

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 353 of 1997.

Dated this Thursday, the 31st day of May, 2001.

Dnyaneshwar Ramchandra Bhosale, Applicant.

Shri S. P. Kulkarni, Advocate for the Applicant.

VERSUS

Union of India & Others, Respondents.

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

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A). ~~and~~

- (i) To be referred to the Reporter or not? NO
- (ii) Whether it needs to be circulated to other NO Benches of the Tribunal?
- (iii) Library. NO

B. Dikshit
(B. DIKSHIT)
VICE-CHAIRMAN.

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Hon'ble Shri B. N. Bahadur, Member (A).

Dnyaneshwar Ramchandra Bhosale,
(B.C.R.), Postal Assistant,
Baramati Post Office,
At P.O. Baramati, Dist. Pune,
Pin Code - 413 102. Applicant.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Union of India through
The Member (O) Postal Services
Board,
Director General Posts,
Dak Bhawan, 20 Asoka Road,
New Delhi - 110 001.
2. Director of Postal Services,
Pune Office of the Post Master
General, Pune Region,
Near C.T.O., C.T.O. Camp,
Pune - 411 001.
3. Superintendent of Post Offices,
Mofussil Division, Swargate,
At P.O. Pune - 411 042. ... Respondents.

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

OPEN COURT ORDER

PER : Shri Justice B. Dikshit, Vice-Chairman.

The applicant is aggrieved by order of the
Superintendent of Post Office, Pune (Respondent No. 3) the
Disciplinary Authority, who in exercise of power under
B. Dikshit

Rule 11 of C.C.S. (C.C.A) Rules, 1965, ordered withholding of one increment of applicant for a period of 35 months without cumulative effect, the order being confirmed by the Director of Postal Services (Respondent No. 2) in appeal. This punishment was reduced in revision by Revisional Authority, Member (O) Postal Service Board New Delhi, (Respondent No. 1) to withholding of one increment for a period of 9 months without cumulative effect. The applicant has moved this application for quashing of the three orders.

2. The facts, briefly, giving rise to this application are that the applicant while working as Sub-Postmaster was proceeded against for misconduct under Rule 16 of C.C.S. (C.C.A) Rules, 1965 by Superintendent of Post Offices, Pune. The charges framed against the applicant set out in application read as follows :

"STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR ON THE BASIS OF WHICH IT IS PROPOSED TO TAKE ACTION UNDER RULE 16 OF C.C.S. (C.C.A.) RULES, 1965, AGAINST SHRI D. R. BHOSALE, S.P.M. INDAPUR.

Shri N.M. Swamy, E.D. Telegraph Messenger, Indapur was promoted in the cadre of Group 'D', due to which a vacancy of E.D. Telegraph Messenger was caused at Indapur sub office with effect from 25.03.1991. Shri D. R. Bhosale has committed the following irregularities in the case of Recruitment of E.D. Telegraph Messenger.

(a) He resumed his duties at Indapur on 20.5.1991. He did not go through the concerned file of appointment of E.D. Telegraph Messenger and did not take any action to regularise the appointment. According to record of the appointment case, 5 applications, for the post of E.D. Tel. Messenger were on record, which were received in response to the advertisement given by the S.P.M. Indapur on 27.3.1991. Out of these either Shri S.B. Sonavane or Shri G. B. Kulkarni, was eligible to be selected for this post. Shri D. R. Bhosale neglected to do this and continued Shri A. P. Thite to work as E.D. Tel. Messenger.

(b) Indapur sub office was inspected by the Sub Divisional Inspector (P) Baramati Sub Divn. in December-1991 and vide para No. 61 of I.R., the Sub Divisional Inspector (P) had instructed to fill up the post of E.D. Telegraph Messenger on regular basis. Shri D.R. Bhosale failed to comply with this para and he sent requisition to Employment Exchange for suitable candidates on 25.6.1992 i.e. after 6 months. As such he intentionally avoided to regularise the appointment of E.D. Tel. Messenger.

(c) In response to letter No. B-2/Misc/EDA/Vacancy/92 dated 24.6.1992, from Divisional Office, he sent false reply vide his Office letter No. 148/92-93 dated 6.7.1992 stating that the vacant post was filled up and there was no any vacancy, whereas actually the permanent appointment of E.D. Tel. Messenger is still to be made.

From the above mentioned lapses it is imputed that :-

- (1) He failed to observe the instructions issued by the D.G. Posts vide letter No. 43-84/80-Pen dated 30.1.1981, No. 43-301/87-PE-II(ED 7TRG) dated 6.6.1988 and also issued from time to time, governing the appointment of E.D. Agents.
- (2) He failed to maintain absolute integrity and devotion to duty and thereby contravened the Provisions of Rule No. 3 (1)(i)(ii) of C.C.S. (Conduct) Rules, 1964."

The applicant contested the said charges. According to the applicant, he took over charge as S.P.M. Indapur from Shri S.K. Gonjare on 21.05.1991 and while taking over the charge, Shri Gonjare told him that appointment order of Shri A. P. Thite as E.D. Tel. Messenger has been issued, and therefore he did not see the appointment file again. The applicant's stand against charges is that no omission was pointed out vide IR Para No. 61 and therefore for want of clear instructions, he could not comply the same. According to him, he tried to get guidance from SDI. His stand is that he tried to open the topic on 22.04.1992 but he

