

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 545 of 2001

Jabalpur, this the 6<sup>th</sup> day of September, 2004

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

R.K. Shrivastava S/o late Shri B.P.  
Shrivastava, aged about 58 years,  
Senior Superintendent of Post Offices  
Civil Lines, Balaghat.

APPLICANT

(By Advocate - Shri Deepak Panjwani on behalf of  
Shri Rajendra Tiwari)

VERSUS

Union of India,  
Through : its Secretary,  
Department of Posts, Dak  
Bhavan, New Delhi.

RESPONDENT

(By Advocate - Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member -

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

"(ii) to quash the impugned order dated 29.5.2001 (Annexure A/7) in its entirety.

(iii) to direct the respondent to continue the petitioner as Senior Superintendent of post Offices with all its consequential benefits and regularise him on the said post along with all the said privileges as claimed above .

(iv) to restrain the respondents from reverting the petitioner to the post of Superintendent of post Offices".

2. The brief facts of the case are that the applicant joined the services of the Union of India in the Department of Posts with effect from 16.2.1963 as Postal Assistant. The applicant was promoted as Inspector of Post offices, Assistant Superintendent of Post Offices, Superintendent of Post Offices and was eligible for promotion to the post of Senior Superintendent of Post Offices in seniority cum fitness basis. A regular departmental promotion committee for promotion to the post of Senior Superintendent of Post

*(Signature)*

Offices met in June and July, 1998 and finalised the work of DPC by 5.7.1998. An order dated 23.7.1998 was issued promoting Senior Superintendent of Post Offices. The name of the applicant was not in the merit list. The applicant was issued a show cause by memorandum dated 4.1.1996 under Rule 16 of CCS( CCA) Rules. 1965 and the recommendations about him were kept in the sealed cover. Until the said matter was disposed of in favour of the applicant, the sealed cover would not be opened and the respondent would not act according to the recommendations of the DPC. The said notice was issued to him for some irregularities alleged to have been committed by him soon after his promotion while he was posted at Itawah between 13.2.1990 to 24.5.1991. A minor penalty was proposed by the said notice. The applicant demanded inspection of certain documents to submit the reply which was allowed to him, whereas some important documents were not made available for inspection. The applicant was yet to submit his reply. The departmental action have been proposed against the applicant on 4.1.1996, i.e. after two and a half years of his adhoc promotion as Senior Superintendent of Post Offices, because the posts were lying vacant and the DPC had not met. In such circumstances, the memo of GOI, Department of Personnel & Training, dated 24.12.1986 has to be followed. Inspite of certain documents having not been shown to him or made available to him for inspection, the applicant submitted his reply on 17.9.1996. If the punishment was given to him 1996 itself, then the applicant would not have been suffered superseded in 1998 by Annexure A-1. Taking advantage to this decision, the applicant was reverted vide order dated 5.8.1998 and was also transferred. Against the reversion order the applicant preferred an original Application No. 593/1998 which was finally disposed of vide order dated 25.9.1998 and the reversion order was quashed. It was also mentioned that the



respondents had to transfer the applicant in the same capacity as SSP. The respondents has passed an order dated 29.5.2001, whereby the applicant has been reduced by two stages in the time scale for a period of one year without cumulative effect. An advice of UPSC was also taken and the UPSC has exonerated the applicant of the charges Nos. 3 and 5. The charge No. 2 is said to be partly proved and the charges Nos. 1 and 4 are said to be fully proved. As regards the charge No. 1 the applicant had acted only on the advice of the PMG, Agra and had inspected his office and on whose inspection he had declared the result. Even if there was any mistake in the declaration of result, the same could be rectified. It was not deliberately done. How the charges are partly proved and fully proved were not explained by the UPSC. Thus, there is no basis for the UPSC to come to the conclusion that the charges are partly/fully proved. Infact no charge is proved against the applicant and the impugned orders passed by the authorities are illegal and unjust. Thus, it is liable to be quashed and set aside.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that the charges against the applicant were not proved. The charges Nos. 3 and 5 are admittedly not proved. The charge No. 2 is said to be partially proved and charges Nos. 1 and 4 are said to be fully proved, while these charges are also not proved and established at all against the applicant. Copies of the relevant documents were not given after repeated requests from the Department. He has filed his reply on the basis of his memoray as the charges were of a very long back period while the applicant was posted at Itawah. Due



opportunity of hearing was not given to him. The proceedings conducted against the applicant are against the law and are not prescribed procedure under the existing rules.

