

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.117/95 Date of order: 8/1/2002
Suraj Narain, S/o Bhanwarlal, Postal Assistant, Head
Post Office, Ajmer.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt. of Posts, Mini.of Communications, New Delhi.
2. Postmaster General, Rajasthan Eastern Region, Ajmer.
3. Director, Postal Services, Rajasthan Eastern Region, Ajmer.
4. Senior Supdt.of Post Offices, Ajmer Division, Ajmer.

...Respondents.

Mr.K.L.Thawani : Counsel for applicant
Mr. Mr.Bhanwar Bagri : Counsel for respondents.

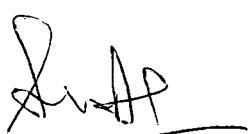
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.
Hon'ble Mr.A.P.Nagrath, Administrative Member
PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and set aside the order at Anxx.A1 dated 3.3.94 passed by the disciplinary authority and order at Anxx.A2 dated 2.12.94 by which the appellate authority has rejected the appeal of the applicant.

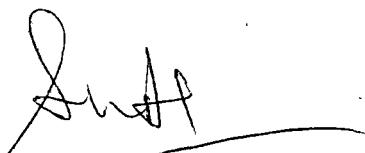
2. Facts of the case as stated by the applicant are that while working as Postal Assistant (LSG) Headquarter Ajmer, the applicant was served memorandum of chargesheet dated 18.2.92 under rule 14 of CCS(CCA) Rules, 1965 by Sr.Suptd of Post Offices, Ajmer. Following charges were levelled against the applicant:

Snri Suraj Narain, Postal Asstt.Ajmer HO while



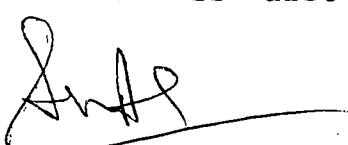
working as SPM, Adarsh Nagar, Ajmer P.O during the period from 1.1.91 to 10.11.91 accepted about 8000 copies of registered newspaper 'Mere Garib Nawaz' on 25.10.91 for despatch to foreign countries which was registered for posting in India and permitted for posting in Ajmer RMS on 5th & 6th of every month with connivance of the publisher to give him undue advantage of concessional rates. He also despatched these articles duly enclosed in four extra 'L' bags direct to APSO Bombay while there was no such provision in the Due Mail and Sorting List of the office. Before accepting these articles for despatch Shri Suraj Narain did not check and ensure whether postage stamps affixed on them were correct or not. Thus he violated the provisions of Rule 52(a) and 58(a) of P&T Manual Vol.V and clause 38 and 60 of post office guide part I. The said Shri Suraj Narain by the above acts did not maintain absolute integrity and devotion to duty and contravened the provisions of Rule 3(i) and 3(l(ii) of CCS (Conduct) Rules 1964.

2. That Shri Suraj Narain, PA, Ajmer H.O, while working as SPM Adarshnagar, Ajmer during the above period accepted mails in large number for despatch to foreign countries on different dates and failed to check whether the letters were sufficiently paid. He despatched the accepted foreign mails duly closed in extra 'L' bag to APSO Bombay and foreign Post Calcutta while there was no such provision in the Due Mail and Sorting list of the sub office. Thus, he violated the provisions of Rule 52(a) of P&T



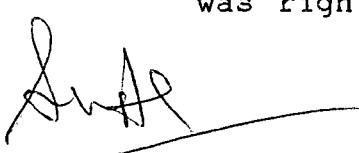
Manual Volume V and clause 60 of the post office guide part I. The official by his above acts did not maintain absolute integrity and devotion to duty contravening rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

