

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 23.1.95.

OA 458/94

DURGA PRAKASH SHARMA ... APPLICANT.

v/s.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

HON'BLE MR. N.K. VERMA, MEMBER (A).

For the Applicant ... SHRI C.B. SHARMA.

For the Respondents ... SHRI V.S. GURJAR.

PER HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

Applicant Durga Prasad Sharma in this application u/s 19 of the Administrative Tribunals Act, 1985 has assailed the impugned orders Annexure A-1 dated 10.4.91 by which a charge-sheet was issued against him, Annexure A-2 dated 13/21.5.91 by which a penalty was imposed on him by respondent No.5, Annexure A-3 dated 18.11.91 by which an appeal against the penalty imposed was decided by respondent No.4 and Annexure A-4 dated 31.5.91 by which the revising authority dismissed the revision petition.

2. We have heard the learned counsel for the parties and have carefully perused the records.

3. The contention of the applicant is that the applicant while working as Development Officer, Postal Life Insurance in the office of the Chief Post Master General, Jaipur, had gone on tour to various places staying at Inspection Quarters/Rooms available in the Post Office buildings. While on tour in the month of January, 1991 and February, 1991 to Banswara and Udaipur Districts, he had issued two service telegrams from Banswara to the Sr. Supdt. of Post Offices, Udaipur for reservation of accommodation in the Inspection Quarter/Room on 6.1.91 and 5.2.91 respectively. However, the Sr. Supdt. of Post Offices, Udaipur, placed the above two service telegrams in fault and reported the matter to the Chief Post Master General vide Annexure A-7. The applicant was asked to deposit the charges of the telegrams amounting to Rs.59/- and it was also stated that in case the

the aforesaid amount was not deposited by him, a departmental action may be initiated against him in the matter. Since the applicant did not make any payment, a charge-sheet was issued by respondent No.5 u/r 16 of the CCS (CCA) Rules, 1965 (for short the Rules). The statement of imputation of misconduct and misbehaviour against the applicant reads as follows :-

"Shri D.P. Sharma, while working as D.O. PLI Circle Office Jaipur un-authorisedly issued XP/0800/5 (5.2.91) and XP/1000/8 (8.1.91) to SSPOs Udaipur for his private purpose. The SSPOs Udaipur, vide his letter No.J-148/90-91 dated 6.2.91 placed these telegrams in fault as the same were issued in contravention of departmental rules. It is therefore alleged that Shri D.P. Sharma despatched the above telegrams in contravention of Rule 671(b), 673 & 674 of P&T Man. Vol.II Third Edition (2nd Reprint) causing a loss of revenue to the department to the tune of Rs 59.00 ~~marked~~ only, and thereby showed non-devotion to duty and acted in a manner unbecoming of a Govt. servant attracting the provisions of Rule 3 of CCS (Conduct) Rules, 1964."

The applicant then replied to the charge. After consideration of the reply and all the relevant facts, the disciplinary authority imposed the penalty of withholding of one increment for two years without cumulative effect and he ordered that the charges of two service telegrams in question viz Rs.59/- be recovered from the pay of the applicant for May, 1991 as a loss of revenue caused to the Government by his carelessness, negligence and breach of orders. The applicant preferred an appeal to the Director Postal Services, Jaipur, and considering all the facts and circumstances of this case, the appellate authority reduced the penalty to recovery of the cost of two telegrams and withholding of one increment of the applicant for a period of six months without cumulative effect. However, a revision petition was filed by the applicant against the order of the appellate authority but the revising authority on a consideration of all the relevant facts rejected the revision petition. The contention of the learned counsel for the applicant is that the charge-sheet could not have been issued by *Chk* the Asstt. Director (PLI), without the approval of the Chief

Post Master General or Head of the Circle. The Asstt. Director (PLI) is unquestionably the disciplinary authority of the applicant and he had acted on the report of the Sr. Supdt. of Post Offices, Udaipur, and as such it was within his competence to issue a charge sheet to the applicant. The said plea of the applicant, therefore, is not sustainable. There is nothing on the record to substantiate the applicant's contention that the Asstt. Director (PLI) was in any way prejudiced against him in regard to the rule quoted in support of issue of service telegram by a non-gazetted officer. There appears to be a misprint in the Hindi version referred to by the learned counsel for the applicant since the same edition in English print is correctly mentioning Gazetted officers entitlement. In these circumstances, this contention of the applicant also cannot be upheld.

4. The order of punishment has also been assailed on the ground that two punishments for the same irregularity i.e. one for the recovery of Rs 59/- from the pay and the other i.e. withholding of one increment for six months could not be imposed in accordance with Rule-11 of the Rules. It is pertinent to mention here that two penalties can be awarded in terms of DGPMT's instruction No.9, below Rule-11 of the Rules, if it is considered as necessary by the disciplinary authority ^{as} in the present case. A recovery of Rs.59/- was ordered to be made from the applicant towards the cost of the telegrams and a penalty of withholding of one increment for a period of six months without cumulative effect was inflicted upon him for breach of rules.

5. The learned counsel for the applicant also urged that when a penalty of recovery is awarded, there should not be any necessity of awarding any other penalty. However, the DGPMT's instruction No.105/26/81-Vig.III dated 30th March, 1981 provides that there is no bar to awarding the penalty of recovery along with any other penalty. The relevant portion of the aforesaid instruction reads

GK/ML as follows :-

"(9) Imposition of two penalties for one lapse/ offence. - A question has been raised as to whether two statutory penalties can be imposed for a single offence committed by an official. Instructions in this behalf already been laid down that while normally there will be no need to impose two statutory penalties at a time, the penalty of recovery from pay of the whole or part of any loss caused by an official to the Government by negligence or by breach of order can be imposed along with another penalty. Para.108 of the P&T Manual, Volume III, also lays down that in addition to the penalty of recovery, technically there is no bar to impose any statutory penalty if the circumstances of the case justify it. The punishing authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or part of loss caused to the Government, the net cumulative effect on the Government servant should not be of such a severity so as to make it impossible for him to bear the strain.

2. The aforesaid instructions would reveal that while normally there should be no necessity for imposing two penalties at a time, there is no bar to awarding the penalty of recovery alongwith any other penalty. But in such cases also the severity of the strain vis-a-vis the nature of offence committed by the official should be carefully assessed and borne in mind by the punishing authority. Further, the penalties indicated in Rule 11 of the CCS (CCA) Rules, are graded only. Accordingly, when the penalty of recovery is awarded, there should be no necessity to award a lower penalty. The necessity to award another penalty should arise only when it is considered absolutely necessary to award a higher penalty like reduction."

In terms of these instructions the penalty of recovery alongwith the penalty of stoppage of one increment for a period of six months without cumulative effect are in order. We do not find any infirmity in the orders passed by the disciplinary authority, the appellate authority and the revising authority. The authority reported in 1994(2)SLR 505, Abdul Ghani Khan v. Secy., Deptt. of Posts, relied upon by the learned counsel for the applicant, has been duly considered by us and it is of no help to the applicant since we are of the view that the impugned order of postponement will not be a strain when recovery of a petty amount of Rs 59/- has also been ordered.

6. In view of what has been stated above, we find no merit in this application and the same is dismissed with no order as to costs.



(N.K. VERMA)
MEMBER (A)



(GOPAL KRISHNA)
MEMBER (J)