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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1185/94.

Dt. of Decision : 29-11-95.

Kolasani Venkateswara Rao

.. Applicant.

Vs

1. The Union of India, Rep.
by the Postmaster General,
Vijayawada Region,
Vijayawada-520 002.
2. The Director of Postal Services,
O/o the Postmaster General,
Vijayawada Region,
Vijayawada-520 002.
3. The Supdt. of
Machilipatnam Division,
Machilipatnam-521 001.

.. Respondents.

For the Applicant : Mr. TPV Subbarayudu
Counsel for the Respondents : Mr. N.N. Devaraj

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

ORDER

As per Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

Heard Shri TPV Subbarayudu, learned counsel for the applicant and Shri N.R. Devraj, learned Standing Counsel for the respondents.

2. While the applicant was working as LSG PM at Kheerpandharpur, Machilipatnam, he acknowledged receipt of 35 parcel bags on 24.3.1990. Parcels in 33 of those bags were delivered in time. The remaining two parcel bags one from Huzurabad and the other from Hyderabad were located in the old record room and they were delivered on 26.4.1990.

3. Thereupon a charge memo dated 5.6.90 was issued to the applicant by Superintendent of Postoffice Machilipatnam (R3). After inquiry, R3 passed the order dated 31-10-1991 imposing the penalty of reduction of pay by one stage from 1680/- to Rs.1640/- in the time scale of pay of Rs.1400-2300 for a period of one year from 1.5.92. The applicant preferred appeal in this regard before Director of Postal Services (R2), Vijayawada. One of the contentions raised therein by the applicant was that the Superintendent of Post-offices was not the competent authority to impose major penalty as he was authorised to impose only minor penalties in regard to LSGs. The said contention was upheld by R2 and he disposed of the appeal of the applicant by order dated 31.3.1992, operative portion of which reads as under:

(78)

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"NOW therefore, the undersigned QUASHES the penalty awarded by the Supdt. of Postoffices, Machilipatnam under his Memo No.CPT/Misc/90-91 dated 31-10-1991. The undersigned further order denovo proceedings from the stage of receipt of Inquiry report from the Inquiry Officer."

The same is assailed in this CA.

4. The contentions for the applicant are three-fold.

i) Rule 27(2)(c) of CCS(CCA) Rules empowers the appellate authority either to-

a) confirm or enhance or reduce or set aside the penalty

OR

b) remit \rightarrow the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case

and it is not open to the appellate authority as per to pass the orders both \angle a) and b) above.

Thus, there is an infirmity in the impugned order of R2 in ordering a denovo inquiry while setting aside the penalty.

ii) It is not open to the appellate authority to act both as appellate authority and disciplinary authority and hence, the impugned order passed by R2 is vitiated; and,

iii) It is not a case where the acknowledgement in regard to the parcels was made as and when the parcels were received and as ~~such~~, the

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(79)

acknowledgement, by the LSG PM will be made at the end of the day, and ^{as} out of confidence in his assistant, the applicant acknowledged for 35 parcels instead of 33 ~~originally~~ received ^{and as} by ~~him~~, there is nothing ~~elusive~~ ^{notion} to indicate that with oblique ~~mind~~, the applicant got those two parcels placed in the old ~~XXXXXX~~ records room. ~~Thus~~, the finding that the applicant was guilty of the charge has to be set aside.

The above three are the points for consideration in this OA.

5. To appreciate the first contention for the applicant, it is ^{convenient} ~~better~~ to extract Rule 27(2)(c) hereunder to the extent it is necessary:

"27.(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 of enhancing any penalty imposed under the said rules, the appellate authority shall consider-

- a) xx xx xx xx xx
 xx xx xx xx xx
- b) xx xx xx xx xx
 xx xx xx xx xx

c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders-

- i) confirming, enhancing, reducing, or setting aside the penalty;
 or
- ii) remitting the case to the authority which imposed or enhanced the penalty or to ~~any~~ any other authority with such direction as it may deem fit in the circumstances of these cases;

xx xx xx xx
xx xx xx xx

for

148

The applicant is also relying upon the following portion of DGP&T Letter No.3/171/72-Disc.I dated 9.2.1973, to support his contention.

