

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.
~~KAX No.~~

544/97

~~X00X~~

DATE OF DECISION 28.8.02

P.D. Jef

Petitioner

Mr. K.L. Thawani

Advocate for the Petitioner (s)

Versus

Union of India and 3 others

Respondent s

Mr. B.N. Sandhu

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Maying all
Agree
27/8/02
(G.L. Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

Original Application No. 544/97

P.D. Jef
S/o Luxminarayan
Ajitgarh District
Sikar

: Applicant

rep. by Mr. K.L. Thawani : Counsel for the applicant.

vs.

1. Union of India through the
Secretary to the Government
of India, Department of Posts
Ministry of Communications,
New Delhi-110 001

2. Member(personnel)
Postal Services Board
Dak Bhawan
Sansad Marg,
New Delhi- 110 001

3. Director of Postal Services,
Rajasthan Western Region
Jodhpur 342 001

4. Superintendent of Post
Offices, Sikar Division
Sikar 332 001

: Respondents.

rep. by Mr. B.N. Sandhu : Counsel for the respondents.

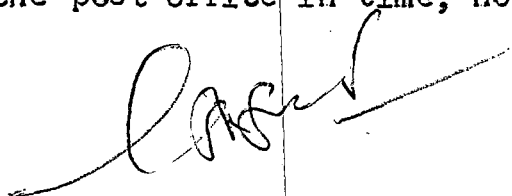
CORAM: The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member.

Date of the : 20.8.02
Order

Per Mr. Justice G.L. Gupta,

ORDER

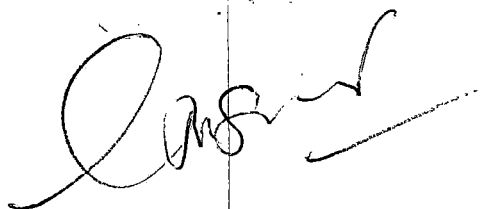
The applicant was working as Sub-Postmaster,
College Road, Fatehpur NDTSO during the period from 30.8.83
to 8.9.83, when the regular incumbent was on leave. He was
served with a charge sheet containing six charges vide
memo dated 13.5.86, under Rule 14 of the CCS(CCA) Rules,
1965, for imposing major penalty. The imputations against
the applicant were ~~of~~ absence from duty, not opening
the post office in time, not handing over the charge of the



post to the regular incumbent on 8.9.83 and take away the Government cash worth about Rs.792.30 and keys of the Post Office on 8.9.83, which resulted into the closure of the Post Office from 9.9.83. The applicant filed his reply to the charge sheet but did not appear before the inquiry officer on various dates and hence the inquiry proceeded ex-parte.

The inquiry officer submitted his report on 13.6.88 holding that four charges were proved against the applicant and two charges not proved. After receipt of the inquiry's officer's report, the Disciplinary Authority vide his order dated 31.8.88, imposed the penalty of reduction of his pay by two stages in the time scale of pay of Rs.975-1660 for a period of two years with effect from 1.5.91. It was also stated that the applicant would not earn increments of pay during the period of reduction and that on the expiry of the period the reduction would not have the effect of postponing his future increments of pay. The Disciplinary Authority vide his communication dated 8.1.93, issued a corrigendum to the effect that the orders would take effect from 1.11.92 instead of 1.5.91. It seems, the applicant did not challenge the order of penalty.

However, when the higher authority came to know about this order, it felt that the penalty imposed on the applicant needed to be enhanced. The Director of Postal Services, Jodhpur issued a show cause notice to the applicant vide memo dated 3.1.90 stating that he proposed to enhance the punishment imposed on the applicant ^{and convert the same} into one of removal from service. The applicant was given time to submit his



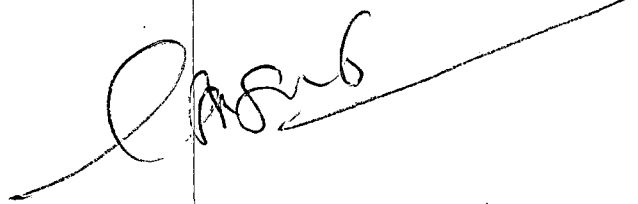
representation against the proposed action within 15 days of the receipt of the memo.

