

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.536/97

Date of order: 31.10.2002

Bhola Ram, S/o Megharam, R/o Vill. & Post Mandrella,
Distt. Jhunjhunu, working as Ex EDDA, Mandrella.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt. of Posts, Mini. of Communications, New Delhi.
2. Director Postal Services Rajasthan Western Region, Jodhpur
3. Supdt.of Post Offices, Jhunjhunu Division, Jhunjhunu.
4. Inspector of Post Offices, Chirawa Sub-division, Chirawa.

...Respondents.

Mr.K.L.Thawani - Counsel for applicant.

Mr.Arun Chaturvedi - Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant is aggrieved by the order dated 15/17.2.97 passed by the Inspector of Post Office Sub-division, Chirawa (Annex.A1) and order dated 27.10.97 passed by the Supdt.of Post Offices, Jhunjhunu (Annex.A2) whereby the applicant was removed from service on account of disciplinary proceedings initiated against him. It may be noticed here that the applicant while working as EDDA, Mandrella Post Office was issued a charge-sheet under Rule 8 of the Extra Departmental Agents (Conduct & Service) Rules, 1964 vide charge memo dated 20.7.96 (Annex.A3). The charges against the applicant were, (i) absent from duty w.e.f. 25.1.96 to 31.1.96, (ii) Misappropriation of Money Order worth Rs.1000/- (Rs.350/- was retained for a period w.e.f. 25.1.96 to 31.1.96 and Rs.650/- was retained for a period

w.e.f. 25.1.96 to 2.2.96), (iii) while on duty on 2.2.96, the applicant was found in drunken state. The applicant was put off duty by respondent No.4 but subsequently he was reinstated. Consequent upon the issue of charge-sheet, Asstt. Superintendent of Post Offices, Jhunjhunu was appointed as Enquiry Officer who after conducting oral enquiry and examining the witnesses, submitted his enquiry report on 7.1.97 (Annex.A5). In this report the Enquiry Officer held that charge No.1, absence from duty stand proved, charge No.2, regarding misappropriation of money order stand partly proved and charge No.3 regarding drunken state of affairs, was not proved. The disciplinary authority did not agree with the enquiry report in its entirety and issued a note of disagreement in respect of charge No.2 & 3 vide memorandum dated 7.1.97 (Annex.A6) and the applicant was asked to submit his representation within 15 days. The applicant submitted representation (Annex.A7) and after considering the matter in its entirety, the disciplinary authority removed the applicant from service vide memorandum dated 15/17.2.97 which is under challenge. The applicant filed appeal against the order of the disciplinary authority and the appellate authority after considering the appeal of the applicant reduced the penalty of removal from service to that of debarring for promotion to the cadre of Gr.D and Postman for a period of 5 years vide memo dated 31.3.97. The reviewing authority viz Director of Postal Services, Rajasthan Western Region, Jodhpur, while exercising suo motu power, reviewed the order passed by the appellate authority in exercise of power vested under Rule 16 of the EDAs(Conduct & Service) Rules, 1964 and remitted back the case to the appellate authority for de novo proceedings from the stage of consideration of the appeal vide order dated 26.9.97 (Annex.A9). The case was

(b)

remitted back to the appellate authority on the ground that the penalty imposed by the appellate authority is not a statutory penalty under Rule 7 of the EDAs (Conduct & Service) Rules. The appellate authority, without giving any show cause notice to the applicant, reconsidered the matter again and passed the penalty of removal from service vide memo dated 27.10.97 (Annex.A2). It is this order as well as the initial order ^{which} ~~Annex.A1~~ ^{applicant of} are under challenge in this application and ~~has~~ has prayed that the impugned order Annex.A1 and Annex.A2 may be quashed being illegal, unconstitutional, capricious and violative of Article 311(2) of the Constitution and direction be issued to the respondents to reinstate the applicant in service with all consequential benefits. The applicant has challenged these orders on the ground that the charges against him have not been proved and in any case the order of removal from service passed by the appellate authority subsequently is not legally permissible. The applicant has further averred that the reviewing authority has failed to pass appropriate order in pursuance of the provisions contained in Rule 16 of the EDA (Conduct & Service) Rules and the matter was probably remitted back to the appellate authority to pass severe order of punishment and the appellate authority passed fresh order of removal from service probably from the direction of the reviewing authority, without applying his mind.

