]. The citation relied on by the applicant also essentially underlines the same principles.

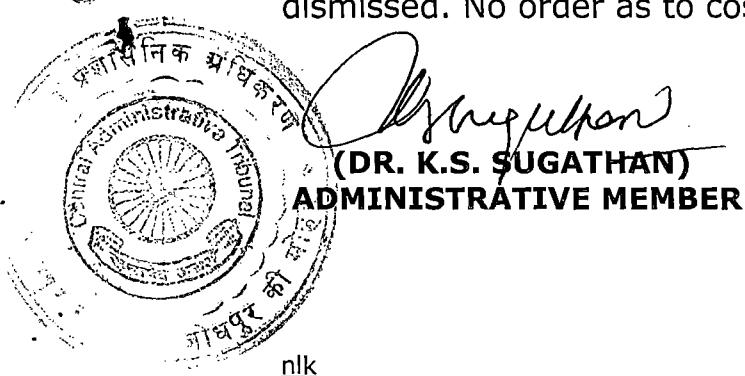
5. We have examined the facts of this case keeping in mind the aforesaid principles. The applicant has contended that the enquiry was not properly conducted and he was not given adequate opportunity to present his case and that he was not given copies of documents. To examine the validity of this contention, we have perused the record of the proceedings of the enquiry officer. On the first date of the enquiry i.e. on 08.01.1999 it is stated in the proceeding that the applicant denied the charges and he was permitted to peruse the documents, but he refused as he wanted to engage a defence assistant. In the second sitting on 12.02.1999 also it is stated in the proceeding that the applicant refused to peruse the documents. On the next occasion i.e. 26.03.1999 he remained absent. But on the next date i.e. 24.04.1999 he attended and perused the documents along with his defence assistant. That

would show that the enquiry officer entertained his request and waited for him to engage a defence assistant so that he could have a meaningful perusal of the documents. The applicant thereafter attended the enquiry proceedings on 16.07.1999, 28.08.1999, 03.08.2000, 30.08.2000, 08.09.2000 and 16.09.2000. The applicant has participated in the enquiry even after new enquiry officer took over in June 2000 without protest. The addresses of some of the registered letters have testified before the enquiry officer about the non-delivery of the letters till after the date of the inspection. The names of these witnesses are mentioned in the report of the enquiry officer. For instance SW3 has testified that the registered letter No. 177 dated 12.04.1997 was delivered to him by SW2 on 19.11.1997, i.e. one day after the inspection. Similarly registered letter No. 0256 dated 20.03.1997 was also delivered by SW3 on 19.11.1997. That would show that these letters were lying undelivered for as long as 6 to 8 months.

6. After a perusal of the disciplinary proceedings, we are satisfied that the contention of the applicant that he was not given proper opportunity to prove his innocence cannot be sustained. We also do not see any violation of rules. The contentions raised by the applicant in reply to the enquiry report has been considered by the disciplinary authority while deciding the penalty. We do not see any infirmity or arbitrariness in the orders passed by the appellate authority or the revision authority. The respondents also cannot be faulted for imposing

the penalty of removal from service as the misconduct of the applicant would adversely affect the efficiency of the postal service and undermine its image. The gravity of the misconduct has to be judged from the nature of the public service.

7. For the reasons stated above, we do not see any reason to interfere with the decision of the respondents taken after following due procedures. The Original Application is, therefore, dismissed. No order as to costs.



S.M.M. Alam
**(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER**

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