

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 438/93

Date of Decision: 10/12/93

G.T.Dahiwalkar

Applicant.

Shri B.Dattamoorthy.

Advocate for
Applicant.

Versus

Union of India & ORS.

Respondent(s)

Shri P.M.Pradhan.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. P.P.Srivastava, Member(A).

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Branches of the Tribunal?


(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 438/93.

10 this the 16th day of December '97.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

G.T.Dahiwalkar,
C/o.Shri B.Dattamoorthy,
Advocate, 47/4, Asmita,
Tarun Bharat Society,
Chakala,
Andheri(E),
Bombay - 400 099. ... Applicant.

(By Advocate Shri B.Dattamoorthy)

V/s.

1. The Union of India through the Member(P) Postal Services Board, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Maharashtra Circle, Bombay - 400 001.
3. The Director of Postal Services Office of the Postmaster General, Aurangabad Region, Aurangabad - 431 002.
4. Superintendent of Post Offices, Shrirampur Division, Shrirampur - 413 709. ... Respondents.

(By Advocate Shri P.M.Pradhan)

O R D E R

¶Per Shri B.S.Hegde, Member(J)¶

In this O.A. the applicant is challenging the impugned order dt. 18.6.1991, Appellate Order dt. 30.9.91 and the Revision Order dt. 24.9.1992 respectively.

2. The applicant was appointed as a Postal Assistant in Shrirampur Postal Division on 13.8.1982, thereafter he was sent on deputation as Sub-Postmaster to Changdeo Nagar in the leave vacancy of Shri S.P.Gaichane from 20.2.1990 to 1.3.1990. While working at Changdeo Nagar

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he was questioned by the I.P.C. Shrirampur about the place of his stay while on deputation. The applicant stated that as the Sub-Postmaster who proceeded on leave did not vacate the quarters and as there were no facility for lodging and boarding in Changdeo-Nagar being the Sugar Factory area, he was not staying there, but he was residing at Puntamba nearby and daily commuting to the office. On the basis of the statement made by the applicant the Superintendent of Post Offices, Shriram-Pur issued a charge sheet under Rule 14 of the C.C.S.(CC&A) Rules, 1965.

(1) The Articles of charge was that the said Shri G.T.Dahiwalkar, Postal Assistant Shrirampur H.O., while functioning as Postal Assistant at Shrirampur Head Office during the period of Feb. 90 & March 1990 was deputed as Sub Postmaster Changdeonagar in leave arrangement of Shri S.P.Gaidhane from 20.2.1990 to 1.3.1990. The Official did not stay at Changdeonagar on any day during the deputation period, but claimed daily allowance for all days from 20.2.1990 to 1.3.1990 including holiday and Sunday dt.23.1.1990 and 25.1.1990 and 70% D.A. for 2.3.1990 in contravention of GIO under S.R. 51, (2) the said Shri G.T.Dahiwalkar deliberately preferred false claim of Daily Allowance for 23rd February, 1990 and 25.2.1990 i.e. for holiday and Sunday respectively on the plea that such practice is prevailing in the Division thus Shri G.T.Dahiwalkar displayed doubtful Integrity and acted in a manner unbecoming of Govt. Servant infringing the Rule 3(1)(i) & (iii) of C.C.S. (Conduct) Rules, 1964. An enquiry under Rule 14 of C.C.S. (C.C.A.) Rules was conducted, the Enquiry-Officer by his report which was submitted on 31.5.1991 concluded that both the Articles of charges were not

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proved. The Disciplinary Authority did not agree with the findings of the Enquiry Officer and imposed a punishment of reduction of his pay by eight stages from Rs.1,180/- to Rs.975/- for a period of 5 years w.e.f. 1.7.1991 with a further order that the applicant will not earn increments of pay during the period of reduction and it will have the effect of postponing his future increments of pay. An appeal was preferred to the Director of Postal Services, Aurangabad on 10.7.1991, who modified the punishment order as under:

"The pay of the official be reduced by 3 stages for a period of three years from 1.7.1991 and during this period the official will not earn any increment and reduction will have the effect of postponing his further increments of pay."

The applicant preferred a petition to the Member (P) of Postal Services Board, the Member (P) has disposed of the petition on 24.9.1992 by accepting the order of the Appellate Authority and rejected the contention of the applicant.