" The matter has been examined carefully in consultation with the Ministry of Law, Department of Legal Affairs and it has been decided that henceforth all appellate/reviewing authorities should ensure to guard against the technical defects while issuing the appellate/review orders. In this connection, attention is invited to Rule 27(2)(c). In clause (i) it clearly envisages that the appellate authority shall pass orders confirming, enhancing and reducing or setting aside the penalty while in clause (ii) as an alternative, it requires the appellate authority to remit the case to an authority mentioned therein with such directions as it may deem fit in the circumstances of the case. It is clear that Rule 27(2)(c) (i) and (ii) *ibid.*, do not empower the appellate authority to pass an order in which both these alternatives are ordered. The appellate orders should be quite clear and in conformity with the provisions contained in Rule 27(2)(c) and Rule 29 of CCS(CCA) Rules, 1965."

6. The question of remitting does not arise, if it is a case of confirming, enhancing or reducing the penalty. If the penalty is set aside on technical grounds, then, it will be a matter of remitting the case to the authority which passed the impugned order and if the said authority is not competent to pass the impugned order, or to the authority which is competent to pass that order. But, if it is a case of appellate authority holding that the delinquent has to be exonerated or in view of the justifiable circumstances, it is not a matter for remitting even though the penalty has to be set aside on technical grounds, then, the appellate ~~authority~~ authority will be setting aside the penalty without remitting

(31)

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the case as envisaged under Rule 27(2)(c)(ii) of CCS(CCA) Rules. But the question of remitting does not arise unless the impugned penalty is set aside. Hence, we cannot say that it is not open to the appellate authority to remit the case while setting aside the penalty, for then it will be a case of passing order both under sub-clauses (i) and (ii). It will be beyond comprehension as to how there can be mere order of remitting the case without setting aside the order of penalty. If the impugned order of penalty is not set aside, and if some other order is going to be passed by the authority to whom it is remitted, then, it will be a case of two penalties or two orders in regard to one and the same charge/charges. Hence, by reading clause i) and ii) of Rule 27(2)(c) of CCS(CCA) Rules together, it has to be held that the question of remitting arises only in a case where the impugned order of penalty is set aside, and it is for the appellate authority to consider while setting aside penalty as to whether it is a fit case for remitting the case and if so, to the authority who passed the impugned order or to any other authority. As such, the first contention of the applicant has to be repelled.

7. It is clear that the Superintendent of Postoffices is empowered to impose only minor penalties in regard to LSGs, while Director of Postal Services is competent enough to impose the major penalty in regard to the LSGs.

...7

Page 31

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It is the Director of Postal Services, who is the
appellate authority against the ^{order passed by the} Superintendent of
Post offices. As the order dated 31-10-1991
was passed by the Superintendent of Postoffices, the
applicant rightly preferred an appeal to the Director
of Postal Services. The Director of Postal Services
has to consider the various contentions raised for
the applicant as against the order dated 31-10-91
passed by the Superintendent of Postoffices. When
the Director of Postal Services accepted the
contention of the applicant that the Superintendent
of Postoffices is not competent to ~~pass the order~~
~~impose~~ → impose major penalty, the same was
set aside. Thus, it is not a case of setting aside
the penalty on consideration of merits. In such a case,
it is open to the appellate authority to remit to the
competent authority for imposition of the penalty
without setting aside the inquiry proceedings upto
the stage of the report of the inquiry officer, for
the inquiry was initiated by competent authority,
i.e., Superintendent of Postoffices, in this case.
Thus, when the appellate authority himself is the
competent authority to impose major penalty and when
it is felt that it is a case of imposing major penalty,
there is no irregularity or illegality when the
Director of Postal Services, who is the appellate
authority herein had ordered continuation of inquiry as
disciplinary authority. Thus, this contention of the
applicant is also not sustainable.

...8

P. 82

8. The following portion from the report of the Enquiry Officer has to be looked into, in order to advert^{to} the last contention for the applicant.

" I cannot agree with this statement. Govt. servant accounted for the two parcel bags received from "Hyderabad PL" as entered in Exp.1 in Exp." and gave acquittance for all the 3 parcel bags entered in Exp.1 besides his acquittance from Parcel bag by received from Huzurabad on Exp.1 conspicuously at its very entry on Exp.1. The ASPOs, Machilipatnam Division, PW2 who conducted preliminary enquiries clearly stated that the enquiries made by him did not reveal how the two parcel bags did reach the old record room and any plot against the Govt. servant was hatched to implicate the Govt. servant by some persons in the office by placing those two parcel bags in the old records room and that the PW2 made marks of curves and horizontal lines, etc., on Exp.1 subsequently to confuse the issue. When the article of charge in that the two parcel bags entrusted to the Govt. servant on 24.3.90 were not account for on the same day. Now the issue is whether there was proper transfer of parcel bags from the mail/delivery PA to the parcel PA the Govt. servant's evidence on record ~~is~~ in very clear that the parcel bags were transferred under acquittance of Govt. servant on Exp.1 and Exp.3"

