

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE.

DATED THIS THE TWENTY SECOND DAY OF JANUARY, 1987.

Application No. 1582/86

Present: Hon'ble Shri Justice K.S. Puttaswamy,
Vice-Chairman,
and

Hon'ble Shri L.H.A. Rego, Member (A).

Between:

M.J. Kolkar,
ex-postal servant,
r/o Chavat Galli,
Belgaum.

....Applicant.

and

Government of India,
by the Secretary to Govt.,
Post & Telegraphs Dept.,
New Delhi.

....Respondent.

(Shri M. Vasudeva Rao, Addl. CGSC)

This application having come up for hearing today before this Tribunal, the Hon'ble Vice-Chairman made the following:-

O R D E R

This is a transferred application and is received from the Court of Munsiff, Belgaum. On such transfer, this Tribunal issued notices to the counsel for the applicant on more than one occasion, and all of them did not evoke any response either from him or the applicant.

But notwithstanding the same, on 8.12.1986, we directed issue of fresh notices to the applicant and his counsel by Registered Post with Acknowledgement Due, and in pursuance of the same, the Registry had accordingly issued notices. We now find that the notice issued to the counsel has been received by him, and the notice issued to the applicant, though addressed and sent to the very address furnished by him in his plaint, had been returned with an endorsement that the same was insufficient and cannot be served. When the notice issued to the applicant to the very address furnished by him in his plaint has been returned, no useful purpose will be served by issuing a fresh notice to that address.

2. We called this case today on more than one occasion in the pre-lunch session and again at 2.30 P.M. and on every such occasion, the counsel for the applicant, though duly served, has not appeared. He has also not written any letter expressing his inability to appear for any reason, or furnish the full and correct address of the applicant to enable this Tribunal to issue a fresh notice. In these circumstances, no useful purpose would be served by this Tribunal issuing any more notices either to the applicant or to his counsel. With considerable reluctance and with no choice left, we have, therefore, proceeded to peruse the papers and heard Shri M. Vasudeva Rao, learned Additional Central Government Standing Counsel, appearing for the respondents.

3. In this transferred application, the applicant has challenged Order No. STA/9-3/44/78 dated 24.3.1979 of the Director of Postal Services (S), Karnataka Circle, ('the Director'), and Order No. Vig/5/2/76-77 dated 8.3.1978 of the Superintendent, Rail Mail Service ('RMS'), Hubli Division, Hubli ('Superintendent').

4. At the material time, the applicant was working as a Postal Jamedar in the Sub-Record Office, RMS, Hubli Division. While he was so working, the officers noticed various omissions and commissions in the discharge of his duties. Evidently, after a preliminary investigation, the Superintendent initiated disciplinary proceedings against the applicant under the Central Civil Service (Appeal) Rules, 1965 ('the rules') and framed three charges and served the same along with the statement of imputations, list of witnesses and documents in conformity with the rules. The three charges framed against the applicant read thus:

- (1) That Shri M.J. Kolkar, Jamadar of SRO RMS 'HB' Division Belgaum while functioning as mailman No.II in Belgaum Stg/1 dated 11.4.76 entered the registration -cum- parcel room unauthorisedly between about 9.05 and 09.10 hrs when there was nobody present in that room and without anybody's specific direction. In that he acted in contravention of the orders in memo of distribution of work of Belgaum Stg/1.

(2) That on 11.4.76 while functioning in the aforesaid office, the said Shri M.J. Kolkar, without anybody's direction or presence took possession of the register bag closed by the set for Sawantawadi in the registration cum parcel room and cut the bag along ~~with~~ the stitches so as to form a cut sufficient to allow abstraction of contents. After being noticed by the H.S. of his having abstracted one INS from the said bag through the cut, he further again picked up the said registered bag, cut open its cord and poured down all the other articles contained in it on the head sorters table without anybody's direction. In that Shri M.J. Kolkar misbehaved and acted in contravention of rule 3(i) (iii) of CCS(Conduct) rules, 1964.

