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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. 812/94 Date of decision: 13.8.1997

Between:

A. Sudhakar .. Applicant

And

1. Postmaster General,
Hyderabad Region,
Hyderabad.

2. Director of Postal Services,
Hyderabad Region,
Hyderabad. .. Respondents

Shri S. Ramakrishna Rao .. Counsel for applicant

Shri V. Bheemanna .. Counsel for respondents

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HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

HON'BLE SHRI B.S. JAI PARAMESWAR, MEMBER (JUDICIAL)

JUDGEMENT

(Per Hon'ble Shri H. Rajendra Prasad, Member (Administrative)

1. The applicant in this O.A. was initially appointed Postal Assistant in Hanamkonda Division under Hyderabad Region. He was promoted to Lower Selection Grade at a time when Selection Grades constituted Circle cadres and the Director of Postal Services was the Appointing/Disciplinary Authority for them. In 1989 the LSG cadre was divisionalised whereby the Divisional Superintendent became the controlling/disciplinary authority.

In August, 1992, certain charges came to be framed against the applicant on account of three alleged lapses. A regular enquiry was held into the charges at the end of which the Enquiry Officer concluded that--

Charge (I) was proved beyond doubt,

Charge (II) was not proved, and

Charge (III) was only partly proved.

The Superintendent of Post Offices, under whose signature the charge memo was issued, formed an opinion that the lapses of

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the applicant and the findings of the E.O. merited a major penalty, which he was not competent to impose. He therefore forwarded the entire record to Respondent-2. This was on account of the fact that although the SPOs had duly become the competent authority controlling LSG officials in the Division, and was also empowered to impose penalties 1 to 4 of Rule 11 of CCS (CCA) Rules, 1965, the power to impose major penalties 5 to 9 of the same Rules still remained with the Director of Postal Services; moreover, the fact that the applicant had been appointed by the said Director also necessitated the transfer of disciplinary proceedings to the higher authority. The DPS imposed the penalty of compulsory retirement on the applicant in March, 1994. In doing so, and while dealing with the Enquiry Report and other connected records, the DPS -

--Agreed with the Enquiry Officer that the Article of Charge (I) was proved, as concluded by the E.O.

--Held that Article (II) was not proved, as opined by the E.O; and

--"Agreed" with the Enquiry Officer that Article (III) of the charges was proved.

The disciplinary authority, viz., the DPS, came to the conclusion on the basis of his own analysis of facts and the evidence adduced during the enquiry that the articles of charge (I) and (III) were proved beyond reasonable doubt and proceeded thereafter to impose the penalty already referred The applicant thereupon filed an appeal to Respondent-1, i.e., Postmaster General, Hyderabad Region, within a fortnight of the imposition of the said penalty. The appeal was disposed of in April, 1994, by Respondent-1, holding that he did not find any reason to interfere with the penalty already awarded by the Director.

2. The applicant prays for setting aside of the punishme

on the following grounds:-

(1) The punishment of compulsory retirement imposed on him by R-2 lacked jurisdiction inasmuch as R-2 had been divested of the power of imposing penalties on an LSG official with the issuance of the revised Schedule of Appointing/ Disciplinary/Appellate authorities in respect of Group C & D employees of the Department of Posts, published in the Gazette of India on 8th July, 1989.

(2) The enquiry officer had duly permitted certain additional documents requisitioned by the applicant to be produced. He was, however, not allowed an adequate opportunity to study the documents so produced whereas a minimum period of at least 3 days is considered fair for the purpose in such situations. Instead, the enquiry officer proceeded to record the statement of the prosecution witnesses on the same day on which the additional documents were produced for the applicant's inspection and perusal.

(3) An important document, relied upon by the I.O. was the statement recorded by the S.D.I. (Posts) from a lady who was the alleged complainant, but showed the RTI of quite another lady who was not the complainant.

