

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 794 of 2001

Dated this Tuesday the 11th day of March, 2003

Coram : Hon'ble Shri Govindan S. Tampi, Member (A)

Babasaheb S. Munde vs. Hon'ble Shri K.V. Sachidanandan, Member (J).

aged 34 years;
Branch Post Master, B.O., TQ.Dharur,
District Beed.
(By Advocate Shri V.M.Kendre)

- Applicant

Versus

1. Post Master General,
Aurangabad Region,
Aurangabad.
2. Director Postal Services,
Aurangabad Region,
Aurangabad.
3. Superintendent of Post Offices,
Beed Division, Beed.
4. Assistant Superintendent,
Post Office, North Sub Division
Beed District, Beed.
5. Union of India
through Chief Post Master General,
Mumbai.
(By Advocate Smt.H.P.Shah)

- Respondents

ORAL ORDER

By Hon'ble Mr.K.V.Sachidanandan, Member (J) -

The Applicant while functioning as Branch Post Master, Chondi B.O. received Dadar R.L.No.1597 dated 21.11.1998 on 27.11.1998 through B.O.Slip. It was addressed to Headmaster Yeshwantrao Chavan Vidyalaya, Chondi. It is contended that instead of delivering the said R.L. to its addressee, the Applicant opened it, found sets of 21 expected questions for SSC examination. It is alleged that the Applicant sold one set to one Kumari Sangita Mundhe, a student of the said Vidyalaya on taking price of the said set and then reclosed it and showed delivery after scoring/altering the date of delivery. Hence the Applicant faulted B.O.Rule No.86, 7th Edition corrected upto

....2/-

31.3.1986. The Applicant was charge sheeted for the said offence. The charges levelled are reproduced below:-

"Charge No.1

Shri Babasaheb Sadashiv Mundhe B.O.Branch, Chondi (Kille Dharur) while working there, therefore other Mumbai Registered letter No.1597 dated 21.11.1998 addressed to Headmaster, Yeshwantrao Chavan Vidhayalaya, Chondi dated 27.11.1998 had received Registered letter contending 21 expected question set for the 10 std. students opening it without any permission and sold the expected question set to one student name Ku.Sangita Shamrao Mundhe obtaining the price and registered letter 31 was signed by overwriting dated 2.2.1999 and delivered it late, therefore, he behaved dishonestly and his act was liable for punishment as per rule 86 Service Rule for Postal E.D.staff."

2. The Respondents appointed an Enquiry Officer as per Rule 8 of the Conduct Rules, 1964 on 31.5.1999 on the basis of one application dated 22.3.1999 alleged to have been filed by Sarpanch of village Chondi regarding complaint without anybody's name or without sign of that complainant. The Applicant stood charge sheeted for the offence that he opened a set of 21 expected questions for SSC examination and sold one set to one Ku.Sangita Mundhe. After a fulfilled enquiry, the Enquiry Officer submitted the enquiry report on 8.8.2000. On the basis of the said enquiry report, respondent no.2 by way of a show cause notice awarded the punishment of debarring the Applicant for three years from appearing for Postmen Recruitment Examination and Postal Assistants Examination on 29.9.2000 (Exhibit-B). To the said show cause notice, the Applicant filed reply taking the plea of no evidence on 19.5.2001 to respondent no.2 - the Director Postal Services, Aurangabad Region, Aurangabad but respondent no.2 did not consider the same. The

Respondent no.2 after perusing the punishment order passed by respondent no.3, without application of judicial mind, issued show cause notice on 29.9.2000 thereby revising the punishment of debarring the Applicant for three years from appearing in the examination of Postal Assistants and Postmen to that of dismissal from service (Exhibit-D). Aggrieved by the said order, the Applicant approached this Tribunal by filing this OA claiming the following reliefs:-