(3) That on 11.4.76 while functioning in the aforesaid office, the said Shri M.J. Kolkar abstracted the INS envelop No.102 of New India Assurance Bombay from the registered bag closed and sealed by the set and tampered with it tearing the covering envelop of the said INS letter. In that Shri M.J. Kolkar exhibited lack of integrity contravening the provisions of rule 3(i)(i) of the CCS(Conduct) Rules 1964.

As the applicant denied the charges levelled against him, the Superintendent appointed one Shri L.G. Chougule as the enquiry officer ('EO'), who held a regular inquiry and submitted his report, holding him guilty of all the



three charges. On receipt of that report and concurring with the same, the Superintendent, complying with the Rules and the Constitution, on 8.3.1978, inflicted the penalty of dismissal from service against the applicant. Aggrieved by the same, the applicant filed an appeal before the Post Master General, who by his order dated 24.3.1979 has dismissed the same. On 18.11.1980, the applicant commenced O.S. No. 539/80 in the Court of the Munsiff, Belgaum, challenging these orders, principally, on two grounds, and they are (i) that the Superintendent was not competent to initiate the disciplinary proceedings and inflict the penalty of dismissal from service, and (ii) the enquiry held and punishment imposed were in contravention of the principles of natural justice and the rules.

5. Before the Munsiff, the respondent has filed its written statement denying all the grounds urged by the applicant.

6. On an examination of the pleadings, the learned Munsiff framed as many as four issues in the suit, and out of them, we are really concerned with the first two, which read thus:

"1. Whether the plaintiff proves that he has not been given an opportunity of being heard with the departmental enquiry?

2. Whether the order of dismissal is void?"

We now proceed to examine Issue No.2 first, and then Issue No.2.



7. In his plaint, the applicant has vaguely urged that he had been wrongly dismissed by the Superintendent and the appellate authority had wrongly confirmed the order of dismissal. In its written statement, the respondent had asserted that the Superintendent, who was the appointing authority of the applicant, was competent to inflict the penalty of dismissal.

8. In the first place, this legal contention urged by the applicant is as vague as it could be, which itself justifies us to reject the same.

9. We have no reason to hold that the Superintendent was not the appointing authority of the applicant. When once we find that the Superintendent was the appointing authority, it was undoubtedly open to him to initiate the proceedings and dismiss the applicant from service. Even otherwise, under the Rules and Orders in force, the Superintendent was competent to initiate the disciplinary proceedings and inflict the penalty of dismissal against the applicant. We see no merit in this ground urged by the applicant and we reject the same.

10. The applicant had filed the appeal before the Director and had invoked his jurisdiction. When this is so, it hardly lies in his mouth to contend that the Director was not competent to entertain the appeal and dismiss the same. Even otherwise, we find that the

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Director was competent to deal with the appeal filed by the applicant. For these reasons, we see no merit in this contention of the applicant and we reject the same.

11. On the foregoing discussion, we answer Issue No.2 against the applicant.

12. On issue No.1, the case of the applicant is that he was not afforded a reasonable opportunity to defend himself before the EO and the disciplinary authority.

13. We have carefully examined the proceedings of the EO, the evidence recorded by him and also the evidence recorded by the learned Munsiff.

14. An examination of the proceedings before the EO disclose that the applicant had been afforded all reasonable opportunity to defend himself. The applicant was defended by an employee of his choice. We see no merit in this ground either.

15. We have perused the report of the EO, the order of the disciplinary authority, and the order of the appellate authority.

16. We find that the findings of the authorities are based on evidence and justified.

17. We have also examined the quantum of punishment imposed by the disciplinary authority and upheld by the appellate authority.

18. When the authorities have applied their mind to the quantum of punishment and found that the extreme penalty of dismissal was called for, this Tribunal should decline to interfere with the sound discretion exercised by the authorities. We are also of the view that the gravity of the offences committed by the applicant were so serious that the extreme penalty of dismissal was fully justified. We find no ground to interfere with the quantum of punishment imposed against the applicant.

19. In the light of our above discussion, we hold that the application is liable to be dismissed. We, therefore, dismiss the application. But in the circumstances of the case, we direct the parties to bear their own costs.

Ab. Dukhanji
VICE CHAIRMAN

Ch. J.
22-1-87
MEMBER(A.)

dms.