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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application 181/2011

Date of Order : 02.05.2012

(Order Reserved on 15.09.2011)

CORAM: HON'BLE DR. K.B.SURESH, MEMBER (JUDICIAL)
HON'BLE MR. SUDHIR KUMAR, MEMBER (ADMINISTRATIVE)

Birbal Singh S/o Late Shri Inder Singh aged about 60 years, By caste Jat, resident of Village Kaswali, District Churu (Raj), [Hall Superintendent of Post Office, Dungarpur Division, Dungarpur].

.....Applicant.

By Mr. S.P. Sharma, Advocate.

Versus

- 1- Union of India through the Secretary to the Government, Ministry of Communication (Department of Posts) Sanchar Bhawan, New Delhi.
- 2- Chief Post Master General, Rajasthan Circle, Patel Marg, Jaipur (Raj).
- 3- Post Master General, Rajasthan, Southern Region, Ajmer (Raj.)

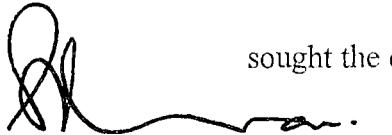
..... Respondents.

By Mr. M.S.Godara,for Mr. Vinit Mathur, Advocate and learned A.S.G.

ORDER
[PER SUDHIR KUMAR,ADMINISTRATIVE MEMBER]

The applicant was working on the post of Superintendent of Post Offices w.e.f. 25.02.2006, and he filed this OA on 28.06.2011. He is before us aggrieved by the actions of the respondents in having issued a memorandum of charges, and in having proposed to conduct a departmental inquiry against him, while he submits that he had in fact protected the interests of the Department. Therefore, he is before us with the prayer that the impugned charge memo dated 03.01.2011 may be declared as illegal and void, and may be quashed and set aside, and the departmental proceedings initiated by the respondents in pursuance of that memorandum may be declared as illegal and void, and for any other reliefs. He had also prayed for a stay of the departmental proceedings already initiated by way of a prayer for interim order, but interim order was never granted, and the case came to be finally heard on merits and reserved for orders.

2. The applicant has been issued a Memo of Charges through Annex.A/1 dated 03.01.2011, containing five charges in total. When the applicant discovered that certain documents mentioned in the Articles of Charges as Annexures enclosed with the Chargesheet, had not been provided to him, he sought copies of the same through Annex.A/2, and when some of the documents were supplied and some others were still wanted, or the supplied documents were not relevant or legible, he further sought the documents through Annex.A/3 and A/4, pointing out the irregularities and



mis-matching in the dates of letters which were part of the chargesheet. On receipt of these requests, the respondents issued a corrigendum to the list of documents mentioned as annexures to the chargesheet and the same were issued through Annex.A/5 and Annex.A/6.

3. After receipt of this Corrigendum dated 17.02.2011 (Annex.A/5) and Clarification dated 22.02.2011 (Annex.A/6), the applicant replied to the Memorandum of Charges through his detailed representation dated 28.02.2011 (Annex.A/7). However, the respondents were obviously not convinced with his explanation, and the order appointing an Inquiry Officer for holding the Departmental Inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965, was issued through Annex.A/8 dated 07.06.2011. The applicant filed this O.A. immediately thereafter, on 28.06.2011. As proof of his very good past performance the applicant has annexed the certificate of excellent performance issued to him on 07.05.2010 (Annex.A/9). On 21.06.2011, orders were issued through Annex.A/10, ordering for the applicant's retirement on 30.06.2011 (A.N.) on attaining his date of superannuation.

4. The applicant has assailed the issuance of the impugned chargesheet by submitting that all the five charges levelled against him relate to procedural irregularities/lacunas, for which no chargesheet of major penalty under Rule 14 of the CCS (CCA) Rules, 1965, can be issued, according to him. In this context, he cited the contents of the Government of India O.M. dated 06.04.2004, wherein it was stated that wherever the circumstances involved minor infringements, or there were cases of only procedural irregularities, resort should be taken only to minor penalty proceedings, instead of initiating major penalty proceedings. The applicant has admitted that there may have been irregularities, as pointed-out in the chargesheet, but submitted that they are only procedural irregularities which are minor in nature, and do not involve any element of serious misconduct, which may warrant issuance of a major penalty chargesheet.