It is stated by the Enquiry officer that as the applicant himself acknowledged in regard to the receipt of 35 parcels^{bags} on that date and when only 33^{bags} were found and when the applicant could not give satisfactory explanation in regard to the missing two bags, the charge has to be held as proved. A Court/Tribunal while exercising powers under Art.226 should not interfere with the finding of the Enquiry officer/Disciplinary Authority if there is at least some evidence in support of the said charges and adequacy of evidence is not a matter ^{for} of consideration in a proceeding under Art.22

It cannot be stated that there is no evidence in regard to the findings given by the Enquiry Officer which was accepted by the Disciplinary authority. It cannot be stated that the finding is perverse on the basis of the material available before the Enquiry Officer. Thus, even the third contention of the applicant is also devoid of merit.

9. But, it may be noted that while R3 by order dated 31-10-1991 imposed the penalty of reduction of pay by one stage for one year, R2, Director of Postal Services imposed the penalty of reducing the pay of the applicant for two stages from Rs. ~~26~~ 1720/- to Rs. 1640/- for a period of three years w.e.f. 1.7.1993.

10. It is a case where the parcels were ~~delivered~~ only on 26.4.1990, when they were actually received on 24.3.1990. R2 Director of Postal Services imposed the said penalty by referring to the above ~~xxxxxx~~ delay of more than one month in delivery and also in view of the ~~thex~~ nature of the contents. The Superintendent of Postoffices had taken into consideration the submission of the applicant that he had put up 30 years of service in the Department and he never came up with any adverse notice of this type and as this is the first occasion, he may be pardoned. Keeping in view the above submission for the applicant, the Superintendent of Postoffices ordered a reduction by one stage only and for one year. But those facts were not taken into consideration by the Director of Postal Services. It cannot ~~also~~ be stated that the circumstances which the Superintendent of Postoffices took into consideration are not

12. Now, the question arises as to whether the matter has to be remitted to Director of Postal Services again for consideration in regard to the penalty after looking into the relevant circumstances which were referred to in the order dated 31-10-91

of the Superintendent of Postoffices or whether this Tribunal can consider ~~the same~~

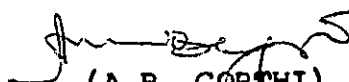
14. Further, we feel that the penalty imposed by the Superintendent of Post offices by reducing the applicant's pay by one stage for a period of one year held as lenient. cannot be / Hence, keeping in view of the circumstances we feel it a case where this Tribunal itself can modify in regard to the punishment instead of remitting it to Director of Postal Services, for

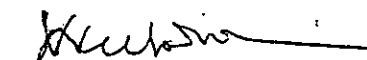
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determination after taking into consideration the various factors which are relevant.

13. In the result, as we held that the penalty imposed by the Superintendant of Postoffices is not lenient, it is just and proper to modify the order passed by the Director of Postal Services by limiting the penalty by way of reduction of pay by one stage from Rs.1720/- to Rs.1680/- for a period of one year w.e.f. 1.7.1993. Any excess amount recovered, has to be refunded by the respondents within three months from the date of receipt of this order, failing which, the same will carry interest at the rate of 12% per annum from the date of completion of three months from the date of receipt of this order.


16. OA is ordered accordingly. No costs.//


(A.B. GORTHI)
Member (Admin)


(V. NEELADRI RAO)
Vice Chairman

Dated: The 29th November, 1995

Dictated in the Open Court


Deputy Registrar(J)C

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To

1. The Postmaster General, Union of India, Vijayawada Region, Vijayawada.
2. The Director of Postal Services, O/o the Postmaster General, Vijayawada Region, Vijayawada-2
3. The Superintendent of Post Offices, Machilipatnam Division, Machilipatnam-1.
4. One copy to Mr. T.P.V. Subbarayudu, Advocate, CAT. Hyd.
5. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. ~~One~~ Copy to All Reporters as per standard list of CAT. Hyd.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELAKANTH
VICE CHAIRMAN

AND

AB Gorkhi
THE HON'BLE MR. R. RANGARAJAN - M(A)

DATED: 29-11-1995

ORDER/JUDGMENT

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

O.A.No.

T.A.No.

in

1185/94

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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No Spare Copy

