

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 772 OF 2005

[Patna, this *Thursday*, the 28th Day of June, 2007].C O R A M

HON'BLE MR. JUSTICE P.K.SINHA, VICE-CHAIRMAN.

HON'BLE MR. S.N.P.N.SINHA, MEMBER [ADMN.]

.....
 Akhileshwar Prasad, S/o Late Mashudan Lal, resident of village & P.O.:
 Nimthu, District – Nalanda.APPLICANT.

By Advocate :- Shri J.K.Karn.
 Shri H.K.Karn.

Vs.

1. The Union of India through the Secretary-cum-D.G., Department of Posts, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Superintendent of Post Offices, Nalanda Division, Bihar Sharif.

.....RESPONDENTS.By Advocate :- Shri S. K. Tiwary, ASC.O R D E RJustice P. K. Sinha, V.C.:- Facts, in short, first -

[i]. The applicant while working as Gramin Dak Sevak Branch Postmaster [for short, GDSBPM] at Nimthu Branch Post Office in Nalanda Postal Division was found, on a surprise visit by officials, to be absent from post office and a lower staff doing his work. For this and other charges of misconduct, a memorandum of charges dated 18/20.09.2000 was issued to him. There were three charges against him, first that he was found absent from duty unauthorisedly on 24.09.1998 when a surprise visit was made by the Superintendent of Post Offices [SPOs] along with the Sub-Divisional Inspector of Post Offices [SDI (P)], East Sub-Division who also found one



Arjun Prasad, EDMC working in his place. The second charge was that the proceedee had continued to remain absent from duty unauthorisedly since 04.08.1998 and was found residing at another place, namely, Sohsarai, with his brother and had engaged himself in his brother's cloth shop. During his absence, the EDMC was performing the duties of EDBPM. The third charge was that while working as EDBPM the applicant did not reside in the post village Nimthu and did not perform the duties of EDBPM, regularly, in past also. This memo of charges also contained a list of 12 documents as well a list of five witnesses arraigned to prove the charges.

[ii]. After completing the inquiry the Inquiry Officer submitted his report holding the charges to be proved, a copy of which was sent to the applicant through Annexure-A/2 to enable him to make a representation against the findings, which the applicant appears to have done. However, the disciplinary authority, the SPOs, Nalanda Division by his order dated 23.10.2002 [Annexure-A/3] considered the report of the Inquiry Officer and noticed that the charged official in his representation dated 31.08.2002 had not accepted any of the charges and had claimed that he was present on 24.09.1998 on which date the officials had visited the Branch Post Office. He also noticed that the witnesses, namely, Arjun Prasad, the EDMC and Ramashish Prasad, the EDDA had rejected their own written statements while deposing before the Inquiry Officer claiming that their statements were prepared on the dictation of the then SDI [P], East Sub-Division claiming that the charged official was present on the date of visit. Two independent witnesses had not turned up before the Inquiry Officer for their evidence.

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Therefore, it was held that the charges were not proved and so holding, the disciplinary authority exonerated the applicant of all the charges. He also ordered that the period of unauthorised absence w.e.f. 24.09.1998 to 22.11.2001 be treated as duty for which the applicant would be entitled to the arrears of allowances as admissible to him.

[iii]. The matter was reviewed by the Chief Postmaster General [for short, CPMG], Bihar Circle, Patna who issued a show cause notice to the applicant dated 13.10.2003 relating to the disciplinary proceeding held against him against the charges under Annexure-A/1. It was mentioned therein that the Inquiry Officer had found the charges to be proved, still the SPOs had exonerated him from the charges. The reviewing officer held that the order of the SPOs, Nalanda Division did not commensurate with the charges levelled as well with the findings of the Inquiry Officer. The proceedee was asked to file a representation as to why the order of exoneration should not be set-aside and punishment of removal from service be not imposed upon him.

[iv]. The applicant submitted his show cause through Annexure-A/5 dated 05.11.2003. The reviewing officer on consideration of the materials on record and the explanation submitted by the applicant, recorded his order dated 15.10.2005 [Annexure-A/6] in which, for the reasons mentioned in the order, in exercise of powers conferred under Rule 19 of the Postal Gramin Dak Sevaks [Conduct & Employment] Rules, 2001 directed removal of the applicant from the post of GDSBPM of Nimthu Branch Post Office.

