

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 138/2006

This the 29th day of October, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P. Singh Member (A)

Hanuman Prasad Srivastava aged about 54 years son of Sri J.P.Srivastava, resident of village Nahoregarh, Post Office- Van Bharia, District- Rae Bareilly

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Communication, Department of Post Office, Civil Secretariat, New Delhi.
2. The Director, Postal Services (HQ) Lucknow Region, Office of Chief Post Master General, U.P. Circle, Lucknow.
3. The Superintendent of Post Offices, Postal Division, Rae Bareilly.

Opposite Parties

By advocate: Sri S.K. Tewari

(Reserved on 17.10.2012)

ORDER

HON'BLE SHRI JUSTICE ALOK KUMAR SINGH MEMBER (J)

The following reliefs have been sought in this O.A.:-

- i) To quash the impugned orders contained as Annexure No.A-1 and A-2 to this O.A. with all consequential benefits.
- ii) To instate the applicant and accord all the admissible benefits, which he would have availed in absence of punishment order.
- iii) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- iv) Cost of the present case.

2. Briefly stated the facts of the case are that the applicant was charge sheeted by respondent No. 3 vide order dated 18.7.95 and thereafter, the enquiry was conducted. The enquiry report was however, submitted after four years. The respondent No. 3 did not agree with the report of the enquiry officer. But before doing so, he did not afford any opportunity of hearing to the delinquent. Therefore, the applicant filed an O.A. No. 657/2001 which was allowed in his favour with the liberty to the respondents to proceed after giving show

AK

cause notice on disagreement. The respondents, accordingly forwarded the disagreement note for submission of reply. The applicant submitted his reply and after considering the same the respondents passed order of removal dated 22.11.2003.

3. An appeal was filed against it but before it could be decided the applicant preferred another O.A. No. 499 of 2004 which was decided on 8.12.2004 with a direction to the respondents to take a decision within a period of one month. In furtherance of the direction, the appellate authority rejected the appeal allegedly without application of mind. Hence this O.A.

4. The respondents have contested the O.A. by filing a detailed counter affidavit saying that the appeal dated 7.4.2004 filed by the applicant against the order dated 22.11.2003 was time barred. Even then, it was taken up for consideration and finally, it was rejected on 13.1.2005.

5. The applicant also filed Rejoinder Reply mostly reiterating the pleadings contained in the O.A.

6. We have heard the learned counsel for the parties and perused the entire material on record along with written arguments.

7. In the case in hand, the enquiry was conducted under Rule 8 of Extra Departmental Agents (Conduct and Service) Rules, 1964 which is a complete court in itself. Therefore, general principles pertaining to CCS (CCA) Rules, 1965 do not apply in such matters as was laid down by the Hon'ble Apex Court in the case of ***Union of India and others Vs. Kameshwar Prasad 1998 Supreme Court Cases (L&S) 447.***

8. In the above back drop, now we proceed to enter into the merit of the case in hand. At the relevant point of time, the applicant was working as Branch Post Master Van Bharia Branch Post Office. An insured letter dated 18.2.1995 for Rs. 1000/- was received from Accounts Office Inhaunna on 23.2.95 by the applicant. According to

AK

allegation, he took out of Rs. 500/- kept inside the ensured letter and re-pasted it while it was in his custody. However, he did not send intimation of ensured letter to the addressee. Instead, he returned it to the Accounts Office, Inahuanna with the remarks that it was doubtful and addressee has refused to take it. Another allegation against him is that on 24.2.95, he received from Accounts Office, Inahuanna another ensured letter dated 20.2.95 for Rs. 1000/- He took out the entire amount from the ensured letter and kept 10 pieces of paper in place of currency notes and re-pasted it. Instead of getting it received by the addressee, this letter was also returned to Accounts Office, Inahuanna with the similar remarks as noted above. The third allegation is that on 13.3.95, a surprise visit was made by the complainant Inspector and a shortage of Rs. 821.50 was found pertaining to cash and stamps with the applicant.

