

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A. NO: 684/88

199

T.A. NO: --

DATE OF DECISION 21-7-1992

K.H. Joshi

Petitioner

Mr. W.E. Waishampayan

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr. P.M. Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

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 ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

mbm*

S.K. Dhaon
(S.K. DHAON)

MD

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.684/88

Krishnaji Hari Joshi,
Plot No.22, Bhayandar
Co.op.Hsg.society,
Near New Jain Mandir,
Bhayandar(West),
Dist. Thane.

.. Applicant

vs.

1. Member(Personnel)
Postal Service Board,
Department of Posts,
Ministry of Communication,
Dak-Tar Bhavan,
Parliament Street,
New Delhi - 110 001.

2. Post Master General,
Maharashtra Circle,
G.P.O.
Bombay.

.. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.W.W.Waishampayan
Advocate for the
Applicant.
2. Mr.P.M.Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per S.K.Dhaon,Vice-Chairman)

Date: 21-7-1992

The Director of Postal Service on 5th January,1984 awarded a punishment to the applicant. On 29th February'88 the Post Master General modified the punishment and enhanced the same in the purported exercise of his powers under Rule 29 of the CCS(CCA)Rules hereinafter referred to as The Rules. On 6th July,1988 the Member(Personnel),Postal Services Board rejected the review application of the applicant in the purported exercise of powers under 29A of the Rules. All the three orders are being impugned in the present application.

2. On 14th December,1979 the applicant was functioning as Sub Postmaster,Bhayandar.

In the relevant papers prepared by the applicant on 14th December, 1979 he showed that a sum of Rs.5,000/- had been remitted to Borivali(W) Post Office. On enquiry, it transpired that the said sum has not reached the Borivali Post Office and the same was also not traceable. The department therefore suffered a loss to the extent of the said amount. Seven charges were framed against the applicant. All of them related to the non remittance of the said amount on 14th December, 1979. At this stage it may be noted that no specific charge had been framed to the effect that the applicant tried to manipulate the records, to suppress the evidence and to shift the blame to his subordinates and to other officers.

3. The Director of Postal Services (the punishing authority) arrived at the following conclusion:-

"Shri K.H.Joshi is a sufficiently senior official. He should have understood the importance of allocating definite duties in writing to his staff and fixing definite responsibilities on them for particular operation of work, instead of creating confusion by issuing oral orders and dividing the responsibilities with no definite directives. He should have effectively observed the closing of cash bag along with proper registered list in the D bag and carefully watched for the acknowledgement for cash remittance from Borivli West P.O. He should have enquired with searching attitude in the non-receipt of remittance by Borivali West H.O. on 15-12-79 when the fact was brought to his notice.

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I cannot understand how Shri Joshi could fail in his duties particularly in the morning of 15-12-1979 and caused despatch of nil registered list to Borivali West H.O. while he kept registered list with remittance entries on the office record. The loss of this cash bag of Rs.5,000/- is mainly due to the actions of Shri KH Joshi. I hold the article of charge No.I,III,IV,V,VI and VIII are proved against Shri K.H.Joshi and hold him responsible for the loss of the remittance. With due consideration to all the aspects of the case, I pass the following orders: "

She accordingly directed that a sum of Rs.3,621/- should be recovered from the pay of the applicant in seventeen equal monthly instalments of Rs.213/- each commencing from the pay of January,1984. We may note that prior to the passing of the said order the applicant was called upon to deposit a sum of Rs.5,000/- which he did.

4. On August 1/2,1984 the Post Master General issued a notice to the applicant to show cause as to why the punishment awarded to him may not be enhanced. In the said notice a reference was made to only four charges contained in the memorandum of charges served upon the applicant. They were: (i) the applicant while functioning as SPM, Bhayandar verbally ordered Shri Prajapati, Treasurer of that Post Office to work as M.O. issue and Mails & Stg. Clerk, on 14-12-79 and he himself worked as Treasurer on that day but he failed to confirm his oral order in writing; (ii) the applicant failed to make arrangement for joint custody of Government Cash and stamp

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balances of Bhayandar Post Office on 14-12-79; (iii) the applicant failed to check details of remittance to Borivali Post Office on 15-12-79 and (iv) the applicant had shown a remittance of Rs.5,000/- only on 14.12.79 to Borivali Post Office but the same was not actually remitted.

5. The applicant gave his reply to the showcause notice. On 12th October, 1984 the Post Master General passed an order enhancing the punishment of the applicant. This Tribunal, on an application made u/s. 19 of the Administrative Tribunals Act by the applicant, set aside the order dt. 12th October, 1984 passed by the Post Master General enhancing the punishment of the applicant on the ground that the same stood vitiated as the applicant was not offered an opportunity of an oral hearing. Thereafter the Post Master General passed a fresh order which is being impugned in this application.

