

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.437/98

Date of order: 14.2.2003

A.K.Bhardwaj, S/o Sh.Mangilal Bhardwaj, R/o Village & Post
Bahnera, Distt.Bharatpur, Ex-Postal Assistant.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt of Posts, Govt of India, New Delhi.
2. Postal Service Board through Member(P), Govt of India, Deptt.of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. Director, Postal Services, Jaipur Region, O/o CPMG Rajasthan Circle, Jaipur.
4. Sr.Suptd of Post Offices, Jodhpur Division, Jodhpur.

...Respondents.

Mr.P.N.Jati - Counsel for applicant.

Mr.N.C.Goyal - 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 has filed this O.A thereby praying for quashing the impugned order of penalty of dismissal from service inflicted by the disciplinary authority vide order dated 22.4.96 (Annx.A3), order of the appellate authority dated 4.11.96 (Annx.A2) and order of Reviewing Authority dated 18.2.98 (Annx.A1) and has further prayed that the applicant be reinstated in service with all consequential benefits.

2. Relevant facts as borne out from records are that the applicant, Ex-Postal Assistant Bharatpur Head Post Office was initially appointed in PA Cadre in Ajmer Division and joined as PA Kishangarh on 24.4.79. He was transferred to Bharatpur

62

Division on 5.10.82 and posted as Postal Assistant Deeg. He worked as PA Bharatpur HO/Bharatpur City HO during the period 7.4.84 to 18.7.90. While working as PA Bharatpur HO and Bharatpur City HO, he frequently went on deputation to Bharatpur Agency Post Office, Basangate, Bharatpur and Atalbandh Bharatpur. On 15.12.89, an incident of theft occurred at Basangate NDTSO Bharatpur during Lunch hours. The following particularized unsold blank certificates and Rs.1230.95 were taken away in the theft for which an FIR was lodged by the Sub Post Master, Basangate, Bharatpur:

Particulars of stolen KVPS & 6 NSC (VIII issue)

<u>DN</u>	<u>SL.No.of NSC 7 KVPS</u>	<u>Total No.</u>
KVP 1000	OOAA 163290 to 163296	07
NSC 10000	6NS/00EE 815004 to 815011	08

The aforesaid loss was circulated vide SPOs Bharatpur letter dated 26.12.89. The police filed final report in this case but the facts came to light when Sh.Ashok Kumar Bhardwaj produced some of the NSCs mentioned above for transfer to Malakhara gate Alwar NDTSO at the counter on 27.6.1990 impersonating himself as Ashok Kumar Sharma, Lab.Assistant, Jaswant Secondary School, Alwar. These NSCs were bearing Sl.No.6NS/00EE 815004 to 815008 DN 10000/- purported to have been issued in the name of Asnok Kumar Sharma at A.B.Mandi, Bharatour under Regn.No.17 dated 31.1.90 and impressed by date stamp of 31.1.1990 of EXPTI PO, J-1198. Shri Ramjilal Meena, SPM, Malakhara Gate, Alwar NDTSO took these NSCs alongwith transfer application (NC 32) from the applicant and compared particular of the NSCs recorded in the application (NC 32) with original NSCs and thereafter ne returned original NSCs to the applicant. Thereafter the transfer application (NC 32) was sent to the SPM Atal Bandh Mandi, Bharatpur under endorsement No.NSC/90 dated 28.6.90

42

which was received at Bharatpur Head Post Office on 2.7.90. The applicant while working as PA Bharatpur HO succeeded to get delivery of the said registered letter and after obtaining the registered letter, he recorded remarks on the transfer application (NC 32) "particulars verified returned to SPM Malakhera gate, Alwar" and made forged signature of the SPM Atal Bandh Mandi Bharatpur and returned under RL No.4789 dated 3.7.90 which was received at Alwar HO on 5.7.90. Thereafter the SPM Malakhera Gate Alwar, returned the said application to the SPM Atal Bandh Mandi, Bharatpur for supplying the omission of the impression of the MO Oblong stamp vide letter dated 5.7.90. The applicant again succeeded to receive the delivery of the said RL on 9.7.90. The SPM Malakhera gate Alwar after returning the application (NC 32) to the SPM Atal Bandh Mandi Bharatpur suspected something wrong in the case, therefore, he wrote a confidential letter dated 13.7.90 to the Supdt. of Post Offices, Bharatpur for verification of genuineness of the NSCs. The dealing Assistant of the Branch brought to the notice of Assistant Supdt (O/D) Bharatpur who checked the particulars of the NSCs at once with the case file of Basangate and noticed that there were the same NSCs which were reported missing from the stock of Basangate NDTSO Bharatpur on 15.12.89. Immediately, a telegram was issued to SPM Malakhera gate Alwar to take possession of these NSCs and report the case to Police. In the meantime, the applicant, on receipt of Malakhera gate Alwar RL No.5667 dated 5.7.90, wrote a letter to SPM Malakhera gate Alwar, purported to have been written by SPM Atal Bandh Mandi Bharatpur informing that the application of transfer (NC 32) will be impressed with the MO oblong stamp of Malakheragate Alwar PO and not of Atal Bandh Mandi NDTSO Bharatpur and himself signed the letter as SPM, AB Mandi by making forged

