

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.839/99

Dated this the 28<sup>th</sup> day of Feb., 2003.

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

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

Narayan Parashram Pishte,  
Postal Assistant,  
Ichalkarnji Head Post Office,  
At P.O.Ichalkaranji,  
Ichalkarnji.

...Applicant

By Advocate Shri S.P.Kulkarni

vs.

1. Union of India  
through Sr.Supdt. of Post Offices,  
Kolhapur Postal Division,  
At P.O. Kolhapur.

2. Director of Postal Services,  
Goa Region, At P.O. Panaji.

3. Postmaster General,  
Goa Region,  
At P.O.Panaji.

4. Chief Postmaster General,  
Maharashtra Circle,  
Old G.P.O. Building,  
2nd Floor, Fort,  
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-

P.Ym - -

O R D E R

{Per : Shri S.L.Jain, Member (J)}

The applicant is seeking the relief to quash and set aside the punishment order dated 13.10.1998, appellate order dated 19.7.1999 and also the chargesheet issued on 18.8.1998 in pursuance of which the above stated orders of the departmental authorities are passed.

2. The applicant was served with the chargesheet dated 14.8.1998 under Rule 16 of CCS (CCA) Rules, 1965 which is in respect to an incident dated 7.7.1998, a statement of misconduct of the misbehaviour on the basis of which action is proposed against the applicant which is narrated on OA.p.73.

3. The applicant replied to the said chargesheet vide his reply dated 7.9.1998 Annexed as Annexure-A-7 (OA.p.53 & 54) denying the said charges and alleging that the charges levelled against him being false and unfair. In view of application of applicant dated 18.8.1998, the respondents passed the order dated 20.8.1998 granting 15 days extension for submitting representation, forwarding copy of the application of Smt.M.S.Gulhani, as asked for by the applicant and denying enquiry officer's report claiming that it is official documents.

P.O. - -

4. Disciplinary authority after receipt of the reply dated 7.9.1998 passed the punishment order dated 13.10.1998 imposing the penalty of with-holding the increment for a period of 35 months with effect from it becomes due without cumulative effect. The applicant preferred an appeal dated 24.11.1998 (Anexure-A-4) which was decided vide impugned order dated 19.7.1998 (A-A-5).

5. The main grievance of the applicant is as argued by the learned counsel for the applicant that copy of the enquiry report which was the basis for the issue of the chargesheet, even on demand by the applicant vide his application dated 18.8.1998, was not supplied by the disciplinary authority on the ground that it is an official document. Particularly when the applicant has denied the charges, the disciplinary authority ought to have ordered the enquiry in the matter. The other grievance of the applicant that the chargesheet mentions Rule 31 (iii) and 3-C of CCS (Conduct) Rules, 1964 while there exists no rule 31 (iii) and 3-C of CCS (Conduct) Rules, 1964.

6. The learned counsel for the respondents argued the matter at length and stated that the applicant has never demanded an oral enquiry, as such, the applicant is now not entitled to raise such plea in judicial review and there is a typing mistake in mentioning Rule 31 (iii) while in fact it is Rule 3 and in fact there was no charge in respect of Rule 3-C CCS (Conduct) Rules, 1964.

*PSD*

He further argued that issue of chargesheet under Rule 14 of CCS (CCA) Rules, 1965 and issue of chargesheet under Rule 16 of CCS (CCA) Rules, 1965 - the procedure for dealing the said charges is not one but entirely different one relying on 2000 (5) SLR 600 - Food Corporation of India, Hyderabad & Ors. vs. A.Prahalaba Rao. We are entirely in agreement with the learned counsel for the respondents in this respect that procedure for finalising the chargesheet under Rule 14 and under Rule 16 of CCS (CCA) Rules, 1965 is not one and the same but is entirely different one.

7. The learned counsel for the applicant relied on 1989 (4) A.I.SLJ 513 decided by CAT, Earnakulam Bench - Thomas Pothan & Ors. vs. Sr.Suptd. of Post Offices, Kottiam Division, Kottian and Anr. and argued that even chargesheet under Rule 16 of CCS (CCA) Rules, 1965 - principle of natural justice is to be adhered to. He further argued that denial of copies of the documents before preparing defence amounts to denial of reasonable opportunity of being heard.

8. The learned counsel for the respondents argued that as in the chargesheet itself no names of the witnesses were mentioned and no documents were relied, as such, there is no error on the parts of the respondents in denying to supply of enquiry officer's report.

9. At the out set, it is worth mentioning that even after the punishment order dated 13.10.1998, the applicant vide his letter dated 27.10.1998 demanded the documents which were denied by the respondents vide letter dated 28.10.1998. As the said demand and refusal is after passing of the punishment order dated 10.9.1998, we do not attach more importance with respect to the same.