5. The applicant has also assailed the fact that the Disciplinary Authority took a time period of more than three months after his reply dated 28.02.2011 (Annex.A/7) had been submitted, before issuance of an order dated 07.06.2011 (Annex.A/8)

appointing an Inquiry Officer. The applicant has submitted that June 2011 being the last month of his service, the competent authority deliberately delayed issuance of the order of appointment of the Inquiry Officer, only so that the inquiry is pending on the date of his retirement on 30.06.2011, in order to deprive him of the opportunity of getting his retiral benefits well in time.

6. The applicant has further explained the facts regarding the charges framed against him, and has tried to explain as to how his surrendering the entire building, which was lying vacant since 01.04.2010, causing payment of unnecessary rent from public funds, and handing it over to the Landlord's representative, with prior telephonic permission of the Post Master General, has been twisted to make this into one of the charges levelled against him. He has submitted that the decision taken by him to vacate the building flowed out of Annex.A/11 dated 15.05.2008, by which orders of the Post Master General were communicated to vacate the premises in question, if the Landlord provides suitable plot of land, and gets a suitable building constructed for the requirement of the department. He said that even though the first part of the directions contained in the letter dated 15.05.2008 (Annex.A/11) was unimplementable, he has given effect to the direction contained in the second part of that letter, and, therefore, no allegations can be levelled against him in this regard. He has similarly tried to explain away the other charges also, and it is not necessary for us to go into the details in respect of those charges, as this Tribunal cannot comment upon and pre-judge any of the issues which have not yet been looked into by the Inquiry Officer and the Disciplinary Authority, and thereafter the Appellate Authority and the Revisional Authority concerned.

7. The applicant has submitted that the Hon'ble Apex Court and the Hon'ble High Court have held in a number of cases that the issuance of a chargesheet to an employee just few days prior to his superannuation is highly improper, and it could be presumed to be an act of mala fide, and that in a number of cases these Courts have interfered when disciplinary proceedings were initiated at the verge of the date of retirement of a Government servant. He, therefore, submitted that in view of the facts and circumstances of the case, conducting a Disciplinary Inquiry against him in pursuance of the impugned Chargesheet would therefore be violative of his rights

under Articles 14 and 16 of the Constitution, and prayed that the OA be allowed, with the prayers as already mentioned above.

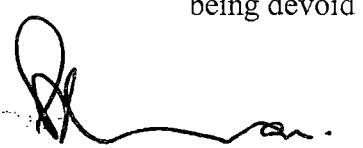
8. The respondents filed their reply written statement on 11.08.2011. The respondents explained the facts and circumstances relating to the charges levelled against the applicant from their point of view, and stated that the applicant has, by his actions, failed to maintain absolute integrity and devotion to duty, and had thereby violated the provisions contained in Rule 3 (i) and (ii) of the CCS (CCA) Rules, 1965. Once again, since these facts have not yet been gone into by the Inquiry Officer in a quasi judicial manner, and thereafter by the Disciplinary Authority, the Appellate Authority, and the Review/Revisional Authority of the applicant, this Tribunal is constrained to discuss or comment upon those aspects. It was submitted by the respondents that the representation of the applicant dated 28.02.2011 was received only on 04.03.2011, and only after a careful examination of that representation, the Chief Post Master General, Rajasthan Circle, had appointed the Inquiry Officer and the Presenting Officer vide the two Sub Memorandums dated 07.06.2011, and the Inquiry Officer had held the first preliminary hearing of the disciplinary enquiry case on 22.06.2011.