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6. The portion of the order of the Post Master General, as relevant, reads:

"11. The applicant was a senior official holding charge of the office in a supervisory post. The charge that he acted in a manner violating the provisions of Rules 3(1)(ii) and (i)(iii) of the CCS (Conduct) Rules, 1964 is clearly established. Evidence indicates that having done away with the remittance of Rs.5,000/- he had also tried to manipulate the records to suppress the evidence and to shift the blame on his subordinates and to the other office. All these are serious and calls for deterrent

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and adequate penalty commensurate with the misconduct of the official. I, therefore hold that the imposition of the penalty of recovery to the extent of Rs.3621/- by the disciplinary authority is inadequate in this case. My predecessor had issued a notice to the official proposing to enhance the penalty to one of reduction by five stages for a period of seven months. As the official had pleaded for a compassionate view, I agree with the quantum of punishment imposed by my predecessor and hereby order that:

(i) that the punishment of recovery awarded by the then D.P.S.(W.R.)

Bombay be modified as under :-

1. The pay of Shri K.H.Joshi be reduced by four stages from Rs.640/- to Rs.560/- in the time scale of pay of Shri K.H.Joshi for a period of five months with effect from 1-11-84 and that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.
2. The amount recovered from the pay of Shri K.H.Joshi in accordance with memo No.WR/Staff/Disc.Pro./1/83 dated 5.1.84 should be refunded to the official
3. The amount of Rs.5,000/- credited by the said official on 18.3.80 should not be refunded to him."

We may refer to the above quoted conclusions of the Director of Postal Service. It will be immediately ✓ seen that she had not recorded any findings that the applicant had done away with the remittance of of Rs.5,000/- She also did not record any finding.

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that he tried to manipulate the records to suppress the evidence and to shift the blame to the subordinates and other office. The showcase notice given by the Post Master General catalogued four charges which we have already extracted. We may read them again. None of them contained the allegations that the applicant had either misappropriated a sum of Rs.5,000/- or done away with the same. There is also no whisper that the applicant tried to manipulate the records with a view to suppress the evidence and to shift the blame on others.

7. The first proviso to Rule 29(1) of the Rules ~~postulates~~, inter alia, that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is ~~proposed~~ proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to ~~enhance~~ enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14...." Rule 11(v) falls under the head of "Major Penalties". It relates to ~~reduction~~ reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay. Sub rule (3) of ..7/-

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Rule 14 provides interalia that "where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge". In the instant case an inquiry under Rule 15 was held against the applicant. The punishing authority had appointed an inquiry officer who conducted an enquiry and submitted its report to the punishing authority. Reading the contents of first proviso to Rule 29, the material part of Rule 11 and the contents of sub rule (3) of Rule 14 there can be no escape from the conclusion that a definite charge that the applicant had done away with a sum of Rs.5,000/- and a definite charge that he had manipulated the records to throw his responsibilities towards others should have been framed against the applicant, so as to enable the authority concerned to impose a major penalty upon him (applicant). Clearly that was not done. A fortiori the requirement of sub rule (3) of Rule 14 were observed in their breach in the case of the applicant. This procedural infirmity being incurable was fatal. The revision authority, therefore, could not modify the order of the punishing authority and enhance the punishment of the applicant.

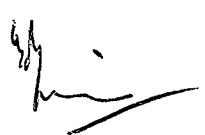
8. Under the proviso to Rule 29(1) the revising authority was under an obligation to give a reasonable opportunity to the applicant of making a representation against the proposed

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enhancement of penalty. The opportunity contemplated is an effective opportunity. We have already indicated that the showcause notice given by the Post Master General on August 1/2, 1984 did not indicate that he (the applicant) was expected to meet the charge that he had done away with the remittance of of Rs.5,000/- and that he had tried to manipulate the records to suppress the evidence and to shift the blame on his subordinates and to other office. It has, therefore, to be held that the applicant was denied a reasonable opportunity of ^{making a} ~~making a~~ representation. This is an additional ground on which the order of the revising authority stands vitiated.

9. This application succeeds in part. The order dt. 29th February, 1988 passed by the Post Master General enhancing the punishment of the applicant is quashed. The order dtd. 6th July, 1988 passed by the Member (Personnel), Postal Services Board, New Delhi, rejecting the review application of the applicant is also quashed. We maintain the order dt. 5th January, 1984 passed by the Director of Postal Services as we have not been able to discern any infirmity in the same.

10. There shall be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(S.K. DHARON)
Vice-Chairman