The applicant denied the charges, therefore, enquiry officer was appointed who conducted the enquiry and submitted his report on 12.10.92 holding the applicant guilty. Thereafter, copy of enquiry report was supplied to the applicant and after consideration of representation, the disciplinary authority imposed punishment as mentioned in order dated 25.2.93. The applicant preferred appeal, the appellate authority decided the appeal and directed the disciplinary authority for denovo enquiry from the stage of supply of enquiry report. The enquiry was thereafter completed and disciplinary authority imposed the penalty on the applicant as mentioned in order dated 3.3.94 (Annex.A1). The applicant preferred appeal against the impugned order which was rejected vide order dated 2.12.94 (Annex.A2). It is stated that the impugned order Annex.A1 is arbitrary and illegal based on perverse finding of enquiry officer. The applicant has not violated any of the rules as mentioned in the charge sheet and more so these rules are not applicable in the instant case. It is also stated that when the charge of deficiency of stamp is not proved against the applicant, the finding of enquiry officer holding the applicant guilty of the charges are perverse. It is stated that during the inspection, Shri S.K.Vijay, who happens to be the Enquiry Officer in this case did not raise this objection regarding permissibility or nonpermissibility of postal despatches. It is also stated that the applicant made request to the



Enquiry Officer for summoning Sh.B.L.Kothari as defence witness but the same was turned down which amounts to denial of opportunity to produce the defence to the applicant. Therefore, the punishment imposed on such enquiry report is liable to be quashed.

3. Reply was filed. In the reply it is stated that the applicant has accepted the registered newspaper mails for despatch to foreign countries on 23.1.91 to 25.10.91 as SPM Adarshnagar, whereas Adarshnagar Post Office was not authorised to accept such article. It is stated that the applicant was required to check the articles to see whether stamps are sufficiently paid or not but the applicant did not check the deficiency of stamp and thus violated the provisions of Rule 52(a) and 58(a) of P&T Manual Vol.V and clause 38 and 60 of Post Office Guide Part II. It is stated that charge No.2 was fully proved on the basis of evidence produced before the Enquiry Officer. It is also stated that the applicant was given full opportunity to inspect the listed documents including 4 labels of bags dated 23.1.91 and it was not practically possible to get zeroxed copies of the same but there has not been any violation of principles of natural justice in supplying copies of listed documents to the applicant. It is stated that the applicant was found responsible for despatch of 4 bags unauthorisedly on 25.10.91 and the publisner has deposited Rs.6000/- on 12.1.92 on account of deficiency of postage stamps which shows that deficiency of stamp which was not checked by the applicant as he was found responsible for accepting and despatching foreign mails unauthorisedly putting the department into loss of revenue. Therefore, the applicant was rightly held guilty and punishment imposed upon him is



not disproportionate to the gravity of the charges. Thus, the applicant has no case.

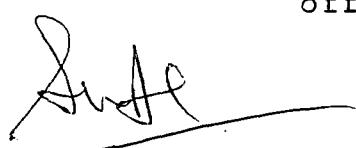
4. Heard the learned counsel for the parties and also purused the whole record.

5. The charges on the applicant is for violation of Rule 52(A) and 58(A) of the P&T Manual VolV and Rule 38 and 60 of Post Office Guide Part I & Part II. Therefore, it would be appropriate to reproduce these provisions:

52-A. Due mail and sorting list. The due mail list shows the details of bags received and despatched with the hours or stations, as the case may be, at which mails are to be received and despatched. It will show (a) in what cases mail lists are to be despatched and received with loose bags (b) transit bags are to be used (c) account bags and B.OBags are to be sent or received in mail bags (d) in the case of post offices, surplus empty bags are due to be received and despatched and (e) in the case of sub-office the mail bags containing cash bags enclosed in registered bags.

The sorting list will show (a) for what office, or sections mail bags and registered bags are to be made up (b) in what cases Express and deferred sorting bundles should be made up and (c) to what offices or sections parcel mail particles may be sent direct and the manner in which they must be despatched.

58(A) Posting of registered Newspapers (i) News papers registered by the Head of the Circle under the provisions of clauses 132 and 133 of the Post office Guide, Pt.I can be posted in Post office and



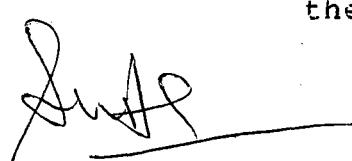
RMS office shown in the application for registration and accepted by the Head of the Circle...

