

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 504/87
~~T.A. No.~~

198

DATE OF DECISION 19.12.89

Petitioner

Advocate for the Petitioner(s)

Versus

Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N. Jayasimha, AYC.

The Hon'ble Mr. J.N. Muzhy, M (Indl).

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

BNJ
BNT

JNM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERBAD BENCH: (8)

AT HYDERABAD.

O.A.No. 504 of 1987

Date of Order: 19.12.87

P.Prabhakar

...Applicant

Versus

Union of India, rep. by the
Postmaster General,

Andhra Circle,

Hyderabad and others. ...Respondents

Counsel for the Applicant: Shri T.Jayant

Counsel for the Respondents: Shri J.Ashok Kumar, S.c. For POSTAL
DEPARTMENT.

C O R A M:

THE HON'BLE SHRI B.N.JAYASIMHA: VICE-CHAIRMAN

THE HON'BLE SHRI J.N.MURTHY: MEMBER (JUDL)

(Judgment of the Bench delivered by Shri B.N.Jayasimha: H.V.C.)

The applicant, a Postal Assistant under the Superintendent of Post Offices, Adilabad, has filed this application against the order passed by Director of Postal Services, A.P. Northern Region in his memo dated 25-4-1986, imposing upon the applicant the penalty of with-holding of increment for three years.

2. The case of the applicant is that the Superintendent of Post Offices Adilabad, Respondent 3, issued a charge memo under Rule 16 of the CCS Rules on 19-5-1980. It was alleged that on 7-2-1980, while he was working as Sub-Postmaster M.C. Works, P.O., he assaulted Shri V.Satyanarayana, a postman and that he left for Warangal on 25-1-1980 without

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obtaining prior permission of the competent authority. The applicant submitted his explanation stating that he did not assault the Postman, that when he objected to the Postman opening and reading a letter addressed to one Mallikarjun, the Postman started quarrelling with him, that he left for Khazipet to attend to his sick mother-in law on receipt of a telegram after posting a letter to the Superintendent of P.Os for permission, to avail of the 26th January 1980, that being public holiday. Respondent 3 imposed upon him the penalty of With-holding of increment for a period of 3 years without cumulative effect.

3. The applicant submitted an appeal to the Director of Postal Services, Respondent 2 contending that there ^{is} were no evidence in support of the charges and that no opportunity was given him to defend the case. Respondent 2 thereafter remitted the case to the disciplinary authority for conducting an enquiry under Rule 14 of the C.C.S. (C.C.A.) Rules and forwarding the record of enquiry to him. Thereafter Respondent 3 issued a fresh charge memo and later appointed an Inquiry Officer, who proceeded with the enquiry despite his objections. The enquiry commenced on 9-7-1982 and completed in 1985.

Thereafter he received from Respondent 2, the memo dated 25-4-1985, along with a copy of the Inquiry Officer report imposing the penalty of stoppage of three increments for a period of 3 years, the Inquiry Officer had concluded that the two articles of charges had not been proved. Respondent 2 however stated that he did not agree with the conclusions in

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regard to charge I and held that it was proved. In regard to charge II, he observed that there is no violation of Rule 62 of P&T Manual Vol. III, and that the charge of leaving the office on 25-1-1980 without prior permission is proved.

4. Aggrieved by this order, he submitted an appeal to the Post Master General on 30-5-1986. Respondent No. 1 (P.M.G.) informed the applicant that the appellate authority is the Postal Board and that he may appeal to the Board. Aggrieved by the action of the respondents, he has filed this application.

5. In the counter, the respondent says that the averment of the applicant that he had raised preliminary objections before the Inquiry Officer is not borne out ^{by} the records. The delay in ^{the} competing the enquiry was attributable to the applicant himself and the Inquiry Officer has explained the reasons for the delay. The appellate authority-Respondent 2, had observed that charge II was not a serious one. He had taken a lenient view even though the charge held proved viz., he assaulted a postman is a serious misdemeanour. The contention that the disciplinary authority had issued a fresh charge memo with, a different imputation is not correct. The fresh memo contains the same charges. The applicant did not raise any objections before the Inquiry Officer. There is no irregularity in the appellate authority asking for the

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enquiry report and passing the order. For these reasons, the Respondent oppose the application.

6. We have heard Shri T. Jayant, Learned Counsel for the applicant and Shri J. Ashok Kumer, Learned Standing Counsel for the Department of Posts.

7. The Main grounds urged by Shri T. Jayant are:

- (1) The appellate authority had not directed the issues of a fresh charge memo, but the disciplinary authority issued a fresh charge memo when it was remanded to him for enquiry under Rule 14.
- (2) Having remanded the case to the disciplinary authority the appellate authority was not right in asking for the enquiry report and passing the order. He should have left the matter to the disciplinary authority to pass the order.
- (3) Respondent 2 had not given any reasons for disagreement with the findings of the Inquiry Officer.
- (4) Respondent 2 could not have confirmed the order of the disciplinary authority since it had been set aside by him earlier.

Point No.1

On a perusal of the charge memo, dated 19.5.80 issued under rule 16 and the charge memo dated 31.3.82 issued under Rule 14, it is seen the charges are the same. The memo has been issued to be in conformity with rule 14, under which a regular enquiry is to be held. We do not find that in issuing the memo dated 31.3.82, there is illegality.

