

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Original Application No. 209/2003.

Jaipur, this the 3rd day of ~~April~~^{May}, 2005.

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

Bhanwar Lal,
S/o Shri Sardar,
Aged about 40 years,
R/o Village Nausar, Near Regional College,
Ajmer 305004.

... Applicant.

By Advocate : Shri Sham Sher Singh.

Vs.

1. Union of India
Through Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication,
New Delhi.
2. Director General,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
3. Chief Post Master General,
Rajasthan Circle, District Kota.
4. Post Master General,
Rajasthan Southern Region,
Ajmer..
5. Director Postal Services,
Rajasthan Southern Region,
Ajmer.
6. Senior Superintendent of Post Offices,
Ajmer Division,
Ajmer.

... Respondents.

By Advocate : Shri S. S. Hassan.



: O R D E R :

By A. K. Bhandari, Administrative Member.

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 to seek the following reliefs :-

"(i) The impugned order passed by the respondent No.6 may be set aside.

(ii) Respondents may be ordered to take the applicant on duty and treat the applicant on duty as E.D. (B.P.M.) Nausar (Regional College), Ajmer continuously since 06.11.2000.

(iii) Respondents may be ordered to make all payment, Bonus and benefits since 24.8.99 when the applicant was put to off duty."

2. Brief facts of the case are that the applicant while working as EDBPM, Nausar, Ajmer, was put to off duty by respondents vide their order dated 24.8.99 (Annexure A/2) under rule 9 of Post & Telegraphs Extra Departmental (Conduct & Service) Rules 1964. When within a month's time of this order nothing further was ^{heard} ~~the~~ applicant protested by submitting legal notice dated 29.9.99 (Annexure A/3) to the respondents but even then he received no reply. He then submitted another representation dated 23.7.01 (Annexure A/4). Thereafter, the respondents reacted through their letter dated 21.8.01 stating that the appellant stood dismissed from service by order dated 6.11.00 (Annexure A/1)

after an ex parte enquiry which became necessary because all correspondence from Disciplinary Authority and Inquiry Officer could not be delivered to him as he was not available at this last known address. Further that the applicant did not appear inspite of two news paper notification dated 25.6.00 and 27.6.00 and in such circumstances, the Enquiry Officer had no option but to concluded ex parte enquiry. And the Disciplinary Authority ^{due} ~~due~~ after L deliberation passed the punishment order. The applicant then filed appeal before Respondent No.5, the Director Postal Service, Rajasthan Southern Region, but the same was dismissed on 3.4.02 vide Annexure A/5. After this, Review Petition before Respondent No.4 was filed which too was dismissed vide Memo dated 25.10.02 (Annexure A/6). Thereafter, this OA was filed.

3. In the grounds, it is stated the applicant was put on put off duty illegally and it was against principles of natural justice as the same was issued without initiation of any inquiry. Also there was no complaint against the applicant. The allegation that between 6.8.99 to 10.8.99 the applicant had misappropriated Rs.440/- is false because the payees of 7 money orders namely Smt. Phooli, Gaindi, Bhaiju, Kaisar, Mangi, Bhanwari and Soni had never lodged any complaint for paying them lesser amount. They have on the contrary, given affidavits that they had received full

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amounts, photo copies of which are annexed as Annexure 7 to 12. Actually, one of the payees, Smt. Kesar, had already expired on 19.11.99 and, therefore, she could not have complained. Further that none of these payees were examined as witnesses during disciplinary inquiry. It is also alleged that the entire action of the respondents is based on the conspiracy hatched by Shri Narendra Kumar Vaishnav who obtained thumb impression on blank papers from the above payees and wrote complaint against the applicant upon them with the intention of getting his son Anil Kumar Vaishnav, appointed as EDBPM, in place of the applicant. Shri Anil Kumar is neither a resident of village Nausar nor he has any house or property in Village Nausar as he belongs to village Nagfani, Ajmer, a different locality of Ajmer due to which reason his appointment as EDBPM, Nausar, could not be ordered. But it was done illegally. Actually this very Anil Vaishnav was given all the letters addressed to the applicant which are remarked to have remained undelivered. He had written such remarks with the ulterior motive to get the applicant ~~dismissed~~ and to have himself appointed in the ^{resultant} ~~vacancy~~. In this conspiracy involvement of Shri B. S. Meena, Assistant Superintendent Post Office, Ajmer (North) is also proved by the fact that he is the tenant of Shri Narendra Kumar Vaishnav father of Shri Anil Kumar Vaishnav, who has ^{helped} ~~the~~ Vaishnavs in the whole affair. As a part of the same conspiracy, the

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Assistant Superintendent Post Office, Ajmer (North) Shri B. S. Meena got the ex parte inquiry conducted by giving false reports on the correspondence, instead of delivering the same to the applicant who was available at home all the time or to his relatives. It is also stated that the dismissal order is defective in many ways. It does not mentioned who lodged the complaint, it is explicit on the point that the inquiry officer had recorded statements of witnesses but in fact he never recorded any statements during enquiry. Such a procedure is violative of relevant rules. Further that in the dismissal order, it is stated that the Inquiry Officer, had recorded the statement of Smt. Kesar but she had expired much before the appointment of Shri Babu Lal as Inquiry Officer. A copy death certificate is annexed as Annexure A/13. It is also pleaded that the applicant is not very well educated and he is not in the habit of reading news paper regularly, therefore, he did not attend the inquiry although he was present at home. Lastly, the Appellate and Reviewing Authorities have rejected his representations without application of mind. Therefore, this OA has been filed.

