

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXX BYXXXXX
NEW BOMBAY BENCH

O.A. No. 223/86 198
XXXXXX

DATE OF DECISION 29.3.1988

Shri P.M.Bhandarge Petitioner

Shri A.I. Mulla Advocate for the Petitioner(s)

Versus

Senior Superintendent of Post Office Respondents
Amravati Dn. Amravati and another

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice Chairman

The Hon'ble Mr. P.Srinivasan, 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?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 223/86

Shri P.M.Bhandarge,
Resident of Nawathe Nagar,
Badnera Road,
Amravati-5.

Applicant

V/S.

The Senior Superintendent of
Post Offices, Amravati Division,
Amravati Camp. Tahsil and
District Amravati - 444 602.

2. Govt. of India
through the Ministry of Communication,
Posts & Telegraph Board,
New Delhi - 110 001.

Respondents

CORAM : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member (A) P. Srinivasan

Appearances :

Shri A I Mulla
Advocate
for the Applicant

Shri P.M.Pradhan
Counsel
for the Respondents

JUDGMENT

Dated: 29.3.1988

(PER: B.C.Gadgil, Vice Chairman)

The applicant who was a Postal Assistant in the
Postal Department is challenging certain orders passed
against him in the departmental enquiry.

2. In 1980 he was working as V.P.L. clerk at Paratwada.
The allegation against him is that a number of VPLs were
received by him for delivery to the addressee after collec-
tion of the V.P. amount and that the applicant delivered
the VP articles after recovering the V.P. amount but did ..2

B CC

not credit the said amounts in the accounts on the date of recovery. It was actually credited after some days. For doing this he has shown the VP articles as not delivered till the amount was actually credited. The necessary charges were framed. Similarly statement of imputations were also prepared on 17.12.1981 and were served on the applicant. The applicant filed a reply denying the charges. However, there was some defect in the charges so framed hence on 3.11.1982 the Senior Superintendent of Post Offices cancelled the earlier charges and a fresh charge sheet was framed. The substance of the allegations remained the same. The applicant was asked to give a reply. He intimated that the reply given to the earlier charges be treated as a reply to the new charges. Thereafter the Inquiry Officer proceeded with the Inquiry. However, the applicant did not participate in the enquiry. Hence the enquiry officer took an record the various documents and the statements of witnesses that were recorded during the preliminary enquiry. He then submitted his report on 6th April 1984 to the Disciplinary Authority. The Disciplinary Authority on 21st April 1984 accepted that report and imposed a penalty of removal from service. The applicant preferred an appeal petition to the Government. The Member, Administration, Posts and Telegraphs Board decided the appeal on 14.12.1984. The guilt of the applicant was held proved. However, the quantum of penalty was reduced to compulsory retirement. It is this order that is being challenged before us.

3. We have heard Mr. Mulla for the applicant and Mr. P.M. Pradhan for the respondents. Though a number of contentions have been raised in the application, Mr. Mulla did not press all those contentions. Hence it is not necessary to consider all the contentions that have been raised in the application. .3

BCP

It will be in the fitness of things to consider those points urged before us. We may add that Mr. Mulla also raised one contention which has not been raised in the application. We felt it desirable that the said contention should also be considered by us. The first contention (which was taken up for the first time during the course of the arguments) is that the impugned order is passed by an authority subordinate to that by which the applicant was appointed. It was urged that the applicant was appointed in the Clerical grade by the Director of Postal Services and that, therefore, imposition of penalty by the Senior Superintendent of Post offices would be bad. It is, however, material to note that there is nothing to show that the applicant was appointed by the Director of the Postal Services as contended by him. The Posts and Telegraphs Manual Vol. III contains a schedule of the in various posts the Postal Department and against each of these posts it is also stated as to who would be the Appointing Authority and who would be an authority competent to impose penalties. As far as the Clerical grades are concerned the schedule states that the appointing authority is the Senior Superintendent or the Superintendent of Post Offices and the Disciplinary Authority for imposing all kinds of penalties would be the Senior Superintendent. The impugned penalty of removal from service was imposed by the Senior Superintendent of Post Offices who is also the appointing authority for posts like that held by applicant according to the aforementioned schedule. Under these circumstances it would be very difficult for the applicant to contend that the Senior Superintendent or the Superintendent of Post Offices was not a competent authority or that the penalty imposed by Senior Superintendent is bad. It is not necessary to give the details of various allegations made against the

BCL

applicant. Suffice it to mention a few of them. For example VPL No. 229 was received at Paratwada on 4.12.1980. The said article was delivered. However, the signature of the addressee was not taken. The charge is that the article was delivered on 5.12.1980 on payment of Rs.270.12 but the VP article continued to be shown as not delivered till 16.12.1980. It is on that date that the amount of Rs.270.12 was accounted for by the applicant. In the second instance, article VPL 935 from Nagpur which was received on 9.12.1980 was shown to be in the VP register upto 16.12.1980. The delivery of the article was made on 12.12.1980 but the amount was actually accounted for on 16.12.1980. The third item is in connection with VPL 3351 from New Delhi. It was received at Paratwada Post Office on 9.12.1980 and delivered on 10.12.1980. But the VP amount of Rs.59.60 was accounted for by the applicant on 16.12.1980. There were in all 11 instances of such type.

