

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 21-9-04

OA 559/2002

B.K.Avasthi, Sorting Assistant, Sub Record Office, Bharatpur.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Sr.Suptd.of Railway Mail Service, Jaipur Division, Jaipur.

... Respondents

CORAM:

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

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant ... Mr.C.B.Sharma
For the Respondents ... Mr.N.C.Goyal

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 has been filed to seek following relief :

"i) That entire record relating to the case be called for and after perusing the same memo dated 4.9.2002 (Ann.A/1) with the memos dated 20.11.2000, 15.2.2000 (Ann.A/2 and A/3) be quashed and set aside with all consequential benefits.

ii) That the charge memo dt.2.3.98 (Ann.A/6) be quashed with the enquiry proceedings, as the same is not justified with the order of suspension dated 2.12.97 (Ann.A/4) with all consequential benefits."

2. Brief facts of the case are that the applicant was placed under suspension on 2.12.97 (Ann.A/4) and a charge-sheet was served upon him on 2.3.98 (Ann.A/6) containing five charges. He stated that he was performing his duties diligently but he had complained to his superiors about discrimination in granting overtime allowance to employees and his immediate superior getting annoyed over this, created unhealthy atmosphere in the office and made false complaints against him to respondent No.4 that applicant was not obeying orders, left office

without permission etc. The respondent No.4 without verifying facts placed the applicant under suspension by order dated 2.12.97 (Ann.A/4) and although the same was revoked on 19.12.97 (Ann.A/5) but conducted preliminary inquiry on 10 & 11.12.97 during the period of his suspension and prepared a charge-sheet vide memo dated 2.3.98 (Ann.A/6). Such a charge-sheet relating to alleged disobedience of verbal orders, leaving office early particularly charge No.4 are non-specific and vague. Pointing out these facts in his letter, the applicant denied charges levelled against him and asked for a detailed inquiry. Prior to inquiry proceedings he also demanded additional documents vide letter dated 11.9.98 (Ann.A/7) but the same were never made available. He also pointed out to the inquiry officer that these charges were based on his Union activities and are therefore not justified, vide letter dated 5.11.99 (Ann.A/8). That during inquiry he was harassed at every stage particularly in the matter of his requirement of additional documents and that he was virtually forced to participate in the inquiry. That the inquiry was not conducted as per rules and regulations and principles of natural justice were also violated. It is alleged that the preliminary inquiry dated 10 & 11.12.97 was conducted after placing him under suspension, which is violative of rules and that facility of Defence Assistant was denied to him on 5 & 8.7.99. That inquiry officer did not consider written representation of the applicant and statement of defence witnesses and relied entirely on the statements of prosecution witnesses and written brief submitted by the presenting officer and came to the wrong conclusion that except charge No.4, which was partially proved, all the other charges stood proved. The inquiry report dated 28.12.99 is annexed at Ann.A/9. On receipt of copy of inquiry report, he submitted his reply representation on 10.2.2000 (Ann.A/10), in which it was mentioned that inquiry officer has not considered his written defence and all the prosecution statements recording during preliminary inquiry are one sided. That the Disciplinary Authority without due consideration of his request/representations from time to time awarded punishment of

reduction of pay by five stages from Rs.4500/- to Rs.4000/- for a period of five years with further direction that applicant will not earn increment of pay during the period of reduction and on expiry of period of reduction the reduction will not have the effect of postponing his future increment of pay vide order dated 15.2.2000 (Ann.A/3). Against this, the applicant preferred Appeal narrating all facts and circumstances against the order passed by the Disciplinary Authority vide representation dated 20.11.2000 (Ann.A/11) but appellate authority did not consider the matter as per facts and has upheld the punishment order. After the decision of the Appellate Authority applicant preferred Revision Petition on 22.2.2001 (Ann.A/12) before competent authority but the same was also rejected by respondent No.2 vide memo dated 4.9.2002 (Ann.A/1), without considering the points raised by him in his representation. It is also alleged that applicant faced departmental proceedings unnecessarily without any reason as he had not committed any serious delinquencies and that punishment order is based on malafide attitude of immediate superior and other co-workers. That the charges are not so serious so as to justify such heavy punishment. That applicant always obeyed orders of higher authorities and whenever he left office early prior permission was taken as has been brought out in the statements of defence witnesses but inspite of these facts the inquiry officer, the Disciplinary Authority as well as higher authorities have inflicted heavy punishment upon him.