It is seen that the applicant challenged that order of the higher authority by filing O.A. No. 22/90, which was re-numbered as O.A. No. 543/92. The above O.A. was dismissed on 30.6.94. The applicant challenged the order of this Tribunal before the Hon'ble Supreme Court by filing S.L.P. No. 14513/94. The same was also dismissed vide order dated 7.11.94.

Thereafter, the Director of Postal Services, Jodhpur issued a communication dated 13.2.96 calling upon the applicant to make a representation against the proposed penalty of removal from service. The applicant did not file any reply though he sought time to file reply. Ultimately, the competent authority passed the order dated 8.7.96, whereby it was held that 5 charges were proved against the applicant and that the applicant shall be removed from service with immediate effect. It is this order which is under challenge in this O.A.

The case for the applicant is that he was not given enough opportunity to make representation against the proposal to enhance the penalty and without waiting for his representation, the impugned order has been passed. It is stated that the applicant was ill for a long period and therefore he could not send his representation to the show cause notice dated 13.2.96. It is further stated that the applicant has been granted leave from 31.1.96 to 23.2.96 and 26.2.96 to 18.7.96. It is prayed that the orders at Annex. A.1, A.2 and A.3 be quashed.

2. The respondents have resisted the claim of the applicant vide their reply dated 22.5.98. It is averred that the inquiry has been conducted in accordance



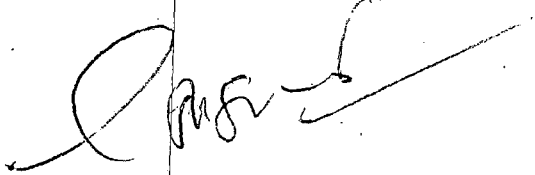
with the procedure laid down in the rules and that the applicant deliberately avoided the attendance in the inquiry on the basis of the certificates obtained from various places. It is also stated that the applicant was given enough time for filing reply, but he did not reply to the show cause notice for enhancement of the penalty from 1990 to 1997.

3. In the rejoinder filed by the applicant, the facts stated in the O.A have been reiterated. The respondents have also filed their reply to the rejoinder. The respondents in their reply to the rejoinder have annexed an order dated 2.6.2000, which has been taken on record.

4. We have heard the counsel on both sides and perused the documents placed on record.

5. Mr. Thawani, learned counsel for the applicant contended that the order of the Disciplinary Authority dated 8.1.93 is illegal, since no alteration could be made in the order without showing cause to the applicant. His further contention was that the Director of Postal Services, Jodhpur, could not enhance the penalty after the expiry of six months from the order dated 31.8.88 and therefore the enhancement order is illegal. Pointing out that the Director of Postal Services, Jodhpur in the show cause notice had expressed his intention to impose the penalty of removal, which shows that he had pre-judged the issue, the learned counsel contended that on this account alone the order is not sustainable. In support of the above contention, he cited the decision of the Principal Bench in Dharambir Singh vs. Union of India and others (2002- (1)-ATJ-31)

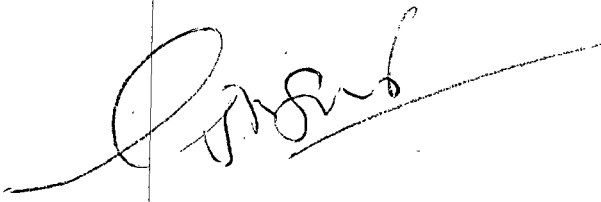
6. On the other hand, Mr. Sandhu, learned counsel for the respondents contended that the scope of judicial review in such matters is very limited and the Courts



should not interfere lightly. He urged that the allegations against the applicant were of serious nature in as much as it was alleged that the applicant had taken away the Government cash from the Post Office and refused to handover the keys of the post office and charge of the post to the regular incumbent. He emphasised that utmost honesty is required from the postal employees as they work in remote villages where most of the population is un-educated.

