

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT BILASPUR

Original Application No. 39 of 2005

Bilaspur, this the 9th day of March, 2006

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri Shankar Prasad, Administrative Member

Vishnu Dutt Dubey, S/o. Shri
R.K. Dubey, aged about 62 years,
R/o. Civil Lines, Manendragarh,
Distt. Korea (CG). ... Applicant

(By Advocate - Shri V. Tripathi on behalf of Shri S. Paul)

V e r s u s

1. Union of India, through its
Secretary, Ministry of Communication,
Department of Post, New Delhi.
2. Member (Personnel), Postal
Services Board, Dak Bhawan,
Sansad Marg, New Delhi.
3. Director, Postal Services,
Raipur (CG).
4. Superintendent of Post Offices,
Raigarh (CG). ... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R

By Shankar Prasad, Administrative Member -

Aggrieved by the order of disciplinary authority imposing the penalty of compulsory retirement from service and that of the appellate and revisional authorities upholding the same, the applicant has preferred the present OA. He has sought for quashing of the orders and for grant of consequential benefits.

2. The facts lie in a narrow compass. The applicant, who was earlier working as Postman, had been promoted as Mail Overseer with effect from 16.7.1991. He had been served with a charge sheet dated 27.4.1992 for various acts of omission and commission during the period from 16.7.1991 to 2.3.1992.

On denial of charges an enquiry officer was appointed.

2.1 The applicant has submitted his defence brief dated 15.5.1993 stating therein that his performance have been found satisfactory prior to his promotion on 16.7.1991, and that all these allegations have been levelled during the first six months of his posting as Mail Overseer. It is also contended that one Shri L.G. Batwar who had been cited as prosecution witness had been reinstated just before the commencement of the enquiry. The defence brief ends with the following that "whatever mistakes have been committed by the applicant may not be taken note of and the applicant be exonerated of the charges as he had already been suspended which is enough punishment for my mistakes. I assure to do my duties honestly and sincerely in future." (Translation)

3. The enquiry officer had held the charges as proved. The order of the disciplinary authority further indicates that no representation has been filed by the applicant against the report of the enquiry officer. The disciplinary authority vide his order dated 30.3.1994 has held all the charges as proved and imposed the penalty of compulsory retirement.

3.1 The applicant thereafter has preferred an appeal dated 7.6.1994. Even in this appeal nothing has been stated about the conduct of departmental enquiry. What is stated is that his pay had been deducted and allowances not paid. ^{His} request ~~also for~~ ^{of} reverting ^{him} me to the post of Postman was not acceded to. The appellate authority vide his order dated 3.4.1995 has rejected the appeal.

3.2 The applicant thereafter preferred a revision petition against these orders. When the said revision petition was not decided he preferred O.A. No. 789/1997. The said O.A. was

disposed of vide order dated 16.1.2003 indicating therein that the reviewing authority should pass a reasoned and speaking order as per law and rules on the subject. The revision petition is not on record. The revisional authority in para 4 of his order has indicated the following points raised by the applicant in the revision petition :

"In the revision petition following assertions have been made.

(i) That the petitioner was less educated, inexperienced and unaware of the duties of the Mailoverseer due to which he had committed mistakes. Still, he did his best and brought to the notice of the SDI(P) the inability to carry on the duties of Mailoverseer. It is contended that he kept him requesting to revert him to his old post of Postman.

(ii) It is contended that due to sickness he could not remain normal and faced difficulties in performing the assigned duties. However his request was never accepted by the SDI(P) as he was considered not devoted to duty and due to which he was punished.

(iii) It is further stated that he had neither made any lapse nor was involved in mis-appropriation of Government money but has been punished harshly for the said lapses.

(iv) It has been alleged that he was retired compulsorily due to prejudiced action of the higher authorities while other employees involved even in mis-appropriation of govt. money were still continuing in service.

(v) It has been stated that due to compulsory retirement he has been facing financial problems. He has therefore requested for sympathetic consideration of his petition."

3.3 The revisional authority thereafter rejected the revision petition, giving rise to the present CA.

4. We have heard the learned counsel.

5. The Apex Court in Devkinandan Sharma Vs. Union of India, 2001 SCC(L&S) 1079 has refused to consider a ground not raised before the disciplinary/appellate authority.

5.1 This Tribunal while exercising the powers of judicial review can only look into the decision making process. It was therefore incumbent on the applicant to produce the representation ^{to} before enquiry officer's report ^{to any,} and to the ^{to}

revision petition etc. to enable us to see as to whether those grounds have been duly considered. The same has however not been done.

6. We note that a three Judge Bench of the Apex Court in the case of High Court of Judicature at Bombay Vs. S.S. Patil, 2000(1) SCC 416 has held that if there is some legal evidence on which findings can be based then adequacy or even reliability of that evidence is not a matter for canvassing judicial review.

7. It is also a settled principle of law that this Tribunal while exercising the powers of judicial review does not act as an appellate authority and cannot substitute its own decision for the decision of disciplinary authority.

8. Coming to the facts of this case, we find that as per the defence brief and as also the appellate petition which is available on record, the applicant has not stated anything about the conduct of enquiry i.e. regarding not making available the relied upon documents or giving him the requisitioned defence documents or regarding cross-examination of witnesses.

9. The learned counsel for the applicant has emphasised that the findings of the enquiry officer and the disciplinary authority are not sustained by evidence on record and are perverse. He has accordingly argued that on this count the orders are required to be set aside.

9.1 It is alternatively argued that the penalty is extremely harsh and requires to be substituted.

10. We have already noted above that the Apex Court in S.S. Patil's case (supra) has held that even if two views

are possible on the basis of evidence on record and has some evidence to support the view taken by the enquiry officer, the Tribunal shall not interfere with the findings of the disciplinary authority.

11. A perusal of the appeal petition as well as the grounds of revision petition as quoted in the order of reviewing authority shows that this aspect had not been raised earlier. We cannot carefully look into this aspect.

11.1 Even otherwise the learned counsel for the applicant has not been able to demonstrate that the findings of the disciplinary authority cannot be sustained by the prosecution evidence on record.

12. It is also a settled principle of law that the quantum of punishment is in the domain of the disciplinary authority. No specific reasons have been pointed out to indicate as to why the penalty is excessive.

13. In view of what has been discussed above, there is no merit in the OA and the same deserves to be dismissed. It is dismissed with no orders as to costs.

Shankar Prasad
(Shankar Prasad)
Administrative Member

B. Penigrahi
(B. Penigrahi)
Chairman

"SA"

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
पलिलिपि आगे भिजा:-
(1) सचिव, उच्च न्यायालय जबलपुर, जबलपुर
(2) आवेदन क्र/दि की/पु.....के काउंसल
(3) प्रत्यक्षी की/दिनांक/पु.....के काउंसल
(4) न्यायालय, कोर्ट, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

उप निरीक्षक

14-3-06

14/3/06

S. Shankar Prasad
B. Penigrahi