

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1056/94

Date of Decision : 26th July 2001

P.N.Nikalji Applicant

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri S.S.Karkera for Advocate for the
Shri P.M.Pradhan Respondents

CORAM :

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

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *no*
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1056/94

Dated this the 26th day of July 2001.

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

Hon'ble Smt.Shanta Shastri, Member (A)

P.N.Nikalji,
Ex-Mailman R.M.S.,
'B' Division, Pune.

...Applicant

By Advocate Shri S.P.Saxena

vs.

1. Union of India through
Sr.Superintendent of RMS,
'B' Division, Pune.
2. Superintendent (Sorting),
Pune RMS, Poona.
3. Shri H.G.Lokhande,
Superintendent (Sorting),
RMS, 'B' Division, Pune.

...Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order of punishment dated 28.3.1992 passed by the Respondent No. 4 and the appellate order dated 7.5.1992, with a direction to the respondents to refix the basic pay of the applicant in the revised scale of pay effective from 1.1.1986 and to pay the arrears of difference between the amount due to him and actually paid to him with reinstatement along with all consequential benefits.

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2. The applicant filed OA.No.782/89 before this Bench which was decided vide order dated 8.8.1993. M.P. 704/93 was filed which was decided on 15.10.1993 and the directions were as under:-

" Mr.S.P.Saxena for the applicant and Mr.Karnik for the respondents.

The present OA. was disposed of finally by the order passed by the Tribunal on 8.8.1991 with liberty to the respondents to proceed with the disciplinary proceedings in accordance with the law from the stage of supply of the inquiry report in cases where the dismissal or removal was the punishment."

3. The applicant is in the employment of Respondents No. 1 & 2 as Mailman in Class-IV post, who was originally recruited as such by the Head Record Clerk (now renamed as Head Record Officer) in RMS, 'B' Division, Pune. The applicant was served with a chargesheet dated 13.2.1985 for an alleged assault on a co-worker. The Respondent No.2 thereafter appointed an Enquiry Officer and a presenting officer. Initially, the applicant participated in the enquiry but had to apply for the change of the Enquiry Officer. The applicant submitted the representation to Respondent No. 2 seeking the change of Enquiry Officer and by letter dated 24.9.1985 (Annexure-'A-8') he informed Enquiry officer but before any reply could be received from Respondent No. [E2, the Enquiry Officer finalised the proceedings ex-parte on 25.9.1985 and submitted the report to the Disciplinary Authority who in turn imposed the punishment of compulsory retirement w.e.f. 28.2.1986.

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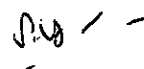
4. The copy of the Enquiry Officer's report was given alongwith the punishment order dated 28.2.1986. The applicant preferred an appeal to the Appellate Authority which was also rejected. The applicant thereafter filed original application No. 782/89 before this Bench which was allowed by the Tribunal by its judgement dated 8.8.1991 and the penalty of compulsory retirement was set aside on the ground that the report of Enquiry Officer was not given before imposing penalty.

5. The respondent No. 4 vide its order dated 16.3.1992 once again placed the applicant under deemed suspension with effect from 1.3.1986 retrospectively and thereafter forwarded the copy of Enquiry Officer's report (exhibit A - 9) to the applicant and asked him to submit his representation if any within 15 days which the applicant submitted on 16.3.1992 and the respondent No.2 imposed the penalty of compulsory retirement with effect from 28.3.1992. The applicant submitted the appeal dated 6.5.1992 to the Appellate Authority, the Senior Superintendent of Post Office RMS, Pune had considered the appeal of the applicant and rejected vide his letter dated 2.6.1992.

6. The grievance of the applicant is that he was appointed under the Railway Mail Service, 'B' Division, Pune by the Head Record Clerk who was the competent appointing authority. The Respondent No. 2 was not competent to issue charge sheet to the applicant as he is neither the disciplinary authority nor the appointing authority as per the provisions contained in Schedule VII of P& T

Manual Volume 3 ammexure A-6. As the respondent No. 2 is Superintendent (Sorting) which is an all together different post to which the applicant belongs. The Deputy Superintendent (sorting) now upgraded to Superintendent (Sorting) is a disciplinary authority in respect of staff working under him and none else. As such the charge sheet issued by respondent No.2 is by an authority not competent to issue the same. As respondent No.2 was influencing and tutoring the Enquiry Officer from time to time within the enquiry period, the applicant objected to the same. The Enquiry Officer was also seeking instructions from respondent No.2 quite often in conducting. The applicant during the enquiry had submitted representation to the respondent No.2 seeking the change of Enquiry Officer and by later dated 24.9.19985 (annexure A -8) he informed the Enquiry Officer but before any reply could be received from respondent No. 2, the Enquiry Officer finalised the proceeding exparte on 25.9.1985 and submitted his report to respondent No.2. During the course of enquiry, the pre-recorded statements which were not voluntary and not of prosecution witness in presence of the applicant were merely taken on the record of proceedings and got confirmed by the prosecution witness which is improper. The applicant was not served notice for proceeding exparte. The Enquiry Officer suo moto changed the venue of holding the enquiry without informing the applicant. Hence, the applicant cannot be blamed for his non-participation at the changed venue of enquiry. Seeking instructions by the Enquiry Officer and consulting respondent No. 4 and 5 while conducting the enquiry has prejudiced the

