

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 25-4-03

OA 1/98

Nand Kishore Bairwa s/o Shri Onkarlal r/o Village & Post Office Khandewala, Distt. Sawai Madhopur.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communications, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Superintendent of Post Offices, Sawai Madhopur Division, Sawai Madhopur.
5. S.N.Basanwai, Supdt. of Post Offices, Sawai Madhopur.

... Respondents

CORAM:

HON'BLE MR.H.O.GUPTA, ADMINISTRATIVE MEMBER

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

For the Applicant

... Mr.K.L.Thawani

For the Respondents

... Mr.N.C.Goyal

ORDER

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

The applicant was initially appointed as Extra Departmental Mail Carrier (EDMC), Khandewala Branch Post Office, on 31.1.82. He was given dual charge of EDBPM, Khandewala, for about 27 months w.e.f. 1.6.93. He was issued charge-sheet under Rule-8 of P&T EDAs (Conduct & Service) Rules, 1964 vide memo dated 26.9.95, whereby containing four charges. The charges levelled against the applicant were briefly: (i) non exchange of B.O. Bags on 24.7.95, 26.7.95 & 31.7.95, (ii) non-delivery of mails on the said dates, (iii) keeping P.O. closed from 18.7.95 to 31.7.95 and (iv) refusal to hand over charge to the selected BPM. The inquiry officer conducted oral inquiry and submitted his report on 17.8.96 thereby two charges were held to be proved partly and the remaining charges were held to be proved fully. Copy of the inquiry report has been placed on record as Ann.A/5. After supplying copy of the inquiry report, the disciplinary authority i.e. Superintendent of Post Offices, Sawai Madhopur, issued the order of removal from service vide order dated 31.10.94 (Ann.A/1). Appeal filed by the applicant to the Director Postal Services, Jaipur, on 7.1.97 was also rejected vide order dated 8.8.97 (Ann.A/7). The applicant submitted a petition to the Chief Postmaster General, Rajasthan Circle, Jaipur, on 17.10.97 (Ann.A/8) and according to the applicant no decision has been

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taken on the said petition. The grounds taken by the applicant in this OA are that the applicant never remained absent from duty. He was holding dual charge of EDBPM & EDMC hence the difference in timings of stationery work in post office as EDBPM and field work of delivery of postal articles in the main village and surrounding villages will naturally be effected as one person was doing job of two persons. The applicant has correctly exchanged the mails regularly and the Post Office, Khandewala, was never closed during the period 18.7.95 to 31.7.95. The applicant never refused to hand over the charge. That the procedure prescribed for absence without permission is laid down in Rules 62 and 63 of P&T Manual Vol.III and action under Rule-8 of the P&T EDAs (Conduct & Service) Rules, 1964 for a very short period is not warranted and is excessive, even if it is held that the charges have been proved. The additional documents were not supplied and the defence witnesses were not allowed by the inquiry officer. The applicant has also levelled allegation against Shri S.N.Basanwal, Superintendent of Post Offices, Sawai Madhopur (Respondent No.5) stating that he has paid Rs.5000/- to Shri Basanwal for his appointment to the post of EDBPM, Khandewala, but the present EDBPM paid more amount and consequently he was selected. When the applicant demanded back Rs.5000/- from Shri Basanwal, he refused to pay the same. Therefore, he has lodged FIR under Section 430 IPC against Shri Basanwal. The applicant has also annexed copy of the said FIR as Ann.A/3. Thus, according to the applicant, all the charges have been manipulated at the instance of Shri Basanwal, Supdt, of Post Offices, Sawai Madhopur, (Respondent No.5), and harsh penalty of removal from service has been passed against him by the same person against whom he has levelled the allegation.

2. The respondents have filed a detailed reply thereby controverting the allegations levelled by the applicant in this OA. It has further been stated that no such petition, as alleged by the applicant as Ann.A/2, was received through proper channel by the answering respondents. This affidavit has been filed by the Superintendent of Post Offices, Sawai Madhopur, on behalf of even Chief Postmaster General, Rajasthan Circle, Jaipur, i.e. respondent No.2. Thus, there is no specific denial by respondent No.2 that the applicant has not filed any petition against the decision of the appellate authority.

3. We have heard the learned counsel for the parties and gone through the material placed on record.

4. From the material placed on record it is evident that the applicant has lodged FIR against Shri S.N.Basanwal, Superintendent of Post Offices, Sawai Madhopur, copy of which has been placed on record as Ann.A/3. The FIR