Post Office Guide Part I

38. Special procedure for delivering registered articles to firms etc. Registered articles for delivery to firms etc. which normally receive a large number of registered articles, are entered in a special list in duplicate which is presented alongwith the articles acknowledgement forms etc, to the addressee who will be required to sign the upper copy in token of receipt of the lower copy of the list alongwith all the articles and return the signed acknowledgements. No individual receipts will be prepared for the articles entered in the special list. Articles on which any charges are to be recovered will not be entered in the special list.

60. Delivery of registered articles, etc, to messengers or to care party. (1) If the addressee specially authorises the postmaster to do in writing the postmaster will also deliver the messenger all registered and insured articles and pay him the value of all money orders (see clause 59) which may arrive for the addressee or his family; provided that no value payable articles will be delivered otherwise than as prescribed in clause 43.

2. If the addressee does not authorise his messenger to sign on his behalf, the receipts and acknowledgements in the case of registered and insured articles and notices with acknowledgements and coupons in the case of money orders will be handed under receipt to the messenger for delivery to the addressee. When



the receipts and acknowledgements are returned to the post office duly signed and the notices endorsed with receipts of payments, the articles and the amounts of the money orders will be made over to the messenger.

3. It is not necessary that the authority granted to the postmaster should apply to all classes of articles; it may be registered to uninsured registered articles, in which case insured articles will be delivered and money orders paid only on the return of the receipts, acknowledgements and notices signed by the addressee.

(4)(i) An article addressed to AB care of a general or shipping agent or care of a Schedule Bank or its Branches in India will be delivered to the care party if it is not known at the post office that the articles can be at once delivered to the addressee himself.

(ii) Instructions received from addressee authorising the post office to deliver articles or pay money orders to persons other than themselves should be treated as lapsed after a time limit of 3 years unless renewed within that time.

Post Office Guide Part II

38. Registered Newspapers:

(a) The rules concerning registered newspapers in the inland post also apply in general to such articles in the foreign post except for the postage rates which are given in the appendix.

(b) Newspapers which post a large number of copies for delivery in foreign countries can post them



without affixing postage stamps under the same conditions as for inland post given in clause 136 of part I

60. Unpaid and insufficiently paid airmail correspondence: (a) Unpaid and insufficiently paid airmail articles bearing on the outside the sender's name and address or for which the same can be easily ascertained without opening the articles will be returned to the senders for making up the deficiency and reposting. Such articles will be forwarded by air if reposted with the requisite stamps and the notice of insufficient postage pasted to the article. (However in respect of articles posted in certain Post Office, the P&T Department itself makes good the deficiency and forward the articles to the destination, simultaneously issuing a notice to the sender to make good the deficiency. Such notices should be handed over to the nearest Post office alongwith postage stamps to cover the deficiency as indicated in the notice).

6. The learned counsel for the applicant argued that the finding of the enquiry Officer are perverse as based on no evidence and memorandum of charge-sheet does not disclose any misconduct on the part of the applicant. Therefore, punishment imposed on the basis of such enquiry is liable to be quashed. On the other hand, the learned counsel for the respondents has argued that the applicant has been held guilty by the enquiry officer on the basis of evidence on record and admission made by the applicant in the statement given before the Enquiry Officer.

7. We have given anxious consideration to the rival

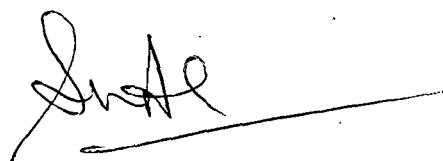
A handwritten signature in black ink, appearing to read "Swf". It is written in a cursive style with a horizontal line extending from the end of the signature.

contentions of the learned counsel for the parties and also perused the whole record.

8. In B.C.Caturvedi Vs. UOI, 1996(32) ATC 44, Hon'ble Supreme Court inter alia held that the Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive on its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner in consistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence.

