

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

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U.S. NO. 243 OF 1989.

- Date of Decision:

Between:

Vg.

Union of India represented by the
Secretary, Ministry of Communications
New Delhi and three others. Respondents.

For the Applicant: - Shri T.Jayant, Advocate.

For the Respondents: Shri N. Bhaskar Rao,
Additional Standing Counsel
for Central Government.

CORAM:

Hon'ble Mr.B.N.Jayasimha, Vice-Chairman.
Hon'ble Shri J.Narasimhamurthy, Member(Judicial)

JUDGMENT.

(120)

O.A. 243 of 1989.

(Judgment of the Bench delivered by Hon'ble
Shri J. Narasimhamurthy, Member (Judicial))

-:-

This application is filed by the applicant for
the relief to quash the impugned Charge Memo No. 7/8//88--VIG.II
Dated 30--11--1988 issued by the 2nd respondent.

The facts of the case are briefly as follows:

The applicant was initially appointed as Clerk in
Postal Department with effect from 1--7--1958. He was
promoted as Inspector of Post Offices with effect from
1--9--1964. He was also promoted as Assistant Superintendent
of Post Offices in 1979 and he was again promoted as
Superintendent of Post Offices (Class II) in 1981 and
he is promoted as Senior Superintendent of Post Offices
(Class I Junior) in 1987. He is due for promotion as
Class I Superintendent of Post Offices on regular basis

He got all the aforesaid promotions in the normal course
by seniority-cum-fitness and by merit as Superintendent of
Post Offices. He has put in unblemished service throughout
his career.

While so the Assistant Director General (VIG)
Department of Posts, New Delhi, the 2nd respondent herein
issued to him the impugned Charge Memo Dated 30--11--1988
"By Order in the name of the President" framing against
him 10 articles of charge in connection with the alleged
events relating to the period from 1981- to 1984 when

he was serving as Superintendent of Post Offices (Class II).

The applicant denied all the charges in his preliminary defence dated 19--12--1988. In continuation of his representation dated 9--1--1988 he raised the following preliminary objections questioning the very validity of the Charge Memo.

i) The charge memo is not in conformity with the provisions of Rule 14(2) of the CCS (CCA) Rules, 1965 inasmuch as the Disciplinary Authority has not formed a bonafide opinion that there is *prima facie* case against the applicant by making independant authoritative and reliable enquiries in the matter

ii) That Charge No. VII alleging that he has failed to exercise the disciplinary powers in a fair and judicious manner by showing undue favour to the Extra Departmental Branch Postmasters is not maintainable under CCS (Conduct) Rules, 1964 inasmuch as the disciplinary powers vested in the applicant as Superintendent of Post Offices under P & T E.D. Agents (Conduct & Service) Rules, 1964 are statutory and it is always open to the appellate and reviewing authorities to pass orders thereon as they deem fit under the same Statutory rules.

iii) That the charges framed in 1988 in connection with the alleged events of the period from 1981 to 1984 are not maintainable inasmuch as it amounts to

denial of reasonable opportunity to defend against the same effectively

iv) that the charges based on certain anonymous complaints are not maintainable in terms of Rule 82 of P & T Manual Vol.II read with Rule 183 of P & T Manual Vol. III. He therefore requested the Disciplinary Authority to drop the Charge Memo on the above grounds. But the Disciplinary Authority without passing any orders on the abovementioned representation appointed Shri R.S.Goel, CDI CVC New Delhi, the 4th respondent as Enquiry Authority and Shri J.V.Punna Rao ADPS., Hyderabad as Presenting Officer for holding an enquiry into the charges by two separate orders dated 13--2--1989. Thereupon the 4th respondent issued enquiry notice dated 16--2--1989 fixing the preliminary inquiry at New Delhi on 6--4--1989. As the 2nd respondent herein has not passed any orders on his representation dated 9--1--1989 the applicant submitted a representation dated 23--2--1989 to the 4th respondent requesting him to keep the inquiry in abeyance till the final disposal of his representation dated 9-1-1989 by the Disciplinary Authority. He also sent another representation dated 28--2--1989 to the 4th respondent. He did not receive any orders from the 2nd respondent about the validity of the Charge Memo. Then the applicant sent a telegram on 6--3--1989 to the 2nd respondent under intimation to the 4th respondent. While so

the Post Master General, Andhra Circle, Hyderabad, the 3rd respondent herein directed the applicant herein at New Delhi to attend the enquiry/by his letter dated 3-3-1989 on 6-4-1989. The applicant received a letter dated 20-3-1989 from the 3rd respondent communicating a copy of D.O. Letter dated 13-3-1989 of the 2nd respondent directing the applicant to raise the issues before the Inquiring Authority.