2. The learned counsel for the applicant has advanced manifold arguments against the impugned order at Annexure-A/6 through which

punishment was awarded. The learned counsel has argued following points :-

- [i] The CPMG, Bihar Circle, Patna has no power of review/revision of an order recorded by the disciplinary authority.
- [ii] The CPMG has mentioned a complaint received by him that the disciplinary authority by so exonerating the applicant had shared 50% of the back wages paid to the applicant. The argument was that the CPMG having mentioned that allegation against the disciplinary authority had allowed himself to be biased against the applicant.
- [iii] It was lastly argued that the punishment was disproportionate to the charges held to be proved.
- [iv] Besides that, the learned counsel also argued that since the EDMC and EDDA had gone back from their statements recorded on the date of surprise visit which ^{had} tended to prove the charges, it must be held that the Inquiry Officer and the Reviewing Officer had reached at their conclusions without cogent evidence on the record of inquiry.

3. Section 19 of the Department of Posts, GDSs [Conduct & Employment] Rules, 2001 [to be referred as '2001 Rules'] provides for revision and runs as follows :-

"19. Revision

[1] Notwithstanding anything contained in these rules -

- [i] the Head of the Circle, or Region
- [ii] any other authority immediately superior to the authority passing the orders; or
- [iii] any other authority specified in this behalf by the Government by general or special

order, and within such time as may be specified
in that general or special order;

may, at any time, either on its own motion or otherwise call for
records of any inquiry or disciplinary case and revise an order
made under these rules, reopen the case and after making such
inquiry as it considers necessary, may

[a] confirm, modify or set aside the order

or

[b] pass such orders as it deems fit:

Provided that no such case shall be reopened under this
rule after the expiry of six months from the date of the order to
be revised except by the Government or by the Head of Circle
or by the Postmaster-General [Region] and also before the
expiry of the time-limit of three months specified for preferring
an appeal under Rule 14:

Provided further that no order imposing or enhancing
any penalty shall be made by any Revisionary Authority unless
the Sevak concerned has been given a reasonable opportunity
of making a representation against the penalty proposed and
where it is proposed to impose any of the penalties specified in
Clauses [v] and [vi] of Rule 9 or to enhance the penalty
imposed by the order sought to be revised to any of the
penalties specified in those clauses, no such penalty shall be
imposed except after the inquiry in the manner laid down in
Rule 10, in case no such inquiry has already been held.

[2] No application to revise an order made on an
application for a revision or order passed or made on a revision
shall be entertained."

4. Prior to this the P&T Extra Departmental Agents [Conduct &
Sevice] Rules, 1964 was prevalent in which Rule 16 provided for review of
orders, containing almost the same provisions as under Rule 19 of the 2001

Rules so far the powers of the superior officers, such as CPMG, to revise an order passed by a disciplinary authority, is concerned.

5. From a perusal of these Rules it is clear that Head of the Circle, namely, the CPMG was empowered, at any time, either on his own motion or otherwise, to call for records of any inquiry or disciplinary case and revise an order made under these Rules, re-open the case and after making inquiry as may be necessary, to set-aside the order and to pass any order as he may deem fit. The bar of a period of six months, as in the Rule, is not applicable when the revision/review is made by the Head of the Circle. All that he has to do is to give a reasonable opportunity to the applicant to make a representation against the penalty proposed.

6. Therefore, it is clear that the CPMG, Bihar Circle is empowered to re-open the matter at any time, and to pass an order he may deem fit, after giving an opportunity to the proceedee to make a representation against the proposed punishment. While so revising the order of the disciplinary authority, the CPMG had called for an explanation of the applicant and had also considered that.

7. In this case the CPMG was not required, while calling for explanation from the proceedee, to give out in detail his reasons for disagreeing with the order of the disciplinary authority as the CPMG was in agreement with the findings of the Inquiry Officer and had sought to review the order of the disciplinary authority on the basis of that report, a copy of which was already made available to the applicant/proceedee.

Therefore, this objection of the learned counsel for the

applicant has to be brushed aside.

8. In so far as the second objection is concerned, no doubt in the impugned order the CPMG has mentioned receipt of a complaint from one Amibka Choudhary and other villagers of Nimthu, through the Postal Directorate, alleging corruption on the part of the disciplinary authority and receipt of 50% of the back pay payments as bribe. The CPMG has also mentioned that after necessary inquiry into the complaint and on examination of documents of the disciplinary case it was ^{found} that the order including for grant of back wages for the period the applicant had not done duty was neither fair, nor based on the facts and documents adduced in course of inquiry. Therefore, it was decided by the CPMG to revise the order of the disciplinary authority.

