

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos 806/01 and 833/01

Bilaspur, this the 7<sup>th</sup> day of July 2004

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

1. Original Application No. 806 of 2001

W.B. Belare, Son of Shri Baliramji,  
aged 57 yrs., Sorting Asstt. (LSG),  
H.R.O., Rail Mail Services, M.P.  
Division, Bhopal, R/o RMS Colony,  
Malviyaganj, Itarsi

APPLICANT

(By Advocate - Shri R.K. Gupta through his Junior  
Miss Aparna Singh)

VERSUS

1. The Union of India,  
through its Secretary,  
Ministry of Communications,  
Deptt. of Posts, Dak Bhawan,  
Sansad Marg, New Delhi.
  2. The Director of Postal Services,  
M.P. Circle, Bhopal.
  3. The Chief Post Master General,  
M.P. Circle, Bhopal.
  4. The Supdt., RMS, M.P. Division,  
Bhopal.
  5. HRO, RMS M.P. Division Bhopal.
  6. The S.R.O. RMS MP Division, Gwalior
- (By Advocate - Shri Om Namdeo)

RESPONDENTS


(2) Original Application No. 833 of 2001

J.P. Shande S/o Shri Darasram Shande,  
aged 59 yrs, Sorting Asstt. HRO, Bhopal,  
R/o Opp. Nanhehotel, Malviyaganj, Itarsi,  
Distt. Hoshangabad (M.P.)

APPLICANT

(By Advocate - Shri R.K. Gupta through his Junior  
Miss Aparna Singh)

VERSUS

1. The Union of India, through its Secretary  
Ministry of Communications, Deptt of  
Posts, Dak Bhawan, Sansad Marg, New Delhi.
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2. The Director of Postal Services,  
MP Circle, Bhopal.
  3. The Chief Post Master General,  
MP Circle, Bhopal.
  4. The Supdt., RMS, MP Division,  
Bhopal.
  5. The HRO, RMS, MP Division, Bhopal.
  6. The SRO, RMS MP Division, Gwalior. RESPONDENTS
- (By Advocate - Shri Om Nandoo on behalf of Shri K.N. Pethia)

O R D E R

By Madan Mohan, Judicial Member -

Since the issues involved in both the OAs are identical, we are disposing of these OAs by this common order.

2. The applicants in both the OAs have prayed for quashment of impugned orders dated 28.4.1994 (A/2); 23.4.1997(A/3A); 30.1.1995 (A/3); 20.1.1999 (A/5); 30.9.99 (A/7) and 21.8.2001 (A/8) in OA No. 806/2001 and orders dated 29.4.1994(A/2); 27.1.1995 (A/3); 28.1.2000 (A/5); 26.6.2000 (A/7) and order dated 11.9.2001 (A/8) in OA No. 833/2001. They have further sought a direction to the respondents to pay them full salary alongwith arrears thereof right from the date when they were suspended by regularising their suspension period.

3. The brief facts in both the OAs are that when the applicants were posted and working as Sorting Assistant in RMS, M.P. Division, Itarsi in the year 1989, they were chargesheeted for participation and cooperation in extraction of contents from a parcel which was enclosed by IPD, Mumbai in a direct parcel bag for Kanpur RMS and an enquiry was initiated against them. The applicants denied the charges and requested for supply of certain material documents relating to the case but the required documents were not made available to them as they were not available or in existence with the respondents which means the enquiry travelled on the hypothetical charges levelled


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by the respondents against them, in which there was no complaint nor any such material which could show that the applicants had committed any misconduct or wrongful act attracting the provisions of CCS(CCA) Rules, 1965. During enquiry proceedings respondents produced fabricated seizure memo and statement of certain witnesses i.e. colleagues of the applicants including the applicants themselves, which were forcibly taken and the colleagues of the applicants were also dealt with departmentally for the same cause separately and they were made prosecution witnesses by the respondents. The applicants could not defend their case effectively in absence of the aforesaid required material and documents as demanded by them. In the enquiry proceedings, it has come on record that those documents were not available, therefore, could not be supplied to the applicants. The alleged witness Shri Goswami deposed before the enquiry officer that he did see personally the applicants extracting any material from the alleged parcel as he is not the eye witness of the incident. Other prosecution witnesses remained hostile in the enquiry proceedings and they alleged that the seizure memo was got signed from them forcibly. It has also come on record that on the alleged date of incident i.e. 15.12.1989 on which the applicants have been stated to have extracted certain articles from the parcel of Kanpur, the said parcel has been said to be not received belonging to Kanpur RMS. This means when the said parcel, as alleged, was never received then how any article could have been extracted from the said parcel. In this view of the matter, the enquiry officer came to the conclusion that the charges levelled against the applicants were not proved and accordingly he submitted his report on 14.7.1992 (A/1) and 28.7.1992 (A/1) in respect of the applicants in their respective OAs. Thereafter the disciplinary authority by disagreeing with the reasons and findings of the enquiry officer without giving cogent reasons and even without inviting the applicants' explanation for the



