

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 454 of 2002

Jabalpur, this the 14th day of July 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Vishwa Nath Kulhara
S/o C.L. Kulhara,
Aged about 53 years
R/o Azad Ward,
Seoni(MP)

APPLICANT

(By Advocate - Shri Pulok Maity on behalf of
Shri Mainder Bhatti)

VERSUS

1. Union of India,
Through : Deptt. of Post,
& Tele Graph, New Delhi.
2. Chief Post Master General,
Chhattisgarh Circle, Raipur(CG)
3. Director, Postal Services,
Raipur Region, Raipur(CG)
4. Senior Superintendent of Post
Offices Balaghat Division, Distt.
Balaghat(MP)

RESPONDENTS

(By Advocate - Shri Om Namdeo)

O R D E R (ORAL)

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the
following main reliefs :-

"i) to issue a writ order or direction in the
certiorari therby quashing the order dt.2/11/99
(A/4), dt.27.4.2000(A/6) and dt.16.02(A/9).

2) To issue a writ order or direction in the
nature of mandamus thereby directing the Respondents
to reinstate the Petitioner in the service with
all consequential benefit w.e.f. 2.11.99".

2. The brief facts of the case are that the applicant was initially appointed as Postal Assistant vide memo dated 4.10.1979. The applicant was born on 10.3.1949. A copy of birth certificate issued by the Registrar, Death & Birth was annexed as Annexure A-1. A copy of Marksheets of Higher Secondary School Certificate Examination was also filed as Annexure A2, in which the date of birth of the applicant is shown as 10.3.49. The applicant was served with a memo along with a charge sheet alleging that the applicant while seeking appointment concealed his correct date of birth (Annexure A3). The applicant acting upon the assurance given by one A.H.Khan who was appointed as enquiry officer, admitted the charges despite the fact that he had not concealed his date of birth. Respondent No.4 imposed on the applicant a penalty of reduction in time scale of pay by 9 stages vide order dated 2.11.99 (Annexure A4). However, respondent No.3 who was not satisfied with the penalty imposed by respondent No.4 issued a notice to the applicant (Annexure A5), upon which the applicant contacted A.H.Khan and asked as to why the order dated 2.11.99 and notice dated 1.3.2000 were issued. The applicant was again assured that nothing would be done and acting upon the assurance, the applicant did not submit his reply which resulted in passing of the impugned order of removal from service (Annexure A6). It is alleged in the application that the impugned orders were passed without giving an opportunity of hearing and the applicant's submissions had not been considered by the appellate authority and that the applicant had been victimised by A.H.Khan.

3. Heard the learned counsel for both parties. It was argued on behalf of the applicant that no opportunity of hearing was given to the applicant. The applicant had produce documents in support of his date of birth. In the documents the date of birth of the applicant recorded was 10th March 1949. The applicant had not concealed any facts regarding his date of birth. The disciplinary authority had awarded a major penalty to the applicant, against which he did not file any appeal. Hence the orders passed by the authorities concerned were not legal and justified and the OA deserves to be allowed.

4. In reply the learned counsel for the respondents argued that on verification, a report was submitted by one G.T.Singh, Principal, Higher Secondary School, Sivni, in which it is specifically mentioned that the applicant had taken admission in the institution on 4.7.1960 in standard VIII and his date of birth is recorded as 10.3.1943 and applicant took admission in 10th standard and there also his date of birth is recorded as 10.3.1943. Hence the aforesaid certificates filed by the applicant are apparently bogus and fake. Rule 29 (1)(v) of CCS (CCA) Rules 1965 empowers the appellate authority to enhance the punishment within a period of 6 months from the date of passing of the earlier order. The appellate authority has passed the order on 1.3.2000 (A-5) not being satisfied with the order passed by the disciplinary authority (Annexure A-4) dated 2.11.99, considering the gravity of the charge and finding that the punishment awarded by the disciplinary authority was inadequate. The appellate authority had issued a notice to the applicant but he did not submit any reply to that and subsequently the order of removal was

passed. No irregularity or illegality was committed by the respondents in passing the impugned order.

4. After hearing the learned counsel for both parties and carefully perusing the records, we find that due opportunity of hearing was given to the applicant but the applicant has neither filed any appeal against the order passed by the disciplinary authority nor has he ~~replied~~ filed any appeal against the order passed by the appellate authority. The contention of the applicant that the applicant did not file any appeal or reply under the assurance of one Mr. A.H.Khan seems to be untenable. As per Rule 29 (1)(V) of CCS (CCA) Rules, the appellate authority is empowered to enhance the punishment suo motu within 6 months of the first order of punishment, considering the gravity of the charge against the applicant regarding his date of birth. The appellate authority has not committed any irregularity or illegality in passing the impugned order. We have also perused the documents filed by the applicant showing his date of birth. Both these documents are apparently false and bogus, in view of the report submitted by Principal, Higher Secondary School, ~~sivin&vnu~~.

5. Considering the facts and circumstances of the case, we are of the opinion that this OA has no merit. Accordingly the OA is dismissed.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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पृष्ठांकन सं. ओ/व्या.....	जवलपुर, दि.....
पत्रिलिपि दर्शे हित :—	
(1) समिति, उद्योगसमिति तथा एकोरिशन, जवलपुर	
(2) अखेताल ओ/व्या/सी/व्यु	को व्यापार
(3) प्रसादी ओ/व्यापारी/व्यु	को क्षमतामाल
(4) प्रसादी , को पा.।, जवलपुर व्यापारीठ	
समया एवं आवश्यक वापरेवादी हैं	<i>[Signature]</i>

Mainder Bhatti
Om Nauroz

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16.8.09
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