The 2nd respondent without himself settling the various objections regarding the validity of the Charge Memo as the Disciplinary Authority directed the applicant herein to raise the same before the Inquiry Officer even though it is not within the purview of the Inquiry Officer. Unless the charge memo is declared as valid or otherwise by the Disciplinary Authority, the question of conducting any enquiry into the charge Memo by the Inquiry Officer does not arise at all. As the subject matter is not within the purview of the Enquiry Officer, the question of raising the same before the Inquiry Officer does not arise. Hence the application.

The applicant also filed additional facts regarding Articles of Charges in the impugned charge Memo mentioning ~~xxxxxxxx~~ various aspects.

~~The respondent have not taken any action.~~
The case is posted for admission after giving notice. The case is adjourned on several occasions before admission.

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When the case has come up before us for admission,

We have heard the learned counsel for the Applicant Shri Jayant and Bhaskar Rao, learned counsel for the respondents. We are disposing of the case on merits.

The applicant herein was initially appointed as a Clerk in the Postal Department on 1--7--1958.

He was promoted from stage to stage to the post of Senior Superintendent of Post Offices, Class I (Junior)

in 1987. He is due to promotion to the post of Senior Superintendent of Post Offices (Class I) on

regular basis. He got all the promotions in the normal course by seniority-cum-fitness and by merit as Superintendent of Post Offices. He has put in unblemished service throughout. The Assistant

Director General (VIG) Department of Posts, New

Delhi, 2nd respondent herein issued to him the

impugned Charge Memo dated 30--11--1988 containing

10 charges with regard to the incidents that occurred his administrative ~~and~~ Performance

during the period from 1981 to 1984 when he was

serving as Superintendent of Post Offices (Class II).

The respondent ~~excluded~~ ~~not~~ ~~disputed~~ ~~the~~ ~~charges~~ ~~in~~ ~~the~~ ~~charge~~ ~~memo~~.

The contention of the applicant is that the ~~impugned~~ Charges were framed against him with

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a mala fide intention to create hurdles in the matter of his promotion to the post of Class I Officer (Senior) on regular basis. He also contended that all the Articles of charges are baseless, concocted and are not maintainable in terms of Rule 82 of the P & T Manual Vol. II read with Rule 183 of P & T Manual Vol. III. He contends that all the charges framed against him now i.e., in the year 1988 relate to the periods from 1981 to 1984 and no enquiries were made into the various incidents they referred to in the charge-sheet. He also contended that the Charge Memo is not in conformity with the provisions of Rule 14(2) of the CCS(CCA)Rules, 1965.

He further contends that the respondents did not take any action upto 5 to 7 years. In 1988 when he was due for promotion to the cadre of Senior Superintendent Class I, the respondents invented all these charges. The applicant very rapidly rose to the position of Superintendent of Post Offices (Grade-I)(Junior) in the year, 1987 by mere seniority-cum-merit. Up to that period, there are no complaints or any charges were framed against him. He got quick promotions in a short span of time. His record of service was very clean.

There is no whisper upto 1987 about the allegations made against the applicant. If really the applicant violated any of the Rules or mis-used his official position, the Superior Authorities have got every right to inspect and call for his explanation regarding the various acts he has done during that period. There is no iota of evidence to show that the Department has proceeded in any manner for the acts done between 1981 and 1984.

All of a sudden when the Applicant is ripe for promotion, the 10 charges were invented against him and served on him in 1988. During the said period i.e., between 1981 and 1984 nothing was pointed out against the applicant to show that he has committed any of the irregularities. Moreover, there is no charge against him with regard to his integrity or any financial irregularities. In such circumstances, can the Department serve the charge-sheet with regard to the various acts he is alleged to have committed in discharge of his administrative duties after a lapse of 5 to 7 years is a question to be considered.

There is no explanation given by the respondents for their inordinate delay of 5 to 7 years in serving the charge-memo against the applicant. What is the

enquiry they have conducted and through whom the inquiry was conducted, no evidence is forthcoming.

In this connection, learned counsel Shri T.Jayant for the applicant relied on a decision reported in P.L.KHANDELWAL V. UNION OF INDIA & OTHERS (1) wherein it was held:

"Unless there is a clear allegation or the charge of corruption or any involvement or inaction resulting in any personal gain or otherwise the mere action of inaction while discharging statutory powers and exercising in the matters of "quasi-judicial" functions, by such officers cannot be subject matter of the disciplinary jurisdiction of the respondents."

The Charge Nos., 2, 6 and 7 are levelled against the applicant that he has failed to exercise the powers in regard to the appointments and discipline in a fair and judicious manner by showing undue favour to the Extra Departmental Branch Post Masters and they are not maintainable as those are the administrative acts done by the petitioner in discharge of his official

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duties. There are no complaints from any quarter against the applicant in these matters. No one is affected by those administrative acts of the applicant. He discharged his duties as per his discretion, power and judgment attached to the said post. These acts cannot be the subject matter of the rules under CCS(Conduct)Rules. The applicant discharged his duties well within the purview of his discretion and judgment. Therefore no stigma can be put to the applicant in regard to the discharge of his duties in his official capacity.