(4) The Disciplinary Authority mis-read the conclusions of the I.O. with regard to at least one of the charges framed against the applicant, and proceeded on that basis to impose a drastic penalty which had a far-reaching consequences on the applicant's career and livelihood.

3. The respondents have filed a detailed counter-affidavit which is based on facts, for the most part. It is submitted by the respondents that the DPS, in whose jurisdiction the applicant was working, was fully competent to issue the punishment order; that the appellate authority had comprehensively covered all points raised by the applicant in the

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appeal; that the disciplinary authority had duly and rightly agreed with the findings of the I.O. and held the charges as proved. It is urged by the respondents that the O.A. is totally lacking in merit and deserves to be dismissed.

4. In a rejoinder to the counter-affidavit the applicant argues that contracting a private loan by him/did not constitute a valid ground for inviting disciplinary proceedings, unless a civil court had duly held him guilty in a proper proceeding.

/from an outsider unconnected with the Department

5. The issues that arise in this O.A. are as follows:-

(1) Was the action of DPS in imposing a major penalty on a Selection Grade official in his jurisdiction, after the publication of the revised Schedule of disciplinary authorities in 1989 in respect of Group C employees permissible or correct?

(2) Was the action of the E.O. in supplying certain additional documents while at the same time proceeding with the recording of the statement of [illegible] witness on the same day correct or permissible?

(3) Would the statement recorded during the preliminary enquiry with contradictory indications at the top and bottom of the deposition of the complainant constitute an anomaly which operated adversely against the applicant without proper basis?

(4) Did the disciplinary authority decide to impose a major penalty as a result of a mis-reading of the enquiry officer's conclusions?

(5) Did the order of the appellate authority rely on or contain any impermissible stand, observation or statement?

6. Our findings on the above questions are as under:-

(1) No.

(2) No.

(3) Yes.

(4) No.

(5) Yes.

These findings and the resultant order herein are based on the facts as revealed in the O.A. and urged during the hearings of the case. It is made clear that the evidence produced during the enquiry was neither scrutinised nor was any attempt made to re-assess the evidence tendered during the said enquiry.

7. The reasons for arriving at the above conclusions are as follows:

(1) As regards the propriety and competence of the DPS to impose a major penalty on an LSG official after the promulgation of the revised Schedule of Appointing/Disciplinary Appellate authorities in respect of Group C in the Gazette of India on 8th July 1989, the legal position is as under:-

In K.P.Varghese Vs. DPS, Calicut and others, (1992) 19 ATC, CAT Ernakulam, an Assistant Postmaster (Acc) in LSG was proceeded against under Rule 14 of CCS (CCA) Rules by SPOs, Palghat. On the applicant denying the charge, the said SPOs appointed an Enquiry Officer and an ex-parte enquiry was conducted. On the basis of the enquiry report submitted by the E.O. the SPOs transferred the records relating to the proceedings to the DPS since he was of the opinion that a major penalty was needed to be imposed on the applicant. After due formalities, the DPS found the applicant guilty and imposed a major penalty. On the applicant filing an appeal to the PMG the latter set aside the punishment order on the ground that the DPS had no jurisdiction to act as disciplinary authority in the case. Shorn of other details of the case which are not relevant to the present discussion, it would be necessary to quote an extract from the order of the PMG in this case.

> "I have carefully considered the points raised in the appeal as well as in the petition for stay. The applicant belongs to the LSG cadre and as per the notification dated June 7, 1989 the authority competent to impose the penalties under Rule 11 is the Divisional Superintendent. It appears, the Director of Postal Services has assumed jurisdiction on the appellant as he was originally appointed to LSG cadre in 1983 by the DPS and hence the Divisional Superintendent was not competent to impose the major penalties. But even in that case, I am of the

view that the DPS cannot assume jurisdiction unless authorised specifically by a Presidential order. In the circumstances, the order of the DPS issued under No. ST/55-8/89 dated 27.12.89 cannot be sustained. Accordingly the said order is hereby set aside."