*J. U. S. M.*

10. On perusal of case of Food Corporation of India vs. A.Prahalaba Rao relied on by the learned counsel for the respondents, it has been held that where employee disputes his liability, a full fledged enquiry should be held, such a proposition can not be held in view of the entire purpose of incorporating summary procedure for imposing minor penalties, the provisions being similar in para materia to Rule 16 of CCS (CCA) Rules, 1965, the said proposition can be accepted. It can not be accepted in each and every circumstance for the reason that the Apex Court has further stated that "if the discretion is given under Resolution 16 (b) is misused or is exercised in arbitrary manner, is open to the employee to challenge the same before the appropriate forum". The Apex Court has further held that "Hence, it is apparent that High Court erroneously interpreted that by holding that once the employee denies the charge, it is incumbent for the authorities to conduct enquiry contemplated for imposing major penalty. It also erred in holding that where employee denies that loss is caused to corporation either by his negligence or breach of order, such enquiry should be held". The Apex Court has stated that "it is settled law that courts power in judicial review in such cases is limited and Court can interfere where the enquiry held in a manner inconsistent with the rules of natural justice or in violation of Statutory Rules prescribing the mode of enquiry in imposing punishment or where the conclusion or the finding given by the enquiry officer is based on no evidence or is such that no reasonable person would have ever reached".

Perusal of the above said proposition of law makes it clear that exercise of jurisdiction either to hold enquiry or not is subject to judicial review depending on facts of each case.

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11. We are able to place our hands on a judgement reported in 2002 SCC (L&S) 188 - O.K.Bharadwaj vs. Union of India & Ors., wherein the proposition laid down is that "whether an opportunity is given to appellant to put forward his grivance or in circumstances and enquiry was called for and if called for was in accordance of law and principle of natural justice". Thus it is clear that even in enquiry under the Rule 16 of CCS (CCA) Rules, principles of natural justice is to be applied.

12. The case of Thomas Bothen and Ors. vs. Sr.Suptd. of Post Offices, Kottiam relied on by the learned counsel for the applicant refers to case of M.L.Gera vs. Chief Engineer (Irrigation) 1973 (1) SLR 1076 decided by the Hon'ble High Court of Punjab & Haryana and Amrit Rao vs. State of Punjab - 1973 (1) SLR 311 in para 8 of it's judgement and states that proceedings to impose a minor penalty is beyond doubt quasi judicial and the authority must make a judicial approach and give adequate opportunity to the delinquent official to submit his explanation and give reasons for the ultimate decision taken. The approach can not be judicial where an enquiry is made by some other authority, recommendation of which are not disclosed to the person effected thereby and no reasons are recorded by the competent authority as to why it is accepting those recommendations.

Further Rule 16(1)(b) of CCS(CCA) Rules,1965 indicates that even for imposing minor penalties an enquiry has to be held 'in every case in which the disciplinary authority is of the opinion that such an enquiry is necessary'. In the instant case before us by denying the petitioners an access to the statements and report, the respondents have not only denied the applicant

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reasonable opportunity of hearing but also thereby has denied him the opportunity of proper representation as would be needed under Rule 16(1)(a) to be taken into account to form the opinion whether an enquiry was necessary or not and also to decide about the guilt.

13. In the instant case before us, the conclusion of the disciplinary authority is based on the enquiry report by A.S.P.O. (Tour) Kolhapur which was denied to the applicant, even on demand by him vide letter dated 18.8.1998 replied vide letter dated 20.8.1998 (A-8). The said enquiry being behind the back of the applicant.

14. In a departmental enquiry under Rule 16 of CCS (CCA) Rules, 1965, it is true that the applicant can not claim as a matter of right, a detailed oral enquiry and the discretion is vested with the disciplinary authority either to allow or deny the same. The said discretion is to be exercised in a judicious way and if not so exercised, it is subject to judicial review.

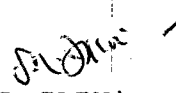
15. No straight jacket can be made by stating in which cases, oral enquiry is to be allowed and in which cases it is to be denied. We as a broad Rule express the proposition that in a case where the case is based on such document/documents where either they are conclusive in itself or minimum they have a presumptive value, proceedings under Rule 16 of CCS (CCA) Rules, 1965 can be initiated and the denial to oral enquiry can be restricted only in the earlier case but not in the later case. A case based on oral evidence, when oral enquiry is asked for, the denial of the same will not be justified.

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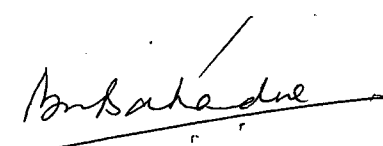
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16. If we examine the present case, we find that in absence of enquiry report, the applicant was denied opportunity of reasonable hearing to have represented his case before the disciplinary enquiry, as such, the conclusion reached by the disciplinary authority and appellate authority is vitiated. Further, even during appeal, the appellate authority has failed to consider his grievance mentioned at para 9 of the appeal. As such the punishment order and the appellate order dated 13.10.1998 and 19.7.1999 deserves to be quashed and set aside. However, respondents are at liberty to continue the proceeding with the directions to the respondents to supply to the applicant copy of enquiry report referred above, afford the applicant an opportunity to file the explanation and thereafter, arrive to the conclusion that oral enquiry is necessary or not, if asked for and then decide the matter in accordance with law.

17. In the result, O.A. is allowed, the punishment order and the Appellate order dated 13.10.1998 and 19.7.1999 respectively are quashed and set aside. The respondents are at liberty to continue with the disciplinary proceedings and in that case we direct the respondents to supply to the applicant copy of enquiry report (along with copy of statements recorded), afford the applicant opportunity to file the explanation and thereafter, arrive to the conclusion that oral enquiry is necessary or not, if asked for and then decide the matter in accordance with law within a period of three months from the date of receipt of the copy of the order. No order as to costs.

  
(S.L. JAIN)

MEMBER (J)

  
(B.N. BAHADUR)

MEMBER (A)

mrj.