

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R .

T.A. No. 616/86

Date of decision: 5-1-1984

SHIV PRASAD SHARMA

: Applicant/Petitioner

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. Prahlad Singh

: Counsel for the applicant.

Mr. U.D. Sharma

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. O.P. Sharma,..... Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

The petitioner filed the writ petition before the Hon'ble High Court which was transferred to this Bench U/S 29 of the Administrative Tribunals Act, 1985.

2. Orders regarding the appointment of the applicant were issued by the Superintendent, Post Offices, Pali on 20.6.1968 and after completing the training he was appointed and posted as Clerk at Bharatpur where he joined on 6.11.1968. He was declared as quasi-permanent on 23.11.71. He also succeeded and passed the confirmation examination and was made permanent by the Superintendent of Post Offices, Alwar vide his order dated 7.5.74 with effect from 1.8.73.

3. The applicant was charge-sheeted on 17.3.75 and alongwith the charge-sheet, the statement of article of charge, statement of imputations of misconduct or misbehaviour in support of each article of charge and a list of documents and a list of witnesses were supplied to the applicant. The applicant submitted the written statement of defence on 9.6.75 and denied all the charges.

4. The Enquiry Officer conducted the inquiry and on 30.8.76 agreeing with the findings of the Enquiry Officer, the Disciplinary Authority, namely, the Superintendent of Post Offices, Alwar imposed the penalty and the applicant was

reduced to the minimum stage of time scale viz. Rs. 260/- for a period of five years w.e.f. 1.3.77 without affecting his future increments. The applicant, being aggrieved with the order of punishment submitted an appeal which was also considered by the Post Master General and the Post Master General came to the conclusion that he has considered the representation, Enquiry Report and the order of the Disciplinary Authority and also agreed as far as the question of guilt is concerned. However, keeping in view the length of service of the applicant he considered that a lenient view should be taken and the applicant's penalty should be reduced by five stages from Rs. 300/- to Rs. 260/- in the time scale of pay of Rs. 260/- for a period of one year w.e.f. 1-3-77. Thus, the period was reduced from five years to one year. He has further directed that Shri Shiv Prasad Sharma will not earn increments of pay during the period of reduction and the period of reduction will have the effect of postponing his future increment of pay. Thereafter, the respondent no. 3 passed an order and the applicant was also allowed to cross the Efficiency Bar vide order dated 5.8.80 (Annexure-3). The respondent no. 4, in exercise of the powers conferred under Rule 29 of CCS(CCA) Rules reviewed the matter and found that keeping in view the gravity of the charges proved against the petitioner, a higher punishment should have been awarded to him. The respondent no. 4 proposed to enhance the punishment awarded by the respondent no. 2 to that of dismissal from service and served a show-cause notice inviting representation from the petitioner against the proposed enhancement of punishment. Thus, the respondent no. 4 initiated the proceedings under Rule 29 after a lapse of more than 5 years. The applicant submitted the representation against the enhancement of penalty and the

same was rejected by the respondent no. 4 vide Annexure A-6, dated 31.5.84.

5. The applicant prayed that the order dated 25.2.77 passed by the Disciplinary Authority and the order dated 5.4.78 passed by the Appellate Authority be quashed. He further prayed that the order passed by the Reviewing Authority under Rule 29 dated 31.5.84 be quashed. He also prayed that it may be declared that the applicant is continuing in service.

6. On behalf of the respondents, reply was filed and it was submitted that the minimum qualification required for the post was High School or equivalent and the minimum age for recruitment was 18 years and maximum age was 23 years as on 1.1.66. The selection was to be made purely on the basis of the marks obtained in High School or equivalent examination. The submission was that the marks-sheet was forged and the applicant was selected. It was submitted by the respondents that the case was reviewed by Member (Administration) under Rule 29 when the matter came to his notice. Immediately, he issued a notice taking into consideration the gravity of the charges and giving an opportunity of hearing, the orders were passed by the Member (Administration) that instead of imposing a penalty of dismissal, the applicant should be retired compulsorily. The applicant does not dispute, to a great extent, the submissions made by the respondents. The applicant has produced Annexure-7 to show that during 1965 and 1972, Munalal, Clerk of the Reserve Bank of India, Jaipur entered into criminal conspiracy with some/unknown person to cheat the Post and Telegraph Department, Rajasthan Circle, Jaipur and the candidates desiring to get job of clerks in the P & T Department were advised to obtain the forged certificates on the payment of huge amounts and large number of candidates have fallen victims of Shri Munalal. Initially,

the list of 11 candidates was given. However, it was mentioned that this list is tentative and after investigation we can find large number of persons appointed who have obtained forged certificates. The applicant submitted that there was one case of Mool Chand Sharma and he was given fresh appointment and his past services were forfeited.

