

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 134/2007

Reserved on 27.8.2014

Pronounced on 17/09/2014

Hon'ble Sri Navneet Kumar , Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Bodh Prakash aged about 50 years ex-Mailman, Lucknow RMS 'O' Division, Charbagh, Lucknow r/o 281/282 Bangla Bazar Ravi Khand, Lucknow-226002.

Applicant

By Advocate: Sri R.S. Gupta

Versus

1. Union of India, through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Director Postal Services o/o Chief Post Master General, U.P., Lucknow.
3. SSRM 'O' Division, Lucknow RMS, Charbagh, Lucknow.
4. Sri R.D. Yadav, E.O., Assistant Superintendent /Office Supervisor O/o SSRM 'O' Division, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri G.K. Singh

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- a) That this Hon'ble Tribunal may kindly be pleased to quash the dismissal order dated 22.9.2006 as contained in Annexure No. 1 and direct the opposite parties to take applicant back in service with all consequential service benefits.
- b) any other relief deemed just and proper in the circumstances of the case with cost of O.A.

2. The brief facts of the case are that the applicant was appointed in the respondents organization was charge sheeted vide charge sheet dated 21.7.2005 which contains the charge of loss of Rs. 29,000/- on account of a loss of bag which contains some valuables from the custody of the Mail Motor Driver. The respondents thereafter,

conducted an enquiry and finally the disciplinary authority came to the conclusion that on account of loss of 260 registered letters and 20 ensured letters and observed about the loss as Rs. 94,816/- without assigning any reasons, as such an order of dismissal from service of the applicant was issued. Learned counsel for applicant has categorically pointed out that in the charge sheet, loss was shown as Rs. 29000/- whereas the disciplinary authority has come to the conclusion that a loss occurred to a tune of Rs. 94,816/- which is unjustified and is liable to be interfered with. It is also indicated by the learned counsel for the applicant that quantum of punishment as awarded to the applicant is also too harsh and the same is violative of Principle of Natural Justice since the disciplinary authority has assessed the loss without any opportunity of hearing to the applicant.

3. On behalf of the respondents, reply was filed and through reply, it was indicated by the respondents that the applicant while working in the respondents organization and on receipt of some information regarding loss of some bag, a preliminary enquiry was done and the said enquiry reveals that the mail opener/closer of CRC, Lucknow GPO handed over 24 bags along with mail list of Sri Birbal Singh, Mail Motor Driver and on account of statement given by the Driver on 13.6.2005, it was disclosed that the applicant along with one unknown person unauthorisedly traveled in the respective trip of the mail motor, as such the bag got misplaced and the applicant was placed under suspension by the disciplinary authority and thereafter, the charge sheet was served upon the applicant and after full opportunity, the enquiry reported dated 25.2.2006 was provided to the applicant for submitting his representation and thereafter, the applicant was dismissed from service by the disciplinary authority vide memo dated 22.9.2006. It is also indicated by the learned counsel for respondents that there is no procedural irregularities in conducting the enquiry, as

such the decision of the authority are not bad and illegal as such it does not require any interference by the Tribunal.

4. On behalf of the applicant, Rejoinder Reply is filed and through rejoinder reply, the learned counsel for applicant has reiterated the averments made in the O.A. and denied the contents made in the counter reply. Apart from this, it is again reiterated by the learned counsel for the applicant that a total loss of Rs. 29000/- is shown in the shape of loss of 260 registered letters and 20 ensured letters and an amount of Rs. 47408/- has already been deposited by the mail motor contractor, Lucknow on behalf of Driver on account of loss occurred. It is also indicated by the learned counsel for the applicant that the Disciplinary Authority in his order has indicated a loss of Rs. 94,816/- and the said amount is an after thought of disciplinary authority and the punishment was awarded to the applicant without any opportunity of hearing which requires interference by this Tribunal.