This view was upheld by the C.A.T., Ernakulam Bench, while disposing of this case. Thus, even though it is correct that the applicant had been initially appointed to LSG by the DPS, the subsequent position was that, after the divisionalisation of LSG cadre, the DPS had become the appellate authority in respect of an official of this grade. It was inappropriate, therefore, for the said Director to unilaterally assume the powers of a disciplinary authority which had by then been vested in the divisional Superintendent. Even if the power to impose a major penalty was still vested in an officer of Director's rank, the proper course for this Director in such a situation was to have asked for the appointment of an adhoc disciplinary authority. This was not done, and instead, the DPS, proceeeded to impose a major penalty on the applicant, appropriating, in the process, a power which was not vested in him anymore in his capacity as the appellate authority. Even if a major penalty needed to be imposed on the delinquent official, and even though in terms of rank, only a Director was competent to impose such punishment, the decision to do so should have been appropriately left to be taken by an officer of like rank other than himself. This could be done only by an adhoc disciplinary authority. The basic objection in the instant situation was that the Director who imposed the penalty was by now the appellate authority and in assuming the role of a disciplinary authority he was fore-judging an issue which he would have been obliged, in the normal course, to review on appeal, thus abjuring unwittingly his rightful and legitimate role as appellate authority.

Therefore it is to be held that the order contained in DPS Hyderabad Region memo No. ST/20-5/3/93 dated 7.3.94 was improper and without jurisdiction and was passed without following the proper procedure.

(2) As regards the supply of additional documents to the applicant at one of the sittings during the enquiry, and the commencement of the recording of the statement of a witness on the same afternoon, the facts, as revealed by the record are as follows:

On 10.11.92 the applicant made a request for the grant of ten days to nominate his AGS. The request was accepted. 11.11.92 was fixed for the perusal of listed documents. The applicant had, however, applied, six days prior to the said date, for granting him fifteen days more to nominate the AGS. It is not known whether this request was accepted, although it does seem that the request was granted considering the fact that an AGS had ultimately appeared on behalf of the applicant during the enquiry. Nevertheless, on 11.11.92 the perusal of documents proceeded as notified earlier. The applicant says that he was compelled to inspect the documents even in the absence of AGS. No opinion can be expressed on the veracity of this statement. The fact, however, remains that these documents were asked to be inspected by the applicant before a proper AGS could appear on his behalf. This aspect of the matter has not been commented upon by the disciplinary authority in his order imposing the punishment. The appellate authority in his order [Para 3(2)] states as under:-

> "When checked the proceedings dated 29.3.1993, no unlisted documents were produced as pointed out in this appeal, during the course of inquiry. Therefore, three days time sought for by the appellant is baseless and examination of PW.1 is in order.

The record of proceedings was therefore called for and examined. It is revealed that recording of the statement of prosecution witnesses did indeed take place on the same day and the hearing was adjourned to the next day in the usual course, and not on account of any additional time given to the applicant to peruse these documents. There is in any case no indication that the proceedings were adjourned to facilitate the perusal of listed/unlisted documents by the

applicant.

The Note below Rule 14(11)(ii) reads as follows:

> "When a government servant applies orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (3) the enquiring authority shall furnish him such copies not later than 3 days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

Again, rule 14(15) reads as under:-

> "(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice."

In Robert Vs. Union of India, [1991(16)ATC 671] the Madras Bench of the Tribunal held that not allowing sufficient time for the inspection and perusal of listed/unlisted/ additional documents will amount to denial of reasonable opportunity to the said government servant to defend himself. The observation of the Tribunal are given below:

> "The Note under Rule 14(11)(ii) referred to makes it clear that if a government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the enquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the enquiry. The purpose of this provision is obvious and it is only to provide a reasonable opportunity to the government servant to prepare his statement of defence....."

