

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1287/94

29.9.99
Date of Decision:

J.S.Honalkar

.. Applicant

Shri S.P.Saxena

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri Karkera for Shri P.M.Pradhan

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

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

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal ? ✓

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

9) 21.7.1999.

A request is made on behalf of applicant's counsel for an adjournment.

Shri S. S. Kankera for Shri P.M.
Pradhan, counsel for the
respondents.

Adjourned to 6/8/1999.

John

(B.N. Bakadur)
MCA)

(R. G. Vaidyanatha)

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6.8.99

Second the arguments of Sh. S.-P.-Saxena

Second the arguments, 1. S. S. Karkera for P.M.

and Sh. order reserved
Bradham, ~~Gossel~~

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MCAT /

29/9/99

Date:-

Applicant by .

Respondent by nose

Respondent's Judgment/Order

Signed and Pronounced Friday the 27th of

in the open court by B. wajid M(A)

Hon'ble Shri D. S. Basu

and Hon'ble Shri S. L. Sanyal

Order/Judgement despatched
to Applicant/Respondent (s)

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Court Office
28/9/99~~

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 1287/94

Dated this the 29th day of September 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

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

J.S.Honalkar,
Sorting Assistant,
R.M.S. 'B' Dn. Pune.
(Residing at 188,
Shaniwar Peth, Pune.).

... Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
through the Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi.

2. The Member (O)
Postal Services Board,
Department of Posts,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi.

3. The Director of Postal
Services, Pune Region,
Pune.

4. The Senior Superintendent,
R.M.S. 'B' Division,
Pune.

... Respondents

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

..2/-

O R D E R

{Per : Shri D.S.Baweja, Member (A) }

The applicant through this OA. has sought the reliefs (a) to set aside the order dated 5.3.1992 imposing punishment of recovery of Rs.6700/-, order dated 2.9.1992 of appellate authority rejecting his appeal and order dated 22.12.1993 rejecting his revision application. (b) to direct respondents to refund the amount already recovered.

2. The applicant while working as Sorting Assistant in the office of H.R.O., R.M.S., 'B' Division Pune was issued Chargesheet dated 7.1.1992 for minor penalty. The charge was that the applicant while on duty on 6.8.1989 as Assistant Mailing Agent (AMA) RMS-3 from 18.00 hrs. to 06.40 hrs. did not check the seal of 'D' bag properly while taking over charge from the earlier shift AMA,RMS-2 in which the 'R' bag was subsequently found short at the destination by the Sub Post Master, Wanowari. The applicant submitted his defence as per letter dated 16.1.1992. After consideration of his defence, the disciplinary authority imposed punishment of recovery of an amount of Rs.6700/- as per order dated 5.2.1992. The applicant made an appeal against this punishment order which was dismissed as per order dated 2.9.1992. Thereafter, the revision application was also rejected on 22.12.1993. Feeling aggrieved by this punishment order, the applicant has filed the present OA. on 18.10.1994 assailing the orders as detailed above.

3. The main ground advanced by the applicant is that there is no evidence on record to support that the applicant had not checked the seal of 'D' bag on 6.8.1989. The applicant's contention is that he had handed over the bag to RMS-1, Shri Navale and there was no report made by him about broken/tempered seal of the said bag. Further, the Sub Post Master of Wanori has not reported that seal of the 'D' bag was not intact before opening the bag. The Disciplinary Authority therefore has imposed punishment without application of mind and evidence on record and findings are based on whims.

4. The respondents have opposed the application through the written statement. At the outset, respondents contend that the OA. is barred by limitation. On merits, the respondents submit that as per prescribed rule, the Assistant Mail Agent is responsible to take over the charge of the mail bags after verifying the seals, labels, cord and condition of the bag. The applicant failed to carry out these checks while taking over the charge from Assistant Mail Agent RMS-2, i.e. of the earlier shift as a result when SPM Wanori opened the 'D' bag, the 'R' bag containing registered articles was found missing. This also resulted in frustration of the inquiries and timely detection of the irregularities and catching hold of the actual culprit. The applicant was chargesheeted for failure to perform duties as per the rules. The applicant during the preliminary inquiry had also admitted and he had not properly checked the seals of the bag.

The applicant has been imposed penalty of recovery of Rs.6700/- after considering his defence to make good the loss caused to the Government. It is the pleading of the respondents that with these averments, the applicant is not entitled for the reliefs prayed for.

5. The applicant has controverted the written statement of the respondents in the rejoinder reply and reiterating his grounds advanced in the OA. The applicant has further added that Shri B.S.Navle, RMS-1 who took charge from the applicant was also chargesheeted and was given the same punishment but in the revision appeal the recovery was reduced to Rs.1000/-. Thus the applicant has been discriminated.

6. Heard the arguments of Shri S.P.Saxena and Shri S.S.Karkera for Shri P.M.Pradhan, learned counsel for the applicant and respondents respectively.

7. As held by Hon'ble Supreme Court in catena of judgements, the scope of judicial review in disciplinary proceedings is extremely narrow and limited. The Court cannot sit in appeal over the findings and re-examine or reappraise the evidence and substitute its own conclusion in place of the conclusion arrived at by the enquiry officer or the disciplinary authority on that evidence. However, if the finding of guilt based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. In this connection, we cite one of the latest

judgements of the Hon'ble Supreme Court dealing with the scope of judicial review in the case of Kuldeep Singh vs. Commissioner of Police and Ors., 1999 SCC (L&S) 429. It will be appropriate here to reproduce paras 6 and 10 of this judgement as under :-

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

In the present case, the applicant has challenged the order of penalty mainly on the ground that there is no evidence on the record to support the view of the disciplinary authority that the applicant had not checked the seal of 'D' bag on 6.8.1989 in RMS-3 shift. Keeping in view the scope of judicial review laid down by the Hon'ble Supreme Court, we will consider the averments

of the applicant and other material brought on record to find out if this contention of the applicant is sustainable.

8. As brought out by the applicant and confirmed by the respondents, 'R' bag contains registered articles, insured etc. articles and money order. This bag is first sealed separately and then placed in 'D' bag which contains the ordinary letters. The 'D' bag is then again sealed and waxed. This work is done by another person called 'Closer'. Such sealed 'D' bags are then handed over to the Assistant Mailing Agent who under the supervision of the Mailing Agent dispatches the bags to the various destinations through the vans. With this system, Assistant Mail Agent is not aware of the fact whether 'D' bag contains any 'R' bag or not. The applicant on 6.8.1989 while working as Assistant Mail Agent was in RMS-3 duty shift from 18.00 hrs. to 06.40 hrs. The relevant 'D' bag from which the 'R' bag was found missing at the destination by the Sub Post Master Wanori was closed by the closer at 17.30 hrs. This bag was thus received duly sealed during RMS-2 duty. This bag was taken over by the applicant in RMS-3 duty and on the next morning, i.e. 7th August, 1989, it was handed over to RMS-1 who finally despatched the bag to its destination. With this background, the main charge against the applicant is that he did not scrutinise the condition of the seal of the subject bag while taking over the charge from AMA Pune RMS-2 on 6.8.1989 which resulted in frustration of inquiry, timely detection of the irregularity and

catching hold of the actual culprits and thus the Department has to sustain loss. Since the chargesheet was for minor penalty, no enquiry was conducted. On going through the order of the Disciplinary authority dated 5.3.1992, we find that no evidence on the record has been relied upon which proves that the applicant did not scrutinize the seal of the 'D' bag under reference while taking over the charge. It is, therefore not clear as to how the inference of guilt of the applicant has been arrived at. In fact the Disciplinary Authority has stated in the order that AMA Pune RMS-1 also failed to scrutinise the seal of the subject bag. Further, the disciplinary authority has relied on the statement of the applicant recorded in the preliminary inquiry wherein he admitted having not checked the seals of the bag closely. We fail to appreciate the reasoning of the disciplinary authority. If AMA of RMS-1 failed to perform his ~~then~~ duty, that does not mean that seals were not in tact when the said bag was handed over ~~to~~ the applicant. Further, it also presumes that the seals were intact and proper when RMS-1 took over the charge of the said bag and handed over the applicant in RMS-3. We find that the orders of the appellate and revision authority ~~on record~~ also do not bring out any evidence available to support the finding. The findings appear to be based on surmises. We also note that one important point raised by the applicant in his defence, appeal and revision application regarding the condition of the seal of the 'D' bag when the same was opened by the Sub Post Master Wanori has not been answered. Even in the written

statement in reply to paras 5.6, 5.7 and 5.8 respondents have avoided to answer this point. We do not find from any of the impugned orders or the written statement that seals of the said 'D' bag were in broken or tempered condition. In the absence of any such averment, we are inclined to infer that the seals of the 'D' bag were intact. With this situation, it is apparent that 'R' bag was not placed in the 'D' bag before sealing. How then the applicant could be held responsible for not checking the seals of 'D' bag and thereby causing loss of 'R' bag inside the same? With these observations, we are to persuade to endorse the contention of the applicant that the findings of holding applicant guilty of the charge is not supported by any evidence. Keeping in view the law laid down in the cited judgement above with regards to findings being based on no evidence, we find that **judicial** present case is fit for interference and the impugned punishment orders deserve to be set aside.

9. In the result of the above, we allow the OA. and the impugned orders dated 5.3.1992, 2.9.1992 and 22.12.1993 are set aside. The recovery of the loss made from the applicant shall be refunded to him within 3 months from the date of receipt of the order. No order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

mrj.

D.S.BAWAL
(D.S.BAWAL)

MEMBER (A)