9. Taking legal objections to the O.A. filed by the applicant, respondents submitted that Hon'ble the Supreme Court has repeatedly held that the Courts should not interfere with the departmental disciplinary inquiry proceedings at interlocutory stage. It was submitted that in the case of Union of India Vs. Upendra Singh, the Hon'ble Apex Court had held that the Tribunal ought not to have interfered at the interlocutory stage, as it has no jurisdiction to go into the correctness or truth of the charges at that stage. It was further submitted that the powers of judicial review cannot be extended to the examination of the correctness of the charges, or the reasonableness of the decision taken in initiating the disciplinary inquiry proceedings. It was further submitted that the judicial review is not an appeal from an administrative decision, but it has to be only a review of the manner in which the decision is made, and therefore the Courts can interfere only in cases where charges framed on facts mentioned disclosed no misconduct or other irregularities, or the framed charges are contrary to law.

10. It was further stated that in the case of Union of India Vs. Ashok Kacker 1995 SCC (L&S) 374, Hon'ble Apex Court had held that the OA filed immediately after receipt of the chargesheet, without waiting for the decision of the Inquiry Officer after conducting the inquiry, and of the Disciplinary Authority on the report of the Inquiry Officer, is premature. It was further submitted that these decisions of the Apex Court have been discussed and explained by the Chandigarh Bench of this Tribunal on 01.02.2007 in the case of H.R. Megh Vs. Union of India 2007 (2) SLJ 322 (CAT).

11. It was further submitted that legible photo copies of the 41 listed documents proposed to be relied upon during the disciplinary inquiry have already been supplied to the applicant, and the applicant has submitted his defence immediately on the basis of the documents supplied to him. It was further submitted that since the disciplinary inquiry had become mandatory as per Rule 100 of the P&T Manual Vol. III, and the Director General P&T Orders No. 3 Below Rule 14 of the CCS (CCA) Rules, the Disciplinary Authority had decided to appoint an Inquiry Officer and Presenting Officer to conduct the inquiry. They had therefore denied that there was any intention to deliberately delay the decision, in order to deprive the applicant from service and pensionary benefits. The respondents further submitted that the charges are quite grave in nature, and after careful examination of the preliminary examination report, the Disciplinary Authority had found full justification to issue chargesheet for major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965.

12. The respondents had further explained the facts relating to the charges concerned, which are not relevant for being discussed by the Tribunal at this stage. But, suffice it to say that the submission of the respondents was that the Disciplinary Authority of the applicant had considered the charges to be grave enough to merit issuance of Memorandum of Charges under Rule 14 of the CCS (CCA) Rules, 1965. It was therefore prayed that the OA is premature, and at this stage the applicant is not entitled to get any relief from this Tribunal, and the O.A. deserves to be dismissed as being devoid of merits.



13. Alongwith this reply, the respondents had filed five Annexures R/1 to R/5, out of which Annex.R/4 is a three page preliminary Inquiry Report, signed by the Assistant Director, Postal Services, Jodhpur, which, according to the respondents, formed the basis for the Disciplinary Authority to decide to institute a disciplinary inquiry under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant.

14. Heard. Both sides argued their cases vehemently. During the course of arguments, the learned counsel for the applicant produced certain documents, including the Circular regarding constitution of Fair Rent Assessment Committee (FRAC) issued by the Government of India, Department of Posts, Ministry of Communication I.T. Building Branch on 03.03.2009, and a copy of the O.M. dated 17/19.1.2009, by which the applicant had been nominated as the Chairman of the Fair Rent Assessment Committee, to see the site suitability, and to reassess the rent of the Post Office building of Momsar in Bikaner Divisions. He also filed a copy of the letter dated 22.09.2005 regarding tenure posting of officials in single handed and double handed Post Offices, and the preventive vigilance measures to be taken in such Post Offices. It is seen that all these documents are relevant for the purpose of going into the merits of the facts imputed/included in the Memo and Articles of Charges, and cannot be gone into by this Tribunal at this preliminary stage, when the Disciplinary Inquiry itself has not even been properly commenced by the Inquiry Officer.

