

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.484/86

Shri M.I.Inamdar,
Ex.Postman,
P.O.Ashte,
Sangli - 416 416.

... Applicant

vs.

1. The Sr.Suptd. of Post Offices,
Sangli Division,
Sangli - 416 416.
2. The Director of Postal Services,
Pune Region,
Pune - 411 001.
3. The Union of India

... Respondents

Coram: Hon'ble Member(A) J.G.Rajadhyaksha

Hon'ble Member(J) M.B.Mujumdar

Appearances:

1. Mr.G.K.Masand
Advocate for
the applicant.
2. Mr.S.R.Atre
(for Mr.P.M.Pradhan)
for the respondents.

ORAL JUDGMENT

Date: 23-9-1987

(Per M.B.Mujumdar, Member(J))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has challenged the order of penalty passed by the Senior Superintendent of Post Offices, Sangli Division by which he is removed from service.

2. The applicant was working as Postman from 27-1-1967 at Ashte from 6-7-1983 to 20-5-1985. Though he was working at Ashte he was staying with his family at Bhilavadi village, which is about 10Kms. away from Ashte. On 21-3-1985 he was served with a charge sheet

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along with the necessary statements containing articles of charge and imputations. The first charge was for remaining absent unauthorisedly from duties during the following periods:(i) 31-12-83 to 2-1-84,(ii)21-1-84 to 24-1-84 (iii) 21-7-84 to 23-7-84 (iv) 28-12-84 and (v)1-2-85 to 18-2-85. According to the second charge, the applicant was not punctual in attending his duties, despite repeated instructions to him during the above said period. The third charge stated that the applicant had failed to exhibit a sense of responsibility and devotion to duty and also acted in a manner unbecoming of a Govt. servant.

3. The applicant pleaded guilty to the charges and prayed for mercy. Accepting his plea of guilty the Sr.Superintendent of Post Offices, Sangli Division who was the disciplinary authority held that the charges were proved and imposed the penalty of removal from service with immediate effect. The applicant preferred an appeal dtd. 31-5-1985,again praying for mercy but it was rejected by the Director of Postal Services, Pune on 10-12-1985. We may point out that though the appellate order gives the reason as to why the order passed by the disciplinary authority was being confirmed the appellate authority had not given a personal hearing to the applicant. On this ground the order of the appellate authority is liable to be quashed in view of the Supreme Court judgment in Ram Chander vs. Union of India reported in 1986(2)SC 252. But we are refraining from doing so because the applicant's advocate restricted the scope of this application only to the quantum of penalty.

The applicant has filed this application challenging the order of penalty of removal from service.

4. The respondents have filed their written statement on 14th April, 1987. They have pointed out that the applicant had remained absent not only during the periods mentioned in the first charge but he had remained absent on previous occasions also. They also pointed out that for remaining absent during the period ~~from~~ 8-8-1983 to 10-8-1983 a lenient view was taken and by an order dtd. 29-8-83 that period was treated as dies-non. They further pointed out that for remaining absent during the period from 31-12-83 to 2-1-1984 again a lenient view was taken and that period was also treated as dies-non by an order dtd. 13-1-1984.

5. We have heard the arguments of Mr. Masand, the learned advocate for the applicant who urged for reducing the penalty as it is disproportionate to the gravity of misconduct committed by the applicant and Mr. S. R. Atre (for Mr. P. M. Pradhan) for the respondents who submitted that the penalty should be confirmed in view of the conduct of the applicant. Mr. Atre also submitted that the appellate authority was not bound to give a personal hearing to the applicant. We cannot, however, accept this view in view of the judgment of the Supreme Court cited above. Still we are not inclined to send back the matter to the appellate authority for deciding the question of penalty. Though we do not approve the conduct of the applicant for which he is held guilty we are impressed by the fact that the applicant was staying at Bhilavadi village as he could not get residential accommodation at Ashte where he was working. The applicant has produced a medical certificate showing that he is a patient

of Appendicits. The certificate further shows that the applicant was sick during the four periods mentioned in the first charge. The certificate does not cover only the period from 21-7-1984 to 23-7-1984. The certificate issued by the Medical Officer of the Primary Health Centre at Bhilawadi, Sangli is dtd. 21-10-1986. The applicant was working as officiating Postman and probably he might not have called for the record from the Primary Health Centre during the course of the enquiry as he perhaps anticipated that his prayer for mercy would be considered favourably. It was not disputed that this Tribunal has power to reduce the penalty if it is found that it is **disproportionate** to the gravity of the charge. The applicant is aged 42 years and he has to support a family of wife and four children. Hence we are inclined to reduce the penalty to "reduction of pay by two stages, with permanent effect". We also propose to direct that the applicant should not be given any salary from the date of his removal from service till his reinstatement.

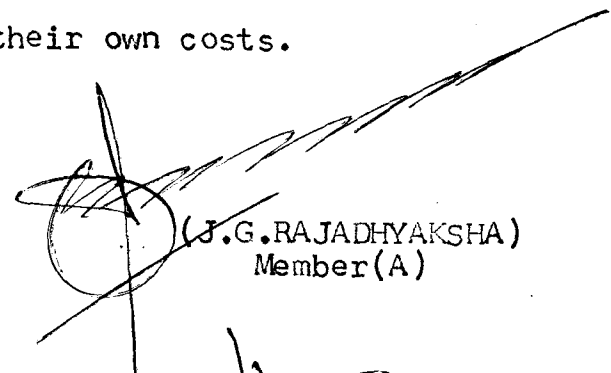
6. With this we pass the following order :

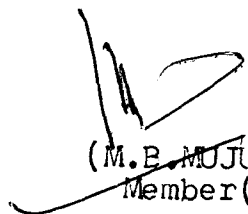
O R D E R

- (i) The finding of the Senior Superintendent of Post Office, Sangli Division, Sangli in his order dtd. 18-5-1985 that the charges framed against the applicant are proved, is confirmed. Similarly, upholding of that finding by the Director of Postal Services, Pune in his order dtd. 10-12-1985 is also confirmed.

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- (ii) However, the penalty of removal from service imposed upon the applicant by the Senior Superintendent of Post Offices, Sangli Division, Sangli by his order dtd. 18-5-1985, which is confirmed by the Director of Postal Service, Pune by his order dtd. 10-12-1985 is set aside and in its place the penalty of reduction in his pay by two stages with permanent effect is imposed upon the applicant. *being done on 18-5-1985*
- (iii) The respondents are directed to reinstate the applicant to his original post within two weeks from the date of receipt of a copy of this order.
- (iv) The applicant shall not be given any salary or allowances for the period from the date of his removal from service i.e. 20th May, 1985 to the date of his reinstatement. However, his absence during that period shall not be treated as a break in service.
- (v) Parties to bear their own costs.


(J.G. RAJADHYAKSHA)
Member(A)


(M.B. MUJUMDAR)
Member(J)