9. The record of this O.A. further reveals that on account of the above allegations, a disciplinary proceedings was initiated under the Provisions of Rule 8 of EDA (Conduct and Service) Rules, 1964 and the charges were found proved. The applicant filed an appeal which was rejected on 6.11.2001. The applicant challenged that order by filing O.A. No. 657/2001. This Tribunal allowed O.A. No. 657/2001 and quashed the order of punishment as well as the appellate order by judgment dated 10.9.2003 mainly on the ground that the disagreement note was not supplied to the applicant in order to give him reasonable opportunity. Thereafter, disagreement note was supplied to the applicant and his representation was obtained. After considering the same, again on 22.11.2003, the order of removal was passed. The applicant filed an appeal dated 7.4.2004 against it which was although time barred but was considered in the light of another order of the Tribunal passed in O.A.No. 499/2004. Finally, the appeal was rejected. Nothing substantial could be shown against the enquiry report which was partially in the favour of the

AC

applicant. The disciplinary authority however, disagreed with the conclusion and therefore, in furtherance of the direction of this Tribunal in previous O.A., the disagreement note was supplied to the applicant who submitted his defence/ representation dated 18.11.2003 raising three points mentioned in the impugned order dated 22.11.2003. But the applicant neither produced any evidence in support of the contention nor could place any solid arguments. His contention that his house is about 1 km. away from the post office and that the keys remain with him and EDMP, was not found to be acceptable on the ground that had there been any truth, he would have produced that EDMP in his support. Therefore, his objections were rejected and the order of removal was passed.

10. The second impugned order is an appellate order dated 13.1.2005. Before the Appellate authority, five points were raised which have been dealt with properly by making a suitable discussion on each point separately. It would be clear from the following extracts:-

"The points, in brief, raised by the applicant in the instant appeal are as under:-

4.1 The reasons given in impugned order for imposing the major penalty of removal from service is not in conformity with the directions of Central Administrative Tribunal.

4.2 Appellant was never afforded opportunity to produce the EDMP as his witness, which has to be provided by the department, hence the impugned order is violative of principles of natural justice. Observance of principles of natural justice is a sine quo non in discharging of administrative functions and failure thereof vitiates the entire order.

AR

4.3 Reasoned and speaking order means the ordering authority must adduce reasons explicitly. The case of applicant is borne out from the records and the disciplinary authority has not perused the same. Because the impugned order is not based on objective consideration and is based on subjective satisfaction, it is arbitrary and perverse, hence liable to be set aside.

4.4 In all eventualities of the matter, the punishment of removal from service imposed upon appellant is not commensurate with the alleged delinquence.

4.5 Appellant has not been paid put off duty allowance, hence entire disciplinary proceedings is vitiated in view of settled law by the Hon'ble Supreme Court of India and Hon'ble Hgh Court.

I have carefully considered the points raised by the appellant along with concerned records and facts of the case. The position has emerged as under:-

5.1 In fact, the appellant in first instance was dismissed from service by SPOs Rae Bareli Division vide order dated 31.3.2000. The appellant preferred an appeal on 6.11.2001. Against the order, the appellant filed an OA. No. 657/2001 before the Hon'ble Central Administrative Tribunal, Lucknow Bench. The Hon'ble Tribunal in its order dated 10.9.2003 quashed and set aside the orders dated 31.3.2000 and 6.11.2001. The court also remitted back the case to disciplinary authority to give his disagreement note to the applicant along with his reasons for disagreement and give him reasonable opportunity to give his representation thereon within

AR

a reasonable time and then to pass the final orders thereon after considering the representation if so given by the applicant. In compliance of these orders of Hon'ble CAT, the SPOs Raebareli Division being disciplinary authority with letter dated 11.11.2003 conveyed note of disagreement to the appellant along with reasons for disagreement and allowed 15 days time for submission of representation if he desire so. The appellant submitted his representation dated 18.11.2003 to the said disciplinary authority. After considering the representation of the appellant, the disciplinary authority passed the order of penalty appealed against. In view of this, the plea put forth by the appellant is not tenable.

