

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Reserved on: 25.7.2012

Pronounced on: 29.8.2012

Original Application No. 307 of 2005

Hon'ble Dr. K.B.S. Rajan, Member-J

Hon'ble Mr. S.P. Singh, Member-A

Lal Bachan, aged about 63 years, S/o Sri Bhagirath, R/o SS-321
Motigheel Colony, Lucknow.

..... Applicant

By Advocate : Sri Surandran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Director General, Department of Posts, New Delhi.
3. Chief Postmaster General, U.P. Circle, Lucknow.
4. Postmaster General, Kanpur Region, Kanpur.
5. Director of Postal Services, Kanpur Region, Kanpur.

..... Respondents.

By Advocate : Sri S.K. Awasthi for Sri S.K. Singh

ORDER

By Hon'ble Dr. K.B.S. Rajan, Member-J

The applicant has sought the following relief(s):

"Wherefore It is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 20.6.2002 and 2.7.2004 contained in Annexure nos. 1 & 2 and issue a direction to restore his original pay of Rs. 10,500/- with effect from 20.6.2002 and pay him the arrears upto 30.6.2002 the date of superannuation and revise the pension and other retirement benefits accordingly. It is further prayed that a direction be issued to promote the applicant in class I cadre with effect from 26.5.1997 the date on which his juniors were given promotion and the case of the applicant has not been considered on account of issuance of chargesheet dated 22.1.1997. Any other relief which this Hon'ble Tribunal deems just and proper be also passed."



2. Briefly stated, while functioning as the Superintendent of Post Offices, Kanpur (M) Division, the applicant was served with a charge-sheet levelling the following two charges against the applicant: -

Article: 1

"That the applicant, during the period from 20 - 12 - 95 violated the provisions contained in DG(P) New Delhi letter dated 18-9-1995 by entertaining qualification of income/property dated 6-4-96 from Sri Jageshwar, the provisionally appointed EDBPM, Ahesa from local market without prior verification of landed property as required under DG(P) New Delhi letter dated 14-08-1995 and thereby displayed utter disregard and lack of devotion to his duty violating the provisions of rule 3(1)(ii) of CCS(Conduct) Rules, 1964 and acted otherwise than in his best judgment in exercise of powers conferred on him and violating the provisions of rule 3(2)(ii) of CCS(Conduct) Rules, 1964.

Article: 2

During the aforesaid period, while functioning in the aforesaid capacity the applicant violated the provisions contained in DG(P), New Delhi letter dated 6-12-1993 by mentioning incorrect residential condition in the notification issued on 8-1-1996 for calling for the applications from local market for the provisional appointment on the post of EDBPM Ahesa and thereby displayed utter disregard and the lack of devotion to his duty violating the provisions of Rule 3(1)(ii) of CCS(Conduct) Rules, 1964 and as otherwise than in his best judgment in exercise of powers conferred on him and violating the provisions of Rule 3(2)(ii) of CCS(Conduct) Rules, 1964."

3. On denying the charges by the applicant, inquiry followed and the inquiry authority held Article I as partly proved and the second charged as not proved. Note of disagreement was struck by the Disciplinary Authority and the same sent to the applicant for making representation. This having been done, the D.A. had held the applicant guilty of misconduct and imposed a penalty of reduction of pay by two stages from his pay of Rs.10,500 to Rs.10,000 in the pay scale of Rs.7500 - 12000 till

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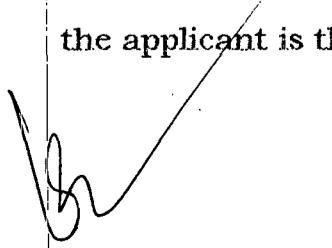
his retirement, i.e. 30-06-2002.

4. Aggrieved by the above order of penalty the applicant moved an appeal before the appellate authority (President of India) and the appellate authority in consultation with UPSC upheld the order of penalty and dismissed the appeal. Hence, this O.A. seeking the reliefs as expected above

5. Respondents have contested the OA.

6. The applicant had filed his rejoinder reiterating the contentions made in his original application.

7. Written arguments were filed by the applicant. According to the applicant, it is the Director-General of Postal Services who is the Disciplinary Authority in his case and thus he alone could disagree with the findings of the inquiry officer, whereas the note of disagreement has been recorded by the CPMG. This is against Rule 15 of the CCS(CC&A) Rules 1965. As regards the two articles of charges, the applicant has stated that the verification conducted by the applicant in respect of the possession of property by the selected candidate was true in that the said individual became the owner of some property in the wake of the demise of his father but it took some time to verify the same by the Tahsildar. In fact the said property was transferred in the name of the selected candidate in March 1996. As regards the second charge, the contention of the applicant is that DG's letter dated 06-12-1993 was not received in the



office of the Supt of post offices, Kanpur. It has also been contended by the applicant that one Shri R.B.L. Dixit was representing officer who also functioned as a witness in this case which is illegal and against the provisions of paragraph 87 of the P & T Manual Vol III, which states "*an official may have appeared as a witness in a disciplinary case should not be appointed as the Presenting Officer or Inquiry Officer in that case.*"

8. In their written arguments, respondents have justified the penalty imposed. Refuting the contention of the applicant that the part to be played by the Director-General had been played by the CPMG in recording the note of disagreement, the respondents stated that it is the Director-General only who had issued the disagreement note and not the CPMG. (paragraph 11 of the written arguments refers). As regards the presenting Officer functioning as witness, respondents stated that the said officer did not give any witness as a prosecution witness but was the choice of the applicant as defence witness.