7. We have given the matter our thoughtful consideration. During the course of the arguments one of the contentions of the learned counsel for the applicant was that the applicant was not supplied a copy of the inquiry report and therefore the disciplinary authority's order is liable to be quashed. However, when his attention was drawn to the communication dated 31.8.88, wherein it is stated that a copy of the inquiry report was sent to the applicant he did not press the point further. It may be pointed out that in the O.A. it is nowhere stated that the applicant had not been supplied a copy of the inquiry report before the order dated 31.8.88 was passed. It shows that the applicant had received the copy of the inquiry report before the order dated 31.8.88 was passed. The applicant was again sent a copy of the inquiry report along with the order of the disciplinary authority. Therefore, it cannot be said that the applicant did not know the contents of the inquiry report when he was asked to make a representation against the proposed enhancement of penalty by the Director of Postal Services, Jodhpur.

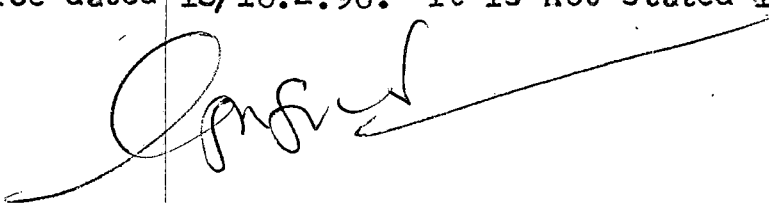
8. There is no merit in the contention on behalf of the applicant that the higher authority could not pass the order on 3.1.90, since the same was not passed within a period of six months from the order dated 31.8.88. The



applicant had filed O.A. No. 543/92 (22/90) on the same ground which was dismissed by this Tribunal vide order dated 30.6.94, and that order was upheld by the Supreme Court. Therefore the applicant cannot be permitted to re-agitate the same point.

9. The applicant was issued a show cause notice on 3.1.90 stating that a penalty of removal was proposed to be imposed on him. The applicant did not file any reply to the said notice. The reply was to be filed within 15 days from the date of receipt of the above said memo. It was clearly stated in the said notice that if the applicant did not file any reply, action would be taken ex-parte. The applicant did not choose to file reply/representation against the said notice, instead he filed O.A. No. 543/92 (22/90) before this Tribunal. It may be argued that because of the stay granted by this Tribunal in the above O.A. the applicant was not required to file reply/representation against the said notice. But when the O.A was dismissed by this Tribunal and the order was upheld by the Apex Court, the applicant ought to have submitted his representation/ reply within the specified period after the Special Leave Petition filed ^{by} him was dismissed. He did not do so.

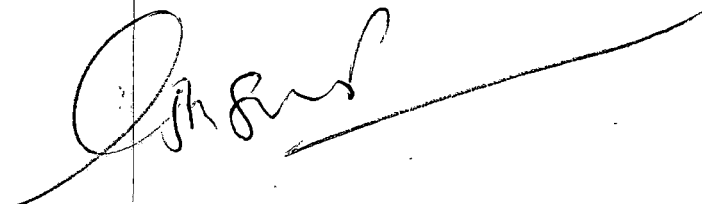
The Director of Postal Services, Jodhpur, by way of abundant pre-caution again issued a notice to the applicant on 13/16.2.96, by which the applicant was asked to submit his representation within 15 days from the date of receipt of the above notice. However, the applicant did not file his reply/representation within the said period. He went on taking time for filing reply on the ground of his illness. It may be that his leave was sanctioned but that could not be a ground for not filing reply/representation to the notice dated 13/16.2.96. It is not stated in the O.A that



the applicant was suffering from such a serious disease that he could not prepare his representation and send it to the authorities. It is not the case where it is established that the applicant was prevented from making his representation within the specified period. It may be stated that the applicant was granted time again and again to submit his reply/representation against the notice. As the applicant did not make any representation against the proposed penalty of removal, the Director of Postal Services, Jodhpur had no alternative but to decide the matter which was pending for more than six years.

