

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A. No. 1149/92

Date of order: 18/2/2000

Madanlal Pareek, S/o Sh. Bajranglal, R/o C/o K.I.Thawani,
93/30 Agarwal Farm, Mansarovar, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Deptt. of Posts, Mini. of Communications, New Delhi.
2. Postmaster General Rajasthan Eastern Region, Ajmer.
3. Director Postal Services Raj. Eastern Region, Ajmer.
4. Supdt. of Post Offices, Tonk Division, Tonk.

...Respondents.

Mr. K.I.Thawani - Counsel for the applicant

Mr. U.D.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

Hon'ble Mr. N.P. Nawani, Administrative Member.

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash Annex A-1 and A-2 and the respondents may be directed to reinstate the applicant on the post of FDBPM at Harchandra with all consequential benefits.

2. Facts of the case as stated by the applicant are that he was appointed as FDBPM Harchandra on 4.11.78. While working on the post of FDBPM at Harchandra, a memorandum of charge sheet dated 13.5.91 was issued to him by the Supdt. of Post Offices, Tonk, alleging that in R.D A/c No. 1336051 the applicant has deposited the monthly deposits late in contravention of Rule 131(3) of Branch Post Office Rules. The applicant denied the charge. Shri K.D.Sharma was appointed as Enquiry Officer who conducted the enquiry. The Enquiry Officer held the applicant guilty of the charge and on the basis of the enquiry report, the disciplinary authority imposed the penalty of removal of the applicant from service via order dated 29.1.92. It is stated that the applicant filed the appeal challenging the order of removal which was also dismissed. It is also stated that the Enquiry Officer while conducting the enquiry did not follow the principles of natural justice. The Enquiry Officer conducted the enquiry in the absence of the applicant in spite of the fact that the applicant was ill and he sent the information by registered post. The Defence Assistant had withdrawn himself abruptly but no defence assistant was provided to the applicant. The applicant was also not provided with an opportunity to cross examine the prosecution witnesses and

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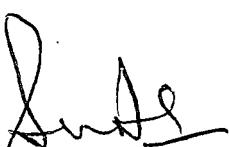
the disciplinary authority did not apply his mind before imposing the penalty of removal from service. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the enquiry was conducted in accordance with the rules/procedure. The applicant was given full opportunity to defend himself and principles of natural justice are not violated. It is stated that the charge of temporary misappropriation of Govt money was established against the applicant which is in violation of Rule 17 of the said rules of 1964. It is also stated that the applicant sent an application on 9.11.91 alongwith medical certificate by registered post but the same did not reach to the Enquiry officer on the date fixed i.e. on 12.11.91 but could reach the Enquiry Officer on 13.11.91. On 12.11.91, statements of Sh.Mohd.Rafiq was recorded and the applicant was sent a copy of the order sheet so as to put his defence on the next date. It was open to the applicant thereafter to request the Enquiry Officer for resummoning the witness for cross examination. But the applicant did not like, therefore, now the applicant cannot make a grievance that the Enquiry officer proceeded ex-parte against the applicant. The applicant was also informed about the unwillingness of the Defence Assistant Shri Suraj Mal. It was the responsibility of the applicant to make the request for nomination of another defence assistant but he did not like to do so. Even this point was not raised in the appeal. It is stated that the disciplinary authority has passed the impugned order of removal dated 29.1.92 after full application of mind, therefore, this O.A is devoid of any merits and the same is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that the applicant was not given proper opportunity to defend his case, as defence assistant had abruptly withdrawn and thereafter no defence assistant was provided. Therefore, he submits that the enquiry proceedings are vitiated. He further argued that the Enquiry Officer has conducted the enquiry in the absence of the applicant in spite of the fact that advance information was given to the Enquiry Officer regarding his illness. In support of his contentions he has referred to:

- (i) 1992(1)ATR 711, Vijay Kumar Vs. UOI & Ors
- (ii) 1993(1) ATJ 56, P.N.Mukherji Vs. UOI & Ors.
- (iii) 1996(32) ATC 731, S.B.Ramesh Vs. GOI
- (iv) 1998(37) ATC 38, I.Jebaraj Vs. UOI & Anr.

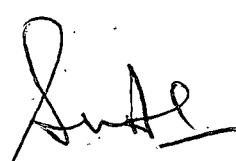


6. The learned counsel for the respondents rejected the arguments of the learned counsel for the applicant and argued that the applicant was given full opportunity to defend his case. In support of his contention he has referred to 1995(31) ATC 652 and 1998 SCC(L&S) 567.

7. In the reply it has been made clear that the applicant was informed about the unwillingness shown by Shri Surej Mal, Defence Assistant to act as Defence Assistant of the applicant. It was the responsibility of the applicant to nominate another person as Defence Assistant. From the reply it also appears that on 16.7.91, the applicant was given 15 days time to nominate his Defence Assistant and on 16.9.91, the applicant alongwith his Defence Assistant was present before the Enquiry officer. No rejoinder was filed to controvert the above facts stated in the reply. Therefore, it is wrong to say that the applicant was not provided opportunity to defend his case.

8. Regarding the second contention of the learned counsel for the applicant, on perusal of the reply it appears that the applicant sent an application to the Enquiry Officer alongwith Medical Certificate from Dambore E.D Post Office, which could not reach the Enquiry Officer at Tonk on 12.11.91, on the date fixed, but it could reach the Enquiry officer on 13.11.91. It appears that the Medical Certificate was obtained by the delinquent from Tonk but the letter of adjournment was sent by registered post from Dambore. The applicant could have taken a care to send it by registered post from Tonk itself so that it could reach to the Enquiry officer before the date fixed. But the applicant did not exercise even the reasonable care to send the information regarding the adjournment of the case on account of his illness. On a perusal of the reply it also appears that the registered letter was given to the Dambore Post Office on 9.11.91 and 10.11.91 was Sunday, therefore, possibility to reach that letter by 12.11.91 was very much meagre. Thus the applicant himself is responsible for the delayed delivery of the letter dated 9.11.91.

9. On a perusal of the reply it also appears that on 12.11.91, statement of Sh. Mohd Rafiq was recorded and copy of the order sheet dated 12.11.91 was sent to the applicant so as to give him an opportunity, if the applicant desires to cross examine the witness, he may request to the Enquiry officer to resummon the witness for cross examination. But the applicant did not like to submit any such application for resummoning the witness. Therefore, the contention of the learned counsel for the applicant is baseless and not sustainable in law and the applicant cannot take the



benefits of his own lapses.

10. The legal citations as referred to by the learned counsel for the applicant in the facts and circumstances of this case do not help the applicant in any way.

11. The learned counsel for the applicant also argued that the disciplinary authority has passed the impugned order of removal without application of mind. But we are not inclined to accept this contention as the Enquiry Officer's report was before the disciplinary authority and there was a documentary evidence to prove the factum of temporary retention of Govt money by the delinquent. Therefore, this contention of the learned counsel for the applicant has no force.

12. In view of the foregoing discussions and facts and circumstances of this case, we are of the considered opinion that the applicant has utterly failed to make out a case for interference by this Tribunal and this O.A is liable to be dismissed as having no merits.

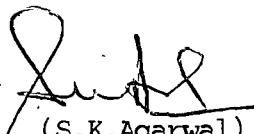
13. We, therefore, dismiss this O.A having no merits.

14. No order as to costs.



(N.P. Nawani)

Member (A).



(S.K. Agarwal)

Member (J).