

Central Administrative Tribunal
Principal Bench

O.A. No. 292 of 1998.

New Delhi, dated this the 19th March, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. S.L. JAIN, MEMBER (J)

P.R. Yashwantrao,
Assistant Postmaster,
Andheri Head Post Office,
MumbaiApplicant.
(By Advocate: Shri C.B. Kale)

Versus

1. Union of India
through
the Member (P) Postal Service Board,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. The Director Postal Services,
Mumbai Region,
Mumbai.
3. The Senior Supdt. Post Offices,
Mumbai City North Division,
Azadnagar,
Mumbai.Respondents.
(By Advocate: Shri S.S. Karkera)

ORDER

S.L. Jain, M (J)

Applicant impugns the disciplinary authority's order dated 15.4.96 (pages 18-20 of OA); the appellate authority's order dated 26.7.96 (pages 21-23 of OA); and the revisional authority's order dated 18.8.97. He seeks consequential benefits.

2. Applicant was proceeded against departmentally under Rule 16 CCS (CCA) rules vide charge Memo dated 18.1.96 (page 14-16 of OA) on the allegation that applicant while functioning as SPM (T/S) Airport P.O. during the period October, 1994 to

February, 1995 failed to observe the provisions of the Orders contained in Circular dated 3.9.93 circulated vide letter No.C-1/Mails/Rebate/93-94 dated 7.10.93. He also failed to ensure that the bulk registered articles were not accepted in the light of the instructions contained in the Circular dated 7.10.93 and also non preparation of justified RBs, and thereby exhibited gross indiscipline and behaved carelessly which was unbecoming of a Govt. servant and thus failed to maintain absolute devotion to duty and thereby violated the provision of Rule 3(i) (ii) and (iii) CCS (Conduct) Rules. Holding a supervisory post of SPM (T/S), he also failed to take all possible steps to ensure devotion to duty of PAS under his control and thereby violated the provisions of Rule 3(2) (i) CCS (Conduct) Rules.

3. Applicant submitted his defence on 7.2.96 in which he denied the charges. He submitted that the senders of the articles listed in the imputation of charges were regular customers of his office and having their residence offices close by, they used to come with the articles duly affixing postage stamps, and therefore he had no alternative but to accept the registered mails, to avoid public complaints. He contended that he had helped them for the betterment of the department, and the department should have appreciated his services instead of instituting proceedings against him. He emphasised that there were no complaints from any of the transit offices or from the delivery office and he had not incurred any extra expenditure for the articles accepted for

Signature

booking in the form of OTA etc. He further stated that all the articles were accepted under the orders of Shri S.B.Bhor the then SDI, Group Officer for his office, and he requested that the charges levelled against him be dropped.

4. The disciplinary authority by his impugned order dated 15.4.96 rejected applicant's defence and held that applicant had contributed negligence which indicated his malafide intention to help Mailers. Accordingly he imposed the penalty of withholding applicant's next increment for 35 months without affecting future increments.

5. Applicant's appeal was rejected vide impugned order dated 26.7.96.

6. Thereupon applicant filed a revision petition. In his order dated 18.8.97 the revisional authority reduced the penalty of withholding the next increment for a period of 18 months without cumulative effect. While doing so he recorded the following finding:

"The plea of the petitioner that the disciplinary authority did not consider the points raised by him and there is no mention of malafide intention in the charge sheet whereas the allegation is shown to have been proved in the punishment order appears to be convincing. The disciplinary authority passed the punishment order without discussing all the points raised by the petitioner and also did not conclude the charge as proved. There was no mention of malafide intention in the charge sheet. However, violation of rules has been mentioned therein. His plea that the circular dated 3.9.93 does not prohibit booking of bulk regd. articles by the PO which has also been accepted by the appellate authority, is correct. The

By 2

above instruction does not specifically mention that Post Office should not accept bulk regd. articles fully prepaid. However, a subsequent letter dated 19.8.94 was issued by the SSPOs, North City Dn. Bombay vide which the Post Offices were warned not to accept presorted bulk mails, though the said letter was issued in the context of rebate for presorted bulk mails. Although violation of letter dated 19.8.94 has not been mentioned in the charge sheet, the fact remains that the contents of the above letters were in the knowledge of the petitioner. He should have acted as per the orders issued on the subject from time to time. When the articles were presented at the Post Office counter with prepaid postage stamps, the petitioner should have advised the mailers to post the bulk mail from the bulk mail centre. The Airport Post Office in which the petitioner was working was not authorised to accept either presorted bulk mails or unsorted mails.

Since there is no loss to the Govt. and the violation of instructions dated 19.8.94 issued by the SSPOs 'N' Dn. has not been mentioned in the charge sheet and in view of the fact that as per instructions dated 7.10.93, the Post Offices were not specifically debarred to accept the bulk mails, the petitioner can at least be held responsible for acting in contravention of the rules on the subject which were brought to his notice, on several occasions. In the circumstances, the penalty of withholding of his next increment for a period of 18 months without cumulative effect would meet the ends of justice."

7. The aforesaid orders have been challenged

in the present OA.

8. We have considered the matter carefully.

9. We note that the Revisional Authority has clearly held that there was no mention of malafide on applicant's part on the charge sheet, and neither has the same been established in the DE. The Revisional Authority has also accepted as correct applicant's contention that the Circular dated 3.9.93 did not

Page 7

prohibit booking of bulk registered articles by the Post Office. However, on the basis of a subsequent Circular dated 19.8.94, which the Revisional authority admits ^{is} nowhere mentioned in the chargesheet, but whose contents according to the Revisional Authority, ^{was} within applicant's knowledge, and ^{was} said to have been violated, the Revisional authority has proceeded to inflict the penalty of withholding the next increment for 18 months without cumulative effect.

10. In our considered opinion when applicant is charged with accepting bulk registered in violation of circular dated 7.10.93 and Revisional authority himself concedes that there is nothing in Circular dated 3.9.93 which prohibited booking of bulk registered articles by the Post office, the Revisional authority cannot hold applicant guilty of misconduct in accepting bulk registered articles on the basis of another Circular dated 19.8.94 (which is not mentioned in the chargesheet) on the ground that applicant was aware of its contents. If applicant is to be guilty of violating the contents of Circular dated 19.8.94 it should have specifically been mentioned in the chargesheet, and applicant should have been given a reasonable opportunity of defending himself against the same. By not doing so, the principles of natural justice have been violated, vitiating the disciplinary proceedings.

11. In the result the OA succeeds and is allowed. The impugned orders are quashed and set aside. Applicant should be restored his increment as

Sd/-

if the impugned order had not been passed, with arrears, if any, within 3 months from the date of receipt of a copy of this order. No costs.

S.L. Jain
(S.L. Jain)
Member (J)

/ug/

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

18/11/02
Order/Judgement despatched
to Applicant/Respondent(s)
on 18/11/02

m