2. The case has been contested by the respondents by filing reply affidavit. They have denied the allegations levelled by the applicant and submitted that the charges against the applicant have been fully proved. They have also annexed with the reply the statement of Sh. Prabhu Dayal, the payee, Shri Hanuman Prasad, who is ^a witness of the receipt of the money ~~order~~ and also the application of the applicant whereby he ~~has~~ ^{has}

admitted that only Rs.350/- was paid to the payee on 1.2.96 and the remaining amount Rs.650/- was utilised by him for his own purpose which he is now willing to deposit. The other allegation that a fresh order was passed by the appellate authority at the instance of the reviewing authority has been denied. It has also been denied that the penalty imposed is highly excessive and no show cause notice was required to be given by the appellate authority while imposing fresh order of punishment to the applicant.

3. We have heard the learned counsel for the parties and gone through the pleadings of the case and the enquiry ^{record} report made available for perusal.

4. Though the counsel for the applicant has contended that all the three charges levelled against the applicant have not been legally proved, The main thrust of the counsel for the applicant is that it was not legally permissible ^{for} by the reviewing authority to remit the case back to the appellate authority to pass fresh order especially when the reviewing authority could have passed appropriate order in view of the provisions contained in Rule 16 of the EDAs (Conduct & Service) Rules, 1964. In any case, the counsel for the applicant argued that the fresh order of removal from service passed by the appellate authority is not a legal order as he has reviewed the order passed by the appellate authority enhancing the penalty of debarring the applicant for promotion to the cadre of Gr.D and Postman for a period of 5 years to that of removal from service, without giving an opportunity to the applicant of making any representation against such enhanced penalty and as such the order Anxx.A2 is not a legally sustainable and liable to be quashed. He has also argued that the applicant will be satisfied even if he is reinstated without any back wages.

5. We have considered the submissions made by the counsel for the applicant. The contention that the charges have not been proved, cannot be accepted. So far as the charge regarding absence from duty w.e.f. 25.1.96 to 31.1.96 is concerned, the respondents have produced documentary evidence in the form of attendance register, wherein the applicant has been shown as absent from duty for this period. There is also oral evidence regarding absence of applicant recorded during the course of inquiry. The contention of the counsel for the applicant that the applicant was prevented by Sub Post Master to mark his attendance and in fact during this period he was discharging his duties of village delivery for distributing ordinary dak, cannot be accepted as in cross examination the applicant has admitted that he has not brought the fact regarding non-marking of attendance in the register to the notice of higher authorities when he was prevented by the Sub Post Master as he could not contact the Inspector of Post Office. Regarding misappropriation of Money order Rs.1000/-, the respondents have placed on record copy of statement of one Prabhu Dayal, copy of application of the applicant made to the Sub Post Master, Mandrella and copy of statement of Sh. Hanuman Prasad, witness to the payment of the money order dated 2.2.96, recorded during the course of preliminary enquiry which have been annexed as Annx.R2, R3 and R4. These documents have also been mentioned in the list of witnesses annexed with the charge memo and also exhibited as Ex. P4, P13 and P5 and proved during the course of regular enquiry. Exhibit P4 is statement of Sh. Prabhu Dayal, the payee, wherein it has been recorded that the applicant came to him on 1.2.96 and told that he should take Rs.350/- now and remaining amount Rs.650/- will be paid after taking his salary. Believing this version, the applicant put his thumb impression