5. In reply the learned counsel for the respondents argued that show cause notice dated 4.1.1996 was issued for the misconduct which he committed while posted as SPO, Etawah in 1990-91. After collecting the necessary information to sustain the charges, the show cause notice was issued to him on 4.1.1996. Since the applicant was facing departmental action based on the show cause notice dated 4.1.1996, the recommendations of the DPC for the year 1997-98 held in June, 1998 was kept in sealed cover as per existing instructions on the subject. Therefore, he could not be promoted on regular basis during this period. The disciplinary authority allowed him to inspect the necessary documents which were relied by the disciplinary authority and which were relevant to the case. The documents, which were neither available with the disciplinary authority nor considered relevant were not made available to him as permissible under the relevant instructions. The applicant at the relevant time was holding a Group-A post on adhoc basis for which the disciplinary authority was President of India and consultation with UPSC was a mandatory requirement. Therefore, after receipt of the reply to the show cause notice, the same was carefully considered by the disciplinary authority alongwith the relevant documents and evidence on records and held the Charge No. 1 and Charge No. IV as fully established, Charge No. II as partly proved, Charge No. III as not proved and Charge No. V can go either side. The disciplinary authority tentatively decided to impose a formal penalty on the applicant. The case was referred to

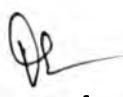


the UPSC on 26.3.1999 for advising the President about the quantum of punishment to be imposed on the applicant or otherwise based on the evidence on records against him. The UPSC on their part carefully considered the entire records, even some time additional information was called for and finally gave its opinion to the President of India on 30.4.2001. UPSC being an independent body analysed the evidence totally in a dispassionate manner and gave their advise. The disciplinary authority after considering the records and advice rendered by UPSC, imposed the penalty of reduction of pay by two stages in the time scale of pay for a period of one year without cumulative effect vide order dated 29.5.2001. Thus, both the disciplinary authority and the UPSC have applied their mind strictly on the case of the applicant in accordance with the existing provisions on the subject. It is also argued on behalf of the respondents that all reasonable and fair opportunity has been granted to the applicant to defend his case and there was no any abnormal delay in deciding the departmental case initiated against the applicant as alleged by him. The respondents further argued that the UPSC while giving its advice to the President of India has already analysed the plea of the applicant that he issued result on the advice of the PMG Agra, who inspected his office and found that the same does not hold good as the applicant did not seek any confirmation of these so called oral instructions in writing. The PMG, Agra categorically denied these verbal instructions. The plea further advanced by the applicant that if there was any mistake in declaration of result, the same could be rectified, does not detract him from the irregularities committed by him. The applicant has also failed to prefer a review to the President under Rule 28 of CCS(CCA) Rules, 1965. The irregularities committed by the applicant came to the light only in the year 1993-1994 and after collecting

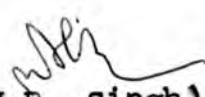
the evidence in support of the charges, he was issued with the memo of charges on 4.1.1996, without any further delay. Hence, the OA is liable to be dismissed.

6. After hearing the learned counsel for the applicant and the learned counsel for the respondents and on careful perusal of the records, we find that the impugned order is passed by the President of India being the disciplinary authority. There is no legal necessity to file any appeal and review/ mercy petition against this order. We also find that the applicant was given due opportunity of hearing and the relevant documents were permitted to inspect by the applicant which were available with the respondents. It is also find that the Charges Nos. I and IV were fully established. Charge No. II was partly proved, Charge No. III was not proved and Charge No. V can go either side. The applicant cannot be exonerated from the penalty imposed on him. We have perused the advice of the UPSC and the impugned order and other relevant documents. This is not a case of no evidence. Specific reasons were given by the UPSC and the disciplinary authority while coming to the conclusion. No irregularity or illegality is committed in conducting the departmental enquiry and in passing the impugned order by the respondents against the applicant. It is a settled legal proposition that the Courts/Tribunals cannot reappraise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Hence, we are of the considered opinion that the OA is liable to be dismissed as having no merits. Accordingly, the OA is dismissed. No costs.

  
(Madan Mohan)  
Judicial Member

"SA"

  
(M.P. Singh)  
vice Chairman