Point No.2

Shri T. Jayant's contention is that the appellate authority is not competent to obtain the enquiry report and pass an order under Rule 27 of the C.C.S. Rules. Having remanded the matter to Disciplinary Authority, he should have left the matter to the disciplinary authority to pass the order on the basis of the report of the Inquiry Officer. We may notice the order of the appellate authority at this stage.

"On a careful examination of the appeal preferred by Shri P. Prabhakar, Postal Assistant, Mancherial H.O., it is observed that the appellant alleges that he was not given opportunity to examine the persons whose depositions were relied upon by the disciplinary authority.

It is therefore, hereby directed in accordance with the provisions of Rule 27(2) (ii) of the CCS(CCA) Rules 1965, that an enquiry under Rule 14 of CCS(CCA) Rules 1965, be conducted by the disciplinary authority and the record of such inquiry forwarded to the Disciplinary Authority, vide his proceedings dated 21-6-80 will not be operative."

/ The punishment imposed on the appellant by Disciplinary authority.

Rule 27(2) (ii) of CCS(CCA) Rules 1965 reads as follows:

"(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of these cases."

Shri J. Ashok Kumar, submits that this rule does not prohibit the appellate authority calling for a report and passing an order thereafter. It may be that the appellate authority considers that since the disciplinary authority had once exercised the disciplinary powers and imposed a punishment it may not be proper to ask the same disciplinary authority to pass a fresh order after conducting enquiry. There is no irregularity in calling for a report by the appellate

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authority and thereafter passing the orders. We are inclined to agree with this argument. There is nothing in the rule which would warrant the conclusion sought to be drawn by Shri Jayanth. We accordingly reject this also.

Point No.3

Shri Jayant's contention is that the reasons given by the appellate authority for disagreeing with the conclusions drawn by the Inquiry Officer are not valid. In regard to charge I, the Inquiry Officer had observed that two vital witnesses were not produced during the course of Inquiry. No medical certificate in support of injuries was obtained and produced and hence he concluded that charge I was not proved. However the Respondent 2, observed that the applicant did not get any evidence to show that the Postman was not assaulted. The two witnesses could not be produced for the reason that one had left^{for} a foreign country and the whereabouts of the other witness was not available. The officer who conducted the enquiry was a witness and he was thoroughly cross-examined by the applicant. As this is not a criminal case, there is no necessity for getting medical certificates etc. These are the reasons given by Respondent 2, for differing from the conclusion arrived at by the Inquiry Officer. Shri Jayant contends that burden had been shifted to the applicant. He further argues that in his defence the applicant had stated that he had objected when the Postman was reading a letter Addressed to one Mallikarjuna and the Postman got wild and thereafter he gave a false

Draft by: Checked by: Approved by
D.R.(J)

Typed by: Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR.B.N.JAYASIMHA: (V.C.)

AND

HON'BLE MR.D.SURYA RAO:MEMBER(JUDL)

AND

HON'BLE MR.D.K.CHAKRAVORTY:MEMBER:(A)

AND

HON'BLE MR.J.NARASIMHA MURTHY:MEMBER(J)

DATED: 19/12/89

ORDER/JUDGMENT

M.A./R.A./C.A./No.

in

T.A.No.

(W.P.No.

)

D.A.No. 504/87

Admitted and Interim directions
issued.

Allowed. ✓

Dismissed.

Disposed of with direction.

M.A. Ordered.

No order as to costs. ✓

Sent to Xerox on:

Central Administrative Tribunal
DESPATCH
23 DEC 1989
HYDERABAD BENCH.

22/12

To:

1. The Post Master General, (Union of India), Andhra Circle, Hyderabad-500 001.
2. The Director of Postal services, A.P. Northern Region, Hyderabad-500 001.
3. The superintendent of post offices, Adilabad Division, Adilabad-504 001.
4. One copy to Mr. T. Jayant, Advocate, HIG II, Block 2, Flat-4, Water Tank, Near Ambedkar college, Bagh lingampally, Hyderabad-500 044.
5. One copy to Mr. J. Ashok Kumar, SC for postal department, CAT, Hyderabad.
6. One spare copy.

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complaint. The Postman evaded to answer denying that he (87) did not remember it, when he was cross-examined. In the light of this, the reasoning given by the appellate authority for disagreeing with the finding of the Inquiry Officer are not valid.

8. In considering these arguments, it will be necessary to notice the defence taken by the applicant. The applicant had contended in his statement of defence filed with the Inquiry Officer that PW-1, V. Satyanaryana, Postman had in the statement given to SDI(P) that " the applicant had assaulted him on his private parts and that a consequence, there was bloodshed from his body." It is strange that PW-1 who complained that he assaulted him on his private parts and there was bloodshed, did not say whether he went to any doctor for treatment or did he submit any medical certificate. The fact is he could go for delivery of mails immediately after the assault. Hence he contended that the complaint is false. Considering these facts, we agree with Shri Jayant's contention that the reasons given by the appellate authority for differing from the finding given by the Inquiry Officer is not supported by the evidence on record. The applicant could not be held guilty of charge I.

9. In the result we find that the impugned orders have to be set aside and we accordingly do so. The application is allowed and No Orders as to Costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
VICE-CHAIRMAN

M.S.
(J.N. MURTHY)
MEMBER (J)

Dated: 19th December, 1989.

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Deputy Registrar