

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 23.05.2003

OA No.274/02

L.L.Agarwal s/o Shri Jagannath Agarwal r/o House No.1204, Khejron Ka Rasta, Chandpole Bazar, Jaipur, presently working as S.A. (BCR) O/o Railway Mail Service, Jaipur Division, Jaipur

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief General Post Master, Rajasthan Circle, Jaipur-7.
3. Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur.

.. Respondents

Mr. P.N.Jatti - counsel for the applicant

Mr. N.C.Goyal- counsel for the respondents

CORAM:

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

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant while working as Sub Parcel Sorting Assistant No.2 in Jaipur PL STG Set/2 on 11.8.99 is stated to have been received parcel No.B-2506 destined to Indore from Parcel Sorting Assistant No.2 in bulk entry but its disposal was not forthcoming in his work papers as it was to be dispatched in parcel bag for Ratlam RMS prepared by him. Consequently vide letter dated 21.9.98 (Ann.R1) he was held responsible and was directed to deposit the

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amount i.e. Rs. 100/- in the UCR of any nearby Post Office within 7 days after receipt of the letter. The said letter was received by the applicant on 8.10.98. Subsequently reminder dated 27.10.98 (Ann.R3) was issued whereby the applicant was once again directed to credit amount i.e. Rs. 100/- in the UCR of any nearby Post Office and submit the credit particulars within 7 days failing which disciplinary action will be taken against him. Consequently, the applicant deposited the said amount of Rs. 100/- in the Post Office vide letter dated 27.10.98. Though the matter ought to have been dropped as per the contents of Ann.R3 from which it can be inferred that the disciplinary action will be taken only if the applicant fails to deposit the amount of Rs. 100/-, Surprisingly enough, after a considerable period of almost 3 years, a charge memo was issued vide letter dated 9.7.2001 (Ann.A2) whereby it was proposed to take action against the applicant under Rule 16 of the COS (CCA) Rules, 1965 on the basis of the imputation of misconduct which was enclosed with the memo and the applicant was asked to submit his representation within 10 days of receipt of the said memo. The applicant submitted his representation on 13.8.01 and the Disciplinary Authority vide the impugned order 28/31.8.2001 (Ann.A3) held the applicant guilty of the charge and ordered that one increment of the official be withheld for a period of 6 months without cumulative effect. The applicant filed appeal against this order before the Director of Postal Services who vide order dated 20th March, 2002 rejected the appeal by affirming the order passed by the Disciplinary Authority. It is against these orders, the applicant has filed this OA thereby praying that the impugned order dated 20th March,

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02 (Ann.A1) as also the order dated 31st August, 2001 (Ann.A3) be quashed and set-aside and the respondents be directed to pay all consequential benefits to the applicant.

2. The respondents have filed reply thereby contesting the case and justifying the action taken by the Disciplinary Authority and the Appellate Authority.

3. The applicant has filed rejoinder reiterating the submissions made in the OA.

4. I have heard the learned counsel for the parties and gone through the material on record.

4.1 In order to decide the matter in controversy, it will be appropriate to reproduce relevant portion of Para 2 and 5 of the impugned order dated 31.8.2001 (Ann.A3), the order passed by the Disciplinary Authority, as under:-

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Regd. Parcel No.B-2506 booked by Jaipur City PO on 11.8.97 was correctly received by Parcel SA No.2. Since the parcel u/r was destined to Indore, it was transferred by him to Sub Parcel Stg. Assistant No.2 for inclusion in the parcel bag for Ratlam RMS alongwith other parcels under bulk entry. But further disposal of the same was not forthcoming in the work papers of Shri Lallu Lal Agarwal Sub. Pl. Stg. Asstt. No.2 or in the work papers of the set. It was, therefore, alleged that Shri Lallu Lal Agarwal failed to discharge his duties properly contravening the provisions of Rule 94 of P&T Man. Vol.VII (Eight Edition) resulting into loss of article under

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reference.

Based on the above, it was further alleged that Shri Lallu Lal Agarwal while working in the aforesaid capacity has displayed a sense of utter irresponsibility, carelessness, negligence and failed to maintain devotion to duty contravening the provisions of Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

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I have gone through the representation of the official carefully and dispassionately. The official has pleaded that -

(a) As already stated in his statements that all the 153 parcels transferred to him by Parcel Stg. Asstt. No.2, were disposed off by him correctly and therefore, it is clear that parcel u/r was not at all received by him from parcel Stg. Asstt. No.2. Had it been transferred to him, one parcel should have been short in despatch side of his regd. abstract whereas his regd. abstract is tallied both sides.

(b) He has deposited Rs. 100/- in the Post Office as directed vide your letter No.K7/SB/24/97-98 dated 27.10.98".

From perusal of the portion of para 2 as quoted above, it is clear that the applicant has been held liable for contravention of the provisions of Rule 94 of the P&T Manual Vol.VII resulting into loss of article under reference. The Rule 94 of P&T Manual Vol.VII has been annexed by the applicant with this OA as Ann.A5. The relevant portion of this rule reads as under:-

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"94. Sorting of registered articles:-(i) The registered articles received, including those posted in a mail office, should be sorted into the several compartments of the registration sorting-case in accordance with the sorting list, the destination of each article being carefully read before it is sorted. Forward registered bundles should each be treated as a single registered article.

(2) An insured article addressed or redirected to a no-insurance office should be forwarded to it, irrespective of the fact that the office of destination is a no-insurance office."

