

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 12-10-04

ORIGINAL APPLICATION NO. 349/2003

Kishan Pal Singh son of Shri Sanendra Singh by caste Jat, aged about 43 years, presently working as SA O/o HRO RMS, Jaipur Division, Jaipur.

....Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
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)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA has been filed u/s 19 of the AT Act, 1985 to seeks the following reliefs:-

(i) That by suitable writ/order or direction, the impugned orders dated 17.9.2002, 6.7.2001 and 28.4.2001 vide Annexure A/1, A/2 and A/3 be quashed and set aside with all the consequential benefits to the applicant.

(ii) That by suitable writ/order or direction the respondents be directed to pay a reasonable cost for filing the OA to the applicant.

2. The brief facts of the case are that the applicant, a Sorting Assistant in RMS, was served with a charge sheet under Rule 14 of the CCS(CCA) Rules, 1965 on 22.1.1998 in which two Articles of charges were

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framed alleging causing of the dislocation of the Government work and displaying of utter irresponsibility, great carelessness, gross negligence and failed to maintain devotion to duty. The enquiry was conducted but respondents have not considered his defence judicially and imposed punishment arbitrarily inasmuch as impugned orders dated 17.9.2002 (Annexure A/1 of the Chief Postmaster General, the order dated 6.7.2001 (Annexure A/2) of the Director Postal services and order dated 28.4.2000 of the SSRM are against the rules of natural justice. It is further explained that charge NO. 1 is regarding absence from duty on 19.9.1997 and charge No. 2 is for not doing the work properly on 21.10.1997, however, charge No. 1 was not found proved by the Inquiry Officer, the Disciplinary Authority agreed with him, as such no punishment was awarded for this charge. Charge No. 2 was found proved which is regarding causing dislocation of work on 21.10.1997. As per this charge, the applicant is alleged to have deliberately caused hinderance in taking over the mail bags at Jaipur Railway Station which resulted into incomplete exchange of mail bags and 30 mail bags were left behind at the Jaipur Railway Station. It is stated that as per Presenting Officer, 26 of these bags were lying on hand truck and four bags were on the plat form. It is pertinent to note that when applicant stopped taking Mail bags from the gate he was operating and asked the staff of NMA Jaipur RMS to handover the remaining mail bags at the other gate, which was manned and operated by Shri Shiv Charan, Peon because space in the Mail van on his side was full, the staff of NMA Jaipur RMS went to the other gate of the compartment but Shri Shiv Charan refused to take over the mail and asked the staff of NMA Jaipur RMS to handover the mails at the gate where the applicant was working. By the time the NMA staff approached that gate, the gate of the compartment has been closed by the applicant and even though every efforts was made by the applicant to open the gate but the same could not opened and in the meantime train moved off. It is stated that perusal of this would reveal that every efforts were made by the applicant to open the gate and he even tried hard to facilitate the work of the NMA staff but the train moved out before he succeeded. Obviously, in the language of the charge sheet itself, this charge could not be considered to be made out. The Presenting Officer in his brief report has also stated that this charge has been 'Ansik proved' (partly proved). That after receiving the brief from both the sides, the Inquiry Officer submitted his report vide Annexure A/7. The show cause notice was issued to the applicant vide Annexure A/8 and on 28.4.2000 punishment order was issued. Appeal and Revision followed but both were rejected. It is prayed that in view of the averment above, that there was hardly any ground to consider this charge also proved.

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3. Further ground taken is that as per rules of the Department, the Mail agent is supposed to check the seal and condition of the bag, lable of the bag, ascertain its destination, check the mail bag with main list and enter so many registers etc. By failing to do so, the mail agent is held responsible for any loss. Further, norm is fixed that a Mail Agent should exchange or should take four bags in a minute. Due to large number of mail bags to be exchanged that day, both the gates of the train were opened because the work was to be completed within 20 minutes of halting time of the train at the Jaipur Station. During this time, the applicant and NMA staff worked hard and collected 270 bags instead of 80 bags per person, they were supposed to collect as the official norm. For this reason also, the applicant cannot be blamed for causing deliberate hinderance in completion of work. The extracts of relevant portion of the statement of witnesses examined by the Inquiry Officer are referred to in order to prove that as per their statement also, no hinderance was caused by the applicant in discharge of his duty. Therefore, the charge cannot be considered to be proved. It is also stated that applicant never refused to accept the mail bags but delivered them to other gate and on hearing that they were refused on the other gate, he tried to open the gate on his own side but in the meantime, the train moved out. Therefore no hinderance was caused by the applicant.