4. It was contended by Mr.Mulla that this departmental enquiry was a result of a threat given by one Mr.Girish Kumar on 25.2.1980 when the applicant was working in the Amravati Post Office. Mr.Mulla submitted that this Girish Kumar went to the Amravati Post Office and gave a threat that he would teach a lesson to the applicant. It is material to note that there is nothing to show that Girish Kumar has given any such threat. This contention does not deserve to be seriously considered in as much as the alleged threat is said to have been given in February 1980 at Amaravati, thereafter the applicant was transferred to Paratwada and the alleged falsification of accounts took place somewhere in December 1980.

5. It was then urged that the VP amounts have been deposited and accounted for on the dates on which the amounts were actually received. The contention is that

B2L

the amounts were not received earlier than the dates on which they have been entered into the account. Mr. Mulla relied upon certain provisions in Posts and Telegraphs Manual Vol. VI part 1 Rule 219 which provide that the Post Master or the Assistant Post Master has to check the V.P. register every day in order to see that the VP articles received on the earlier day are rightly carried forward on the next day. Thereafter, the VP articles delivered on that day are also accounted for and entered. It was contended that the concerned register has been checked by the Assistant Post Master and he had not found anything wrong when the applicant had shown the VP articles as not delivered before the day on which he has credited the relevant amounts in the accounts books. It was urged that this sort of checking is an indication that the applicant has not made any manipulation of late delivery of VP articles for the purpose of retaining VP amounts for himself for sometime. We do not think that the charges levelled the applicant can be decided on such hypothesis. It may as well as the position that the Post Master or Assistant Post Master has not correctly checked the Register and that would not be decisive. What is important is to see whether there is evidence to prove that the applicant had made a record showing that the VP articles ^{were} delivered on a particular day though they were actually delivered a few days earlier. Before the Inquiry Officer there were statements of three witnesses Sarvashri Mohanlal Laxmi Narayan; Vijay Sridhar Palsodkar; and Surendra Madhukarrao Deshmukh. They were the addressees of the VP articles. Mohanlal has stated that he got the delivery of VP article on 5.12.1980, but the account book shows that the VP amount was credited on 16.12.1980. S M Deshmukh stated that he got the delivery of articles on 9.12.1980 by paying the concerned amount but

PLG

the account book shows that the amount has been credited on 16.12.1980. Similarly Palsodkar has stated that he got the delivery of the VP article on 9.12.1980, the register shows that the amount is credited on 16.12.1980. In addition the applicant has himself admitted in his statement dated 11.9.1981 that the above mentioned three articles as also remaining articles mentioned in the charge sheet were delivered earlier and the amount recovered has been credited on a subsequent date. It will not be possible for Mr. Mulla to contend that this positive evidence should be discarded simply because the Assistant Post Master is said to have not properly checked the VP register.

6. It is material to note that the applicant has not participated in the enquiry when it was at the stage of leading witnesses. The applicant has remained absent. The enquiry officer took on record the concerned documents as also the statements. There after a fresh notice was given to the applicant calling upon him to lead the defence evidence. The applicant did not appear for that purpose. Thus the enquiry was an exparte one and there is nothing wrong if the enquiry officer has based his report on the basis of the documents (including the statements) that were before him. This has been so held by the Delhi High Court in the case of Shri Bhag Singh Bedi Vs. Union of India through the Secretary, Ministry of Finance & ors. reported in 1974 (2) SLR 687. Secondly it is now an accepted position that the strict rules of evidence are not applicable in a domestic enquiry and the statements and witnesses recorded earlier can be lead in a departmental enquiry. This has been so held by the Supreme Court in the case of State of Haryana V. Rattan Singh reported in 1977 SC cases L&S page 298. The relevant head note reads as follows :

Reb

"In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All material which are logically probative for a prudent mind are permissible ...

Simple point in all these cases is, was there some evidence or was there no evidence - not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept."

It would also be beneficial to note another decision of the Supreme Court in the case of Major U.R.Bhatt V. Union of India, reported in AIR 1962 SC 1344. The relevant head note is as follows :

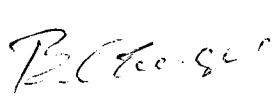
"The Enquiry Officer is not bound by the strict rules of the law of evidence and when the public servant declined to take part in the proceedings and failed to remain present, it was open to the Enquiry Officer to proceed on the materials which were placed before him."

It will not, therefore be open for the applicant to contend that previously recorded statements of witnesses and also of the applicant should not have been considered by the disciplinary authorities. This is more so when the applicant has chosen to remain absent in the enquiry.

7. The net result, therefore, is that the application is liable to be dismissed and accordingly we dismiss it. Parties to bear their own costs of the application.


(P SRINIVASAN)

Member (A)


(B C GADGIL)
Vice Chairman