

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 433 of

T. A. No.

1991

DATE OF DECISION 29-7-1991

KP Varghese

Applicant (s)

Mr MR Rajendran Nair

Advocate for the Applicant (s)

Versus

Director of Postal Services, Respondent (s)
Calicut & 3 others

Mr NN Sugunapalan, SCGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

AV Haridasan, Judicial Member

The important question that arises for consideration in this application filed under Section 19 of the Administrative Tribunals Act is whether, a disciplinary authority whose order imposing penalty on a postal employee is set aside by the Appellate Authority for want of jurisdiction to act as Disciplinary Authority, permitting issuance of fresh proceedings after obtaining Presidential Order, without specifying the stage from which the proceedings are to be commenced or Presidential order continued can after obtaining/validly issue an order imposing penalty without an enquiry or without following the procedure

laid down in the CCS(CCA)Rules in regard to ^{the} imposition of penalties.

2. Shorn of details the facts can be stated as follows.

The applicant is working as ^{an} Assistant Post Master(Accounts) Olavakkode in the Lower Selection Grade. Vide Memo No.E4/LTC/1/88-89 dated 28.12.1988, the Superintendent of Post Offices, Palghat initiated action under Rule 14 of the CCS(CCA)Rules against the applicant for alleged false LTC claim. The applicant denied the charge. The Superintendent of Post Offices appointed an enquiry authority who conducted an ex-parte enquiry as the applicant did not participate in it. On receipt of the enquiry report/which the Enquiry Authority had found the applicant guilty, finding that the Superintendent of Post Offices is not competent to impose a major penalty on the applicant, the Superintendent of Post Offices, Palghat transferred the records relating to the proceedings DPS to the Calicut(the first respondent). The first respondent after furnishing a copy of the enquiry report to the applicant and giving him an opportunity to make his representation, found the applicant guilty and imposed on him a penalty of reduction to the lower post of Time Scale Postal Assistant until he would be found fit to be restored to the higher post of L.S.G. after a period of 5 years by order dated 27.12.1989(Annexure-II). The applicant filed an appeal to the P.M.G. who by order dated 14.2.1990(Annexure-III) set aside the order under appeal on the ground that the D.P.S.

had no jurisdiction to act as Disciplinary Authority. But it was observed in the appellate order that the order would not preclude "the competent authority" viz. the D.P.S. to issue fresh proceedings, after obtaining a Presidential order in this regard". Thereafter, by Presidential order dated 30.8.1990 at Annexure-IV, the first respondent was empowered to function as Disciplinary Authority. The first respondent then without following the procedure as contemplated in Rule 14 of CCS(CCA)Rules furnished the applicant with a copy of the report submitted by the Enquiry Authority appointed earlier by the Superintendent and gave him an opportunity to make his representation. The applicant submitted a representation in which he contended that the enquiry report had lost its validity and that as the penalty order had been set aside in appeal, the entire disciplinary proceedings should be held denovo. This contention was not accepted by the first respondent. The first respondent passed the impugned order dated 28.2.1991(Annexure-I) imposing on the applicant a penalty of reduction of his pay to the minimum of the Time Scale Postal Assistant in the pay scale of Rs.975-25-1150-EB-30-1660 until he would be found fit after a period of five years to be resorted to the higher post of L.S.G. on 12.3.1991. The applicant filed an appeal to the second respondent which is pending. While so, the fourth respondent in his order dated 15.3.1991(Annexure-VI) directed that the applicant should work in the Lower Grade of Postal Assistant. The applicant filed a petition before the second respondent

praying for stay of his reversion. In the first round before the Appellate Authority had set aside the punishment order, the Appellate Authority despite the direction from the Tribunal in OA-57/90 to dispose of the application for stay, took the view that the appellate authority has no power to stay the order of punishment in the absence of any provision in the CCS(CCA)Rules. Therefore since the applicant was being compelled to work in a lower post, he has filed this application praying that though the appeal has not been disposed of taking into consideration of the circumstances of the case, this application may be admitted and that the impugned orders at Annexure-I and VI may be quashed.

3. The stand taken by the respondents in their counter affidavit is that since the punishment order dated 27.12.1989 issued by the first respondent was set aside only on the technical ground of want of jurisdiction and not on account of any irregularity in the conduct of the enquiry, as been the first respondent has/empowered by Presidential Order dated 30.8.1990 at Annexure-IV to function as the Disciplinary Authority of the applicant with powers to impose all the penalties mentioned in Rule 11, it was not necessary to

hold a de novo enquiry and that the impugned order at Annexure-I passed after furnishing the applicant with a copy of the Enquiry Report and giving him an opportunity to make his representation is perfectly valid. It has also been contended that/the Annexure-VI letter dated 15.3.1991 of the Superintendent of Post Offices is only an internal correspondence directing implementation of the punishment order at Annexure-I, the applicant is not entitled to challenge that.

4. We have heard the learned counsel for the parties and have also carefully gone through the pleadings and the documents produced.

5. The case of the applicant is that since the second respondent as Appellate Authority has set aside the punishment order dated 27.2.1989 at Annexure-II of the first respondent by order dated 14.1.1990 at Annexure-III on the ground that the first respondent could not have assumed jurisdiction to act as Disciplinary Authority unless authorised specifically by a Presidential order and has only observed that the appellate order would not preclude the first respondent from issuing fresh proceedings after obtaining Presidential order, under Rule 126 of the P&T Manual, Vo.III,

the entire disciplinary proceedings containing the charge-sheet are to be deemed as quashed, since the stage from which the retrial should be conducted has not been specified in the order. It is worthwhile to extract the relevant portion of the order of the Appellate Authority dated 14.2.1990 which reads as follows:

"I have carefully considered the points raised in the appeal as well as in the petition for stay. The applicant belongs to the LSG cadre and as per the notification dated 7 June 1989 the authority competent to impose the penalties under Rule 11 is the Divisional Supdt. It appears, the Director of Postal Services has assumed jurisdiction on the appellant as he was originally appointed to LSG cadre in 1983 by the DPS and hence the Divisional Supdt. was not competent to impose the major penalties. But even in that case, I am of the view that the DPS cannot assume jurisdiction unless authorised specifically by a Presidential Order. In the circumstances, the order of the DPS issued under No. ST/55-8/89 dated 27.12.89 cannot be sustained. Accordingly the said order is hereby set aside. This will, however, not preclude the competent authority viz. DPS, to issue fresh proceedings, after obtaining a Presidential Order in this regard."