3. In the grounds action of the respondents has been termed arbitrary, illegal and unjustified. That inquiry was conducted without consideration of his legitimate requirement of documents. That non-application of relevant rules amounts to abrogation of provisions of the Constitution. That action of the respondents is unjust because it is based entirely on the statements of prosecution witnesses without any consideration of what was stated by the defence witnesses. That neither his senior officers nor colleagues had ever made any complaint against

him prior to initiation of this departmental proceeding. That punishment imposed upon him is disproportionate to the petty delinquencies with which he was charged. That charges were not specific e.g. disobedience of orders is alleged but the details of the same have not been mentioned in the charges. This is particularly so regarding charge No.2 which is non specific about date and place of mishap. Charge No.4 was found partially proved during inquiry and adjudged not proved by the disciplinary authority, but these facts were not considered while imposing heavy punishment. The inquiry officer did not follow the mandatory provision of Rule 14 (18) regarding examination of government servant by questioning him about circumstances appearing against him in the evidence. Giving details of the charges it is stated that charge memo is based entirely upon the report submitted by the applicant's immediate superior without seeking any corroboration of the same and without taking note of the fact that on 5.11.97 and 26.11.97 he had not disobeyed the orders and had left the office after completing own work according to his duty list. That the appellate and reviewing authorities have also not applied mind and considered facts submitted by the applicant while reaching to conclusions.

4. The respondents have submitted a detailed reply giving brief history of the matter. On their behalf it is stated that on 5.11.97 applicant's duty hours were from 14.20 to 22.00 hrs. As per report of Head Sorting Assistant, written in daily report (Ann.R/1), work of the mail branch was finished by 1930 hrs. and thereafter Head Sorting Assistant asked one Shri Amar Singh, Sorting Assistant, and the applicant to sort Diwali mail articles, whereupon Shri Amar Singh carried out these orders but the applicant did not pay any heed and left the office at 2000 hrs. after giving a note in the rough note book of the set that since he has completed his work he is going home (Ann.R/2). Thus obviously left the place of work two hours before the end of duty time without permission. These facts are corroborated by his colleagues during the

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preliminary inquiries (Ann.R/3 to R/11). That applicant himself also admitted these facts in statement dated 10.12.97 (Ann.R/12) but has shown time of leaving office as 2100 hrs and feigned ignorance of any orders given to him by the Head Sorting Assistant. This clearly proves that he had disobeyed the superior's orders. Similarly, on 18.11.97 applicant's duty hours were 2300 to 0500 hrs. He came to office on time but after working for hardly half an hour upto 2330 hrs he went to sleep and remained asleep upto 0400 hrs. After getting up at 0400 hrs he tendered an application stating his inability to perform duty and left the office. This matter was recorded by Head Sorting Assistant in his daily report dated 18.11.97 (Ann.R/13). The same are corroborated in statements of Head Sorting Assistant and colleagues on duty that day vide Ann.R/14 to Ann.R/15. This fact has also been admitted by the applicant in his statement. On 26.11.97 he left office early at 2000 hrs instead of 2200 hrs. On that day while working in RMS/2 he was ordered by Head Sorting Assistant to sort out paper mail articles but he refused, report regarding which is entered in daily report dated 26.11.97 (Ann.R/16). These facts are also corroborated by witnesses during preliminary inquiry.

5. Inquiry was conducted strictly as per rules and report was submitted on 29.12.99 (Ann.A/9). Copy of the same was sent to the applicant on 30.12.99 and he was called upon to submit his representation within 15 days but the same was received late but it was considered by the Disciplinary Authority who awarded the above punishment after careful consideration of all facts and circumstances of the matter. It is further stated that for deciding the period of suspension separate show-cause notice was issued by Sr.Supt., RMS Jaipur Division, Jaipur, vide memo dated 12.9.2001 (Ann.R/23) and after careful consideration of applicant's representation dated 9.11.2001 (Ann.R/24) period of suspension i.e. 6.12.97 to 22.12.97 was ordered to be treated as "non duty" for all purposes vide order dated 18.2.2002 (Ann.R/25).

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6. In parawise reply it is denied that the action of the respondents was arbitrary, illegal or unjustified or that punishment orders have been issued/sustained without proper inquiry and application of mind. The charge-sheet is detailed and drafted strictly as per rules and is specific and not vague inasmuch as the statement of imputation of misconduct, list of documents and list of witnesses whose statements form basis of article of charges are clearly spelt out in it. The applicant was given opportunity of submitting written statement of defence. Inquiry officer was appointed as per rules and applicant was given fullest opportunity to defend himself including opportunity to cross examine the witnesses. IO's report was given to the applicant as required under rules and although his representation reached late, the same was considered by the disciplinary authority and was analised before passing punishment order by the disciplinary authority. Similarly, the appeal and revision petition were carefully analised before passing orders.

