

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 7-05-04

Original Application No.432/2002.

Pawan Kumar Sharma S/o Shri Prabhu Lal, aged about 45 years, resident of Brij Para Purana Sahar, Dholpur. Last employed as extra departmental mail carrier, Civil Court Sub Post Office, Dholpur(Removed from services).

... Applicant.

versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi 110 001.
2. Director Postal Services, Jaipur Region, Jaipur 302 007.
3. Superintendent of Post Offices, Dholpur Postal Division, Dholpur.
4. Sub Divisional Inspector (Postal) Sub Division, Dholpur.

... Respondents.

Mr. C. B. Sharma counsel for the applicant.
Mr. N. C. Goyal counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant while working as Gramin Dak Sevak Mail Carrier (for short, GDSMC), Civil Court Sub Post Office, ^{Dholpur} North Pole, was issued charge sheet under Rule 8 of EDA (Conduct & Service) Rules, 1964 vide memo dated 8.2.1999 (Annexure A-4). The charge against the applicant was that on 21.01.1999 at 14.00hrs, when the applicant attended the office, he was in drunken condition and created anomalous situation in the office work and also mis-behaved with one Indra Singh Panwar

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and as such he has violated the provisions of Rule 17 of EDA (Conduct & Service) Rules 1964.

2. The applicant denied the charges and consequently a detailed enquiry was conducted. The Enquiry Officer held the applicant guilty of the charge. Thereafter, copy of the enquiry report was sent to the applicant who made representation to the Disciplinary Authority. The Disciplinary Authority after considering the relevant record of the case and taking into consideration the representation made by the applicant imposed the penalty of removal from service without disqualification for further employment vide memo dated 31.05.2000 (Annexure A-3). The applicant filed an appeal against this order and the Appellate Authority affirmed the punishment imposed by the Disciplinary Authority vide its order dated 04.12.2000. The applicant preferred further revision petition to the higher authority. The said Revision Petition was also dismissed vide order dated 01.04.2002 (Annexure A-1). It is these orders which are under challenge in this OA.

3. The respondents have filed the detailed reply, thereby justifying the action taken by them. It is further stated in the reply affidavit that the work and behaviour of the applicant during entire service was not satisfactory. He had also mis-behaved with the then Superintendent of Post Offices, Dholpur, Shri B. S. Sisodia on 31.08.1996. For this act, the applicant was punished with the penalty of debarred from appearance in departmental examinations for a period of three years vide order dated 19.01.1998 (Annexure R-1). Similarly it has been stated that on 01.04.1997, the applicant had reached the Head Office, Dholpur, in drunken condition and took his Acquittance Roll from Accounts Branch and torn it in pieces and then threw it on Shri Behori Lal, Accountant. In this regard, the statement of Shri Behori Lal dated 03.04.1997 has been annexed with the OA as Annexure R-2.

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The respondents have also stated that the applicant was given reasonable opportunities to defend his case. The applicant was given opportunity for producing the defence assistant but the applicant failed to produce his defence assistance. In that regard, the respondents have placed on record 8 documents consisting of letters/order sheets recorded by the enquiry office as Annexure R/4 (A) to R/4 (J). Similarly, ample opportunities were given to the applicant to produce his defence witnesses and ultimately the applicant himself requested to drop the defence witnesses, copy of the order sheet No.10 dated 09.12.1999 has been placed on record as Annexure R-7.

4. We have heard the learned counsel for the parties and gone through the material placed on record. Learned counsel for the applicant has put-forth three main contentions for our consideration. First contention raised by the learned counsel for the applicant is that ; as can be seen from the document attached with the charge memo Annexure A-4, the charge was required to be proved on the basis of three documents, namely, Police Report submitted by S.H.O., Nihalganj, Dholpur, Second document is Medical Report and third document is statement of Shri Indra Singh Panwar, Sub Post Master, Civil Court Post Office, Dholpur. In the list of witnesses, the name of three witnesses namely, Shri Akhilesh Sharma , Shri Ransingh and Shri Indra Singh Panwar have been cited as witnesses. Learned counsel for the applicant submitted that in order to prove the document namely the Police Report submitted by the S.H.O. and Medical Report submitted by Doctor, it was necessary to examine those witnesses. As such, the charge against the applicant that while on duty he was in drunken condition cannot be held to be proved. On the other hand, learned counsel for the respondents submitted that these two documents has been fully proved and it was not necessary to examine the author of these documents. In this regard, it has been argued that the applicant was examined by Doctor S. B. Agarwal of General Hospital, Dholpur, in

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the presence of Shri Ram Singh Meena, PRI (P) Dholpur, who has been cited and examined as one of the witnesses during the enquiry proceedings and he has confirmed the medical examination report.

