

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 25/1/2001

OA 6/94

Karan Singh s/o Shri Sultan Singh r/o Sekhisar House,
Station Road, Sikar.

... Applicant

Versus

1. Union of India through Secretary, Ministry of
Communication, Post & Telegraph Deptt., New Delhi.
2. Post Master General, Rajasthan, Western Region,
Jodhpur.
3. Director Postal Services, Rajasthan Western Region,
Jodhpur.
4. Supdt. of Post Offices, Sikar Division, Sikar.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.N.K.Bhatt

For the Respondents

... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

This application has been filed against the order of disciplinary authority dated 16.11.92 (Ann.A/2), imposing penalty of removal from service on the applicant, and order of the appellate authority dated 31.3.93 (Ann.A/1), upholding the order of the disciplinary authority. The applicant has prayed for quashing and setting aside these orders and for a direction to the respondents to reinstate

him in service with full back wages and all other consequential benefits.

2. Case of the applicant is that he was appointed as Postal Assistant against Sports quota and his appointment was approved vide order dated 14.2.80. He was served with a memorandum dated 25.11.91, delivered to him on 22.5.92, and the charge levelled was that he absented himself from duty without information w.e.f. 17.12.90. An inquiry officer, Shri K.C. Verma, was appointed on 15.1.92, who commenced the inquiry on 14.2.92. Vide Corrigendum dated 7.4.92 the charge-sheet was amended inasmuch as the last para of Annexure I and II, the change was made that word "Rule 63" to be read instead of "Rule 62". On 28.4.92, another inquiry officer, Shri B.L.Verma, Superintendent of Post Offices, Nagaur Division, was appointed in place of Shri K.C.Verma. It has been stated by the applicant that he objected to the appointment of Shri B.L.Verma as inquiry officer but his objection was over-ruled by an order in the order-sheet dated 22.5.92. The applicant has raised many grounds challenging the inquiry proceedings which, among others, are that he was not supplied with copy of the documents asked for and that inquiry for 5.8.92 and onwards proceeded ex-parte even though he had sought postponement on 5.8.92 on the ground of sickness, for which he submitted a Sick Certificate. Copy of the inquiry report was received by the applicant on 10.9.92 and the inquiry officer had held the charge levelled against him as fully proved. The applicant submitted his representation to SPOs Sikar on 25.9.92 and took a plea that the inquiry report was vitiated as the inquiry was conducted in unlawful manner. The

applicant has stated that mala fide intentions of the department can be proved from the fact that even before the disciplinary authority passed any order of punishment, a caveat was filed by the department on 8.10.92 before this Tribunal. The order of removal was issued on 16.11.92. The applicant submitted an appeal against the order of the disciplinary authority but his appeal was rejected vide order dated 31.3.93. The applicant claims that he continued to represent the department in various Basketball Tournaments much after the date of removal from service. The applicant has challenged the order of removal on the ground that the removal order has been passed by an authority not competent to do so as his appointment was approved by the Directorate of Indian Post & Telegraph Department, Government of India, whereas the order of removal has been passed by the SPOs Sikar, who is a lower authority than the appointing authority. He has further assailed the findings of the inquiry officer as having been based only on surmises and conjectures which suffers from not having given adequate opportunity to the applicant to participate. It is further stated by the applicant that the charge-sheet was given to him with mala fide intention as he had earlier challenged his transfer order from Sikar to Phalodi before the Tribunal, which was stayed by the order of the Tribunal. In the written statement, averment has been made by the applicant that he proceeded on medical leave from 3.12.90 for 14 days, for which he had produced the medical certificate. Further, he could not join duty as he continued to remain sick. He claims to have submitted medical certificate to cover the period upto 31.3.91 which, as per his version, has also been entered in the attendance

register. For his absence beyond 31.3.91, he stated that he had been keeping Post Master Sikar informed. He has also taken a ground that during inquiry he was denied assistance of defence counsel.

3. The respondents in their reply have stated that the applicant was appointed as Postal Assistant by the Superintendent of Posts Offices vide letter dated 31.5.80. The applicant is stated to have remained frequently absent from duty since his appointment. It has been admitted that first inquiry officer, Shri K.C.Verma, had been appointed soon after issue of the charge-sheet. The charge-sheet could be delivered to the applicant only on 31.3.92 as a Registered AD letter sent to him was returned undelivered and efforts to deliver the same through Public Relation Officer did not meet the success. A notification had been published in the local newspaper on 4.2.92 directing the applicant to collect the charge-sheet from the office of SPOs Sikar. Plea of the respondents is that appointing an inquiry officer before receiving any reply from the applicant and holding preliminary sitting on 14.2.92 did not cause any prejudice to the applicant. It has been admitted that a corrigendum was issued making some changes in the annexures to the charge-sheet. The inquiry actually started on 22.5.92 when the applicant also attended. It has been stated that there was no denial of opportunity to the applicant and he was allowed to inspect the attendance register, which he did on 7.7.92. It is stated that there was no provision in the rules for supply of copies of the additional documents. It has been admitted that on 5.8.92 the applicant attended in person and furnished a medical

certificate of sickness issued by a private doctor. He did not, however, make any request for postponement of the inquiry proceedings through an application. The inquiry officer had given detailed reasons in the order-sheet dated 5.8.92 for not postponing the inquiry further. The medical certificate did not indicate inability of the applicant to participate in the inquiry. Contention of the respondents is that since the applicant was non-cooperative and was adopting various tactics to delay the inquiry, the inquiry officer had no alternative but to proceed further and finalise the same. The representation made by the applicant after receipt of the inquiry report is stated to have been considered properly by the disciplinary authority who, after considering the same, imposed the penalty of 'removal from service' on the applicant vide order dated 16.11.92. It has been denied by the respondents that filing of caveat was any malicious action as the respondents were within their legal right to file such a caveat. It has been maintained that applicant had been given adequate opportunity to participate in the inquiry and was also asked to give the name of his defence assistant. He himself chose not to nominate any person for his defence.