7. It is also denied that the applicant had a clean record of service. To substantiate this, two punishment orders dated 31.7.96 and 31.3.98 of reduction of pay by one stage and withholding of one increment for six months respectively have been cited. That the applicant is even now facing a disciplinary proceeding for disobeying orders of Head Sorting Assistant vide memo dated 21.11.2002. It is denied that applicant's Union activities specially his complaint about discrimination in granting overtime allowance had anything to do with the above proceedings. It is further clarified that his immediate superior had no concern with the overtime duties rather he has made reports against the applicant about negligence, non performance of duty and insubordination which are proved during inquiry. About suspension it is stated that preliminary inquiry became necessary due to adverse reports for the period 5.11.97 to 26.11.97 for which he was placed under suspension on

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2.12.97. But as soon as the preliminary inquiry was completed his suspension order was revoked on 19.12.97. That subsistence allowance was allowed as per rules and as such there is no illegality in this action. About allegation of not supplying additional documents, copy of daily order sheet No.4 dated 12.3.99 (Ann.R/26) recorded by the inquiry officer is cited, according to which inquiry officer had impartially and judiciously complied with the guidelines about inspection and supply of copies of documents. Contention that he denied the charges on 5.11.99 is refused by stating that the preliminary hearing was held on 29.7.98, and as per the daily order sheet No.1, annexed as Ann.R/27, during proceedings that day, the applicant denied the charges and desired for oral inquiry. That on 5.11.99, on which date he submitted letter annexed as Ann.A/8, the inquiry was already at an advance stage, oral inquiries having been completed, and both presenting and inquiry officer were asked to submit their written briefs. Copy of daily order sheet No.10 dated 5.11.99 is also annexed as Ann.R/28. Applicant has raised allegations of illegality in following rules and regulations but has failed to mention the details thereof. Allegation about not providing defence assistant on or after 5.7.99 is also denied by citing applicant's letter dated 21.7.98 (Ann.R/31). In this, inquiry officer while fixing the date of preliminary hearing asked the applicant to nominate defence assistant or that he can bring his defence assistant with him on 29.7.98, but on that day applicant gave an application (Ann.R/32) intimating that due to sickness of his mother he could not choose his defence assistant and requested for further time upto 8.8.98. The request of the applicant was acceded and he was asked to nominate a defence assistant by 8.8.98 which he did ~~not~~ on 4.8.98, as is evident from his application dated 4.8.98 (Ann.R/33). However, by his application dated 5.8.99 (Ann.R/34) he stated that due to sickness his defence assistant was not in a position to participate in the inquiry and due to this reason he will defend his case himself. It is also stated that defence witnesses listed by the applicant were permitted and examined during the course of oral inquiry

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and statement of each witness was considered in the inquiry report. On the basis of above facts, the ground of non consideration of defence witnesses and defence representations by the IO have also been denied. Neither the applicant nor defence witnesses produced by the applicant could disprove the charges. The documents which were considered relevant in the case were made available and all permissible opportunities to defend including cross examination were given as per rules. Thus, there is no illegality regarding observance of rules and correct procedure or natural justice.

8. The applicant has filed detailed rejoinder, in which it is asserted that applicant became victim of annoyance of the superior officers due to his work connected with service Union and that they wanted to demoralise him by disciplinary actions and they started harassing him. It is also stated that action of the respondents in placing him under suspension in contemplation of disciplinary proceedings was a calculative move and once having done this he had to be punished which has been done by starting departmental inquiry for major punishment over small matters like lack of punctuality, leaving office early, not carrying out instructions in day to day work. That for these small matters very heavy punishment has been meted to him. That appellate and reviewing authorities have not applied their minds but towed the line of the disciplinary authority even though many facts and circumstances favourable to applicant had been mentioned in the appeal and revision petition, which also show that he was a victim of circumstances. That periods of alleged absence from duty were never treated as dies non or absence but charges for disciplinary action were made out of them. That a few documents denied to him by inquiry officer are the real ones containing information which would have clinched the case in his favour. That in the interest of justice inquiry officer should have allowed him to nominate another defence witness instead of accepting applicant's request that he will plead his case himself.

