

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 575/95

21.11.2000
Date of Decision :

Shri N. S. Kirloskar Applicant.

Shri S.P.Kulkarni Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

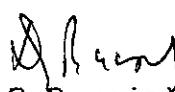
Shri S.S.Karkera for Shri Pradhan Advocate for the
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library


(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.575/95

Dated this the 21st day of January 2000.

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

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

Narayan Shripad Kirloskar,
Postal Assistant,
Satara Head Post Office,
Satara - 415 001.

... Applicant

By Advocate Shri S.P.Kulkarni

V/S.

Union of India through

1. Senior Superintendent of
Post Offices,
Satara Division, At P.O.Satara,
Dist. Satara-415-001.

2. Director of Postal Services,
O/o Postmaster General,
Pune Region, Pune.

3. Postmaster General,
Maharashtra Circle,
Pune Region, Pune.

... Respondents

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

O R D E R

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

The applicant while working as Postal Clerk at Satara Head post Office was entrusted with the work of Sub office Savings Bank (SB)/Recurring Deposit (RD) Ledger Clerk on various

dates, namely 4.12.1992, 5.12.1992, 7.12.1992, 14.12.1992 and 28.12.1992. It was the duty of the applicant to check transactions, pay-in-slips of deposits in SB and RD Accounts, withdrawal forms, transfers etc. and also admit such documents and vouchers in accordance with the procedure laid down in Post Office Savings Bank Manual, Vol. I. The applicant was issued a charge sheet dated 13.9.1993 for minor penalty as per the statement of imputation of misconduct enclosed with chargesheet with the charges that on account of lapses committed by the applicant in not properly comparing the signatures etc. resulting in allowing one Shri E.N.Kumbhar, Postal Assistant Budh Sub Post Office to commit fraud to the extent of Rs.3,17,718/-. The applicant denied the charges as per his letter dated 3.10.1993 and requested the disciplinary authority to hold an enquiry. The disciplinary authority however rejected this request as per order dated 15.12.1993 without assigning any reasons. The applicant then sent an appeal against the order dated 15.12.1993 dated 21.12.1993 to Post Master General, Pune followed by another letter dated 7.1.1994. This appeal was rejected as per order dated 21.2.1994 advising that the applicant can file an appeal against the punishment order of the disciplinary authority without indicating reasons for rejection. Without waiting for disposal of his appeal, the disciplinary authority however passed an order dated 24.1.1994 imposing a punishment of recovery of Rs.12,500/- from the applicant. The applicant preferred an appeal against this order and the appeal was also rejected as per

order dated 29.8.1994. Feeling aggrieved by this punishment order, the applicant has filed the present OA. on 2.6.1999 seeking the following reliefs :-

- (a) To quash the orders dated 29.8.1994 (A-2), 24.1.1994 (A-3 (a), Chargesheet dated 13.9.93 (A-3 (b) and order dated 7.10.1994 (A-4) conveying adverse remarks in the Confidential Report with reference to the punishment imposed.
- (b) To direct respondents to hold an inquiry into the alleged misconduct.
- (c) To hold that orders dated 15.12.1993 (A-7) and 21.2.1994 (A-8) rejecting the request for holding inquiry are arbitrary.

2. The applicant has built up his case pointing out the following infirmities in the disciplinary proceedings :-

- (a) non holding of the inquiry on the request made. Rejection of the request without assigning any reasons is arbitrary. Holding of the inquiry was imperative in view of the fact that charges related to non comparison of the signatures.
- (b) Before the appeal for holding the inquiry was disposed of, the disciplinary authority passed the punishment order.

- (c) The disciplinary authority relied upon the statements recorded during the preliminary inquiry at the back of the applicant.
- (d) Absence of any evidence in support of charges.
- (e) Appellate order has been passed without any application of mind as points raised by the applicant have not been considered.
- (f) Violating of the rules quoted in the charge sheet but the rules relied upon are different in the punishment order.