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case of the applicant. The respondents No.2, 3, 4 and 5 were prejudiced and biased against the applicant. The applicant had been deprived of the opportunity to cross-examine the prosecution witness, to examine himself. Thus the enquiry has resulted in gross injustice to the applicant. The Enquiry Officer in haste has included the enquiry. The cause for all the above acts is participation of the applicant in union activities. The disciplinary authority and the appellate authority failed to apply their minds.

7. The respondents resisted the claim of the applicant and alleged that the applicant was recruited as Sorter Pune with effect from 19.6.1994 and the Record officer was the appointing authority. The competency regarding issue of the charge sheet is asserted by the respondents and alleged that the Superintendent was competent authority to impose all the penalties specified in Rule 11 of the CCS (CCA) Rules 1965, as he was an administrative authority for the staff in his office and also a disciplinary authority. The applicant was recruited by Senior Superintendent and appointed by the Head Record Officer Pune. The post of Superintendent Pune RMS was created in 1981 as Head of the Office. As per the schedule of powers included in Part 4 of CCS (CCA) Rules 1985 the head of the office is a competent authority who is authorised to impose all penalties on group 'D' staff working under him. An application for change of Enquiry Officer was made on 26.7.1989 addressed to the disciplinary authority. The Enquiry Officer has postponed the enquiry and the disciplinary authority rejected the request of the applicant.

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Thereafter the applicant again applied on 9.8.1985 to the Superintendent for change of the Enquiry Officer which was again rejected on 12.8.1985 vide annexure R -3. On 21.8.1985, an application was submitted by the applicant stating that the decision should come from the Appellate authority. The appeal was rejected on 3.9.1985. The next date of enquiry was notified as 29.9.1985 thereafter the applicant was given notice to attend the enquiry proceedings and the Enquiry Officer was left with no other alternative but to proceed with the enquiry ex-parte. The applicant was paid subsistence allowance from 1.3.1986. Actual reinstatement was not necessitated. The enquiry was held in the manner as contemplated by law. The Enquiry Officer has acted in accordance with Rule. The disciplinary authority and the appellate authority have held the applicant guilty after due application of mind. The statements recorded during the course of preliminary enquiry were confirmed by the witness without any hesitation in time. No haste by the Enquiry Officer in concluding the proceedings. The principles of natural justice were properly followed. Hence prayed for dismissal of the OA alongwith cost.

8. The applicant had filed the rejoinder reiterating the facts in OA and stating that the malafides alleged against the respondent No. 3 Shri H.G. Lokhandale, while the officer Shri P.M. Lal had verified the written statement and is not competent to say anything about the said fact. The act of the applicant did not amount to misconduct by displaying a poetry in Marathi.

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At the time of issue of the charge sheet the applicant was a Mail man. It is also stated that the applicant could not attend enquiry on 28.9.1985 due to unavoidable reasons.

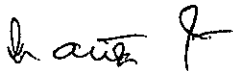
9. The applicant has preferred an appeal against the order said to have been passed by the disciplinary authority vide Annexure-11 (OA. page 61). The applicant has not specified the designation of the appellate authority but has only mentioned the "appellate authority". The said appeal is decided vide Annexure-'A-2' (OA. page 22 to 31) by Senior Superintendent, RMS, 'B' Division, Pune. The appellate authority is Deputy Director in respect of penalties imposed by Superintendent, Railway Mail Service. The Deputy Director, R.M.S. has not decided the appeal of the applicant.

10. The disciplinary authority alleged to be Superintendent (Sorting), Pune, RMS, Pune, whether the said authority is competent to impose the penalty of compulsory retirement, whether charge-sheet issued by the Superintendent (STG) Pune and the procedure adopted during enquiry is in accordance with law or not, the said points or the questions ^{in our considered view} ~~deserve~~ ^{to be} or can be decided by the appellate authority, when the matter is remitted back to the competent Appellate Authority, i.e. Deputy Director, R.M.S. Pune to decide the appeal in accordance with law.

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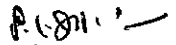
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11. In the result, the order of the appellate authority dated 2.6.1992 is quashed and set aside. We remit the case to the respondents to place the appeal of the applicant before the competent authority, i.e. Deputy Director Railway Mail Service and decide the appeal after considering the questions raised by the applicant in the appeal memorandum and also the points raised by the applicants in his OA. even if they do not place in the appeal of the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.



(SMT.SHANTA SHASTRY)

MEMBER (A)



(S.L.JAIN)

MEMBER (J)

mrj.