on the money order and Sh.Hanuman Prasad has not put any signature as witness in his presence. This version is corroborated by the statement of Sh.Hanuman Prasad in exhibit P-5 (Annex.R4), who has specifically stated that the applicant has not paid the money order in his presence. Exhibit-P13 (Annex.R3) is the application of the applicant dated 3.2.96 addressed to the Sub Post Master, Mandrella, whereby it has been stated that MO No.1593 dated 21.1.96 amounting Rs.1000/- was given to him for making payment to Sh.Prabhu Dayal Sharma and a sum of Rs.350/- was paid to the payee on 1.2.96 and the remaining amount Rs.650/- was utilised by him for personal use which he is ready to deposit now and the same may be deposited. On this application it has been recorded that "Rs.650/- deposited in VCR vide ACG 67 receipt No.38 dated 3.2.96". The applicant in his statement before the Enquiry Officer though has denied that he has not deposited a sum of Rs.650/- in the Post Office but he has admitted his signature on the application. The case of the applicant is that payment of Rs.1000/- was paid to the payee and this fact is clear from the statement of Shri Prabhu Dayal (Annex.A10) and statement of Sh.Hanuman Prasad, Annex.A11, made during the course of regular enquiry. Thus, according to the applicant the charge of misappropriation of Rs.1000/- in the manner as alleged, does not stand proved. Regarding the third charge that on 2.2.96, while on duty, the applicant was found in drunken state, it has been argued by the counsel for the applicant that this charge has not even been proved as no medical examination was conducted nor there is any signature on the so called medical report.

6. We have examined the matter in depth and have also gone through the various documents exhibited and statement recorded



during the course of regular enquiry. It is not a case of the nature that there is no evidence on record in order to prove these charges. The matter has been examined by various authorities in the light of material placed on record and has come to the conclusion that the charges stand fully proved. At the most it is a case which falls within the realm of appreciation of evidence and the authorities concerned after appreciating the evidence has come to the conclusion that the charges against the applicant stand proved. It is not permissible for us to appreciate the evidence in the manner suggested by the applicant especially when there is some evidence on record to suggest that the applicant is guilty of the charges levelled against him. Thus, we are of the view that it is not a case of no evidence. The second contention put forth is that it was not legally permissible to the reviewing authority to remit the case back to the appellate authority for *denovo* proceeding from the stage of consideration of appeal. At this stage, it will be relevant to notice the provisions of Rule 16 of the EDA (Conduct & Service) Rules, 1964, which provides as under:

"Review of orders

Notwithstanding anything contained in these rules,

(i) the Central Government, or

(ii) the Head of the Circle or Postmaster General (Region) as the case may be, or

(iii) an authority immediately superior to the authority passing the orders, may at any time, either on its own motion or otherwise, call for records of any enquiry or disciplinary case and review any order made under these rules, reopen the case and after making such enquiry as it

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considers necessary, may

(a) confirm, modify or set aside the order, or

(b) pass such orders as it deems fit.

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Provided further that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in (clause (v) & (vi)] of Rule 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule 8 in case no such enquiry has already been held."

From the reading of the aforesaid rules, it is clear, the authority immediately superior to the authority passing the order could have suo mottu, review any order made under Rules. Further, from a reading of the second proviso to the aforesaid rule, it is also clear that an order enhancing any penalty against an employee could only be passed after giving him a reasonable opportunity of making representation against the penalty proposed. Thus, it is quite evident that in case the reviewing authority was not satisfied with the penalty of debarring the applicant for promotion to the cadre of Gr.D and Postman for a period of 5 years, it was permissible for the reviewing authority to pass enhanced penalty after giving opportunity to the applicant to make representation against the proposed penalty and pass fresh order imposing such penalty. Admittedly, the reviewing authority has not adopted such course instead it has remitted the case back to the appellate

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authority for denovo proceeding for consideration of appeal. Thus the contention of the counsel for the applicant that the matter was remitted back to the appellate authority by the reviewing authority solely with the purpose that fresh order of removal from service may be passed and which order in fact been passed probably at the direction of the reviewing authority, cannot be out-rightly rejected without any substance. Be as it may, since the applicant has not challenged the order of the reviewing authority dated 26.9.97 (Annx.A9), we do not consider it appropriate to adjudicate the legality of this order.