4. Heard the learned counsel for the parties and perused the whole record.

5. The learned counsel for the applicant emphasised on the sequence of events in this case based on the dates of certain action of the respondent department to prove that it was a pre decision on the part of the disciplinary authority to punish the applicant. In this context he pointed out that the inquiry officer was appointed even before the

applicant received the memorandum of charges. He was not provided with copies of the documents by the inquiry officer, which were vital to prove his case. On 5.8.92, the applicant produced a medical certificate and personally requested the inquiry officer to postpone the proceedings till he was in a position to attend. This request was summarily turned down and the inquiry officer went on to complete the proceedings of the inquiry on that very day. It was indicative of the pre-determined mind of the inquiry officer to prove the applicant guilty. Further action of the respondents of filing a caveat in the Tribunal even before the notice of imposition of penalty was issued, again is a conformation of the fact that the respondents were hell-bent in removing the applicant from service. When the applicant represented to the disciplinary authority and later to the appellate authority about his not having been afforded full opportunity to defend his case, this plea was not taken into account and the punishment order was passed by the disciplinary authority and later upheld by the appellate authority. As such, action of the disciplinary and the appellate authority is not consistent with the principles of natural justice and the orders passed by them need to be quashed and set aside.

6. The learned counsel for the applicant also assailed the quantum of punishment on the ground that the same was totally disproportionate to the charge levelled against the applicant.

7. The learned counsel for the respondents stated that action of the respondents in having appointed the

inquiry officer before the charge-sheet was served on the applicant in no way caused any prejudice to his case. The effective inquiry started only after the applicant had received the charge-sheet. He contended that adequate opportunity had been given to the applicant to defend his case but he made all attempts to delay the inquiry. Submission of the medical certificate on 5.8.92 was not enough ground for postponing inquiry further. Filing of a caveat in the Tribunal was very much a matter of right with the respondent department and no mala fide can be attributed because of this reason. This step was taken only as a matter of abandon precaution.


8. We have given anxious consideration to the sequence of events in this case and we do form an opinion that action of the respondent department was not rational. Every action has to be based on sound reasoning. Appointing of an inquiry officer even before a charge-sheet is delivered to the charged official and filing of a caveat even before the order of punishment has been issued, are certainly indicative of the pre-determined mind of the respondents. The inquiry has been conducted and completed without affording adequate opportunity to the applicant. No opportunity was provided to the applicant to explain his conduct and his case. On 5.8.92, he sought postponement of the inquiry and had submitted a medical certificate in support of his sickness and Doctor's advise that a period of absence from duty for 30 days was absolutely necessary for restoration of his health. We find from the order-sheet dated 5.8.92, the inquiry officer rejected the request to defer the inquiry as in his view there was no mention in the medical certificate that the SPS was unfit to attend the

inquiry. While giving various other reasons he did not accept inability of the applicant to attend the inquiry only because of that medical certificate. We also find there are order-sheet that the inquiry officer proceeded and completed the inquiry on that very day. Because of all these reasons, we are of the view that the inquiry report was vitiated because of its having been framed in absence of full participation of the applicant who was not given adequate opportunity. Denial of the copies of certain additional documents asked for by the applicant during the inquiry to support his case without assigning proper reasons is also an action amounting to denial of adequate opportunity.

9. We find that the applicant had brought out these infirmities in the inquiry proceedings in his representation to the disciplinary authority and also later to the appellate authority. These grounds have not been accepted by both the authorities and penalty of removal from service has been imposed by the disciplinary authority, which has been upheld by the appellate authority. These orders of the respondents No.3 and 4 based on an inquiry report suffering from illegalities because of the reasons aforesaid, cannot be sustained under law and are liable to be quashed and set aside.

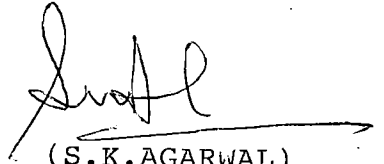
10. We, therefore, allow this OA and quash the order dated 16.11.92 (Ann.A/2), passed by respondent No.4, and order dated 31.3.93 (Ann.A/1), passed by respondent No.3, and set aside the punishment of 'removal from service', as imposed on the applicant. We further direct the respondents to reinstate the applicant in service within a period of

one month from the date of passing of this order. The respondents are also directed to pass appropriate orders as per rules to decide the period from the date the applicant was removed from service to the date of his reinstatement. The applicant shall be entitled to all consequential benefits. No order as to costs.



(A.P. NAGRATH)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)