15. We have given our anxious consideration to the facts of this case. The respondents are correct in pointing-out the law that the Hon'ble Supreme Court has laid down, that this Tribunal should not interfere with such departmental disciplinary inquiry proceedings at interlocutory stages, as this Tribunal has no jurisdiction to go into the correctness or truth of the charges at this stage. This Tribunal can exercise only the powers of judicial review. These powers of judicial review come into being only when the administrative decision and action has first been taken. The administrative decisions in a disciplinary inquiry case are taken in quasi-judicial capacities by four identifiable individual persons' minds. Firstly, the Disciplinary Authority decides to initiate the inquiry, after assessing the evidence available. Secondly the Inquiry Officer who is entrusted with the task of conducting the

Disciplinary Inquiry and giving his report. Then again the Disciplinary Authority comes in the picture, to assess and to either accept or to dis-agree with the Inquiry Report submitted by the Inquiry Officer, and to decide about the quantum of punishment, if any, to be inflicted upon the delinquent Government official. Thereafter, the appeal of the delinquent has to be considered by the Appellate Authority as the third identifiable individual's mind, and a review or revision may also lie to the Revisional Authority, or Review Authority, as the fourth identifiable individual's mind, concerned with conclusion of the departmental inquiry proceedings against the delinquent Government official. Judicial review can enter into this stream only after all of these four stages of quasi-judicial administrative decision making have been gone through, and have resulted in a final administrative decision about the penalty which is proposed to be inflicted upon the delinquent Government official.

16. It is also correct that even then, the powers of judicial review can only extend to two aspects, (a) an examination of the correctness of the procedures followed at each of these stages of the process of administrative decision making, and (b) to judge regarding the quantum of punishment which is proposed to be inflicted upon the delinquent, just to assess and make sure that it may not be exorbitantly high, so as to shock one's conscience. But, such powers of judicial review can never be extended to (c) a re-appreciation of evidence tendered during disciplinary inquiry, and (d) determining or examining the correctness of the charges or the reasonableness of a decision taken for initiating the inquiry proceedings. The law in this regard was laid down by the Apex Court very succinctly in the case "State of Andhra Pradesh Vs. S. Sree Rama Rao : AIR 1963 SC 1723 ; (1964) 3 SCR 25", and then reiterated again, with approval, as recently as on 13.10.2011 in the case "State Bank of India Vs. Ram Lal Bhaskar and Anr : 2012 (1) AISLJ 109."

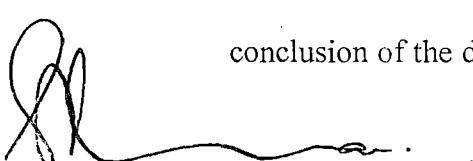
17. The respondents are also right in citing the law laid down that the Courts and this Tribunal can interfere only in cases where either the charges framed on facts mentioned disclosed no misconduct or other irregularity, or the framed charges are contrary to law. The respondents are also right in having cited the case of Ashok Kacker (supra) to state that an OA filed immediately after receipt of the chargesheet, without awaiting the decision of the Disciplinary Authorities thereupon, is premature.

18. In the case of U.P.State Sugar Corporation Vs. Basudeo Chaudhary & Anr., 2008 (2) SCC 41 the Hon'ble Supreme Court had held that a departmental or domestic inquiry can be continued even on the basis of a chargesheet issued on the last date of service of the delinquent Government employee, and the proceedings continued thereafter even after his superannuation could not be termed to be illegal. Further, in the case of Commissioner and Secretary to the Government & Ors. Vs. C. Shamugam, 1998 (2) SCC 394, the Hon'ble Supreme Court had held that whenever it was not a case of no evidence, any interference by the Tribunal was improper.

19. It is true that in the instant case it is not a case of no evidence against applicant. It is only that the evidence marshalled by the respondents so far, for the Disciplinary Authority to first issue the Memorandum and Articles of Charges on 03.01.2011, and then to institute the disciplinary inquiry against the applicant on 07.06.2011 through Annex.A/8, has yet not been gone into in detail, and weighed quasi-judicially as to its correctness or otherwise, by either the Inquiry Officer, or the Disciplinary Authority thereafter, or the Appellate Authority, or the Revisional Authority. Therefore, since it is not a case of no evidence, any interference by this Tribunal at this stage would be premature.