5.2 As per IO's report, EDMP Banbhariya P.O. Shri Ram Chandra prosecution witness was produced and examined during the enquiry in presence of the appellant. Further, the appellant had not given defence witnesses. As such, plea of the appellant at this stage is not supported by facts and cannot be given weight.

5.3 The facts of the case as well as arguments submitted by the appellant in his representation and also the points mentioned by the I.O. have been found fully discussed in the punishment order. Hence plea of the appellant does not hold good.

5.4 The misconduct leveled against the appellant was very serious which was found proved by the enquiry officer on the basis of records. Accordingly, the disciplinary authority awarded the penalty appealed

AC

against, which is commensurate with the gravity of charges. The plea is not tenable.

5.5 The plea of the appellant that put off duty allowance was not paid during the period he was put off duty is not acceptable as appellant was not entitled for any such allowances for the period from 6.3.95 to 12.2.1997. However, the issue pertaining to payment of put off duty allowance does not vitiate the disciplinary proceedings.

In view of the foregoing discussion, the charges made out against the appellant hold good. In my considered view, the penalty imposed upon the appellant is adequate keeping in view the gravity of his misconduct. I am further of the opinion that if the appellant is taken back in service and is allowed to work as Branch Post Master, it will be seriously detrimental to public interest. Considering the instant appeal devoid of merits, I reject it accordingly."

11. Thus, in the above appellate order also, we do not find any flaw or blemish. At the cost of repetition, it may be mentioned here that the disciplinary enquiry was conducted against the applicant in accordance with rules. After service of charge sheet, his statement of defence was obtained. Thereafter about five witnesses were produced who were cross examined. After that, three dates were given for defence and whatever defence was submitted by the delinquent was taken on record and duly considered. The perusal of the enquiry report shows that in respect of first two charges, when a pointed question was asked by the enquiry officer, the applicant admitted that initially the envelopes were received by him in proper condition. But when he returned on the next date, the seal was found in broken condition.

At

Under the feeling of fear, he noted the remark in question. At the same time, he admitted that the entire responsibility was his. It is also mentioned that neither he submitted any defence list nor produced any material evidence in defence. In respect of three charges, the applicant stated before the enquiry officer that his wife remains ill on account of which he was not in a proper mental condition and could not put the complete amount of money. Thus, in fact, he has admitted this lapse on his part. Considering these admissions, duly substantiated by the witnesses produced in the enquiry, the final conclusion was arrived at by the authority concerned and accordingly he was punished.

12. Thus, we did not find that any prejudice was caused to the applicant. Rather every procedural provisions laid down under the rules have duly been followed and adequate opportunity of hearing has been given to the applicant. Otherwise also, violation of any procedural provisions cannot automatically vitiate the enquiry or the punishment orders if no prejudice was caused to have resulted there from. Thus, we do not find any flaw in the discussion making process till the stage of proving charges. This discussion therefore, ends in favour of the respondents.

13. The learned counsel for the applicant would lastly submit that keeping in view the long engagement of about 17 years of the applicant and never giving any chance of complaint to any body, the punishment of removal was very harsh. This submission appears to have some substance. But the final decision has to be taken by the authority concerned. Broadly speaking the quantum of punishment should be decided by the authority concerned keeping in view the following six points:-

- i) Gravity of misconduct
- ii) Past conduct
- iii) Nature of duties

AC

- iv) Position in organization
- v) Previous penalty , if any
- vi) Kind of discipline required to be maintained

14. From the perusal of the punishment order, it does not appear that any of these points were considered or discussed. Therefore, the punishment order is quashed only on the point of quantum of punishment. It is made clear that the findings in respect of three charges having been duly proved, is not being disturbed. The matter is being remitted to the respondents/ authorities concerned to pass order afresh in respect of quantum of punishment after taking into consideration the aforesaid six points expeditiously say within three months from the date of this order.

15. With these observations, this O.A. is partly allowed without any order as to costs.

S.P. Singh
29.10.12
(S.P. Singh)
Member (A)

Alok Kumar Singh
(Justice Alok Kumar Singh) 29.10.12
Member (J)

HLS/-