signature of B.L.Gupta and put the designation stamp of SPM Atal Bandh Mandi Bnaratpur and reached Alwar with transfer application (NC 32) with the request to the SPM for transfer of certificates immediately on his record since he wanted to take loan on these certificates from SBI Manal Chowk, Alwar. Since the application was now complete, the SPM Malakhera Gate Alwar transferred these certificates to Malaknera Gate Alwar under registration No.208 dated 13.7.90 and returned the same NSCs to the applicant. However, he failed to check the date of issue shown in NC 32 as 29.1.90 instead of 31.1.90 by transferring post office. He also noticed same date of verification on NC32. The applicant then appeared in SBI Manal Chowk Alwar on 19.7.90 for getting loan on the NSCs. The Manager, SBI, Manal Chowk had already been informed in the matter by the postal authorities of Alwar, no sooner the applicant did appear there, the police arrested him alongwith the stolen certificates. The applicant admitted to have done away with the unsold IVP for Rs.5000/- from the stock of Bharatpur Agency. IVP Rs.52500/- from the stock of Atal Bandh Mandi and NSC (VIII issue) 8 NSCs Dn.10000 and 7 KVP of Dn Rs.1000 from the stock of Basangate PO. He also intimated the facts to the Supdt.of Post Offices, Bnaratpur in writing through a letter. The police captured the unsold blank certificate stolen by him from Basangate Agency and Atal Bandh Mandi Bnaratpur from his custody. Consequently, disciplinary action under Rule 14 of CCS(CCA) Rules, 1965, was initiated against the applicant vide charge memo dated 22.4.91. The Enquiry Officer after holding regular enquiry submitted the enquiry report to the disciplinary authority holding the charges are not proved. The enquiry report and disagreement of the disciplinary authority with reason thereof was sent to the charged officer to submit his representation initially by



S.P.O. But subsequently the competent authority appointed SSPO, Jodhpur as the adhoc disciplinary authority vide Presidential order dated 2.11.95 as the SPO was not competent authority to inflict major punishment on the applicant. The adhoc disciplinary authority recorded the note of disagreement and issued show cause notice dated 21.3.96 (Annx.R4 with rejoinder) thereby holding that on the basis of oral as well as documentary evidence the charge against the official stands proved on the basis of circumstantial evidence and called upon the applicant to submit his representation within 10 days. The applicant submitted his representation and after considering the entire matter and relevant documents, the disciplinary authority inflicted the penalty of dismissal from service upon the applicant with immediate effect vide the impugned order Annx.A3. Thereafter, the applicant preferred his appeal to the appellate authority on 8.5.96 and the same was duly considered and rejected by the appellate authority vide memorandum Annx.A2. The applicant then preferred his review petition to the Member(P), Postal Service Board, New Delhi which too was rejected vide Annx.A1. Feeling aggrieved by these orders, the applicant has preferred the O.A thereby praying for the aforesaid relief on various grounds.

2. The case has been contested by the respondents by filing detailed reply. The applicant filed rejoinder reiterating the submissions as made in the O.A.

3. We have heard the learned counsel for the parties and also gone through the material on record. The respondents have also produced the record of departmental enquiry for our perusal.

4. Though the applicant has taken number of grounds for challenging the orders passed by the authorities but during the course of arguments on 3.2.03, the counsel for the applicant

fairly conceded that he will limit his case on the note of dissent and not on other grounds mentioned in this case. As such, the matter is being examined only on this limited ground.

5. The main anchor sheet of the argument of the learned counsel for the applicant is that the note of dissent given by the disciplinary authority is of no consequences as this note does not record the reason as to why the disciplinary authority disagreed with the finding of the Enquiry Officer. Thus, according to the learned counsel for the applicant, prejudice has been caused to the applicant and the disciplinary authority has in fact recorded the final finding based on a letter dated 20.7.90 (Ex.17) which was a statement of the applicant when he was admittedly under Police custody. Thus, according to the learned counsel for the applicant, the penalty cannot be imposed solely on the basis of this exhibit, thus, the disciplinary authority has committed grave illegality in sending the frivolous point of disagreement without taking into consideration the finding of the Enquiry Officer whereby the applicant was exonerated and also Exhibits S-2 to S-6.