9. In Indian Oil Corporation Vs Ashok Kumar Arora, (1997) 3 SCC 72, it was held by Hon'ble Supreme Court that High Court in such cases of departmental enquiry and findings recorded therein does not exercise the power of appellate court/authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic inquiry is vitiated by non-observance of the principles of natural justice; (2) denial of reasonable opportunity, if findings are based on no evidence (3) punishment is disproportionate to the proved misconduct of the employee.

10. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1998(9) Supreme 452, Hon'ble Supreme Court held that the Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the

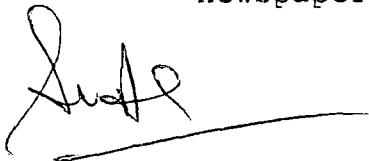


domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

11. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 227, Dr.A.S.Anand, Chief Justice, held that once the finding of fact based on appreciation of evidence are recorded, High Court in writ jurisdiction may not normally interfere with those findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be compassed before the high Court. High Court cannot substitute its own conclusion with regard to the guilt of the delinquent for that of departmental authorities unless the punishment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

12. In Sayed Rehimuddin Vs. DG, CSIR & Ors, ATJ 2001 (3) SC 252 decided on 1.11.2001, it was held by Hon'ble Supreme Court that finding of facts arrived at in disciplinary enquiry the interference by the court is permissible only when there is no material for the said finding or conclusion or on material available no reasonable man can reach to such conclusion.

13. In the instant case, it appears that the applicant while working as SPM, Adarsh Nagar, during the period 1.1.91 to 10.11.91, he accepted about 8000 copies of registered newspapers 'Mere Garib Nawaz' irregularly for which SPM

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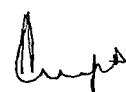
Adarsh Nagar was not authorised and on 25.10.91 the applicant despatched these newspapers in duly closed 4 'L' Bags to ASPO Bombay and Foreign Post Calcutta, directly. It also appears that the applicant did not check the sufficiency of stamp before these newspapers were sent to ASPO Bombay or Foreign Post Calcutta.

14. From the averments made by the applicant it also becomes abundantly clear that the applicant himself admitted in his statement that there was no provision for despatching these newspapers directly to ASPO Bombay or Foreign Post Calcutta. Further it also establishes that Shri Arzhisoor Renman, an official of 'Mere Garib Nawaz' has deposited Rs.6000/- on 10.1.92 at the instance of SSP, Ajmer and on the basis of which conclusion can be drawn is that there was insufficiency of stamp at the time of accepting the registered newspapers by the applicant and the applicant did not check the same, despatched those newspapers in 4 'L' Bags to foreign countries. Merely that the enquiry officer could not examine the fact of insufficiency of stamp because no envelop has been produced to him is not a sufficient ground to hold that there was no fault of the applicant in checking the sufficiency of stamp. If the applicant could have checked the sufficiency of stamp at the time of despatch then there would have been no reason to ask the publisher to deposit the cost of the insufficient stamp which undisputedly deposited by the publisher. As the payment of Rs.6000/- has been deposited by the publisher of the newspaper on 10.1.92 towards the cost of insufficient stamp and further the applicant has accepted 8000 copies of registered newspaper from 1.1.91 to 10.11.91 and he despatched the same to foreign countries in 4 closed 'L'



bags directly without any authority, therefore, we are of the considered opinion that the enquiry officer has rightly held the applicant guilty of violating the rules as contained in Post Office Guide Part I & Part II and P&T Manual and thus the applicant was rightly punished for misconduct as defined under Rule 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964. The appellate authority has already taken a lenient view looking to the gravity of the charge proved against the applicant, therefore, we are of the opinion that the punishment is not disproportionate to the gravity of the charges. Therefore, the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

15. We, therefore, dismiss this O.A having no merits with no order as to costs.



(A.P.Nagrath)

Member (A).



(S.K.Agarwal)

Member (J).