

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 216 of 1999.

Dated this Wednesday, the 15th day of January, 2003.

Suresh Kashinath Mehta, Applicant.

Shri S. P. Inamdar, Advocate for Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? ✓
(ii) Whether it needs to be circulated to other Benches of the Tribunal ? ✗
(iii) Library. ✗


(B. N. , BAHADUR)
MEMBER (A)

OS*

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Suresh Kashinath Mehta,
Postal Assistant - Group 'C'
Poladpur (Raigad)

...

Applicant.

(By Advocate Shri S. P. Inamdar)

VERSUS

1. Union to India through
The Member (Personnel),
Department of Posts,
Dak Bhavan Sansad Marg,
New Delhi - 110 001.

2. The Director of Postal Services
(MR),
The Chief Postmaster General,
Maharashtra Circle,
Mumbai - 400 001.

3. The Superintendent of Post
Offices, Raigad District,
Alibagh - 402 201.

... Respondents.

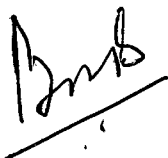
(By Advocate Shri V. S. Masurkar)

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case has come up to the Tribunal seeking quashing and setting aside of the orders of punishment imposed upon him through the order of Disciplinary Authority dated 07.08.1995, order of Appellate Authority dated 17.10.1996 and the order on his revision petition dated 04.03.1998. He seeks a direction from the Tribunal to restore his pay scale,

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grade and increments which he held earlier. Consequential directions/reliefs are also sought.

2. The facts of the case are in a short compass, in that, the Applicant was proceeded against a departmental enquiry and after due enquiry, was imposed punishment by Disciplinary Authority vide order dated 07.08.1995. The order is as follows :

"I, T.S. Sinha, Senior Superintendent of Post Offices, Thane Central Division, Thane - 400 601 (Ad hoc Disciplinary Authority appointed vide Directorate's letter No. 4/38/94-TF. dtd. 9.8.94) in exercise of the powers conferred by Rule - 12 of C.C.S. (CCA), Rules, 1969, have decided that Mr. S. K. Mehta, PA, Mahad is reduced to the lower post/grade of Time Scale PA until he is found fit by the competent authority to be restored to the higher post/grade of TBOP.PA."

He went up in appeal to the Director of Postal Service, who modified the order of punishment and made the following order :

"I, T. Murthy, DPS (MR) modify the punishment to that of reduction by 5 stages from 1900 to Rs. 1680/- in the pay scale of 1400-40-1800-EB-50-2300 for a period of four years. The Official will not earn any increment during the period of reduction. This is without cumulative effect. The leniency shown should help the official to improve his performance. It is hoped that the official will give a better output in the forthcoming years."

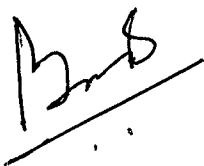
Thereafter, the Applicant sought the route to revision through a revision petition which was considered and rejected by a Member of the Postal Board, vide his order dated 04.03.1998 (page 27 of the O.A.).



3. The Respondents have submitted a reply, resisting the claims of the Applicant. After describing the facts and the procedure followed, the Respondents state that the Disciplinary Authority, Appellate Authority and the Revisionary Authority have passed their respective orders after due and proper application of mind, and that the orders are detailed speaking orders. The contention of the Applicant made in the O.A. to the effect that Appellate Authority has enhanced the punishment without notice is denied by taking the stand that the punishment imposed by modified order is not an enhancement. In fact, this point was argued by both Learned Counsel as a core point and will be discussed later. In the further part of the Written Statement, the Respondents have sought to offer parawise comments on the averments made in the O.A.

4. Learned Counsel for the Applicant, Shri S.P. Inamdar, first made the point that a reading of the orders of Disciplinary Authority and the Appellate Authority would clearly show that Appellate Authority's order enhances the punishment, and that it is therefore defective, in that, no show cause notice/hearing was provided to him. This, in fact, is the main argument taken. He sought to make the point that he has described in para 4.5 as to how the punishment imposed by Disciplinary Authority is less. A salient argument taken in this direction was that in the former order no stoppage of increment was ordered whereas in the later order of Appellate Authority the stoppage of increments for the period of four years was ordered.

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5. Arguing the case on behalf of Respondents, their Learned Counsel, Shri V.S. Masurkar, took the point as detailed in para 2 of the Written Statement stating that firstly the order of Appellate Authority constituted a reduced punishment and hence no notice was necessary; also that personal hearing was not asked for. He also argued the point that if the Appellate Authority's order constituted an enhancement of punishment, the course open to Applicant was to go up in appeal, as provided in Rule 23 sub-clause 3 of C.C.S. (C.C.A) Rules. Instead, the Applicant had chosen to go in revision and his revision was disposed of through a well argued order at a senior level. He also raised the point that the test of fairness and prejudice should be considered as per law settled by the Hon'ble Supreme Court.

6. After perusing of records and considering the arguments made by Learned Counsel on both sides, it is clear that the core issue is, whether the Appellate Authority's order constituted an enhancement of punishment. Here we note the fact that the order of Disciplinary Authority is per se a very defective order, in that, he has stated that the reduction in the lower post/grade of time scale is "until he is found fit by the competent authority to be restored to the higher post/grade of T.B.O.P." Now this part of the order is something that needs to be criticized badly. Such kind of orders are never made in service law. Every punishment either by way of reduction in grade or to a lower scale has to be necessarily followed by stipulation of a time period, for which the punishment will be effective. We are not making a theoretical point that some vacancies may crop up in the

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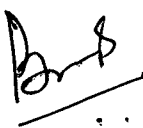


next few months and the Applicant would be considered fit. Under these circumstances, it would not be open to the Respondents to take a view that merely because the reduction is from Rs. 1900/- to Rs. 1680/- by Appellate Authority (as against from Rs. 1900/- to Rs. 1600/- by Disciplinary Authority) the latter punishment is lesser. A very clear cut arithmetical assessment is not possible in view of the vague or incomplete order made by the Disciplinary Authority. It will have to be construed in favour of the Applicant to this extent that order of Appellate Authority is of higher severity.

7. We note that there is a right as per rules for the Applicant to being heard if the penalty is to be enhanced in Appeal. While all the objections, etc. have come out now and there is no material used in providing empty formalities, it will be best in the interest of justice if we provide opportunity to the Applicant to make a representation to the Appellate Authority as to why enhanced punishment should not be meted out to him. Considering this and the earlier appeal memo, the Appellate Authority will need to issue a special order afresh.


8. In view of the above discussions, we allow this O.A. to the extent in terms of the following orders :

(i) The Order of Appellate Authority is hereby quashed and set aside. Liberty is provided to the Applicant as spelt out in para 7 above. The competent authority shall decide the




appeal and representation if made within a period of 45 days from the date of receipt of copy of this order by Applicant/his counsel. The decision by Appellate Authority shall be taken on merit and in accordance with rules and considering the observations/directions in these orders within a period of three months from the date of receipt of representation.

(ii) No order as to costs.


(S. L. JAIN)
MEMBER (J)

OS*


(B. N. BAHADUR)
MEMBER (A).