10. In the case of Dharambir Singh (supra) relied on by the learned counsel for the applicant, the fact situation was different. In that case, the Disciplinary Authority itself had observed that the applicant therein was not a fit person to be retained in service and the Appellate Authority had observed that the Disciplinary Authority had finally come to the conclusion that the applicant was not a fit person to be retained in service. It is under these circumstances that the Principal Bench held that the Disciplinary Authority had pre-judged the matter and had violated the principles of natural justice.

The facts in the instant case are very different. In this case, the Disciplinary Authority had not given any notice to the applicant that the applicant was not a fit person to be retained in service. It is the higher authority who has issued the notice of enhancement of penalty and therefore the ruling of the Principal Bench in Dharambir Singh's case cannot be held to be applicable in this case. When the higher authority had issued such a notice it cannot be said that the higher

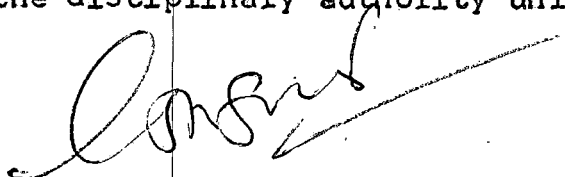


authority had pre-judged the issue. The higher authority had issued the notice only after it came to the conclusion that the charges had been rightly found proved. It had every right to issue such a notice. In the notice, proposed penalty was also required to be stated. Therefore, the action of the Director of Postal Services, Jodhpur, cannot be said to be illegal, when he observed that keeping in view the gravity of the charges the penalty of removal could be imposed.

11. One of the contentions raised by the learned counsel for the applicant was that he had put in more than 30 years of service with clean record and that the charges were not such serious which warranted the punishment of removal. He prayed that the penalty may be reduced. In the O.A it is nowhere pleaded that the applicant had served for more than 30 years and there was no adversity against him. A new fact cannot be allowed to be argued which was not stated in the O.A.

Moreover it cannot be said that the mis-conduct proved against the applicant is not of a grave nature. The allegations against the applicant are that he did not open the post office in time and he even refused the S.D.I.(P) Fatehpur to verify the cash and stamp balance on 6.9.83 at 3 PM. Further he had taken away the Government cash worth Rs.792-30 with him on 8.9.93. The above amount was not found in the post office on 9.9.83. Keeping in view the mis-conduct, it cannot be said that the penalty of removal is excessive.

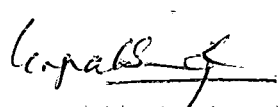
Apart from that, it is well settled that Tribunals/Courts cannot substitute its opinion in the matter of penalty imposed by the disciplinary authority unless it shocks the judicial

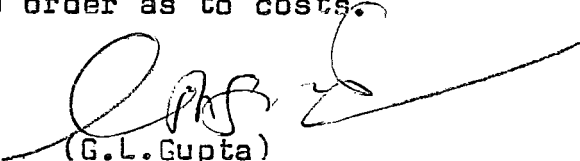


conscience being grossly disproportionate to the mis-conduct proved. See. B.C. Chaturvedi vs. Union of India & ors. (J.T.-1995-(8)-SC-65). The instant case is not of that type.

12. As to the order dated 8.1.93, it may be stated that the order has been merged in the order of the Director of Postal Services, Jodhpur. Moreover that order was also the subject matter of the earlier O.A which was dismissed. The alteration of the effective date of punishment by the Disciplinary Authority does not invalidate the order of the Director of Postal Services, Jodhpur dated 8.7.96.

13. Consequently, we find no merit in this O.A. which is hereby dismissed. No order as to costs.


(Gopal Singh)
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.