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9. Respondents have submitted additional reply to the rejoinder and denied victimisation and reiterated that record clearly shows that applicant was habitual to leave office before duty hours, disobeying orders and that Head Sorting Assistant on 15.11.97 and 26.11.97 stated in the daily diary that applicant did not perform his duty as ordered by him which are clearly proved during inquiry. Same is regarding charge of leaving office early on 18.11.97. These facts are unbecoming of government servant. In the absence of any denial of reasonable opportunity the inquiry and the punishment cannot be termed as arbitrary or unjust.

10. The parties were heard at length. Learned counsel for the applicant read through the charge-sheet and stated that charge No.2 was vague inasmuch as neither the date nor place of work at which alleged indiscipline was committed are mentioned in it. That charge No.4 was found only partially proved and disciplinary authority completely exonerated him of this charge. He also stated that charge No.5 pertains to Head Sorting Assistant objecting to the applicant putting in extra work having already completed his share of work of the day. This shows his sincerity towards his job and as such charge No.5 is frivolous. He also stated that charge No.4 and 5 pertain to work on the same day and if charge No.4 was found disproved on facts, charge No.5 could not be considered proved. That heavy punishment entailing monetary loss exceeding Rs.One Lakh is disproportionate to the charges which have been found proved. That placing the charged officer under suspension before holding preliminary inquiry is violative of rules and natural justice and merely a method of demoralising the applicant and recording statement during preliminary inquiry through this method cannot be considered just. Learned counsel for the applicant read through the charge-sheet and statement of allegations and tried to prove that the same are vague. He also read through Ann.A/10, which is representation of the applicant

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after inquiry and correlated the facts mentioned therein with the conclusions drawn by inquiry officer to prove that applicant's defence was not justly appreciated by the inquiry officer. He also found fault with disciplinary authority in towing the line drawn by the inquiry officer and thereby not considering the defence of the applicant. Regarding appeal and reviewing authorities' decisions he stated that both are not just because they lack consideration of facts stated by defence witnesses and the applicant himself in his various representations and memos of appeal and revision.

11. Learned counsel for the respondents vehemently denied that memo of charges and statement of allegations are vague. He correlated the entries made by the Head Sorting Assistant in duty register on 5.11.97, 18.11.97 and 26.11.97 with the statements of witnesses including the statement of applicant himself and other documents, the list of which is appended to the charge-sheet and tried to show how each point raised in the charge-sheet is crystal clear and duly supported by documentary and oral evidence. Regarding vagueness of charge No.2 because date and place are not mentioned in it, he drew attention to line "while working in the aforesaid capacity in aforesaid office" on the basis of which it is clear that the date and place are same as mentioned in charge No.1 i.e. 5.11.97 in the office of RMS/1. Regarding contention of the learned counsel for the applicant that charge No.5 is self contradictory and proves sincerity of the applicant towards his work rather than insubordination and indiscipline, learned counsel for the respondents pointed out that he refused to do the work he was asked to do, which is act of indiscipline. For the contention that charge No.5 cannot be considered proved if charge No.4 was not proved, it was stated that they pertain to different places. After reading the two articles of charges it was pointed out that charge No.4 pertain to RMS/1 and that he left this office two hour earlier than duty time, charge No.5 pertains to RMS/2 where he disobeyed orders of superior authorities and showed insubordination, although both the acts

of indiscipline were committed on 26.11.97. Regarding allegation of arbitrariness in conducting preliminary inquiry after placing the applicant under suspension, it was pointed out that allegations pertain to period between 5.11.97 to 26.11.97, on the basis of which he was placed under suspension on 2.12.97 and preliminary inquiry was conducted on 10 & 11.12.97. This sequence shows that the entire action was logical and not arbitrary. Regarding contention that written defence was not considered while passing punishment order, counsel for respondents read out portion of punishment order dated 11/15.2.2000 in which it is clearly stated that although written representation was not submitted during the stipulated time, disciplinary authority had gone through the same and considered all points raised in it before passing the punishment order. Counsel for the respondents also pointed out that as per rules applicant is barred from raising in his OA fresh points which he has not raised in his petitions of appeal revision. For this, he pointed out that plea of disproportionate punishment and charge No.4 and 5 being correlated and many other similar matters have not been mentioned in the appeal and revision petitions but the same have been raised in the OA which should not be taken note of now. Regarding other allegations about non supply of documents, not calling witnesses and not giving such opportunities for ensuring natural justice, it was stated that applicant has in no way shown how any of these alleged matters caused prejudice to the applicant in his cause. In light of these facts, counsel for respondents argued that the action of the respondents is fully justified and as per rules and the OA deserves to be dismissed.