9. In his oral arguments, the applicant's counsel argued further that the penalty cannot be made for an indefinite period to affect the pension of the applicant. In this regard he has invited the attention to the provisions of D.G. P & T letter No. 6/8/70-Disc I dated 16th December, 1970 which reads as under:-

"Reduction to a lower stage in a time scale: it has been decided that in future while imposing the said penalty on a Government Servant, the operative portion of the punishment order should be worded as in the form given below:-

It is therefore ordered that the pay of Shri..... be reduced by..... stages from Rs..... to Rs..... in the time scale of pay off Rs..... for a period of years/months w.e.f..... It is further directed that Shri will/will not earn increments of pay during the period of penalty and that on the expiry of this period, the reduction will/will not have the effect of postponing his future increments of pay."

10. Counsel for the respondents argued on the lines as contained in the counter read with the written arguments filed on behalf of the respondents.

11. Arguments were heard and documents perused. As regards the contention of the applicant that the note of disagreement was recorded by the authority other than the Disciplinary Authority, it has been stated by the respondents that as a matter of fact, on receipt of the inquiry report the CPMG forwarded the report to the Director-General and as such the contention of the applicant cannot be correct. Even though, in his rejoinder to paragraph 22 of the counter affidavit wherein the fact of CPM G having forwarded the enquiry reports to the Director-General has been mentioned, the applicant has maintained that the contents of a 22 of the counter reply are denied, there has been no substantiating material to prove his contention. We are satisfied that the respondents' version has to be accepted.

12. As regards the witness functioning as a Presenting Officer, respondents are not wrong when they have stated that Shri Dixit who functioned as the Presenting Officer was not a prosecution witness. When

the applicant knew very well that the Presenting Officer cannot be one who is a witness, the Presenting Officer Shri Dixit should not have been made the defence witness. If such a witness is very essential, the applicant should have in advance requested for appointing some other as Presenting Officer at the appropriate time. Failure on the part of the applicant himself cannot be taken to the advantage of the applicant.

13. The last limb of the argument is that the penalty imposed for an indefinite period is illegal. The penalty order reads as under:-

“.... the ends of justice would be met in this case if the play of Sh. Lal Bachan, the then SPOs, Kanpur (Mfl) and now Dy. Supdt. R.M.S. “KP” Dn. Kanpur is reduced by 2 (two) stages from Rs. 10,500 to Rs. 10,000 in the timescale of pay of Rs. 7500 – 250 – 12000 with immediate effect till his superannuation, i.e. 30.6.2002.”

14. The Government of India instructions dated 7th Feb. 1964, under rule 11 of the CCS(CC&A) Rules, 1965 inter alia provide that

“It has been decided in consultation with the Ministries of Law and Finance that in future, an order imposing the penalty of reduction to a lower service, grade or post or to a lower time scale, should invariably specify -

‘ period of reduction, unless the clear intention is that, the reduction should be permanent or for an indefinite period ; and...’

(emphasis supplied)

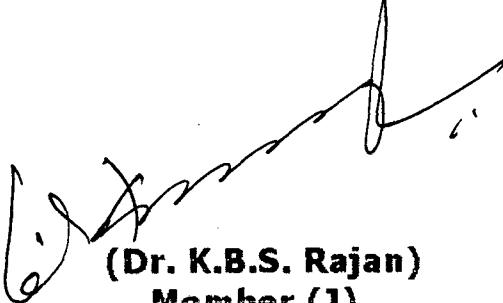
15. In the case of the applicant the intention has been specifically expressed through the words “till his superannuation” and as such, the same is in conformity with the above provision.

16. Though the applicant has contended that in regard to article 1 the same is not true since the individual had inherited the property in March 1996 itself, and that the DG's circular dated 06-12-1993 was not received in his officer (in respect of Art. II), the Tribunal will not be in a position to deal with the same as it would amount to appreciating the evidence which is not permissible. The applicant had been given ample opportunity by the respondents to make his submissions on the facts of the case. Judicial review being restricted only to the decision-making process, the Tribunal cannot travel beyond the same.

17. In view of the above the applicant having not made out a case the OA has to be **dismissed**. We order so. No costs.



(S.P. Singh)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)