7. Now let us examine the further contention of the applicant viz that the appellate authority could not have legally passed the order of removal from service afresh especially when the appellate authority has on earlier occasion passed the order debarring the applicant for promotion to the cadre of Gr.D and Postman for a period of 5 years, that too without giving an opportunity to the applicant for making representation against the enhanced penalty. We see considerable force in the contention raised by the applicant. While remitting back the case to the appellate authority for the purpose of denovo proceedings from the stage of consideration of appeal, the reviewing authority in its order Annx.A9, has specifically observed that the penalty awarded by the appellate authority is not a statutory penalty under Rule 7 of EDA's Conduct & Service Rules. The statutory penalty under Rule 7(iii) is "Debarring of ED Agents from being considered for recruitment of Group 'D' for a period not exceeding three years" instead of 5 years. The reviewing authority has not remitted the case back to the appellate authority on the ground that the penalty as imposed upon the applicant is inadequate and in the facts and

circumstances of the case keeping in view the gravity of charges levelled against the applicant, higher penalty of removal/dismissal from service is warranted in the instant case. As already noticed above, it was open for the reviewing authority to impose the enhanced penalty of removal/dismissal from service to the applicant in case the reviewing authority was satisfied that such action is warranted in the facts and circumstances of this case, of course in that event, the reviewing authority could have passed such order after giving an opportunity to the applicant to make representation against the proposed penalty as per Rule 16 ibid. The reviewing authority has chosen not to exercise such power. Thus only inference which can be drawn from Annx.A9 vide which the matter was remitted back to the appellate authority, is that the appellate authority could have passed appropriate punishment except removal/ dismissal from service in consonance with Rule 7 of the EDA (Conduct & Service) Rules. According to us, the appellate authority has exceeded its jurisdiction by imposing higher penalty of removal from service which according to us could was neither permissible nor it / be the intention of the reviewing authority that the higher penalty as awarded by the appellate authority at the first instance be imposed. That apart, the order of appellate authority Annx.2 is not sustainable yet on another ground. The appellate authority while passing the fresh order of removal from service has totally ignored the provision of Rule 15 of the EDA (Conduct & Service) Rules 1964 which stipulated that while passing the order on appeal, the appellate authority shall consider whether the penalty imposed is excessive, adequate or inadequate. A perusal of Annx.A2, reveals that the appellate authority has not mentioned even a single word as to why the grave penalty of



removal from service is warranted, in the facts and circumstances of this case, especially when the same authority on early occasion has reduced the penalty from removal from service to that of debarring the applicant for promotion to the cadre of Gr.D and Postman for a period of 5 years. It appears that on earlier occasion the appellate authority has passed this order keeping in view of the gravity of the charges levelled against the applicant which according to the appellate authority was not such a serious charge which involves harsh penalty of removal from service thereby forfeiting 18 years of service of the applicant without any pensionary benefits. Thus, it was incumbent upon the appellate authority while passing fresh order to record the reasons as to why the penalty of removal from service is warranted in the facts and circumstances of this case which the appellate authority failed to record as required under the rules and as such according to us Annx.A2 is not legally sustainable. Further, it is an admitted case of the respondents that no opportunity of hearing was given to the applicant before the order of removal from service was passed. This was necessary as penalty of debarring the applicant for recruitment to Group-D posts and Postman for a period of 5 years was enhanced to removal from service. On this count also the order of the appellate authority suffers from legal infirmity. Thus, we are of the view that the ends of justice will be served if direction is given to the appropriate authority to impose any of the penalty as mentioned in Rule 7 of the EDA (Conduct & Service) Rules, 1964, except the penalty of removal/dismissal from service and the applicant is reinstated in service without any back wages.

8. In the facts and circumstances as stated above, the impugned orders Annx.A1 & Annx.A2 are hereby quashed and set

aside. The applicant shall be reinstated within a period of 15 days from the date of passing of this order. The intervening period when the applicant remained out of service on account of the order of removal from service till his reinstatement shall not be treated as period spent on duty and he shall not be entitled to any back wages. However, this period shall be treated as qualifying service for the purpose of pensionary benefits. Liberty is given to the appellate authority to pass fresh order to impose any of the penalty as contemplated under Rule 7 of the EDA(Conduct & Service) Rules, 1964, lower than the penalty of removal or dismissal from service keeping in view the representation of the applicant and evidence on record within a period of 3 months from the date of receipt of this order. The O.A is disposed of accordingly with no order as to costs.


(M.L.Chauhan)

Member (J)


(H.O.Gupta)

Member (A).