It is further argued that even the applicant has confirmed his signature on the medical report before the enquiry officer. On the face of this evidence, it was not necessary to examine the medical officer. It is further stated that in case the applicant wanted to examine the medical officer as one of the witnesses, it was open for him to cite him as self defence witness. since the applicant had neither demanded for producing medical officer as witness nor he produce any medical officer from his side, as such, it cannot be argued at this stage that the medical report cannot be relied upon. Learned counsel for the respondents further argued that even if these two documents have not been proved in the manner as contemplated under law, even then there are sufficient material to hold the applicant guilty of the charge. According to learned counsel for the respondents, the charge stand fully proved on the basis of the statement made by the three witnesses as well as on the basis of the statement made by the complainant Shri Indra Singh Panwar, which statement find mention in the list of the documents and has been proved during the course of enquiry. We agree with the submissions made by the learned counsel for the respondents. As can be seen from the enquiry report, the charge against the applicant stand fully proved on the basis of the statement made by the complainant Shri Indra Singh Panwar, which version also stand corroborated by the statement of other two witnesses namely Ran Singh Meena and Akhilesh Sharma. The Enquiry Officer in his report has given the detailed reasoning for coming to the conclusion that the charge stand fully proved. This reasoning of the enquiry officer has not been demolished by the applicant even in his representation dated 22.05.2000 (Annexure A-10), which representation was made pursuant to the submission of the enquiry report (Annexure A-10).

5. We have also perused the finding given in Enquiry Report as also the version submitted by the applicant, more particular para 5 where the objection regarding acceptability of statement of these 3 witnesses have been raised. The fact remains that the applicant has not demolished the charge of the respondents that he came to the office in drunken condition and thereby created anomalous position in the office and also mis-behaved with Indra Singh Panwar and also obstructed the office work. At this stage, it may be relevant to submit that the scope of interference in such matters is very limited. Further it is also judicially settled that in disciplinary proceedings evidence beyond reasonable doubt is not required. Further it is also equally true that strict rule of evidence is not to be followed in the departmental enquiry proceedings. The only requirement of law is that the allegation of the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and made finding upholding the ~~gravemar~~ of the charge against the delinquent officer. The Court while exercising the power of judicial review would not interfere with the finding of fact arrived at in the departmental enquiry proceedings except in a case of malafide or purversity or whether there is no evidence to support a finding or whether a finding is such that no prudent man acting reasonably and objectively could not arrived at that finding. It is also equally true that the court cannot embark upon, reappreciating the evidence or weighing the same like as Appellate Authority. So long as there is some evidence to support the conclusion arrived by the departmental authority, the same has to be sustained.

6. Viewing the mater from this angle we are of the view that it cannot be said to be a case of no evidence. As can be seen from the report given by the enquiry officer as well as the detailed order passed by the disciplinary authority, we are satisfied that this

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cannot be said to be a case of no evidence. As such the charge against the applicant stand proved. Similarly the Appellate as well as Revisional Authority has passed detailed reasoned orders dealing with all contentions raised by the applicant. Thus we see no infirmity in these orders also.

7. So far as the second submission of the learned counsel for the applicant that while imposing the punishment, the disciplinary authority has also taken into consideration the past conduct which could not have been taken into consideration without giving show cause notice, suffice it to say, that this argument though attractive cannot be upheld in the facts and circumstances of the case. It is no doubt true that the disciplinary authority in his main order has also made mention of the past conduct of the applicant but if the reference is made to penultimate para of the order, it can be safely concluded that what weighed with the Disciplinary Authority in passing the order of removal from service was that the department of posts is a public utility office and the conduct of an employee taking liquor, not only affect the working and efficiency of the Institution but also lower the image of the department in public eyes. It was thereafter that the Disciplinary Authority held that the applicant should be awarded punishment of removal from service. Thus what really weighed with the Disciplinary Authority in awarding one of the severe punishment of removal from service of the applicant was not his past conduct but the manner in which the applicant behaved while performing his duties in drunken condition which affected not only the working and efficiency of Institution but has also lowered the image of Department in public eyes. As such we see no infirmity in the order passed by the disciplinary authority. The learned counsel for the applicant has cited the judgement in the case of Nathi Ram vs. Union of India & Ors. 2002 (1) ATJ 79 and submitted that the competent authority was unpermitted from taking into consideration the past