4. Even though the Disciplinary Authority had imposed the punishment of reduction of pay by four stages in the pay scale of Rs.4000-100-6000 for a period of five years with immediate effect and that he will not earn increment during the period of reduction and on expiry of this period, the reduction will have no postponing effect on future increments of pay but after taking the facts and circumstances of the case into account, the Appellate Authority in exercise of his powers modified the punishment to reduction of pay by four stages for three years and that he will not earn any increment during the period of reduction. The Revising Authority decided not to interfere with the punishment awarded by Appellate Authority. It is prayed that there is ample ground for quashing the impugned order as no charge of causing deliberate hinderance in smooth working is made out.

5. The respondents have filed a detailed reply. Giving background of the matter, it is stated that on 19.9.1997, the applicant and Van Mail were to perform the duty as Mail Agent in JP-30 on 19.9.1997 from Phulera to Agra. However, both of them remained absent without prior information due to which alternative arrangement could be made and work

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of the Section was dislocated. Although Medical Sickness Certificates were given by the applicant to cover this irregularity, the loss to the Department could not be covered. Therefore, the basis of Daily report (Annexure R/1 to Annexure R/3), charge of absence were framed. Similarly, the applicant, Mail Agent and Shiv Charan, Van Peon, were on duty in JP-30 IN on 20.12.1997. The train reached Jaipur Railway Station at 2300 Hours. Shri Sadhu Ram, Mail Guard of RMS Jaipur working with the NMA Jaipur RMS staff was present on the Platform for exchange of Mail bags. After receiving the same, the staff of RMS Jaipur started handing over the mail bags to the Staff in the Mail Van from both the doors of the Boggie. Some Group 'D' Staff were also assisting in arranging the mail bags inside. After sometime, applicant stopped receiving the mail bags and asked the staff to give the same from the other gate where Mr. Shiv Charan was receiving the bags. The applicant also threw some of the bags on the platform which were lying at the gate of the Mail van. The staff of the RMS Jaipur brought the remaining bags to the other gate but Shiv Charan refused to accept them there and asked the staff to deliver them at the other door, where the applicant had already stopped of receiving the bags and had closed the door. Meanwhile, the train started moving. That Shri Shiv Charan also threw some bags on the platform. As a result of this, 30 bags were left behind at Jaipur Railway Station. This matter was reported by Mr. Sadhu Ram vide ER-1 (Annexure R-5). The same matter was corroborated by his statement dated 29.10.1997 and of other staff dated 10.12.1997, who were present at the scene of the incident that date. Their statement are cited as Annexure R-6. Copy of applicant's statement dated 21.10.1997 and statement of Shiv Charan dated 8.12.1997 are cited as Annexure R/7 and Annexure R/8 respectively where they have admitted the facts as stated above.

6. Due to this act of misconduct, the applicant was placed under suspension as disciplinary inquiry was conducted under Rule 14 of the CCS(CCA) Rules, 1965 (Annexure R/9). The applicant submitted his statement of defence dated 3.3.1998 (Annexure R/10) denying all the charges. S/Shri G.R.P. Meena ASRM (HQ) and N.K. Bohra, IRM, CSO, Jaipur were appointed as Inquiry Officer and Presenting Officer respectively vide office order dated 16.3.1998 enclosed as Annexure R/11. The Inquiry Officer after completion of the inquiry submitted his inquiry report dated 24.1.2000 (Annexure A/7) which was given to the applicant who submitted his representation dated 19.2.2000 (Annexure A/8). After considering the representation of the applicant, competent authority imposed the penalty of reduction of pay by four stages for a period of five years vide order dated 28.4.2000 (Annexure A/3). Against this, applicant filed an appeal dated 19.6.2000 (Annexure A/9). The Appellate

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Authority modified the punishment order to that of reduction of pay by four stages for a period of three years vide order dated 6/9.7.2001 (Annexure A/2), which was received by the applicant on 17.7.2001. The applicant had also preferred a Petition to the Revising Authority but the Revising Authority upheld the punishment so imposed by the Appellate Authority vide order dated 17.9.2002 (Annexure A/1).