It is very clear from what is quoted above that the Appellate Authority though has given liberty to the Disciplinary Authority to issue fresh proceedings after obtaining a Presidential order it has not specified the stage from which the retrial should be conducted, in the appellate order. Rule 126 of the P&T Manual, Vol.III reads as follows:

"When on appeal, the appellate authority sets aside the punishment orders and remits the case for de novo trial, the original proceedings containing the chargesheet are to be deemed as quashed unless the stage from which the re-trial should be conducted is specified in the order. It would be open to the disciplinary authority to frame any other charge in addition to or in substitution of the original charge sheet subject to the condition that it is based on facts of the case as initially disclosed for taking departmental action against the Government servant."

In terms of the above quoted rule, the first respondent should have conducted the disciplinary proceedings *de novo* commencing from the issuance of a charge-sheet. The enquiry report and the evidence recorded at the enquiry held before the first respondent was empowered to act as disciplinary authority in respect of the applicant by Annexure-IV Presidential Order could not have been validly made use of by the first respondent for the purpose of passing an order of penalty. Before issuing the order of penalty the disciplinary authority is bound to follow the procedure laid down in Rule 14 of the CCS(CCA)Rules. The enquiry held by the Enquiry Authority appointed by the Superintendent of Post Offices has not been saved and the first respondent has not been directed to continue or complete the proceedings from ~~any~~ a particular stage by the appellate order at Annexure-III. We are of the view that the contention of the respondents that it was not necessary to conduct a fresh enquiry after the first respondent was empowered to act as Disciplinary Authority is opposed to Rule 126 of the P&T Manual, Vol.III and therefore untenable, inasmuch as no valid disciplinary proceedings preceded the impugned order at Annexure-I, the order is invalid and unsustainable.

6. In the impugned order at Annexure-I, the punishment awarded is reduction of the pay of the applicant to the minimum of the time scale Postal Assistant in the pay scale of Rs.975-25-1150-EB-30-1660 until he would found fit after a period of 5 years from the date of the order to be restored to the higher post of Lower Selection Grade. The direction in the letter

of the Superintendent of Post Offices, Palghat Dated 15.3.1991 at Annexure-VI which says:

"The orders contained in the PMG, Northern Region Calicut Memo No. ST/30-0W/I/90 dated 28.2.91 are unambiguous. As per the orders the official is to work in the lower cadre of T/S. PAs. You may please assign him work expected to be done in that cadre.

The official may please be informed that his refusal to note the orders of the Post Master and to work as T/S. PA will have to be viewed seriously and disciplinary action would be warranted by him on action.

Please acknowledge the receipt."

This direction involves a reversion of the applicant to the lower cadre of Time Scale PA in addition to the penalty imposed on him by Annexure-I order which was only a reduction in pay.

The Superintendent of Post Offices, Palghat is not empowered to impose on the applicant a further penalty of reduction in rank than the penalty imposed on him by the Disciplinary Authority. Therefore the Annexure-VI being without authority is unsustainable. The contention of the respondents that the Annexure-VI

is an internal correspondence which is not liable to be challenged by the applicant cannot be accepted because a copy of this was marked to the applicant and this letter adversely affects the applicant's rights. We are therefore of the view that both the impugned orders are liable to be quashed.

7. The respondents have in the reply statement raised a contention that this Tribunal cannot assume jurisdiction in the matter since the statutory appeal filed by the applicant is pending. Normally, under Section 21 of the Administrative Tribunals Act, an application will be admitted only if the applicant has exhausted all statutory remedies available to

him. In this case, the applicant though the appeal filed by him was pending, approached the Tribunal with this application with a prayer for interim relief of stay of the operation of the impugned order at Annexure-I and VI with the apprehension that the Appellate Authority, namely, the second respondent would not grant a stay of the operation of the impugned orders, pending appeal since inspite of the direction in O.A.57/90 to the Appellate Authority, the second respondent to dispose of stay the application filed by the applicant against the implementation of the Annexure-II punishment order, the Appellate Authority did not do so on the ground that the CCS(CCA)Rules do not contain any provision empowering the Appellate Authority to grant a stay of the operation of the punishment orders. In such circumstances, the remedy of appeal available to the applicant cannot be treated as an equally effective efficacious remedy and therefore, we are of the view that it is a fit case where the Tribunal has to interfere and grant relief.

8. In the conspectus of facts and circumstances, we allow the application and set aside the impugned orders dated 28.2.1991 at Annexure-I of the first respondent and dated 15.3.1991 at Annexure-VI of the fourth respondent. However, we leave it open to the competent authority if it so decides to initiate de novo disciplinary proceedings against the applicant on the same allegations which formed the basis of the proceedings which culminated in Annexure-I order. In case the competent authority decides to initiate such proceedings, the same should be initiated within a period of one month from the date of communication of this order. There is no order as to costs.

AV HARIDASAN
JUDICIAL MEMBER
trs

29-7-1991

SP MUKERJI
VICE CHAIRMAN