3. In the light of the above, the question to be considered is whether the applicant while working at Changdeo-Nagar on deputation whether he was staying at Changdeo-Nagar or going up and down daily from Shrirampur. The contention of the applicant is that due to non-availability of Boarding and Lodging at Changdeo-Nagar he had to go up and down and claim daily allowance. We have heard the arguments of

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Shri B.Dattamoorthy, counsel for the applicant and Shri P.M.Pradhan, counsel for the respondents and perused the pleadings.

4. The learned counsel for the applicant submitted that the charge is based on recorded statement. At the initial stage no charge is proved against the applicant. As per the enquiry, the punishment awarded is out of sheer perception ~~and~~ of SPO and nowhere it is stated in the written statement that he was doing up-down daily. It is only stated before the Enquiry Authority that he was going up and down from Puntamba and the applicant had submitted evidence at the time of enquiry to show that Changdeonagar is situated in the Gram Panchayat area of Puntamba Village and had also stated that he was staying with one Shri Maid with whom he was staying as a defence witness to prove this fact as the Postmaster had not vacated the quarters and there was no Boarding and Lodging arrangements at Changdeo Nagar, hence he stayed at Puntamba. The applicant has also filed an application dt. 5.3.1991 before the Enquiry Officer for allowing him to submit additional docuemtns and defence witness of Shri Maid which was rejected by the Enquiry Officer without giving any reason for such rejection. Therefore, it is contended that the examination of Shri Maid was essential as he was in a position to prove that he was staying at Puntamba during the period of his deputation period, thus he was denied the reasonable legitimate opportunity of establishing truth of the case. Therefore, the charge levelled against him is not sustainable, the Enquiry Proceedings is vitiated. It is true that

the quarters at Changdeonagar in which earlier incumbent was staying was not vacated by him and as no accommodation was available there, he was perforced to stay elsewhere. The charge levelled against the applicant is that he had claimed false Daily Allowance for 23.1.1990 and 25.1.1990 being Holiday and Sunday. If it is found ~~to be~~ correct that he had claimed Daily Allowance for the aforesaid period and in that even the applicant cannot justify his action for claiming Daily Allowance for Holiday and Sunday. During the course of the hearing the claim of the applicant has been negatived by the respondents and further it is contended that the story of staying at Puntamba is an after thought. The statement of applicant on 7.12.1990 has no reference with the complaints on record. He has clearly stated that because of non-availability of facility of Boarding and Lodging at Changdeonagar, he had to do up-down. The applicant has thus claimed Daily Allowance for the Holiday and Sunday which was against the Rule. It is not the case of the applicant that he has not been given reasonable opportunity to defend himself. The Enquiry Officer had given sufficient opportunity to the applicant and the Enquiry was conducted in accordance with the Rules. Since Shri Maid is not an employee of the department and was an outsider the plea of the applicant has been denied by the Enquiry Officer. It is true that the Disciplinary Authority did not agree with the findings of the Enquiry Officer, which he is empowered to do so under the Rules and he has given sufficient reasons for disagreeing with the findings of the Enquiry Officer.

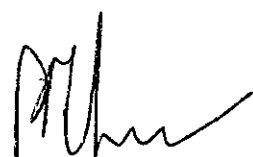
In State Bank of India and Ors V/s. Samarendra Kishore Endow and Another [(1994) 27 ATC 149] the Apex Court has held that the High Court/Administrative Tribunal cannot interfere if punishment has been imposed after holding enquiry. If it is considered that the punishment imposed is harsh, the proper course is to remit the case back to the Appellate or the Disciplinary Authority.

In Union of India V/s. Parma Nanda [(AIR 1989 SC 1185)] the Apex Court has held that if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. In the instant case it is noticed that the applicant has claimed Daily Allowance on holiday and Sunday which he is not supposed to do so whether he is on deputation or otherwise, whereby the integrity of the Officer has been doubted. Since the applicant has not made out any case to quash the impugned orders passed by the respective Authorities it is not for this Tribunal to substitute its findings to that of the authorities concerned. The limited scope that the Tribunal can go into is with the infirmity in the enquiry and not the punishment imposed by the Competent Authority. We do not find any infirmity in the enquiry conducted by the Department. That being the position, We do not find any merit in

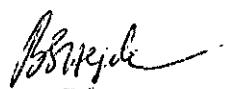
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the O.A., the same is dismissed. No order as to costs.



(P.P.SRIVASTAVA)
MEMBER(A)



(B.S.HEGDE)
MEMBER(J).

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