7. The disciplinary proceedings were initiated against different persons and all were independent though, to some extent, the cases were similar. It was submitted that P.D. Sharma was awarded the penalty of reduction of his pay to the minimum of Rs. 200/- in the time scale of pay for a period of seven years with cumulative effect. Shri K.C. Jain was also found guilty of submitting the forged marks-sheet. The respondents have submitted that the cases of P.D. Sharma and K.C. Jain are totally different as they have been charged only in relation to the submission of forged marks-sheets with higher marks whereas the applicant was charged with submitting the forged marks-sheet with higher marks and the second charge was submitting the certificate with wrong date of birth. It was also submitted that in case of J.P. Sharma, the same view was taken by the Reviewing Authority under Rule 29 and the directions were issued for the removal from service. As far as the order of Appellate Authority is concerned, the applicant was not aggrieved and he was satisfied with the reduction in penalty and finding of guilt. This fact is evident that after 1978 he has not come to the court to challenge the order of the Appellate Authority finding him guilty of submitting the forged marks-sheet showing higher marks and also the incorrect certificate about the date of birth. The applicant submitted this writ petition in July, 84 after the passing of the order by the Reviewing Authority in exercise of the powers under Rule 29. It is a case in which the Reviewing Authority has exercised the powers under Rule 29 after a period of 6 years,

i.e. the order was passed by the Appellate Authority in 1978 and the Reviewing Authority exercised the powers in 1984.

8. The Reviewing Authority issued the notice, for the first time, vide Annexure-4 dated 28.1.84 stating therein that the Director of Postal Services modified the punishment to that of reduction to the minimum for one year with cumulative effect vide order dated 5.4.78. Rule 29-A provides that the President may, at any time, either on his own or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice. This does not apply. Rule 29 provides that the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board, at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary.

9. The words "at any time" have been used. So no limitation has been prescribed in regard to revision under Rule 29. However, one must not think that the review after the lapse of many years will adversely affect the administration. The review has not been taken at the earliest opportunity in which the order of the Appellate Authority was confirmed by the Member (Administration). The review was taken and the show-cause notice (A-1) was issued for the enhancement of the penalty from 5 years and 9 months. The

and submitted that he was a victim of Shri Munalal's activities. It was also submitted in the representation that he entered the service in 1968 and reached the stage of Rs. 300/- on 7.11.74 and thereafter, the disciplinary proceedings were initiated and various penalties were imposed.

10. We have gone through the order dated 31.5.84 which reads as under:-

"5. To sum up, the charges that the official attached copies of fake certificates showing higher percentage of marks and bogus date of birth have been proved and these charges are grave enough to justify award of the severest punishment. Keeping in view all the circumstances of the case, the undersigned in exercise of the powers conferred on him vide Rule 29 of the CCS(CCA) Rules, 1965, the undersigned hereby orders that the punishment of reduction to the minimum of the time scale for a period of one year with cumulative effect be modified to that of compulsory retirement with immediate effect."

From this order, one thing is very clear that the penalty imposed by the Disciplinary Authority as well as the Appellate Authority does not survive that means it is merged into the order Annexure-6, dated 31.5.84. The applicant will be entitled to get all benefits which he was getting prior to the passing of the order dated 25.2.77 by the Disciplinary Authority, that means, the order of reduction of pay has come to an end. The order of not granting the increments has also come to an end and the applicant will be entitled for the salary which he was drawing before the passing of the order dated 25.2.77 and 5.4.78. He will also be entitled for increments and he will be allowed all benefits upto 31.5.84 and the pension of the applicant should be determined taking into consideration that the orders dated 5.4.78 and the orders passed by the Disciplinary Authority on 25.2.77 have not come into force and his pension should be revised accordingly. As far as the gravity of the case is concerned, we agree with the Disciplinary Authority that it is not a case in which we should take a lenient view. The applicant obtained the forged marks-sheet as also ante-dated birth certificate and succeeded in getting selected showing