3. The respondents in the written statement have contested the OA. The respondents submit that the applicant was issued chargesheet because of some lapses committed by him which were found when investigating into the fraud case against one Shri E.N.Kumbhar involving amount of Rs.3,25,318/-. The applicant was given opportunity to submit his defence but he did not avail the same. For the request of conducting inquiry, the respondents contend that there is no provision in CCS (CCA) Rules for the same when the chargesheet is issued under Rule 16. The disciplinary authority after taking into account the material documents and evidence available, rejected the request for holding inquiry as per order dated 15.12.1993. There is also no provision of appeal under Rule 16 (b) and Rule 23 of CCS (CCA) Rules. The disciplinary authority has imposed punishment of recovery of Rs.12,500/- after careful consideration of the evidence on the record. The appellate authority has also

rejected the appeal through a speaking order. Respondents with these averments plead that there is no procedural infirmities in imposing the punishment and the DA. is without any merit.

4. The applicant has not filed any rejoinder reply for the written statement.

5. We have heard Shri S.P.Kulkarni and Shri S.S.Karkera for Shri P.M.Pradhan, the learned counsel for the applicant and respondents respectively.

6. The first ground of challenge and which is the core of the defence of the applicant is that the request for holding inquiry has been rejected by the disciplinary authority without assigning reasons. Further appeal against the rejection of request by the disciplinary authority to appellate authority had not yet been disposed of but the disciplinary authority passed the punishment order. The respondents have contested this and have stated that for the chargesheet under Rule 16, holding ~~of~~ inquiry is not mandatory. It is further stated that the applicant made the request for holding inquiry without indicating the reasons as to why the conducting of inquiry was imperative. In view of this and also taking into account the material and evidence on the record, respondents contend that the request was correctly rejected by the disciplinary authority. It is also contended that under Rule 16 (b) there is no provision for appeal

against the order of disciplinary authority. After going through the provisions of Rule 16 and the rival contentions, we are of the considered view that ground taken by the applicant is without any substance. As per Rule 16, the inquiry is not obligatory before the punishment could be imposed. Inquiry could be however conducted if (i) in the opinion of the disciplinary authority, (ii) the same is necessary to establish the charges keeping in view the nature of charges as provided in Rule 16 (b). The request for holding inquiry however could be made by the delinquent employee also. Such a request if made is to be dealt with as per the Government of India's instructions dated 28.10.1985 under Rule 16. The disciplinary authority is required to consider the request and then pass an order on the same and indicate the reasons in case the request is rejected. For consideration of this request, it is incumbent upon the delinquent employee to indicate the reasons as to why the holding of inquiry is considered necessary in the opinion of the employee. It will be relevant here to reproduce below the following extract from the instructions dated 28.10.1985 :-

" The implication of this rule is that on receipt of representation of Government servant concerned on the imputation of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to

the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."

From the letter dated 3.10.1993 at Annexure-'A-6' in reply to the chargesheet, we note that applicant has just made a request without elaborating the need of the inquiry. The applicant has not indicated what documents are necessary to be made available to him to prepare his defence and cross examination of ~~which~~witnesses is required. In the absence of such details, the disciplinary authority cannot be expected to apply his mind. We, therefore, do not find any infirmity on account of rejection of request for the holding of inquiry. The applicant has made further submission that he made an appeal against the order of the disciplinary authority rejecting his request. The respondents have taken the stand that there is no provision of an appeal against such rejection in Rule 16 & Rule 23. The applicant has not contested this. Without going into this controversy, we find from the representations sent to appellate authority and brought on the record at A-5 (a) and (b), we find that the applicant again has not made any case for holding an inquiry detailing reasons as to how he is not able to defend his case. Therefore, the appellate authority could have also not appreciated the request. Therefore this plea is also not tenable.

7. The second ground of attack is that disciplinary authority has relied upon the statement recorded in the preliminary inquiry at the back of the applicant. The applicant has made this ground referring to the following extracts from the order of the disciplinary authority :-

" The entire case together with the relevant documents (i.e. vouchers), the statements recorded of the official in the preliminary inquiry was therefore thoroughly examined by the undersigned."

