

Central Administrative Tribunal
Mumbai Bench: Mumbai

OA No. 357/1997

Mumbai this the 8th day of June, 2001:

Hon'ble Mrs. Shanta Shastri, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Sh. Fulchand Ganpati Dixit,
Son of Sh. G.P. Dixit,
R/o Bamniwadi Village,
Tal & District Osmanabad-413 506. -Applicant

(By Advocate Shri S.P. Kulkarni)

-Versus-

Union of India through:

1. Supdt. of Post offices,
Osmanabad Postal Division,
at P.O. Osmanabad
Tal & Distt. Osmanabad 413 501.
2. Director Mumbai GPO,
GPO Building at PO Mumbai,
through Director of Postal Services,
Aurangabad Region,
Aurangabad-413002. -Respondents

(By Advocate Shri S.S. Karkera)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

The applicant who was an Extra Departmental Branch Post Master (EDBPM) has assailed an order dated 17.10.94, whereby he has been dismissed from service under Rule 7 of the Extra Departmental Agents (Conduct) Rules, 1964. The appeal preferred against the order of dismissal was also rejected.

2. The applicant has assailed the orders on various legal infirmities, including that the order passed by the disciplinary authority as well as appellate authority are non-speaking without dealing with the contentions of the applicant. The applicant has also assailed the orders on the ground that he

has been deprived of a reasonable opportunity to cross examine the witnesses and was compelled to participate in the enquiry in the absence of his Defence Assistant. The applicant has also raised a grievance regarding non grant of personal hearing despite being specifically prayed for by him in his supplementary appeal to the appellate authority and lastly contended that the proportionality of punishment despite being taken in his appeal has not at all been gone into by the appellate authority.

3. The respondents in their reply rebutted the contentions of the applicant and maintained that the disciplinary proceedings have been conducted in accordance with the rules and the applicant has not been deprived of a reasonable opportunity. It is stated that vide his application dated 24.2.94 the applicant has himself chosen to participate in absence of his Defence Assistant and the charge levelled against the applicant ~~has been~~ regarding misappropriation of Govt. money has been proved by the evidence produced in the enquiry. As regards the personal hearing, it is contended that there is no provision under the Rules to accord such a hearing to the applicant despite being prayed for in the supplementary appeal. It is also maintained that there is no provision for filing a supplementary appeal against the order of the disciplinary authority.

4. We have carefully considered the rival contentions of the parties and perused the material on record. As regards the challenge of the applicant

to the proceedings on the ground that he has been compelled to participate in the enquiry with the result he has been deprived of a right of cross examination and the enquiry officer had crossed examined the witnesses showing that the cross examination by the applicant is concerned, the same is not borne out from the record and is not legally tenable as the applicant on 24.2.94 vide his application made to the disciplinary authority voluntarily chose to participate in the enquiry, he is estopped from challenging the same on the ground that he was compelled to participate in the same. The applicant despite being afforded an opportunity to cross examine the witnesses has not cross examined the witnesses and thus lost his right which cannot be violative of the principles of nature justice or denial of reasonable opportunity. There is no prejudice caused to the applicant on account of the cross-examination of the witnesses. The applicant's contention that the findings of the enquiry officer are non-speaking and without according reasons and in derogation of Rule 23 of the CCS (CCA) Rules is concerned, the same is not tenable. On a perusal of the findings of the enquiry officer we find that the enquiry officer has recorded sufficient reasons on each article of charge, which is the requirement of rule 23 ibid.

5. As regards the grievance that the disciplinary authority as well as appellate authority have not passed speaking orders is concerned, we find that the disciplinary authority agreed with the findings of the enquiry officer which are detailed and under the

rules and established law if the findings of the enquiry officer are detailed one, dealing with the contentions of the delinquent official then it is not mandatory on the part of the disciplinary authority to record reasons while issuing the order of punishment. The appellate order too passed by the appellate authority is a detailed one dealing with the contentions of the applicant. Apart from it, we find that the applicant has highlighted several legal infirmities during the course of the enquiry. But the same have not been agitated by him in his appeal made to the appellate authority. If a legal plea is based on facts is not taken in the appellate memorandum the same cannot be taken into in this OA for the first time and in this view of ours we are fortified by the ratio of the Apex court in State Bank of Patiala & Others v. S.K. Sharma, reported in JT 1996 (3) SC 722. Lastly the contention of the applicant that despite being prayed for personal hearing to the disciplinary authority in the supplementary appeal he has not been accorded the same and has relied on the ratio of the judgement in the case of Ram Chander v. Union of India, reported in 1986 SCC (L&S) 383. We find from the perusal of the appellate authority that there is no indication that the applicant had been accorded a personal hearing by the appellate authority. Rather, we find from the supplementary request of the applicant made on 21.6.95 regarding personal hearing and the order of appellate authority was issued on 31.5.96, i.e., much after the applicant had requested the appellate authority by way of his supplementary appeal to accord him personal hearing. The respondents in

their reply have not denied the fact of supplementary appeal being filed by the applicant requesting for personal hearing. The defence of the respondents is that there is not^{ly} provision for filing a supplementary appeal. We find that the applicant has not filed a supplementary appeal taking additional grounds but rather the request for personal hearing has been made therein as such the same cannot be deemed as supplementary appeal but only a request for personal hearing which is to be considered as part and parcel of the appeal filed by the applicant. Whatsoever may be, the question remains that the request of the applicant has been communicated to the appellate authority ^{ly} ~~and~~ before he has taken a final decision on the appeal and despite this the opportunity of personal hearing was not accorded to him, which is contrary to the ratio laid down in the case of Ram Chander (supra). Non-grant^{ly} of personal hearing has prejudiced the applicant and would be in violation of the principles of natural justice. We also find that the applicant in his appellate memorandum has taken a specific plea of the punishment being not commensurate with the charge and being severe. The appellate authority while dealing with the contentions of the applicant has not at all^{ly} taken into consideration the plea of the applicant regarding proportionality of the punishment. As the proportionality of the punishment cannot be gone into by this Tribunal the same has to be dealt with by the appellate authority as well as the revisional authority. In this view of ours we are fortified by the ratio laid down by the Apex Court in B.C. Chaturvedi v. Union of India, reported in JT 1995 (8)

SC 65. As there is nothing on record to show that the appellate authority has examined the aspect of proportionality of punishment being specifically taken by him in his appeal the appellate order is not legally tenable on that ground.

6. In the result, although we find no infirmity in the enquiry proceedings and in the order passed by the disciplinary authority but as the appellate authority has not accorded a personal hearing to the applicant and has not gone into the proportionality of punishment, we quash and set aside the order of the appellate authority and remand back the case to the appellate authority to pass fresh order, dealing with the proportionality of the punishment, after giving a personal hearing to the applicant. This exercise shall be done within a period of two months from the date of receipt of a copy of this order. No costs. The OA stands disposed of in the above terms. *me*

S. Raju

(Shanker Raju)
Member(I)

Shanta S.

(Smt. Shanta Shastri)
Member(A)

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