

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 354/99

DATE OF ORDER:

5-6.2002

Jitendra Kumar son of Kanhaiyalal aged about 32 years resident of House of Daleep Pahalwan, Rose Mail Press, Gautam Nagar, Ramganj, Ajmer and Ex. Mail Man RMS, Ajmer.

....Applicant.

VERSUS

1. Union of India though the Secretary to the government of India, Department of Posts, Ministry of Communications, New Delhi.
2. Director Postal Services, Rajasthan Southern Region, Ajmer.
3. Superintendent, Railway Mail service, 'J' Division, ajmer.
4. Head Record Officer, Railway Mail Service, 'J' Division, Ajmer.

....Respondents.

Mr. K.L. Thawani, Counsel for the applicant.

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Shri Jitendra Kumar has filed OA u/s 19 of the Administrative Tribunal's Act, challenging the impugned order dated 4.3.98 (Annexure A/1) and order dated 6.7.98 (Annexure A/2) as violative of Article 311(2) and 21 of the Constitution of India and also for seeking a direction to reinstate the applicant in service with all consequential benefits.



2. The factual matrix of the case is that the applicant was initially appointed as Mailman on 21.1.87. He has been honestly and satisfactorily performing his duties with unblemished record of service for about ten years. He was served with a charge sheet under Rule 14 of the CCS(CCA) Rules, 1965 vide Memo dated 7.8.96 (Annexure A/3). The following charges have been alleged against him.

Charge No. 1.

That on 31.1.1996 the applicant had torn 4 foreign mail letters and on search 8 British Postal Orders, 4 letters, one foreign cheque and pouch of 200 ML of Country Liquor were found with him and that he was drunk.

Charge No. 2

That the allegations are same as in Charge No. 1 but in this charge it has been shown that 8 British Postal Orders, 4 letters, and one pouch of 200 ML Country Liquor were found in the pocket of shirt of the applicant and further details of such BPOs and letters are given under it. A clear opinion has been given by the disciplinary Authority about the charge.

Charge No. 3

This charge is also repetition of the above two charges. In all the charges, it has been mentioned that the applicant has acted against the provisions of Rule 3(1)(ii)(iii) of the CCS (Conduct) Rules, 1964.

Or

3. The applicant denied the charge and an oral inquiry was conducted in the matter. The applicant was not shown the documents during the course of the inquiry and the same was finalised. The applicant was supplied with a copy of the inquiry report wherein the Charge No. 1 has been held 'proved' and other charges have been held as 'partly proved' by the Inquiry Officer. The applicant submitted a representation to the Disciplinary Authority against the finding of the Inquiry officer vide letter dated 20.1.1998 (Annexure A/5). The Disciplinary case came to be decided by Respondent No. 3 and not by respondent No. 4 who issued the charge sheet and appointed the Inquiry Officer. The said Disciplinary Authority has imposed the penalty of dismissal from service vide order dated 4.3.98 (Annexure A/1). The Disciplinary Authority disagreed with the findings of the Inquiry Officer and held all the charges as fully proved. The applicant was not intimated the points of disagreement while supplying the copy of the Inquiry report.

4. The appeal was preferred to the Appellate Authority who has decided the appeal without application of mind in as much as wrong facts have been taken into account that "he neither attended the inquiry nor had given any reason for his absence in the inquiry." It has also been mentioned that he failed to avail the opportunity to inspect the documents during the course of the inquiry.

5. The OA has been filed on number of grounds, mentioned in the OA, which shall be discussed in the later part of this judgement.

6. The respondents have filed the detailed reply and have controverted the facts and grounds taken in the OA. It has been averred that the applicant committed a criminal offence and a criminal case is pending in the Railway Court. Regarding supply of original documents, it has been said that

2

appeal to us in as much as the Criminal Court case has been filed against the very applicant and all the original documents have been filed in the same case. There was no need to inspect all the original documents since he himself is a party in the Criminal case. Further, prejudice has been shown having caused to him due to the said act of the respondents. Thus there is no denial of reasonable opportunity to defend the applicant in this case on this count.

