

48

THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 712/92

Date of Order: 22-9-95

Between:

S.Satyanarayana.

... Applicant

and

1. The Senior Post Master,
Hyderabad General Post Office,
Hyderabad.
2. The Director of Postal Services,
Hyderabad City Region,
Hyderabad.

Respondents.

For the Applicant :- Mr.S.Ramakrishna Rao, Advocate

For the Respondents: Mr.N.R.Devraj,
Sr./~~Asst.~~ CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR. A.B.GORTHY : MEMBER (ADMN)

(53)

O.A.No.712/92

Dt. of decision: _____

JUDGEMENT

X As per the Hon'ble Sri A.B. Gorthi, Member (A) X

The applicant, when serving as an Extra Departmental Mail Carrier (EDMC for short) in the General Post Office, Hyderabad was served with a charge memo alleging that he participated in an illegal strike on 11th and 12th Oct. 1989 and that on the said dates when ordered to work as Contingent Postman, failed to perform his duties. After a departmental disciplinary enquiry he was found guilty of the charges and awarded the major penalty of removal from service vide order dt.31-5-91, issued by the ~~xx~~ Sr. Post Master, Hyderabad GPO and his appeal to the Director of Postal Services was rejected vide memo dt.10-2-92.

2. The relief claimed by the applicant is that the penalty of removal as affirmed by the Appellate Authority be set aside and that he may be reinstated in service with all consequential benefits.

3. Sri S.Ramakrishna Rao, learned counsel for the applicant assailed the validity of the enquiry proceedings and the resultant penalty order on several grounds. His first contention is that as the first charge pertained to the applicant's participation in an illegal strike along with others, the applicant should have been subjected to common enquiry proceedings along with others who also allegedly took part in the strike. In this regard he relied upon Rule 53 of

Vol.III of P&T Manual and also Rule 18 of the CCS (CCA) Rules, 1965. Admittedly, the CCS (CCA) Rules, 1965 do not apply to E.D.Agents, but the applicant's counsel urged that the principle underlying Rule 18 of the CCS (CCA) Rules, 1965 as reiterated in Rule 53 of Vol.III of P&T Manual should not have been ignored by the respondents. In this context, we may note that the said provision enables the competent authority to hold the common enquiry proceedings in cases where there is joint complicity of the accused employees. In the instant case, the statement of imputations in support of Article-I would show that the applicant played a very active role in mobilising his cadremen for participation in strike. It is further stated that the applicant played a leading part in raising slogans against the Post Master and the Dy.Post Master. In these circumstances, if the respondents decided to proceed against the applicant separately, the enquiry cannot be said to be vitiated for such reason alone, particularly when it is apparent that the accused has not been prejudiced in any manner in his defence.

4. The next issue raised by the applicant's counsel is that although the first charge alleged that the applicant took part in an "illegal strike", it was not lead in evidence that there was ^a formal declaration to the effect that the strike observed on 11th and 12th Oct., 1989 was illegal. The respondents refuted the contention by stating that the

(61)

-4-

question whether the strike was illegal or not was not in issue. The employees suddenly and without prior notice struck work and that such conduct was in violation of Rule 19 of the E.D. Agents (C&S) Rules, 1964. The explanation offered by the respondents is plausible and we therefore find that even in the absence of a formal declaration that the strike was illegal, such averment in the Article of Charge, in the circumstances of the case, is absolutely in order.

5. Another contention urged on behalf of the applicant is that the applicant was an EDMC, but was shown as officiating contingent postman in Article-II. It is admitted that the applicant, as per procedure, was given leave for two days, i.e. for 11th and 12th Oct., 1989 when he was asked to perform duty as Contingent Postman. Thus the status of the applicant continued to be that of an EDMC only. As he was directed to work as Contingent Postman on 11th and 12th Oct., 1989, it was correctly stated in Article-II of the charge memo that he failed to perform duties as Contingent Postman when ordered to do so. We find no irregularity in the articles of charge in this regard.

6. As regards the conduct of the enquiry, learned counsel for the applicant contended that the mere statements of the Asst. Post Master and Dy. Post Master were believed as true by the Enquiry Officer and that had the Enquiry Officer ^{he} seen the attendance register ~~he~~ would have found that the applicant was marked "Present". It is the case of

62

-5-

the applicant that he did not participate in the strike at all and that on 11th and 12th Oct., 1989, he did perform duties as a Contingent Postman. It was asserted for the applicant that he did deliver several letters to the addressees on 12-10-89 and that if a few letters were left undelivered, it would not amount to his non-performance of duty as a Contingent Postman.

7. A perusal of the enquiry report would indicate that soonafter the incident, written reports were made by Sri K.Venkataraman, A.P.M. and Sri T.Lingaiah, D.P.M. stating that the applicant took an active part in the strike and that he shouted slogans, such as PM down down, DPM down down, PM Murdabad, DPM Murdabad. It is also stated by the Asst. Post Master that the applicant reported for duty on 12-10-89 at about 1630 hours when the strike was called off and thereafter proceeded on his duty taking out some letters for delivery. The enquiry officer and disciplinary authority therefore concluded that the applicant by his own actions and omissions failed to perform his duty on 11th and 12th Oct., 1989 as a result of which several letters remained undelivered. The findings in this regard cannot be said to be either unsupported by evidence or perverse. We are, therefore, not inclined to interfere with the findings of the competent authority.

8. In support of his arguments, the learned counsel for the applicant has referred to the judgements in:-

(1) K.Rajasekharan Nair and Ors. V/s U.O.I. & Ors.
(1995) 29 ATC 760, and (2) M/s Glaxo Laboratories (I) Ltd.
V/s Presiding Officer, Labour Court, Meerut & Others.
AIR 1984 SC 505.

In the case of K.Rajasekharan Nair, Ernakulam Bench of the Tribunal deprecated the practice of E.D.Agents being employed against leave vacancies of Group 'C' and 'D' employee of the P&T Department. In the instant case, it is not the grievance of the applicant that he should not have been ordered to work as Contingent Postman. In fact, he did take leave and proceeded to the office to work as Contingent Postman but instead of performing his duties as Contingent Postman took part in the strike in protest against the attitude of the Dy. Post Master. The charges against the applicant do not, therefore, fail merely on the strength of what was observed in Rajasekharan Nair's case.

As regards the decision of the Supreme Court in the case of M/s Glaxo Laboratories (I) Ltd., the relevant portion of the judgement reads as under:

"Some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would not expose the workman to a penalty. It cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty".

64


9. As already noted, Sec.19 of the E.D.Agents (C&S) Rules, 1964 prohibits strike. The said rule is as under:


"No employee shall resort to any form of strike in connection with any matter pertaining to his conditions of service."

Apart from the above specific provision, there is a general rule (Rule 17) which lays down that "every employee shall at all times maintain absolute integrity and devotion to duty" (underlined for emphasis). In view of the rule position it cannot be argued that participation in a strike by the E.D. Agents can never be construed as misconduct.

10. We have carefully gone through the enquiry proceedings and we find ~~no~~^{our} such irregularity or illegality as would warrant ~~or~~ interference.

11. In the result, we find no merit in the O.A. and the same is dismissed. No costs.//


(A.B. Gouthi)
Member (A)


(V. Neeladri Rao)
Vice Chairman

Dated 22 Sept 95


Deputy Registrar (J)CC

To

1. The Senior Postmaster,
kmv Hyderabad General Post Office,
Hyderabad.
2. The Director of Postal Services,
Hyderabad City Region, Hyderabad.
3. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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