From perusal of this rule it is evident that it was the duty of the Sorting Assistant to sort out all the registered articles received by him from various Post Offices into several compartments of the registration sorting case in accordance with sorting list. Admittedly, the applicant was not the Sorting Assistant at the relevant time. He was Sub Sorting Assistant working under the Sorting Assistant. On a query raised by this Tribunal, the learned counsel for the respondents submitted that there were 5 Sub-Sorting Assistants working under the Sorting Assistant. The duty to sort out the registered articles received from various Post Offices was of the Sorting Assistant. The article so received was further to be handed over to the concerned Sub-Sorting Assistant who in turn was required to despatch the said article to the concerned quarter. It was further submitted that the Sub-Sorting Assistant was required to prepare 2 separate lists - one indicating the place/Post Office from where the

registered articles were received and the second indicating the total number of Registered Articles/Parcel received. The specific case of the applicant, as can be seen from para 5(a) of the order Ann.A3 as reproduced above, is that he has only received 153 parcels from the Parcel Sorting Assistant No.2 and the same was disposed of by him correctly. Had the parcel in question transferred to him by the Sorting Assistant, in that eventuality there should have been shortage in the despatch side of his registered extract. The respondents have not placed on record any material to indicate that the registered parcel in question which was admittedly received by the Sorting Assistant No.2 from Jaipur City Post Office on the relevant day was handed over to the applicant in order to hold him liable for violation of rules, even if it is assumed that Rule 94 of the P&T Manual Vcl.VII is applicable in the instant case. That apart as can be seen from Para 6 of the finding given by the Disciplinary Authority in the impugned order dated 31.8.2001 (Ann.A3), the charge against the applicant has been held to be proved only on the ground that the applicant has not denied receipt of parcel No. B-2506. At this stage it will be relevant to reproduce para 6 of the order passed by the Disciplinary Authority, which reads as under:-

"6. The arguments advanced by the official are not tenable. Tallying of total regd. abstract does not prove that the a/u/r was not transferred to him. The a/u/r was destined to Indore and there was no other alternative for its disposal except to consign in the parcel bag for Ratlam RMS which was due to be prepared by Shri Lallu Lal Agarwal, Sub Parcel Stg. Asstt.No.2. Thus it

is evident that the a/u/r i.e. Jaipur City Regd. PL. No.B-2506 must have been transferred to him for inclusion in the parcel bag for Ratlam RMS. In his statement recorded on 27.2.98 the official had stated that the a/u/r was not despatched in the parcel bag for Ratlam RMS but had not denied its receipt from the concerned Parcel Stg. Asstt. The amount credited by him in the PO has no relevancy so far as lapses committed by him during the course of discharging his duties as Parcel Stg. Asstt., are concerned, neglecting departmental Rules which ultimately resulted into loss of a/u/r. The official is therefore, fully at fault and the imputations, brought forth against him stands fully proved. "

Thus the aforesaid finding of the Disciplinary Authority is not based on any evidence and is only based on assumption and presumptions. The applicant has categorially stated that he has only received 153 parcels which he has despatched. In view of this categorical statement of the applicant, it was incumbent upon the respondents to lead further evidence in order to show that the parcel in question which was admittedly received by the Sorting Assistant was handed over to the applicant either by examining the Sorting Assistant as witness or by producing any contemporaneous documents in order to establish that the parcel in question was handed over to the applicant. The respondents has not placed any material on record even in this proceeding that the parcel in question was handed over to the applicant.

4.2 Further, it is not the case of the respondents that 153 parcels which were received by the applicant were

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not those parcels which were handed over to him by the Sorting Assistant and/or some of these parcels which have been shown to have been despatched by the applicant were never handed over to him. The burden of proving the charge solely rests on the prosecution and once they have discharged the burden by leading evidence, it is only thereafter that the delinquent is required to rebut that evidence and prove the further facts that he is not guilty of the charge. Thus according to me, it is a case of no evidence. There is no evidence to the effect that the parcel No. B-2506 which was received by the Sorting Assistant was handed over to the applicant. As such the findings recorded by the Disciplinary Authority is not legally sustainable and is required to be quashed.

4.3 Similarly, the Appellate Authority while rejecting the appeal of the applicant has affirmed the findings given by the Disciplinary Authority in Para 6 of the punishment order. Thus the order passed by the Appellate Authority dated 20.3.02 (Ann.A1) also deserves to be quashed and set aside.

4.4 The reason why the disciplinary proceedings were initiated after a lapse of 3 years especially when initially the respondents had held the applicant guilty of negligence and it was only in the eventuality of non-depositing the said amount, that the disciplinary action was proposed to be taken, are not forthcoming nor the learned counsel for the respondents could answer this question on a query raised by this Tribunal. The matter has been considerably delayed as the incident relates to 11.8.97 and that the applicant has suffered a lot while defending the disciplinary proceedings and also by contesting the case before the Tribunal and, therefore,

keeping in view the gravity of the charge involved, I am of the view that it will not serve any purpose to remit the case back for the purpose of holding fresh enquiry even if it is presumed that charge for violation of Rule 94 of the P&T Manual Vol.VII is made out against the applicant.

5. Accordingly, the OA is allowed. The impugned orders dated 20.3.02 (Ann.A1) and dated 28/31.8.2001 (Ann.A3) are hereby quashed and set-aside. The applicant will be entitled to all consequential benefits on account of setting aside these orders. No order as to costs.



(M.L.CHAUHAN)

Member (J)