The remaining 7 charges relate to fixation of rents to the office buildings and purchase of furniture to the offices and also based on anonymous petitions cannot be maintainable under CCS(Conduct) Rules as none of the charges attribute any alleged misappropriation or any personal gain in the said transactions. They speak only about the alleged irregularities in the procedural matters and all of them are within the Administrative powers and rules.



Moreover the charges that were framed against the applicant in the year 1988 relate to the incidents that occurred during 1981 and 1984. There was no enquiry into the charges. No action was taken to verify by the Higher Authorities about the truth or otherwise of the charges levelled against the applicant. Therefore, they are not maintainable at this distant date i.e., after a lapse of 5 to 7 years. It amounts to denial of reasonable opportunity to the applicant to have an effective defence to defend himself at this distance of time.

Learned counsel for the applicant relied upon a decision reported in MOHANBHAI DUNGARBHAI PARMAR V. Y.B.ZALA AND ANOTHER (2) discussing on the question where "Disciplinary proceedings against a Police constable on the allegation of his absence (i) from the morning parade on one occasion and (ii) at the time of taking drill call on some other occasions - Delay of $1\frac{1}{2}$ years in initiating the proceedings - does such delay constitute denial of

reasonable opportunity to defend? the Gujarat High

Court held:

"The very delay in initiating proceedings must be held to constitute denial of reasonable opportunity to defend."

The learned counsel for the applicant also relied on

a decision reported in BANI SINGH V. UNION OF INDIA (3)

wherein the Jabalpur Bench of the Central Administrative

Tribunal agreeing with the view of the Madras Bench

of the Tribunal (in T.A. No. 855 decided on 13-11-1986)

held:

"the extraordinary and inordinate delay in issue of the charge sheet in the impugned disciplinary action against the petitioner has vitiated the proceedings...."

inordinate

In this case there is a delay of 5 to 7 years in

issuing the charge-sheet. No preliminary enquiry

was made by the respondents to know the real truth

or otherwise of the charges. So this delay of

5 to 7 years is not explained properly. This itself

(3) A.T.R. 1988 (1) C.A.T. 592.

is sufficient to throw out the case.

~~The respondents have not filed their counter.~~

The applicant pleads that the charges framed on the basis of certain anonymous complaints are not maintainable in terms of Rule 82 of P & T Manual Vol. II read with Rule 183 of P & T Manual Vol. III. Without any basis the charges were framed against the applicant. If there is any basis to frame those charges, the material for that basis to frame charges must be made available to the applicant. In this case that material was not made available to the applicant.

The applicant in discharge of his official duties did the various acts within his discretion and judgment governed by rules and regulations. They cannot be questioned in disciplinary proceedings.

In this case, the applicant though joined as a Clerk in the Postal Department in the year, 1958 he rose upto the rank of Superintendent of Post Offices Grade I (Junior) by seniority-cum-merit in the year, 1988. Till such time there is nothing against him. His service record is very clean. All of a sudden when

To

1. The Secretary, (Union of India)
Ministry of Communications,
New Delhi - 110001.
2. Assistant Director General(VIG),
Dept. of Posts, Oak Tar Bhavan,
Sansad Marg, New Delhi - 110001.
3. The Post Master General, Andhra Circle,
Hyderabad - 500001.
4. R.S.Goei, Commissioner for Departmental Inquiries,
Central Vigilence Commission, Block No.10,
Wing No.8, Jamnagar House, Akbar Road,
New Delhi - 110011.
5. One copy to Mr.T.Jayant, Advocate,
17-35 B, Srinagar Colony, Gaddiannaram,
Dilshuknagar, P & T Colony P.O.,
Hyderabad - 500660.
6. One copy to Mr. N.Bhaskara Rao, Addl.CGSC.,
CAT., Hyderabad.
7. One spare copy.

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Int. Dept.
1/2/83

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he is just ripe to get his promotion to Grade-I(Senior) post, the Charge Memo was served on him. This throws a doubt about the genuineness of the truth or otherwise of the charges levelled against him.

The charges framed at a belated stage on the basis of certain anonymous complaints and on the basis of the acts done in discharge of his official duties are not maintainable in law.

In the circumstances, we hold that the charges are baseless, belated and the acts done by the applicant are well within the purview of discharging his official duties in exercise of his discretion and judgment and therefore, they cannot lie against the applicant. We therefore, quash the impugned Memo No.7/8/88-VIG.II dated 30--11--1988.

The application is accordingly allowed.

There will be no order as to costs.

B.N.Jayamha
(B.N.JAYASIMHA)
Vice-Chairman.

M.S
(J.NARASIMHAMURTY)
Member (Judl.)

9-11-89.

S. Venkateswaran
DEPUTY REGISTRAR (J)
11/14/89