9. Here matter of complaint so received has been mentioned as the reason for which the record of the departmental proceeding was called and looked into. But this order clearly states that on perusal of the documents and materials on the record the order of the disciplinary authority was not found to be fair and hence an explanation was called from the proceedee. Therefore, just mentioning a ground as to how and why the records of the proceeding were perused does not lay upon the CPMG any charge of bias. This point is also not acceptable.

10. In so far as the argument that the punishment was disproportionate of the charges held to be proved, suffice it to say that the charges were quite serious which alleged that on a particular day not only that the applicant was absent from his duty unauthorisedly, but had allowed the

BMG

EDMC to do the work of EDBPM. The other charges were also that earlier also he had remained absent unauthorisedly and was living at another place during that period.

11. Once the charges are legally found to be established against the charged official, it is mainly the discretion of the disciplinary or the revisional authority to award punishment as it may deem fit. The scope of interference in that discretion by the Courts/Tribunals is very limited. Only if the punishment is found to be shocking to conscience that any interference may be made thereto. The charges being quite serious, we do not see any scope of interfering with the punishment.

12. In so far as the adequacy of evidence is concerned, the order of the CPMG is quite elaborate and he has discussed the materials that were on the record, whether in favour of the proceedee or, against him. The CPMG had noticed that the proceedee was found absent from duty on 24.09.1998 in course of surprise visit by the SPOs, Nalanda Division who had very clearly recorded this fact in visit remarks as also the fact that GDSMC was found performing the duties of BPM on that date without any authority. The SPOs had directed the SDI[P] in the visit remark to submit report after making detailed inquiry. The SDI[P] in his inquiry report dated 04.12.1998 had reported that the applicant did not reside in the post village and did not perform the duties of BPM which was performed by GDSMC. He also reported that the records of the BO were found written by the GDSMC on several dates and the BO account was not written from 04.09.1998 to 23.09.1998 in absence of the proceedee [since 04.09.1998]. He also had

[Handwritten signature]

annexed the written statements of GDSMC and DA as also of some villagers supporting the charges. The CPMG also noted that the proceedee in his written statement had accepted his absence from 04.09.1998 to 24.09.1998, also admitting that in his absence the work was performed by Arjun Prasad. The proceedee had also accepted his absence from duty on 24.09.1998 in his written statement dated 10.09.2003 made before ASP [Vig.], C.O., Patna. The CPMG also mentioned as to how the deposition of SDI[P] which accepted that on 29.07.1998 he had verified cash and stamps from the custody of the proceedee, had no relevance to the charge of his absence from 04.09.1998 to 24.09.1998. He found that the denial of contents of previous statements by Arjun Prasad and Ramashish Prasad before Inquiry Officer would appear to be an afterthought as they themselves had written in the written statements that they had given those statements without any pressure. He also noted that genuineness of those statements were confirmed by the SDI[P] before the Inquiry Officer.

13. The CPMG also noticed that the Inquiry Officer had compared the handwriting of Arjun Prasad in his written statement with handwriting on the records of the BPO and had found the handwritings to be tallying fully which also substantiated the charge that the said Arjun Prasad was also doing the work of GDSBPM.

14. The law relating to proving of charges in a departmental proceeding is not as rigorous as in the case of proving charges in a criminal case before a Court of law. While, in the later, the evidence must prove the charges beyond reasonable doubts, in the former if there is evidence on the

record which proves the nexus between the proceedee and the acts alleged and, if on such materials the charges are held to be proved, such a finding would be legally tenable. It is sufficient that if any reasonable person, on going through the materials on record would come to the conclusion that such a nexus existed, then the view held by the competent authority finding the charges to be proved would be legal, not liable to any interference by Courts/Tribunal, the Tribunal not sitting in appeal over such a view held by the competent authority.

15. In that view of the matter, the conclusion as arrived at by the CPMG, Bihar Circle, cannot be faulted.

We do not find any merit in this application which is dismissed.

No costs.



[S.N.P.N.Sinha]/M[A]



[P.K.Sinha]/VC

skj.