12. Before parting, counsel for applicant drew attention to statement of Suresh Chand (R-14) in which as applicant's colleague he has stated that on 18.11.97 at about 11.00 pm applicant was feeling unwell so he lay down and that before leaving for home at 4.00 AM on 19.11.97 he had given an application for leave, which proves that respondents did not consider the genuineness of applicant's action that day but made charge No.3 out

of it, which shows vindictiveness on their part. He also repeated that for very petty delinquencies very heavy punishment has been awarded, which is unjust by all standards of administrative and judicial norms.

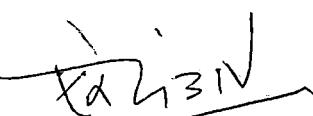
13. Heard the learned counsel for the parties and perused the records. For the plea of vindictiveness and mala fide taken by the applicant, no evidence at all has been adduced. There is not a single statement nor document on record which go to prove that respondents' action was born out of some illwill or premeditation to punish. It is true that the charges are based on incidence of day to day work which can go unnoticed but it is clear from the perusal of the daily diary/reports that indiscipline on part of applicant had been going on for quite some time and in the daily diary dated 26.11.97 while mentioning the indiscipline committed by the applicant on that day, reference has been made to earlier acts of indiscipline and in it senior officers have been urged to take remedial measure, failing which the Incharge will find it difficult to extract work from the staff. The contention of charges being vague has been adequately replied by the respondents inasmuch as charge No.2 pertains to acts of indiscipline on the same day as acts of indiscipline mentioned in charge No.1. The statement of allegation elaborates the charge and the same are not vague and make clear sense. No illegality is also found in conducting preliminary inquiry after placing the charged officer under suspension. It has been satisfactorily explained by the respondents that applicant was placed under suspension in December 1997 due to repeated acts of indiscipline during the month of November, 1997. It is not difficult to imagine that the daily diary/report dated 26.11.97 referred to above should have culminated into this action. Although statements were recorded for the preliminary inquiry when the charged officer was under suspension, it is seen that the charged officer was given full opportunity to cross examine the witnesses during the departmental inquiry. As such, no prejudice was caused by this action of the respondents. Perusal of the inquiry report reveals that each aspect of defence taken by the applicant has been meticulously appreciated,

analysed and examined and then only conclusions are drawn. On account of clinching evidence given by the defence witnesses on one aspect of charge No.4, the same has been considered as only partially proved. This goes to show that there was no premeditation on the part of inquiry officer as alleged by the applicant. The Disciplinary Authority has considered this charge not proved. This also shows fairness on his part. The plea that charge No.5 is a corollary to charge No.4 and should also therefore be considered not proved is untenable. The charge No.4 pertains to act of indiscipline at RMS/1, whereas the indiscipline described in charge No.5 pertains to RMS/2 although both premises are situated at Bharatpur. Even the facts of the indiscipline are distinct. It is alleged that the delinquent officer committed acts of indiscipline at both places of work that day. Allegations regarding not following the procedure of inquiry as per rules is also not backed by facts. On the contrary, counsel for respondents pointed out a few examples of pleas taken in the OA which had not been taken in the representations of appeal and revision for which the applicant is barred under the provisions contained in CAT Act and we are inclined to agree with him. The contention regarding non-supply of additional documents and not providing defence assistant on certain dates has also been satisfactorily rebutted by the respondents. The punishment may seem to be heavy because it has far reaching consequences ranging upto effecting the retiral relief/benefits, but in the circumstances of the case it has been justified by the respondents by referring to two earlier punishments based on facts similar to the facts of this inquiry. It is also brought on record that one more departmental inquiry is pending against the applicant for similar indiscipline. Normally the Courts and Tribunals are not required to evaluate the evidence and similar matters in an inquiry which are within the purview of the administration and confine to examining violation of rules or abrogation of natural justice but in this case the evidence of indiscipline by the applicant is so overwhelming that it cannot be missed. The allegation that the appellate and reviewing authorities have without applying their

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own judgement gone by the verdict of the disciplinary authority without considering the documents connected with the appeal and revision, the relevant documents were seen very carefully and it is found that both have considered all aspects of defence before coming to the conclusion of sustaining the punishment awarded by the disciplinary authority. All in all no ground for our intervention in the matter is thus warranted.

14. In view of what has been stated above, the OA is dismissed with no order as to costs.



(A.K. BHANDARI)

MEMBER (A)



(M.L. CHAUHAN)

MEMBER (J)