5. Heard the learned counsel for the parties and perused the record.

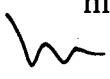
6. The applicant who was working in the respondents organization was charge sheeted vide charge sheet dated 21.7.2005. In the said charge sheet, it is indicated that on account of negligence on the part of the applicant, a bag containing 260 registered letters and 20 ensured letters amounting to total loss of Rs. 29000/- is caused to the Department, as such the applicant has contravene the provisions of Rule 3(1)(i) and (iii) of CCS (CCA) Rules, 1964. Along with the charge sheet, the statement of imputation of misconduct, list of documents and list of witnesses were mentioned. After receipt of the copy of the charge sheet, the applicant submitted application under Right to Information Act, in which it is indicated that an amount is recovered from Mail Motor contractor amounting to Rs. 47,408/- whereas total loss of 260 registered letters and 20 ensured letters is assessed Rs. 94816/-. The Enquiry officer was appointed and the enquiry officer has

given his detailed report on 23.8.2006 after due examination of facts of the case and after cross examining of all the relevant witnesses and also after perusal of the relevant records. It is needless to mention here that the enquiry officer has also mentioned that the loss of 260 registered letters and 20 ensured letters and cost of which is shown as Rs. 29000/-. After the report of the enquiry officer, the applicant submitted the detailed representation denying the allegations leveled against him and also submitted that the observation of the enquiry officer is not based on evidence and records and requested for exoneration. Copy of the enquiry officer's report along with reply of the applicant was submitted to the disciplinary authority who imposed a punishment of dismissal from service upon the applicant and has also indicated that the said loss of 260 registered letters and 20 ensured letters is amounting to Rs. 94,816/- It is also to be pointed out that the disciplinary authority has not mentioned in any of the proceedings about coming to the conclusion about the quantum of loss which was Rs. 29000/- as assessed in the charge sheet which is shown as Rs. 94816/- in the disciplinary authority's order. The applicant submitted the appeal to the appellate authority and has also indicated in his appeal that the amount so enhanced by the disciplinary authority is without providing any opportunity of hearing to the applicant and as such the same is against the principle of natural justice. Not only this, the applicant has also taken a ground that certain witnesses were not examined by the enquiry officer and since the charges are fabricated and based on concocted story and also contrary to the rules and law, as such the applicant be exonerated.

7. Not only this, it is also argued by the learned counsel for applicant that the bags from CRC were opened by Sri Azam Ali, Incharge Mail Lucknow, RMS. It is a case of fraud committed by Driver of Mail Motor Sri Birbal Singh who has run away from his job and also absconding at the moment. Not only this, it is also vehemently

submitted by the learned counsel for the applicant that an amount fRs. 47408/- has already been deposited by Mail Motor Contractor, Lucknow on behalf of the driver as per the information vide letter dated 31.12.2007 but conclusively the respondents leveled the charges against the applicant and dismissed him from service on the basis of incorrect, false and fabricated charges that too without indicating the charge whether any rules have been violated. It is once again repeated by the learned counsel for the applicant that in the charge sheet, the total loss is shown of 260 registered letters and 20 insured letters total value is Rs. 29000/- whereas the disciplinary authority in his order has stated that total loss is Rs. 94, 816/-, and also recovered a sum of Rs. 47408/- which was deposited by the Contractor vide letter dated 31.12.2007. As such, indicating the total loss of amount Rs. 94816/- in the order of disciplinary authority is illegal and is liable to be interfered with. Although, the respondents tried to establish that the loss so occurred was on account of the applicant but they fail to indicate in their entire counter reply or in their oral arguments that on what basis, the disciplinary authority has come to the conclusion that the total loss is amounting to Rs. 94816/- whereas in the charge sheet, it is shown as Rs. 29000/- only. Under such circumstances, we are inclined to interfere in the present O.A.

8. On the basis of facts mentioned in the pleadings, the impugned order dated 22.9.2006 deserved to be interfered with and is accordingly quashed. The matter is remanded back at the stage of disciplinary authority to reconsider the matter afresh in the light of the charge sheet as well as on the basis of enquiry report and the reply submitted by the applicant and pass a fresh order after providing an opportunity to the applicant. The same be done within a period of 6 months from the date of certified copy of order is produced.



9. With the above observations, O.A. is allowed. No order as to costs.

J. Chandra

(JAYATI CHANDRA)
MEMBER (A)

U.R. Agarwal

(NAVNEET KUMAR)
MEMBER(J)

HLS/-