4. Notices were given to the respondents and they have filed detailed reply.



5. The facts of the case are elaborated in the preliminary paras and brief history and it is stated that the applicant was put on put off duty because of mistakes seen in his working. Subsequently, on verification of monetary transactions it was found that the applicant misappropriated certain amounts related to money orders. A disciplinary inquiry was therefore, contemplated and a charge sheet under Rule 8 of Rule 64 was prepared on 6.12.99 and at the same time the applicant was reinstated vide order dated 6.1.00. But both the orders could not be served upon him as he went missing from the last known address. Both the orders were returned with remarks that the applicant has gone abroad without any intimation. This was in spite of order dated 24.8.99 in which it was clearly stated that during put off duty he will not leave the Headquarter without prior permission. Further that as per rules, Inquiry Officer and Presenting Officer were appointed but the orders concerning these appointments could also not be served upon the applicant due to his absence from the Headquarter and his address as per office record. Therfore, the intimations to attend the inquiry were published in News Papers on 25.6.00 and 27.6.00. Despite these efforts applicant neither responded, nor attended the inquiry proceedings. Thus, after giving full and reasonable opportunities, the Inquiry Officer proceeded Ex-parte and after consideration of all facts and

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circumstances of the case, the Disciplinary Authority awarded penalty of dismissal from service. His appeal and Review Petitions against the termination order were also rejected by the competent authority through detailed speaking orders. Respondents have annexed Annexure R/1, a copy of the charge sheet dated 6/10.12.99 which inter alia includes lists of witnesses and documents relied upon, besides statements of allegations and articles of charges. About the reason for putting him to put off duty, it is stated that there were complaints of irregular and improper delivery of mail and misappropriation of government money. The fact of contemplation of departmental inquiry is clearly stated in order dated 24.8.99 (Annexure R/2) which is also perfectly legal. When this order was served upon the applicant it was expected that he would cooperate in the inquiry and stay at the headquarters during the pendency of the departmental proceedings. Appointment of Presenting Officer and Inquiry Officer were necessary corollary of the proposed action. The applicant was even reinstated from put off duty but it appears that he had disappeared and ex parte inquiry was the only option left with the respondents. Respondents have also attached as Annexure R/4 and R/5, the photo copies of envelopes containing order dated 6.1.00 and 7.1.00 which were returned back un delivered with remarks that the applicant is not in Ajmer for the past one month etc. Similarly



letters dated 6.12.99 and 6.1.00 were also returned with remarks that the applicant is not residing ^{at} ~~his~~ original address and has gone abroad without intimation. Copies of these are annexed as Annexure R/6 and R/7 respectively. Respondents have also attached copies of News Paper Notifications dated 25.6.00 of Dainik Bhaskar, ^{and} ~~dated~~ 27.6.00 of Rajasthan Patrika as Annexure R/8 and R/9 respectively, in which Inquiry Officer had urged the applicant to attend his office for smooth conduct of the departmental inquiry. But it is evident that the applicant failed to avail of all these opportunities and the inquiry had therefore to be conducted ex parte and the order of dismissal was passed vide order dated 6.11.00 (Annexure A/1). From the above facts, it is clear that the applicant was absenting from the period December 1999 to May 2001. His contention that he sent one legal notice and one representation do not serve any purpose because they were sent after the issuance of dismissal order and can only be considered as afterthought. Further that it is true that the letter dated 6.11.00 was delivered to the applicant on 4.9.01 but he is hiding the fact that he received the punishment order late only because he was neither present at the Headquarters nor at his ~~last~~ known home address. Respondents have further ^{ad} ~~citing~~ ^{ed} applicant's letter dated 7.6.01 (Annexure R/10) by which he has asked for payment of bonus of the year 1998-99 on 7.6.01. This letter also

proves that the applicant was not available at the Headquarters during the intervening period.