In parawise reply, it is stated that applicant was deliberately causing hinderance in work and that the procedure for Departmental inquires has been correctly followed by the Inquiry Officer and the Disciplinary Authority has also considered the evidence and defence carefully before awarding punishment. That Appellate Authority on the basis of the facts noticed by him reduced the punishment which shows his objectivity. The Revising Authority upheld the punishment awarded by the Appellate Authority because he was satisfied with the punishment as modified by the Appellate Authority, The applicant has been given reasonable opportunity and there is no violation of principles of natural justice. Therefore the OA be dismissed.

7. The applicant has filed rejoinder stating that the main question in the OA whether 278 mail bags can be loaded with the Mail van. However, the applicant and his colleagues received most of the bags and only 30 bags were left behind. The work done by them is more than the norms of work. Therefore, the Tribunal should look into the matter.

8. Parties were heard at length.

9. The learned counsel for the applicant read out extensively Article No. 2 of the charge sheet and also statement of imputation of this charge. It is argued that plain reading of these would show that rather than causing deliberate hinderance of work, the applicant inspite of paucity of time and heavy load of work, tried to collect all the mail bags. He also argued that no space was left in his side to accept any more mail bags. He, therefore, requested the staff to hand over the remaining bags at the other gate. But Shri Shiv Charan refused to accept the same. Even though the applicant had closed the gate in the meantime and he tried to open the same but failed to do so before the train moved out, and he could not receive the remaining bags. That no witnesses have stated that he had thrown the bags on the platform. On the contrary, the charge of throwing the bags was levelled against Shri Shiv Charan, and was found proved. He is the one who refused to accept the bags but the respondents awarded lesses punishment of reduction of pay by four stages and the same was further reduced in appeal to reduction of one increment

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for one year without future effect whereas the applicant on his part made no mistake, but has been punished more heavily and even in appeal his punishment has been ~~not~~ reduced but it remains much more than that of Shri Shiv Charan.

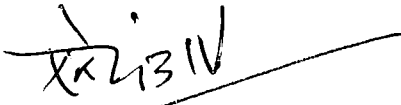
10. The learned counsel for the respondents has tried to justify the action of the respondents by stating that the applicant was senior and in supervisory role and there is no justification for closing the gate till the work was completed and that dislocation of Government work inasmuch as 30 bags were left due to his action is proved for which punishment was awarded.


11. After careful consideration of all the pleadings, we find that procedure under CCS(CCA) Rules for holding disciplinary inquiry has been correctly followed but on the analysis of the facts we find that the charge sheet has not been prepared correctly. Charge No. 1 was found not proved by the ^{Inquiry and} Disciplinary Authority shows that defence submitted by the applicant in his denial of charges was not properly considered before framing the charge sheet. In relation to Charge No. 2, it is apparent that even though the applicant tried to collect all the mail bags, he failed to do so due to two reasons; paucity of time as duration of halt of the train was only 20 minutes and paucity of space in the mail van due to which the portion of the van on applicant's side was full and perhaps some vacant space was there on the other side where Shri Shiv Charan was collecting the mail bags and he tried to divert the remaining bags to that side but on hearing that Shri Shiv Charan had also refused to accept the bags, the applicant tried to open the gate which he had closed. But in the meanwhile, the train started moving. It is obvious that inspite of adverse circumstances, he tried to collect full load of mail bags. Thus there was no causing of deliberate hinderance on his part. We have also carefully seen that norms laid down by the Department for collecting mail bags, which is to the tune of 4 bags per minute and we cannot fail to notice that by this norm, only 80 bags could be accepted ^{by each person} against which 240 bags were taken by two persons together. This also proves that instead of raising hinderances, there was best effort on the part of the applicant to accept maximum number of mail bags. Lastly the facts reveal that mistake, if any, was on part of Shri Shiv Charan, who not only refused the mail bags inspite of supervisory officer's instructions but also threw some mail bags from the moving train but he has been awarded less punishment. Although in appeal, the punishment awarded to the applicant has been reduced but still more

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punishment has been awarded to him than to Shri Shiv Charan for which there does not appears to be any rational.

12. In view of the above, the OA is allowed. Impugned orders dated 17.9.2002 (Annexure A/1), 6.7.2001 (Annexure A/2) and 28.4.2001 (Annexure A/3) are quashed and set aside. No order as to costs.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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