" I have examined concerned documents and have confirmed that there is visible difference in the signature appearing."

" I have come to the conclusion that there is visible difference in thumb impressions."

The respondents while replying to para 4.8 of the OA. have not specifically covered this point. However, after careful consideration of the order of the disciplinary authority, we are not inclined to see merit in the contention of the applicant. We note that the applicant had asked for the copy of his statement and the same was furnished to the applicant as brought out by the disciplinary authority in his order. Further, on going through the punishment order, we do not find that except making reference to this statement, any reliance has been placed on what is contained in this statement. There is no discussion of the evidence coming out of this statement in support of proving the charges. The applicant has also not elaborated as to what evidence from his said statement has been relied upon by

the disciplinary authority. In fact, we note that the applicant has himself referred to his statement recorded during the preliminary inquiry in his appeal and he has not taken any objection to placing reliance on this statement. In the light of these observations, we do not find that applicant has made out any case that this infirmity pointed out by him vitiates the punishment order.

8. The third ground is that there is no evidence on the record to support the charge. The applicant submits that no details of the specific transaction with dates have been indicated in the chargesheet. He further adds that merely quoting the total fraud amount is not enough and the loss directly attributable to the applicant was required to be brought out in the chargesheet to establish the nexus between the alleged lapses and the loss sustained due to fraud. On going through the statement of imputation, we are unable to endorse the contention of the applicant. The statement of imputation clearly brings out the details of the lapses made and the laid down rules which have not been followed which help/^{ed} in fraud being committed by Budh Sub Office. The applicant in his letter dated 3.10.1993 at Annexure-'A-6' has stated that he does not agree with the charges. Such a categorical denial of the charges can be made only when the charges were understood by the applicant. If the applicant felt that the charges pointing his lapses were not specific and lacked details and the applicant could not understand to enable him to submit his defence, he should have so pointed out

at the first instance in his defence against the chargesheet to enable disciplinary authority to consider his contention. In the absence of any such reaction from the applicant, he cannot advance this as the ground for challenge. We are, therefore, of the considered view that this) infirmity brought out by the applicant to assail the punishment order is not born out by the statement of the imputation. Therefore, this contention is without any substance and merit.

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9. The fourth ground is / the specific rules cited in the statement of imputation said to have been violated have been shown different in the punishment order. The applicant has mentioned in para 4.9 of the OA. that cited rule in the chargesheet which is alleged to have been violated is 31 (2) (a) (ii) while in the punishment order the rule violated is referred to as 31 (2) (iii). The contention of the applicant is that this amounts to amendment in the chargesheet for which no opportunity was given to the applicant. The applicant has not brought out as to what is the difference in the two Rules and how his defence has been prejudiced due to this. We also note that the disciplinary authority has covered this aspect in his order. We are of the view that this infirmity is not material until and unless the applicant brings out as to how he as per the rule cited in the chargesheet he could be absolved of his responsibility for carrying out the laid down checks by him. In the absence of any such pleading, we are not persuaded to see any merit in the same.

10. The last ground is that order of the appellate authority is non speaking order as it does not show application of mind because the points raised by the applicant in his appeal have not been covered. On going through the appellate authority's order dated 29.8.1994 at Annexure-'A-2', we do not consider that the same reflects lack of application of mind. The appellate authority has summarised the points taken in the appeal. He has examined the same in the light of the order of the disciplinary authority wherein all the points have been already considered. We are therefore of the view that order of the appellate authority is speaking one and does not suffer any infirmity.

11. In the result of the above deliberations, we find that none of the infirmities pointed out in challenging the impugned orders has any merit. The OA. accordingly deserves to be dismissed and is accordingly dismissed. No order as to costs.

SLJ-11-1
(S.L.JAIN)

MEMBER (J)

D.S.BAWEJA
(D.S.BAWEJA)

MEMBER (A)

mrj.