In the light of the above observations and the provision of rules it is to be held that the E.O. would have been well advised to postpone the enquiry until an AGS nominated by the applicant was properly in position. If for some reason, this

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was not considered feasible, the applicant should atleast have been given a minimum of three days to prepare his defence on the basis of the documents supplied to him. It is noteworthy here that the rules and the pronouncements did not make any distinction between listed and unlisted documents in this regard, as long as the latter are relevant to the case and had been duly permitted to be produced on the request of the applicant.

The recording of the statement of a prosecution witness on the same day on which certain additional documents were supplied to the applicant has, therefore, to be held as impermissible and incorrect.

(3) The next question to be answered is as to whether or not the reliance placed by the prosecution on a document containing some anomalies was proper. The SDI(P), during the preliminery enquiries, seems to have recorded a statement from a lady whose name was written as Rajavva on the top of the sheet but the right hand-thumbimpression of the deponent was attested as that of Lachavva. This evidently constitutes a source of confusion besides being an incorrect source for investigative procedures. While this is so, R.1 has taken a somewhat unusual stand to the effect that it was for the applicant to prove that the statement was in fact given by Rajavva and not by Lachavva. The applicant protests at this observation on the ground that it was for the prose-cution to produce every evidence that was regarded as correc[illegible] while pressing a charge and holding it as proved. We accept this contention of the applicant and [illegible] that the basic document of complaint in this case which led to the imposition of the punishment was flawed ab initio In coming to this conclusion notice has also been taken of the manner in which the said statement was admittedly recor[illegible]

In the proceeding of enquiry, in answer to a question put to the SDI(P), who conducted the preliminery enquiry, it was stated by him that the right hand-thumb impression of Lachavva was taken on a blank sheet of paper and the statement was recorded on her oral submission after her actual departure from the post office where the preliminery investigation was conducted.

To say the least, all of this is far from correct or proper and vitiates the whole process of investigation.

(4) Regarding the probable mis-reading of the conclusions of the Enquiry Officer by the Disciplinary Authority, the record reveals as under:-

Charge	Conclusions of I.O.	Conclusions of D.A.
I	Charge of temporary misappropriation of Rs 5000 is proved beyond doubt.	I hold that article of charge-I proved as held by the I.O.
II	Article of charge-II is disproved.	I hold that charge-II is not proved and agree with the findings of the I.O.
III	Charge-III is proved to the extent only the entry of UCR for Rs 5000 was not found in the daily account dated 15.7.92.	I hold that the article of charge-III proved and agree with the findings of the I.O.

The disciplinary authority, however, finally held that the articles of charge (I) and (III) are proved beyond reasonable doubt. It is seen that there is no real discrepancy in the findings on charge-III by the I.O. and the D.A., because the D.A. had duly analysed the facts involved in charge-III and the findings of the I.O. in coming to his own conclusion even though he may have appeared to be differing, in the process, with the conclusion of the I.O. It is, however, also noticed that the D.A. has elsewhere recorded a clear finding that the articles of charge (I) only are proved beyond reasonable doubt.

Considering the context and the trend of his earlier observation, the lone stray remark that the article of charge III was proved as per the findings of the I.O. can only be an inadvertent and innocuous mis-statement. At any rate, there is nothing to indicate in the punishment order, or to hold, that the penalty imposed on him was based solely on the findings on charge-III. The punishment was evidently based on the facts and findings on all the three charges and one minor error of mis-statement at one place in the body of a lengthy order does not ipso facto render it invalid.

Under the circumstances we hold that there was no misreading of the reported conclusions of the I.O. by the D.A. and that the minor error which evidently occurred due to inadvertence has no material effect on the outcome of the disciplinary case inasmuch as the punishment cannot be traced per se to the findings of any so-called misreading on this charge alone. We therefore reject the contention of the applicant in this regard.