was asked to wait instructions from Divisional office. According to him, even C.I. also did not throw any light on the matter during his visit on 03.12.1992. The applicant further claimed that according to list received from Employment Exchange, Shri A. P. Thite was found to be eligible as E.D. Messenger and accordingly he replied on 06.07.1992 that the post was filled up and there was no vacant post. His assertion is that appointment of E.D. Messenger is an administrative job and it was duty of D.O. and S.D.I. to guide him properly in cases of appointment with clear cut instructions as to how to regularise. While considering applicant's defence, the Disciplinary Authority held that charges levelled against applicant have been proved beyond doubt and the official has submitted misleading representation. He concluded that the applicant, for his personal pecuniary interest, direct or indirect, had not taken due care while making recruitment of E.D. Tel. Messenger and controverted standing instructions. He further held that being a senior officer in the department, such an irresponsible performance, considering the gravity of charges, was not expected from him. Considering the charges and holding the applicant guilty, the Disciplinary authority withheld the increment of applicant for a period of 35 months without cumulative effect. There appears some earlier punishment against applicant also, as he directed that this punishment and earlier punishment imposed on the official vide office memo no. CR/M-152/90-91 dated 13.04.1992 will not run concurrently. Dis-satisfied with the punishment awarded by the Disciplinary Authority, the applicant preferred an B.O.M.R

appeal which was dismissed, as stated earlier, by the Director of Postal Services, Pune Region (Respondent No. 2) vide order dated 29.09.1993 by holding that the points mentioned in the appeal were not relevant and considering the gravity of the case, the punishment seems to be justified.

3. Being dis-satisfied by the two orders, the applicant preferred revision. The Revisional Authority held that the applicant was proceeded against for not taking prompt action in respect of regularisation of the said E.D. Tel. Messenger. He discarded the contention of applicant that the Divisional Office did not clearly instruct him whenever he discussed this case with SDI (P)/SP on various occasions. He held that the applicant was supposed to get necessary clarification from the higher authorities in writing but he added that the disciplinary authority has not refuted the contention of the applicant that he discussed the case on various occasion with him and S.D.I.(P). He did accept the finding of Disciplinary Authority that the petitioner furnished incorrect position about the vacant post of E.D. to the Divisional Office. According to Revisional Authority, at best the applicant can be faulted for not proceeding with the case of regularisation of the said E.D. employee with due care on the ground of non receipt of clarification from senior officers and keeping in view the circumstances, the Revisional Authority considered reduction of penalty imposed on applicant by withholding one increment for a period of 9 months without cumulative effect to be in the ends of justice. The Revisional authority maintained other conditions stipulated in the original punishment order.

B.G.Sarkar

4. The Learned Counsel for the applicant argued that the findings recorded by the disciplinary authority have not been accepted in toto by the Revisional Authority. He contended that the finding recorded by the Revisional Authority to the effect that applicant has not taken due care due to non-receipt of clarification from senior officer is not a valid ground to punish applicant and therefore the order of punishment vitiated. He relied on narration of facts as well as findings recorded by Revisional Authority and argued that on the basis of findings recorded, the applicant is not guilty of any such conduct which could justify the imposition of penalty. Under law when a person knew correct facts, that too from a person against whom charge of mis-guiding is levied then under law it is not a case of mis-guiding or mis-representing facts. Otherwise also, in such circumstances there could be no reason for the applicant for making an incorrect statement when he already brought correct facts in the knowledge of said authorities. Thus, the finding of Revisional Authority that petitioner faulted for not proceeding the case of regularisation of E.D. Tel. Messenger with due care on the ground of non receipt of clarification from Senior Officers is unsustainable.

5. The Learned Counsel for the Respondents has contended that the applicant was negligent in not regularising the E.D. Tel. Messenger. He further contended that applicant tried to misguide the senior officers by giving incorrect information and proper punishment has been awarded as applicant did not take due care in proceeding the case of appointment of E.D. employee.

6. Considering the arguments we find that the Revisional Authority held that "the Disciplinary Authority has not refuted the contention of the petitioner that he discussed this case on various occasions with him and SDI (P)". He further held that, "It is also seen that the petitioner furnished incorrect position about the vacant post of E.D. to the Divisional Officer as discussed in the punishment order." When these conclusions of Disciplinary Authority are considered in the light of above said finding, we are of opinion that applicant discussed the matter in respect of appointment of E.D. employee with the senior officers including the disciplinary authority and S.D.I. (P). Thus, not accepting the above finding of Revisional Authority we hold that the applicant did bring all relevant facts correctly to the notice of the Supdt. of Post Offices, Pune MFL. Divn., Pune - 411 042 as well as S.D.I. (P). The question of mis-guiding could have arisen had the correct facts were not known to the said authorities. When relevant facts were already in the knowledge of the Superintendent of Post Offices, Pune MFL Division as well as S.D.I. (P), then it cannot be said that the applicant tried to mis-guide department or gave incorrect position in respect of vacancy.

7. For the aforesaid reasons we hold that no reasonable person could have come to conclusion on the basis of material on record that applicant deliberately tried to misguide the department or faulted for not regularising the case of said E.D. Tel. Messenger with due care. Thus, the finding of Revisional B. (Regd) 8

Authority to that effect is unsustainable under law and the orders of the Member (P), Postal Services Board, Director General of Posts, New Delhi (Respondent No. 1), Director of Postal Services, Pune Office of the Post Master General, Pune (Respondent No. 2) and the Superintendent of Post Offices, Pune (Respondent No. 3) awarding punishment to applicant in respect of stoppage of increment is hereby quashed. The application is allowed. The applicant will be entitled for all the benefits which would have accrued to him had his increment not been withheld. The Superintendent of Post Offices, Mofusil Division, Pune, (Respondent No. 3), is directed to pass a fresh order in disciplinary proceeding in question in the light of aforesaid observation within three months from the date of receipt of order. No order as to costs.

B. Bahadur

(B. N. BAHADUR)
MEMBER (A).

B. Dikshit
(B. DIKSHIT)
VICE-CHAIRMAN.

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