conduct of the applicant which is not a part of the charge sheet. According to us this judgement is not applicable in the facts and circumstances of the case. It has been held in that case that the authority has taken into consideration the previous misconduct of the applicant and it was on those circumstances, the findings were recorded by the Principal Bench of the Tribunal in the case of Nathi Ram (supra). On the contrary, in the instant case only reference of past misconduct was made by the disciplinary authority but while awarding the punishment of removal from service that factor has not weighed with the Disciplinary Authority as stated above. Thus, the aforesaid case is of no assistance to the applicant.

8. Lastly, learned counsel for the applicant submitted that the departmental enquiry as well as the criminal charge so initiated is based on the some set of facts and since the applicant has been acquitted in a criminal charge, as such the punishment of removal from service is not legally sustainable.

9. We have considered the submissions made by the learned counsel for the parties and according to us this submission deserves out right rejection. At this stage, it may be stated that a criminal case was instituted against the applicant under Section 34 of the Police Act, whereas in departmental enquiry the charge against the applicant was of mis-conduct and mis behaviour with the Superintendent, Post Office, Dholpur, and also obstructing the official work and coming on duty in drunken condition. As such it cannot be said that the departmental and the criminal proceedings were based on identical and similar set of facts. That apart, as can be seen from Annexure M-R/1, the applicant was not acquitted on merit. In fact, no witness on behalf of the prosecution was examined. As such the applicant was discharged/acquitted even without recording the statement under Section 313 of C.R.P.C. The decision was rendered by the Additional Chief Judicial Magistrate in Criminal case on 23.05.2003 whereas the applicant

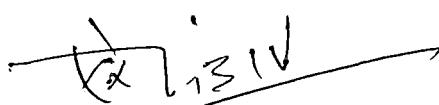
stood removed from service by the disciplinary authority vide order dated 31.05.2000. Even his appeal was rejected on 4.12.2000 and revision petition was also rejected. This all happened much prior to his so called ~~acquittal~~ in criminal case on 23.05.2003. As such no infirmity can be found in the order passed by the disciplinary authority and affirmed in appeal by the appellate authority as also maintained by the Revisional Authority. In case the applicant was aggrieved that the departmental proceedings and criminal case was based on identical and similar set of facts, it was open for him to approach the appropriate forum at relevant time and prayed for staying the departmental proceedings till the conclusion of the criminal case. Having not done so, the applicant cannot be permitted to raise this point at this stage. Learned counsel for the applicant has brought our attention to the decision of the Apex Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another 1999 SCC (L&S) 810 to contend that the departmental enquiry and criminal case could not proceed simultaneously. We have perused the said judgement, particularly para 22 of the judgement where the principle has been ~~called~~ out. Reading of Para 22 makes it clear that the departmental proceedings and proceedings in a criminal case can proceed simultaneously. In that case the applicant therein was acquitted by the criminal court on merit wherein it was held that the "raid and recovery" at the residence of the appellant were not proved. The departmental proceedings were also based on identical set of facts and charge was required to be proved on the basis of raid and recovery of incriminating articles therefrom. It was under this context that the Apex Court held that the finding recorded against the applicant in ex-parte disciplinary enquiry should not be sustained. The facts of the present case are entirely different. Such a situation is not here.

10. Though the learned counsel for the applicant has half heartedly argued that Inquiry Officer and

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Presenting Officer was appointed by Superintendent Of Post, authority higher than the Disciplinary Authority as such enquiry is also vitiated on this count also. According to us this arguement deserves out right rejection. It has not been shown to us how the applicant has been prejudiced ^{or} in this count, nor it is shown that there is prohibition in the rules that superior authority than the Disciplinary Authority cannot appoint the Inquiry Officer and Presenting Officer. On the contrary, the respondents in their reply have stated the circumstances in which the Superintendent of Post has exercised this power. Further reasonable and ample opportunities were given to the applicant to cross examine the witnesses and also to produce his defence witnesses. It was only on the basis of statement made by the applicant that the right to examine the defence witnesses was dropped. As such there is no infirmity in conducting the Departmental enquiry.

11. In view of what has been stated above, there is no substance in the OA and is accordingly dismissed with no order as to costs.


(A. K. BHANDARI)

~~MEMBER (A)~~


(M.L. CHAUHAN)

MEMBER (J)