(5) Finally, the contents of the order passed by the appellate authority (Ann.V) itself need to be taken note of While the said order is flawless in discussing the evidence adduced during the enquiry, certain observations contained therein are found to be either factually incorrect or ina-

It is stated in para 3(ii) of the appellate order (page 3) that the proceedings of enquiry dated 29.3.93 were checked and it was found that no unlisted documents were produced as stated in the appeal and that, therefore, the contention that three days time sought for by the applicant is baseless and that the examination of PW.1 was in order. A perusal of the same proceedings reveals that certain unlisted documents were indeed permitted to be produced and perused by the applicant. It is also a fact that an AGS

had not been nominated by the applicant by then. In the light of this the above observation of the appellate authority would appear to be factually inexact.

Elsewhere, the appellate authority states that it was for the appellant to prove his innocence during the course of the enquiry adducing evidence instead of attributing allegations and finding fault with the preliminery enquiry. This observation also seems to be inappaopriate since the onus of proving a charge or an allegation rests primarily on the prosecution. The charged official can at best try to defend himself against the charge which is not the same thing as his being made solely responsible to prove his innocence.

At another place the appellate authority makes the following observations:-

> "Smt. Jogila Laxmavva has given the statement dated 15.7.92, but the name below the L.T. impression was written as Smt. J.Rajavva. But the TW.1 has identified the same to have been obtained from Smt. J. Laxmavva only. However, the applicant did not produce evidence of any lady by name Smt. Rajavva in support of his claim and as such his contention on this error is not agreeable."

Here again, it would suffice to say that it was for the prosecution to explain the anomaly and not for the charged official to produce evidence to substantiate or refute an error committed by the prosecution in an important document on which so much reliance was placed by the P.O.

The following observation from para (viii) ibid also calls forth the same observation:

> "The appellant could have disproved the allegation, adducing evidence that she gave Rs 5000 only on 15.7.92, even though she withdrew Rs 4450/- on 18.5.92. When the point of veracity in the statement comes, there is much to be upheld the version of Smt. J.Laxmavva. As such, contention of the appellant cannot be agreed to."

Thus, although the appellate order is the result of much thought, deliberation and analysis, certain inappropriate observations, at variance to established principles of ordinary law, have been allowed to creep in which mar the

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overall tenor of the appellate order.

8. In the light of what has been discussed in the preceding paragraphs, we are of the view that the relief claimed by the applicant cannot be resisted or denied.

9. Under the circumstances, the order contained in Director of Postal Services, Hyderabad Region Memo No. ST/20-5/3/93 dated 7.3.94 is hereby set aside. It is directed that the applicant be reinstated and admitted to duty within 2 weeks of the date of receipt of a copy of ---

Since, however, the impugned order is quashed more on technical grounds and for reasons other than those relating to either blemishlessness or misdemeanour of the applicant, it needs to be made clear that the applicant shall not be entitled to any back wages for the period intervening his compulsory retirement and re-instatement. The manner of the treatment of this period for other purposes is left to the competent respondent to decide as per rules and law.

Thus the O.A. is disposed of.

Member (Judicial)
13.8.97

(H. Rajendra Prasad)
13 Aug 97

13-8-97

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O.A. 812/94.

To

1. The Postmaster General,
   Hyderabad Region, Hyderabad.

2. The Director of Postal Services,
   Hyderabad Region, Hyderabad.

3. One copy to Mr. S.Ramakrishna Rao, Advocate, CAT.Hyd.

4. One copy to Mr. V.Bheemanna, Addl.CGSC.CAT.Hyd.

5. One copy to HHRP.M.(A) CAT.Hyd.

6. One copy to D.R.(A) CAT.Hyd.

7. One spare copy.

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COMPARED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE
VICE-CHAIRMAN

and

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

11 mr. B.S.Jai Parameswar

Dated: 13 - 8 -1997

ORDER/JUDGMENT

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

in

O.A.No. 812/94

T.A.No. (w.p.

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions ✓

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm