

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1114/94.

Date of Decision: 22-7-99

Syed Ali Imdad Ali,

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

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

Advocate for
Respondent(s)


CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

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

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

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


(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1114/94

.....this the 22nd day of July 1999

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Syed Ali Imdad Ali,
Rafique Estate,
Room No.19,
Quereishi Nagar,
Kurla,
Bombay - 400 040.
(By Advocate Shri G.K.Masand)

... Applicant.

Vs.

1. Union of India,
through the Secretary,
Ministry of Communication,
Department of Post & Telegraphs,
New Delhi.
2. Director,
Postal Service,
G.P.O.,
Bombay - 400 001.
3. Senior Superintendent of
Post Offices,
Bombay City,
North East Division,
Bhandup - 400 042.
(By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan).

... Respondents.

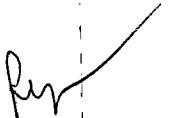
: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant was working as a Postal Assistant in the Post Office at Sakinaka, Bombay at the relevant time. During 1980 he applied for leave and then went to Dubai on 19.3.1980, since there was Matrimonial dispute between his sister and her

...2.



husband. Initially, he was granted five months leave. Subsequently, he sent an application for extension of leave, but he got no response from the respondents. He had furnished the Dubai address to the third respondent before proceeding on leave. He returned to Bombay on 3.1.1984 and went to join duty on 4.1.1984, but he was not taken to duty on the ground that the services have been terminated. Then, he filed an appeal before the Appellate Authority, which came to be rejected by order dt.21.3.1985. Then, he carried the matter by filing a Petition to the Member(A) P & T Board, New Delhi, who set aside the order of the Appellate Authority and remanded the matter to the Appellate Authority. Even on the second occasion, the Appellate Authority rejected the appeal of the applicant by order dt. 7.11.1987. Then, the applicant filed an application in this Tribunal viz. O.A. 256/87 which came to be allowed by this Tribunal solely on the ground that copy of the Enquiry Report had not been furnished to the applicant and accordingly the order of the Disciplinary Authority was set aside with liberty to proceed afresh after furnishing copy of the Enquiry Report. In view of that order of the Tribunal, the applicant was reinstated in service on 18.11.1991. The Disciplinary Authority passed an order that the period from the date of removal from service till the date of reinstatement should be regularised under the F.R. 54 A (2)(i). After furnishing the copy of the enquiry report to the applicant and on receipt of the representation, the Disciplinary Authority again passed an order dt. 18.2.1994 imposing a penalty of removal from service. The applicant preferred an appeal before the Appellate Authority, but the applicant did not receive any reply from the Appellate Authority.

...3.



It is stated that the whole enquiry is vitiated since no charge sheet was given to the applicant and no enquiry was held as per rules. That, though one Mr.B.B.Dave was appointed as Disciplinary Authority by a Presidential Order, he has not passed the impugned order of punishment and therefore, the order of punishment passed by the different authority is illegal and without jurisdiction. During the pendency of the application, the Appellate Authority passed the order dt. 14.12.1994 by setting aside the order of removal from service and substituted it by a penalty of stoppage of increment for a period of three years with cumulative effect. The applicant has amended the OA and has challenged the order of the Appellate Authority.

3. At the time of arguments, the learned counsel for the applicant mainly pressed that the whole enquiry is vitiated being in violation of procedural rules and violation of principles of natural justice, since no charge sheet was supplied to the applicant and no enquiry was conducted as per rules. His another contention is that the order of the Disciplinary Authority is illegal and without jurisdiction since it is not passed by Mr.B.B.Dave who has been specifically appointed as Disciplinary Authority by a Presidential Order. A grievance was also made that Subsistence Allowance has not been paid inspite of the order dt. 29.11.1991. The learned counsel for the respondents has supported the action taken by the administration and refuted the above contentions.

4. Taking the last point first, it appears that a show cause notice was issued by the Competent Authority to the applicant on 17th December, 1997 as to how the period has to be treated. The applicant gave a reply on 14.1.1998 stating that since the

present application is pending no order should be passed on the basis of the show cause notice. The learned counsel for the respondents, therefore, submitted that no final order is passed by the Competent Authority in view of the representation of the applicant that the OA is pending in this Tribunal. He further submitted that appropriate orders will be passed by the Competent Authority under F.R. 54 A (2). Since we are disposing of this OA to day, it is open to the Competent Authority to pass appropriate orders under F.R. 54 A (2) and if the applicant is aggrieved by any such order he gets a fresh cause of action to challenge the same before the appropriate forum according to law.