6. Though the argument addressed by the learned counsel for the applicant is attractive but according to us it merits no consideration. It is well established that the report of the Enquiring Authority is only an enabling document which helps the Disciplinary Authority in formulating his opinion and is intended to assist the disciplinary authority in coming to a conclusion about the guilty of the Govt servant. Its findings are not binding on the Disciplinary Authority who can disagree with them and come to its own conclusions on the basis of its own assessment of the evidence forming part of the record of the enquiry. It is also equally true that the Disciplinary Authority should examine carefully and dispassionately the

Inquiring Authority's report and the record of the enquiry and after satisfying itself that the Govt servant has been given a reasonable opportunity to defend himself will record its findings in respect of each article of charge saying whether, in its opinion, it stands proved or not. If the Disciplinary Authority disagrees with the findings of the Inquiring Authority on any article of charge, while recording its own findings, it should also record reasons for its disagreement but not so when he agrees.

7. From the material placed on record and after perusal of the note of disagreement, it is clear that the disciplinary authority while disagreeing with the report of the Enquiry Officer has recorded his finding holding that "in view of the oral as well as documentary evidence I find the charge against the official proved on the basis of circumstantial evidence" and thereafter called upon the applicant to submit his representation within 10 days. It is only after receipt of the representation from the applicant, the final order was passed by the disciplinary authority imposing the penalty of dismissal from service. It is true that the finding given on the note of dissent by the disciplinary authority has held that the charges stand proved but it was a tentative view of the disciplinary authority and opportunity was given to the applicant to convince and persuade the disciplinary authority to accept the favourable conclusions of the Enquiry Officer. Thus, according to us, the applicant was given an opportunity to file representation before the disciplinary authority records his finding on the charges framed against the delinquent and he was also made aware about the material which was being relied against the applicant. As such according to us, no prejudice has been caused to the applicant. The applicant was aware about

rel

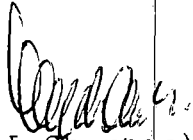
the charges levelled against him. He was also aware about the findings given by the Enquiry Officer and also the tentative view of the disciplinary authority as to why the disciplinary authority is disagreeing with the finding of the enquiry report and material relied in support of such finding and further the applicant was also given opportunity to file representation against the finding so recorded by the disciplinary authority. Thus, it cannot be said that prejudice has been caused to the applicant in this case and the disciplinary authority sent the applicant frivolous point of disagreement with the report of the Enquiry officer without taking into consideration the report of the Enquiry Officer and also Exhibits S-2 to S-6.

8. Further, the contention of the learned counsel for the applicant that the order of dismissal is based only on one and the only document, the statement made by the applicant (Ex.S17) when he was under Police custody is not based on the material placed on record and the disciplinary authority has issued his final order in speaking term wherein it has been stated that he has given a thorough consideration to the oral and documentary evidence of prosecution and defence side, Ex.S1, S2, S3, S4 S6, & S8 and statement witness SW.1,2 & 3,4 and S-8. etc. Thus, order of the disciplinary authority has been confirmed by the appellate authority vide order Annx.A2 by a reasoned and speaking order wherein all the points raised by the applicant have been dealt with elaborately. Similarly, we see no infirmity in the order of the reviewing authority, Annx.A1.

9. Thus, from the reasons stated above, we are of the view that the disciplinary authority while disagreeing with the enquiry report has recorded his tentative reasons for such disagreement which was forwarded to the delinquent officer and was given an opportunity to make representation before

recording his finding and passed the order of dismissal from service. Thus, no prejudice has been caused to the applicant if the disciplinary authority has not recorded specific finding as to why he disagrees with the finding of the enquiring authority and the tentative view given by the disciplinary authority as conveyed vide Annx.R4 to the applicant was sufficient to appraise the applicant as to on what basis the disciplinary authority is disagreeing with the finding of the enquiring authority on the article of charges against the applicant. Moreover, the applicant has also failed to show in what manner he has been prejudiced by the finding recorded in the note of disagreement (Annx.R4) and how he could not make the effective representation on the basis of such note of disagreement.

10. In view of what has been stated above, we do not find any merits in this O.A and the same is dismissed with no order as to costs.



(M.L. Chauhan)

Member (J)



(H.O. Gupta)

Member (A).