20. While on the above aspects we are in agreement with the submissions made on behalf of the respondents, we cannot close our eyes to the fact that the respondent authorities had suddenly become active in issuing a Memorandum of Articles of Charges against the applicant less than six months prior to his superannuation on 30.06.2011, and then instituting the departmental inquiry just three weeks before his date of superannuation, after having kept his reply under consideration for more than three months, a period in which the departmental enquiry could perhaps have even been conducted and concluded, had the decision to actually institute the Disciplinary Inquiry been taken by the Disciplinary Authority immediately after receipt of his reply dated 28.02.2011 on 04.03.2011, as has been admitted to by the respondents themselves. We are only anxious that the institution of this departmental inquiry should not now be used as an excuse, or ruse, to deny to the applicant his retiral benefits indefinitely, because the respondents can also keep on delaying the conclusion of the departmental proceedings already started against the applicant, and

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he would in the meanwhile be deprived of sustenance, which can be provided to him after his superannuation only by his retiral and pensionary benefits.

21. Therefore, while we cannot grant to the applicant the reliefs as prayed for by him in relief Para 8 (i) AND (ii) of his OA, to quash and set aside the impugned chargesheet Memorandum Annex.A/1, and to declare illegal and void the proceedings initiated by the respondents in pursuance of the impugned memorandum, and we would like the departmental inquiry to be completed by the respondents as early as possible, we are inclined to grant relief to the applicant in response to his third prayer in para 8 (iii) of the O.A. praying for any other relief which this Tribunal deems just and proper in favour of the applicant.

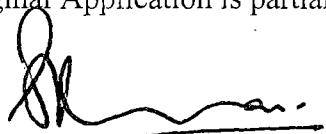
22. It is, therefore, ordered that pending conclusion of the departmental inquiry proceedings, and the imposition of the penalty which may follow thereafter, the respondents shall forthwith release to the applicant 90% of the Death-cum-Retirement-Gratuity, and 90% of the Pension due to him, and the Full amount of his Provident Fund (which is his own savings), pending finalization of the departmental inquiry, and imposition of any penalty upon him. In case, the applicant is exonerated of all the charges proposed by the impugned departmental inquiry charge memo, the respondents shall then release the remaining 10% of the amount of Death-cum-Retirement-Gratuity, and other dues, and the remaining 10% of his Pension, along with interest, as per the interest rate applicable for General Provident Fund Deposits from time to time. However, in case the applicant is found guilty on any or all of the charges included in the Memo of Articles of Charges on the basis of which the departmental inquiry has been instituted, and if the punishment then imposed exceeds the 10% with-held amount of Death-cum-Retirement-Gratuity, and 10% of the with-held amount of Pension of the applicant, the respondents would be entitled to recover the same even from the future payments of pension or family pension over the next five years after imposition of such penalty, but without any interest.

23. Needless to add that any such orders pursuant to the conclusion of the departmental enquiry would give rise to a fresh cause of action for the applicant to

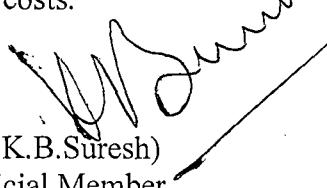
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agitate before the appropriate forum, and the right of the applicant to seek redressal of his grievance in respect of any penalty finally imposed upon him would remain undisturbed or un-curtailed by the above directions issued in this O.A.

24. In view of the above observations, while permitting the respondents to continue with the disciplinary inquiry already initiated against the applicant, one month's time is granted to them for releasing 90% of the Death-cum-Retirement-Gratuity amount, and 90% of the Pension amount, which became due to the applicant on the date of his superannuation on 30.06.2011, and to that extent alone, this Original Application is partially allowed. No order as to costs.



(Sudhir Kumar)
Administrative Member



(Dr. K.B. Suresh)
Judicial Member

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