162

was lodged on 8.9.95. The charges levelled against the applicant, as can be seen from the charge-sheet, also relate to the period from 18.7.95 to 31.7.95. The inquiry was conducted by the Assistant Superintendent of Post Offices, Gangapur, who is admittedly subordinate to the Superintendent of Post Offices. The inquiry report was submitted by him on 17.8.96, after lodging FIR by the applicant. On the basis of the inquiry report Shri S.N.Basanwal, against whom the applicant has lodged FIR, passed the impugned order on 31.10.96 thereby removing the applicant from service. It is elementary principle of natural justice that justice should not only be done but it should appear to have been done. When there was serious allegation against Shri Basanwal, it was not expected of him to pass the impugned order against the applicant on the basis of the inquiry report submitted by the Assistant Superintendent of Post Offices, who was a subordinate authority to Shri Basanwal. Thus, the apprehension of the applicant that even if the charges as levelled against him are held to be proved, such a penalty of removal from service could not have been passed, cannot be outrightly rejected. From the material placed on record it is clear that the applicant has put in 14 years of service as EDMC and he was also given dual charge of BDBPM, Khanda wala, for about 27 months before his removal from service and appointment of another person as BDBPM. The applicant has submitted that during his entire service career he has worked efficiently, honestly and sincerely and this fact has not been disputed even by the respondents except for the alleged charges levelled against him. Further contention of the applicant is that the appellate authority had been misled, misguided and prejudiced by the Superintendent of Post Offices, against whom he has levelled serious allegation, and as such the matter has not been decided in proper prospective by the appellate authority. The learned counsel for the applicant has invited our attention to the observations made in para 3(i) by the appellate authority, whereby he has recorded that; "appellant at his own took charge of the B.O. w.e.f. 1.6.93". Further, in para 3(ii), it has also been observed that; "the complaint made by Shri Babulal Barodia whose resignation from the post of BDBPM had been accepted as mentioned above disclosed that the appellant had compelled the then BDBPM to sign the resignation and thereby the charge of B.O. were taken by the appellant with some malafide intention which should have been properly investigated and noticed suitably by the SPOs". The *Advocate for the* applicant contended that there was no such allegation/charge against him. He was working as EDMC cum EDDA and how he could have taken the charge from the Branch Post Master, who is a superior authority, with malafide intention. The learned counsel for the applicant has further argued that the applicant was asked by the SPOs, Sawai Madhopur, to perform the duty of BPM in addition to the duties of EDDA, in which capacity he worked for 27 months continuously, whereas in the appellate order it has been stated that

16

the applicant has worked only for some time. Thus, according to the learned counsel for the applicant, the appellate authority has taken into consideration extraneous material while passing the impugned order, which shows that the appellate authority was influenced by Shri S.N.Basanwal in affirming the harsh penalty of removal from service. Besides, two charges in the charge-sheet relate to allegations when he was working as ~~EDBPM~~ <sup>EDBPM</sup> for which the Inspector was not competent to issue charge-sheet.

5. We have considered the submissions made by the learned counsel for the applicant. The submission made by the applicant that the impugned order dated 31.10.96 (Ann.A/1) could not have been passed by Shri S.N. Basanwal, SPOs, Sawai Madhopur, against whom he has levelled allegation and lodged FIR, cannot be outrightly rejected. The person against whom serious allegations were levelled and even FIR lodged could not have passed the impugned order of removal from service. This has certainly caused prejudice to the applicant and as such the impugned order (Ann.A/1) is not legally sustainable. Further, from the perusal of the appellate order, it appears that even the appellate authority has made extraneous observations which were not matter of the charge-sheet and were not warranted in the facts and circumstances of the case. Thus, the contention made by the learned counsel for the applicant that the appellate authority has passed the order at the instance of Shri Basanwal, SPOs, also cannot be outrightly rejected. Notwithstanding the submissions made by the applicant and finding, as recorded above, and also that the Inspector was not competent to issue charge-sheet in respect of two charges while functioning the applicant as EDBPM, the fact remains that the inquiry officer has held the applicant guilty of remaining two charges. This cannot be said to be a case of no evidence. It will <sup>not</sup> ~~not~~ be in the interest of justice to remit the case back to the other disciplinary authority, after lapse of such period, to pass fresh order as Shri S.N.Basanwal could not have passed the impugned order (Ann.A/1) in his capacity as disciplinary authority as serious charges were levelled against him. However, we are of the view that the penalty of removal from service on the charges levelled against the applicant is harsh and grossly disproportionate so as to shock the conscience of the Tribunal. However, from the perusal of the EDA (Conduct & Service) Rules, 1964, it is evident that the applicant has also got a remedy available to him by way of review under Rule-16 of the said Rules, which is equally efficacious remedy. In fact, the applicant has also filed petition before the Chief Post Master General, copy of which has been annexed as Ann.A/3. However, the Superintendent of Post Offices, who has also filed reply on behalf of respondent No.3, has stated that no such petition was received through proper channel. However, the fact remains that no order has been passed by the reviewing authority. In the facts and circumstances of this case, it will be in the interest of justice if a

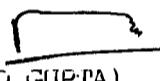
direction is given to the reviewing authority to invoke the provisions of Rule-16 of the EDA (Conduct & Service) Rules, 1964 and entertain the representation of the applicant and pass an appropriate order to impose lesser penalty than removal from service.

6. We, therefore, direct the applicant to make a fresh representation to the reviewing authority within a period of 15 days from the date of receipt of a copy of this order and the reviewing authority shall dispose of the representation, if filed, within a period of two months from the date of receipt thereof and the decision taken shall be communicated to the applicant within 10 days thereafter. We hope and trust that the reviewing authority while passing an appropriate order of punishment other than removal from service will examine the matter dispassionately keeping in view the fact that the applicant has worked as EDMC for about 14 years and also holding the additional charge of EDDA for about 27 months and during this entire period nothing has been placed on record to suggest that work and conduct of the applicant was not satisfactory. With these observations, the OA stands disposed of with no order as to costs.



(M.L. SINGHAN)

MEMBER (J)



(H.O. GUPTA)

MEMBER (A)