- (a) This Application kindly be allowed.
- (b) The record and proceedings may kindly be called for from the office of the Respondents no.2 and 3;
- (c) The order passed by the Respondent no.3 on 29.9.2000 debarring the Applicant for three years for appearing in Postmen Recruitment Examination and Postal Assistants Examination, (ii) The impugned order passed by the Respondent no.2 on 2/5.7.2001 thereby dismissing the Applicant's services as B.P.M. and (iii) The order passed by the Respondent no.1 on 10.10.2001 rejecting the appeal filed by the Applicant may kindly be quashed and set aside.
- (d) Pending hearing and final disposal of this application the operation and execution effect of the above orders passed by respondent no.1 to 3 may kindly be stayed in the interest of justice.
- (e) Pending hearing and final disposal of this Application, the Respondent no.3 may kindly be directed to allow the Applicant to perform his duties as BPM at Chondi BO as usual as before and to release his salary and other allowances permissible as per law.
- (f) The Respondent no.3 may kindly be directed not to fill up the post of BPM at Chondi BO Tq Dharur as advertised on 19.7.2001 and the advertisement itself be stayed till the final decision of this application.

....4/-



:: 4 ::

- (g) Any other suitable relief/s in favour of this applicant, which this Hon'ble Authority may kindly be granted and oblige.

3. The Respondents have filed a detailed reply statement contending that the Applicant managed to get open registered letter and took out one set of 21 expected questions for SSC examination. He further managed to sell the set of expected question paper to one Ku.Sangita Mundhe. He further managed to reclose and deliver the said article to the addressee late, but managed to alter the date of delivery, to show that it was delivered without delay. Enquiry was conducted and the Enquiry Officer submitted the enquiry report on 8.8.2000 holding charge of scoring the date of delivery on the receipt to be signed by addressee as proved. However, the charge of sale of expected question paper set, was not proved. As such the charges alleged were partially proved.

let

4. The Appellate Authority is an authority to review the punishment awarded and to either increase or to decrease the punishment. Accordingly the Director of Postal Services, Aurangabad Region, Aurangabad has reviewed the punishment awarded to the Applicant and on finding that the punishment awarded was not proportionate to the offence committed, has issued show cause notice as to why punishment of dismissal from service should not be reviewed. It is further contended that the action of the respondents is in accordance with law and there is no procedural irregularity. As such the OA is liable to be dismissed.

5. Heard Shri V.M.Kendre, learned counsel for the Applicant and Smt.H.P.Shah, learned counsel for the Respondents.

....5/-

6. Learned counsel has taken us through the pleadings, materials and evidence placed on record. The learned counsel for the Applicant submitted that the punishment imposed upon the Applicant for the first time barring him from appearing in the Postmen Recruitment Examination and Postal Examination was passed on 29.9.2000 whereas suo moto order was passed by the Appellate Authority on 12.1.2001. He has contended that the period of limitation in such action as contemplated as per rules is only six months, and therefore, the order of the Appellate Authority in revising the original order is faulted and is to be quashed. The counsel for the respondents on the other hand submitted that there is no time limit prescribed in respect of the original order and therefore the question of limitation does not arise.

7. We have given due consideration to the arguments advance by learned counsel and we find that even if there is no time limit prescribed, the nomenclature that is used as reasonable time will be limited to six months in any case. Therefore, an order that has been passed in revisional jurisdiction by the Appellate Authority should have been issued positively within six months time but there is ~~no~~ delay in passing this order and therefore this is faulted and in our view this is not sustainable and is liable to be quashed on the sole reason that the second order is barred by limitation. In the circumstances, we quash and set aside the review order and hold the original order to

....6/-

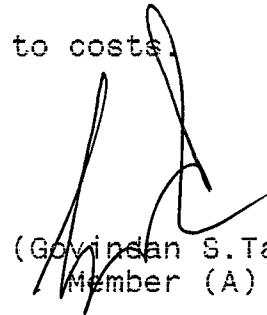


stand good. In furtherance of this order, the Applicant will be entitled to all consequential benefits including reinstatement. However, we are of the view that the Applicant will not be entitled to any backwages. The entire exercise shall be completed by the Respondents within a period of two months from the date of receipt of a copy of this order.

8. With the observations made above, this OA is disposed of. In the circumstances, there is no order as to costs.



(K.V.Sachidanandan)
Member (J)



(Govindan S.Tampi)
Member (A)

mb