6 The grounds of illegality, arbitrariness and improper inquiry are denied on the basis of above facts. The allegation of impropriety in issuing put off duty order is denied by saying that the same is as per rules. Respondents were well within their rights to issue orders appointing Presenting Officer having issued the charge sheet and in the facts and circumstances stated above, there was full justification for conducting ex parte inquiry. Regarding affidavits submitted by the Payees of money orders in which they have denied less payment of the money order amount, it is stated that they were executed in the month of October 2001 when the entire action of disciplinary proceedings ~~were~~ ^{was} over and can only be considered as afterthought. The allegation of recording statement of Smt. Kesar is also denied because she had died before the statements were recorded in the Disciplinary Inquiry. Regarding temporary appointment of Anil Kumar Vaishnav as EDBPM, it is stated that this appointment was a stop gap arrangement as the work at Nausar Post Office could not stopped. Besides Anil Kumar Vaishnav had filed OA bearing No.106/01 in the Jaipur Bench of the Tribunal which is sub-judiced. Contention that the applicant is less educated and not in the habit of reading News Paper and



that Inquiry Officer should not have hastened the departmental inquiry as ex parte are denied by stating that not reading news paper is only an excuse to hide the fact that he was not present at Ajmer during this entire period.

7. The applicant has filed rejoinder emphasizing his earlier pleadings and alleging that Inquiry Officer never recorded any statement during enquiry and that this can be seen by inspection of the Inquiry Report.

8. Arguments from the applicant's side were heard in Part on 13.12.2004. On the basis of contention of Learned Counsel for the applicant that statements of witnesses were never recorded by the Inquiry Officer, the case was adjourned with orders to the Learned Counsel for the respondents to produce the original record of the inquiry. The record of the departmental inquiry was seen on 25.4.2005 and 26.4.2005 on which dates arguments from both the contending sides were also heard. Perusal of the original record reveals that contention of the learned counsel for the applicant that no complaint regarding less payment of money order amounts were received is wrong because such complaints duly signed or bearing thumb impression can be seen in the records submitted by the respondents. Contention that statements of witnesses were not recorded by the Inquiry Officer is similarly found

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wrong because the order reveals that the statement of Smt. Phooli, Gaindi, Bhairu, Mangi, Bhanwri and Soni were recorded on that day. The actual statements of these witnesses are also available on the file. All the above witnesses have testified their earlier statements and their signatures thereupon, and the same are signed by the witnesses, the Presenting Officer and the Inquiry Officer. Various letters from the offices of Disciplinary Authority and the Inquiry Officer duly addressed to the applicant at his known home address bearing date of visit and remarks that recipient is not at home etc. are also seen on the file in original.

9. During arguments, Learned Counsel for the applicant emphasized the conspiracy theory by stating that the temporarily appointed ^{JK} Anil Kumar Vaishnav had ulterior motive in writing false remarks about the applicant's absence because by doing so he was able to get temporary appointment as EDBPM, and that with this sole objective his father Narendra Kumar Vaishnav and B. M. Meena, Assistant Superintendent Post Offices, being tenant of Narendra Kumar Vaishnav hatched the conspiracy to show applicant not present at home. He also emphasize contents of affidavits in which allegation of non payment of full money order amount and misappropriation are falsified.



10. Per contra, Learned Counsel for the respondents drew attention to order dated 24.8.99 by which applicant was not only put on put off duty but also he was required to stay at Headquarter Nausar, but he absented himself and also stayed away even from his last known home address. He also drew attention to the set of complaints of non payment of money order amounts seen by us on the Inquiry file which in fact necessitated contemplation of regular inquiry. That the applicant willfully absented and due to this reason ex parte inquiry had to be conducted and that before starting the same the Inquiry Officer gave adequate opportunity to the applicant to be present and participate in it. Regarding conduct of Disciplinary Inquiry as per rules and allegations that statements of witnesses were never recorded ^{is wrong} he drew our attention to the record already seen by us.

11. After careful consideration of all the facts and pleadings we fail to notice any irregularity on part of the respondents in their issuance of put off duty order because a departmental inquiry was contemplated. The respondents were fully justified in their conduct of ex parte inquiry because all possible opportunities to present himself were given through their letters and news paper notification but we are inclined to conclude that the applicant could not/did not avail of them because he was not present at

Ajmer during the relevant period. His not attending the Headquarter office during put off duty period and in course of inquiry period are also mistakes on his part, due to which respondents had no alternative but to initiate ex parte inquiry. Our perusal of records shown by respondents disproves the allegations that the Inquiry Officer did not record the statements of witnesses. We are also inclined to believe the contention of the respondents that affidavits were filed well over a year after the inquiry and this was nothing but an afterthought to cover the past mischief and if he had such a strong case he should have participated in the inquiry and cross examined the witnesses when they were examined by the Presenting Officer. We are not inclined to believe the plea of conspiracy, because if it was so he could have challenged the same during inquiry and raising it now is nothing but after thought. We also believe that in matters of financial misappropriation and embezzlement of public funds respondents are justified in awarding punishment of dismissal from service which action has been approved by the Hon'ble Supreme Court in the case of Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra and others, reported in AIR 1997 SC 2148.

11. For the above reasons, we find that the applicant has no case and we find no reason to interfere with the punishment order. Accordingly, the OA is dismissed with no order as to costs.

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(A. K. BHANDARI)
ADMINISTRATIVE MEMBER

~~MLC~~

(M. L. CHAUHAN)
JUDICIAL MEMBER

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