

In The Central Administrative Tribunal
Calcutta Bench

OA 407 of 1997

Present : Hon'ble Mr. B.F. Singh, Administrative Member

Hon'ble Mr. Kuldip Singh, Judicial Member

Pradip Kumar Mitra, S/o late Manindra Nath
Mitra, working as Office Asstt. under Chief
Postmaster General, West Bengal Circle,
residing at Vill ' P.O. Udayrajpur, P.S.
Barasat, Dist: North 24 Parganas.

.... Applicant

- Versus -

- 1) Union of India, service through the Secretary,
D/o Postal Services, M/o Communication, N.Delhi.
- 2) The Chief Postmaster General, West Bengal Circle,
Yogayog Bhawan, Calcutta.
- 3) The Sr. Superintendent, Calcutta Airport Sorting
Division, Calcutta.
- 4) The Asstt. Superintendent, Calcutta Airport
Sorting Division, Calcutta.
- 5) Superintendent (Sorting), Calcutta Airport Sorting
Division, Calcutta.
- 6) Head Sorting Asstt. Set(11)2, Calcutta Airport
Sorting Division, Calcutta.

.... Respondents

For the Applicant : Mr. B.P. Vaisya, Counsel

For the Respondents: Mr. B. Mukherjee, Counsel

Heard on : 05-02-2002

Date of Order : 5-2-2002

O R D E R

B.P. SINGH, AM

Shri P.K. Mitra of Vill. & P.O. Udayrajpur, P.S. Barasat,
District : North 24 Parganas has filed this O.A. against the order of
illegal imposition of punishment of stoppage of increment by the
respondents authorities. The applicant has prayed for the follow-
ing reliefs :

Cobtd....

- A) A direction upon the respondent authorities to cancel and/or withdraw and/or rescind and/or revoke the Memo No.SSRM/CON-48(3) dated 7th June, 1996 issued by the Sr. Supdtm., Calcutta Airport Sorting Division and the Memo SFB/N-31/96 dated 21st Feb, 1997 issued by the Director of Postal Services (Hq.) and the Chief Postmaster General, West Bengal Circle;
- B) An order directing the respondent authorities not to give any effect or further effect to the Memo No.SFB/N-31/96(Appeal) dated 21-2-97 issued by the Director of Postal Services (Hq.) and the Chief Postmaster General, West Bengal Circle and the Memo No.SSRM/CON-48(3) dated 7-6-96 issued by the Sr. Supdtm., Calcutta Airport Sorting Division.

2. The facts of the case as it appears from this O.A. are that the applicant was working as Assistant at Calcutta Airport Sorting Division, Calcutta. On 31-5-1995 there was some altercation with the employee and some other officials as a result of which complaints were lodged before the appropriate authority. The applicant was asked to explain about the incidence which took place on 31-5-95 in the Office vide order dated 29-9-1995 (Annexure-B). The applicant submitted his explanation on 9-11-1995. Finding the explanation unsatisfactory he was issued charge-sheet dated 4-3-1996 under Rule 16 of CCS Rules. The applicant was imputed to have uttered harsh words and mis-behaved causing dislocation of work and violated the discipline of the Office. He was alleged to have violated the provision of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964. The applicant submitted his defence on 12-3-96 to the respondent No.3. After consideration of the representation the respondent No.3 punished the applicant with penalty of withholding of increment of pay for 12 months from the date of next increment without cumulative effect (Annexure-F). The applicant preferred an appeal to this order (Annexure-G) which was rejected by the Appellate Authority vide order dated 2-2-1997 (Annexure-H). Being aggrieved by the above order the applicant has filed the present O.A. and prayed for the reliefs as quoted above.

3. We have heard Ld. Counsel Shri B.P. Vaisya for the applicant and Ld. Counsel Shri B. Mukherjee for the respondents. We have gone through the O.A., reply to the O.A. and rejoinder to the reply alongwith various enclosures annexed therewith.

4. Shri Vaisya, ld. counsel for the applicant has reiterated the fact and submitted that the order of punishment and the appellate order are illegal, bad in law and without the authority of law.

Ld. Counsel has further submitted that the charge-sheet was issued with a closed and biased mind as the disciplinary authority had already come to the conclusion about the guilt of the applicant before enquiry.

Ld. Counsel has further submitted that the applicant was not given opportunity of hearing and making any representation against the findings of the enquiry and as such the alleged order imposing punishment of stoppage of increment is illegal and bad in law.

Ld. Counsel further submits that the disciplinary proceedings was initiated with unholy motive against the applicant. He submits that the applicant had unblemished service record for the past 17 years in the department. Therefore, the order of punishment ^{is issued and} ~~imposed~~ with mala fide intention and in colourable exercise of power.

Ld. Counsel further submits that the proceedings was held against the provision of Rule 16 of CCS(Conduct) Rules which requires holding of enquiry in all cases.

Ld. Counsel further submits as it would be clear from the punishment order ^{that} the enquiry was held in the case but the same enquiry was held exparte and behind the back of the applicant and without his knowledge. Therefore, no reliance should have been made by the disciplinary authority on this enquiry report. The

Contd....

applicant was never asked to appear before the enquiry authority nor he was given any opportunity to lead evidence and to prove his innocence at the said enquiry. Therefore, the enquiry proceedings including the order of punishment and the appellate order are bad and void abinitio.