9. The learned counsel for the applicant further submitted that it is a case of no evidence in as much as it was impractical to take out so many things from his pocket. No seizure memo has been prepared and the respondents have taken self-contradictory stands. The learned counsel for the respondents has submitted that the applicant has admitted his guilt and this position is turn out from the averments made in his appeal and also it is not a case of no evidence and as such this ground is also not sustainable. The next ground stressed by the learned counsel for the applicant is that Inquiry Officer has held charge No. 1 proved and other two charges as not proved. Whereas the Disciplinary has agreed all the charges as proved but no opportunity to make any representation has been given to the applicant. The applicant was supplied the inquiry report simplicitor. Any point of disagreement have not been informed to him whereas in case the Disciplinary Authority disagrees with the findings of the Inquiry Officer, it is incumbent upon the Disciplinary Authority to record reason for disagreement and also to inform the delinquent employee the same while supplying the copy of the inquiry report. The opportunity to make representation against points of disagreement is required to be given but such exercise has not been done in the present case. The reply to this contention of the respondents is that no prejudice has been shown to have caused to this. It has also been said that the Disciplinary Authority has only disagreed on the findings of the Inquiry officer on Charge No. 3 and he agrees with the findings of the inquiry officer on charge No. 1 & 2. Even taking charge No. 1 & 2 and

2

the same were in the custody of the GRP/ in the Upper Chief Judicial Magistrate, Ajmer. However, the Xerox copies were made available during the inquiry and the applicant was permitted alongwith his Defence Assistant to personally inspect the documents in the Court of ACJM (Western Railway), Ajmer and the applicant did inspected the documents. As regards the action of the Disciplinary Authority, it is submitted that Respondent No. 4 had forwarded the matter with his opinion that a major penalty was considered be awarded to the applicant. It has also been mentioned that Respondent No. 3 had agreed with the Inquiry officer on charge No. 1 & 2. However, he was not agreed with the Inquiry officer on charge No. 3. In view of the gravity of the offence committed by the applicant, he was rightly dismissed from service. The Disciplinary Authority has considered the evidence and the Appellate Authority also considered the case of the applicant after taking into account all available evidences adduced during oral as well as preliminary enquiry. It is wrong to contend that there was no application of mind. The penalty order is prefectly valid and justified. Thus no relief can be granted to the applicant and the OA is liable to be dismissed.

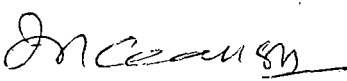
7. We have heard the learned counsel for the parties and have perused the records of the case.

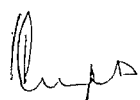
8. The learned counsel for the applicant has stressed on the ground that applicant was denied the reasonable opportunity to defend his case in as much as he has not been shown the original document which were listed documents. He has argued that the applicant was allowed a short time to inspect the documednts and he could not inspect the documents properly and could not take extract of the same due to the time constrained in the Criminal court. The learned counsel for the respondents submitted that nothing has been said on behalf of the applicant as to what prejudice has been caused to him by not showing/not allowing him to inspect all the original documents. The contention of the applicant does not

2

independently charge No. 3, the penalty would be justified and this Tribunal would not go into the question of sufficiency or adequacy of the evidence. Thus there is no infirmity in the impugned order since the charges against the applicant are great enough to penalty of dismissal as has been imposed against the applicant in this case. The learned counsel for the applicant has lastly stressed that Appellate Authority has not applied his mind in the grounds raised in the appeal and rejected the appeal in a mechanical manner. It has been said that the appeal has been rejected with wrong premises that the applicant has neither attended the inquiry nor had given any reasons for his absence. The appeal has been decided on wrong facts. The learned counsel for the respondents has submitted that the Appellate Authority has passed a speaking order and has examined the matter in detail. It may be due to <sup>an</sup>advertence that absence of the applicant has been indicated. The applicant has very well attended the inquiry. However, it has also been submitted that it does not in any way affect the gravity of the charges levelled against the applicant and the impugned orders are in conformity with the rules or procedure as established by law for imposing the penalty. We are of the considered opinion that the Appellate Authority has passed a speaking order and there is no infirmity in the same.

10. In the result, we are of the opinion that the order of dismissal of the applicant does not suffer from any illegality or infirmity and, therefore, OA is hereby dismissed. No order as to costs.

  
(J.K. KAUSHIK)  
MEMBER (J)

  
(A.P. NAGRATH)  
MEMBER (A)

AHQ