5. Admittedly, the applicant was given 5 months leave and applicant went to Dubai. It is also on record that applicant sent a fresh leave application for extension of leave. According to the applicant he never received any reply, but the respondents contention is that the letter was sent refusing extension of leave. Whatever that may be, when the Disciplinary ~~Authority's~~ action was initiated, the charge sheet has not been served on the applicant. The enquiry papers submitted by the learned counsel for the respondents show that notices were sent to the original address of the applicant and they were returned stating that applicant was not found in that address. The learned counsel for the applicant pointed out that he had given Dubai address to the respondents and instead of sending the notices to Dubai address, they have sent the notice to the old address of the applicant, where applicant was not at all residing and therefore there is no proper service of notice on the applicant as required by rules. We find sufficient force in this submission.

Principles of natural justice requires that charge sheet should be served on the applicant and he should be given opportunity to defend himself in the enquiry case. In the absence of notice about the enquiry dates, the applicant could not appear in the enquiry and could not defend himself. When the applicant has furnished his Dubai address to the administration, the administration should have sent the charge sheet and subsequent enquiry notices to Dubai address, but sending notices to applicant's old address, when he was not residing, will not serve any purpose. Hence, in these circumstances, we are constrained to hold that the whole enquiry is vitiated due to non-supply of charge sheet and non-intimation of the enquiry dates to the applicant. In view of this, we have to set aside the order of penalty with liberty to the Disciplinary Authority to proceed afresh by serving a copy of the charge sheet on the applicant and then give him an opportunity to defend himself.

6. As far as the applicant's contention that order of penalty should have been passed by Mr.B.B.Dave and no other officer could have passed the order is concerned, the learned counsel for the respondents brought to our notice a decision of ours dt. 24.3.1999 in OA 437/93 (R.M.Sahu Vs. UOI and Another) where we have taken a view that when an ad-hoc Disciplinary Authority has been appointed by a Presidential Order due to the post of Disciplinary Authority being vacant, there is nothing illegal if subsequently the officer who is posted as Disciplinary Authority passing the order of penalty. It is not disputed that Senior Superintendent of Post Offices is the Disciplinary Authority of the applicant. But, it appears in 1992 a Junior

Officer was holding the post of Senior Superintendent of Post Offices and therefore, he was not competent to be an appointing authority of the applicant and thereby not competent to act as Disciplinary Authority. That is why a Presidential Order was passed appointing one Mr.B.B.Dave who was of the rank of the Senior Superintendent of Post Offices to act as ad-hoc Disciplinary Authority and once the post of Senior Superintendent of Post Offices is filled up by an Officer of that rank he would automatically become the appointing authority and consequently the Disciplinary Authority. In the above judgment we have taken a view that in such a case inspite of appointment of ad-hoc Disciplinary Authority there is nothing illegal if the officer who is occupying the post of appointing authority passess the order.

Any how, we need not dilate on this point much since at the time of arguments, respondents counsel submitted that Mr.B.P.Dave is no longer working here and he has gone on promotion to a different place. Therefore, as on to day, it is only the competent appointing authority who can initiate or continue the disciplinary action against the applicant.


7. In the result, the application is allowed as follows:


1. The impugned order of the Appellate Authority dt. 14.12.1994 and order of Disciplinary Authority dated 18.2.1994 is hereby set aside, on the ground that the whole disciplinary enquiry is vitiated due to non-service of the charge-sheet on the applicant and not giving opportunity to defend himself in the Disciplinary Enquiry case.
2. Liberty to the Disciplinary Authority to proceed from the stage of serving a copy of the charge sheet on the applicant and then giving an opportunity to him to defend himself in the enquiry case and then to conduct the enquiry as provided under the rules and then passing the final order as per rules. In such a case, it is open to the Disciplinary Authority either to conduct the enquiry himself or appoint an Enquiry Officer as per rules.
3. The Competent Authority may pass a speaking order on ...7.



the basis of the show cause notice dt. 17.12.1997 as to how the interregnum period should be treated under the FR 54 A (2).

4. In the circumstances of the case, there is no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

B.