Ld. Counsel further submits that the principles of natural justice and provision of Rule 16 of CCS(Conduct) Rules have been violated in this case.

On the basis of the above submissions, Ld. Counsel submits that the order of the disciplinary authority as well as the appellate authority are illegal, bad in law and void abinitio and the same should be quashed and application be allowed by granting the reliefs as prayed for in the application.

5. Ld. Counsel for the respondents has contested the application and denied each and every allegation except those which are based on records. Ld. Counsel submits that a complaint regarding hooliganism in the office was lodged against the applicant on 31-5-95. The then Superintendent (M&TM) was ordered by SSRM, Calcutta Airport Sorting Division (respondent No.3) to take up the enquiry in the complaint. The Superintendent (M&TM) submitted the enquiry report on 6-6-96. The enquiry was based on the examination of various witnesses and statements of such witnesses. The enquiry report reveals that the applicant was the chief instigator of the whole incident and he should not have acted the way he acted on the relevant date. Had he not done so, the entire incident ^{which} took place would not have occurred. On receipt of enquiry report, the applicant was asked to explain his conduct along with other officials involved in this case. The explanation of the applicant was not found satisfactory and therefore, he was proceeded under Rule 16 of CCS Rules 1965 vide Memo dated 7-6-1996. The applicant filed O.A. No.670 of 1996 before the CAT in which the applicant was directed to prefer an appeal before the prescribed appellate

authority. The applicant preferred appeal which was duly considered by the appellate authority and the same was after due consideration rejected vide appellate order dated 21-2-97 upholding the order of the disciplinary authority.

Ld. Counsel has further submitted that Rule 16 of CCS Rules does not provide for enquiry in all the cases except where the same is found necessary by the disciplinary authority or where a specific request has been made by the delinquent official and the same has been found reasonable by the disciplinary authority. Otherwise a simple representation of defence is to be submitted by the concerned official in reference to the charge-sheet. The disciplinary authority, taking into consideration the defence of the delinquent official, decided the charge-sheet and awarded the punishment. Therefore, the submission of the ld. counsel for the applicant to follow the procedure of holding enquiry under Rule 16 of CCS Rules is not valid and correct. Ld. Counsel further submits that the applicant never made any request for holding enquiry in this case.

Ld. Counsel further submits that the applicant was given reasonable opportunity to defend himself in the case according to the provision of the Rules. Therefore, there was not any denial of reasonable opportunity to him. Therefore, contention of the Ld. Counsel for the applicant is not actually correct.

Ld. Counsel for the respondents submits that the fact-finding enquiry was made in the case when the complaint was received by the respondent No.3 and on the basis of the fact finding report and after obtaining explanation from the applicant the charge-sheet was issued and action for disciplinary proceedings was initiated. There was no violation of the Rules and there was no pre-judging of the guilt and question of closed mind in the case.

6. The reference to the enquiry made in the disciplinary

Contd...

authority's order relates to the enquiry made by the Superintendent (M&TM) in which the report was submitted on 6-6-95. As submitted by the ld. counsel for the applicant it was not enquiry made under the provision of Rule 14 of CCS (conduct) Rules ^{CCA} ~~which~~ ^{as} referred to in the order of the disciplinary authority. No doubt in the order of the disciplinary authority there was no reference to the preliminary enquiry; but there was a clear reference to the said preliminary enquiry report dated 6-6-95 on the basis of which the process of disciplinary action was initiated.

7. Ld. Counsel for the respondents has further submitted that ~~although~~ ^{any} the disciplinary authority as well as the appellate authority had applied their minds and considered all the points raised by the applicant in his defence. After due consideration and evaluation thereof they have passed the order of penalty. The orders are required to be passed as per provision of the Rules and after due application of the mind. Ld. Counsel further submits that there was no misuse or abuse of power by the disciplinary authority or by any other authority insofar as the process of disciplinary proceedings against the applicant is concerned. The respondent No.3, being within the right as controlling officer of the unit, was empowered with the authority to take justified action and he took the action in exercise of those power on the basis of materials made available before him and after due assessment of the materials placed before him.

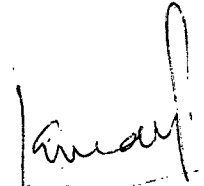
8. In view of the submissions of the ld. counsel for the respondents that the entire process of disciplinary action against the applicant was according to the provision of the CCS Rules, and based on material evidence and penalty has been imposed on objective appreciation of the fact as stated in the charge-sheet as well as in the defence representation of the applicant. The disciplinary authority as well as the appellate authority have applied their

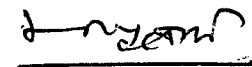
Contd.....

minds clearly and objectively within their rights and decided the matter after due application of their minds and appreciation of the materials placed before them. Therefore, there is no merit in the application and the same should be dismissed.

9. In view of above, we do not find any illegality in the process of disciplinary proceedings or violation of CCS Rules in issuing the charge-sheet and imposing the penalty on the applicant. The authorities have acted according to the provisions of the CCS Rules and awarded punishment following the procedures and rules on the subject. We are unable to agree with the view of the applicant that the proceedings are vitiated and are against the provision of CCS Rules and without proper application of mind. We do not find any substance in the application.

10. On the basis of the above discussions, we do not find any merit in the case. We hereby disallow the application without any order as to costs.


(Kuldip Singh)
Member(J)


(B.P. Singh)
Member(A)

DKn