same, passed the orders dated 28.4.1994 (A/2) in OA No. 806/2001 and order dated 29.4.1994 (A/2) in OA No. 833/01 imposing the penalty of compulsory retirement on the applicants. The applicants aggrieved by the said orders of the disciplinary authority preferred their respective appeals. The appellate authority vide its orders dated 30.1.1995 (A/3) in OA No. 806/2001 and order dated 27.1.1995 (A/3) in OA No. 833/01 respectively allowed the appeal in part and reduced the punishment of compulsory retirement to that of reduction of pay to the minimum of the pay scale of LSG Cadre for seven years. The applicants preferred another appeal and the appellate authority vide its orders dated 23.4.1997 (A/4) and 12.8.1999 (A/4) respectively observed that the Supdt., RMS, MP Division Bhopal forwarded the IO's report to the official without his specific opinion on the same and the ad-hoc disciplinary authority also should have given reasons for disagreement with the IO's report before passing the punishment order. Thus there has been denial of reasonable opportunity to the applicants and the punishment ~~aw~~ awarded by the disciplinary authority was set aside and the matter was remitted back for de-novo enquiry from the stage of supply of enquiry report together with the disagreement note of the <sup>ad hoc</sup> disciplinary authority with the IO's findings. Thereafter applicants were served with the memo dated 20.1.1999 and 28.1.2000 respectively calling <sup>vague</sup> representations from them giving/reasons of disagreement of the enquiry officer's findings. The applicants their representations to the said memorandum vide Annexure A-6.


2.1 After receiving the representations from the applicants ad hoc disciplinary authority vide its orders dated 30.9.1999 and 26.6.2000 on the basis of vague reasons for disagreement and without applying its mind rejected the representations of the applicants and imposed the penalty of reduction in five stages for five years against applicant



in OA No. 833/2001 with in OA 806/01 and for three years against applicant/cumulative effect i.e. from the stage of Rs. 6125 to 5500 in the pay scale of Rs. 4500-7000 and during that period the applicants shall not be entitled to earn increments. Being aggrieved by the said orders passed by the disciplinary authority the applicants preferred their respective appeal before the appellate authority and the appellate authority without considering the contentions of the applicants raised in their appeals, rejected the appeals vide its orders dated 21.8.2001 (A/8) and 11.9.2001 (A/8) respectively. Hence, Impugned orders are bad in law and are liable to be quashed and set aside.

3. Heard the learned counsel for both the parties and carefully perused the material on record.


4. It is argued on behalf of the applicants that the enquiry officer had exonerated the applicants from the charges levelled against them as there was no evidence to support the alleged charges but the disciplinary authority had passed the order of compulsory retirement against both the applicants disagreeing with the findings of the enquiry officer which was not based on any cogent reasons, whereas the appellate authority modified the order of punishment compulsory retirement to that of reduction of pay and subsequently the matter was remitted back to the disciplinary authority for de novo enquiry. After remittance for fresh enquiry, the applicants were not given proper opportunity of hearing and the mandatory procedure prescribed for conducting the enquiry was also not followed by the respondents. However the disciplinary authority vide its orders dated 30.9.1999 (A/7) and 26.6.2000 (A/7) respectively imposed the penalty of reduction of pay against which both the applicants preferred their respective appeals which were rejected by the appellate authority confirming the orders of the disciplinary authority. It is further argued that the orders impugned in these OAs are non-speaking orders and deserve to be



quashed and set aside.


5. In reply, the learned counsel for the respondents argued that the allegations against the applicants are very serious in nature as they extracted the material from the parcel which was entrusted to them while posted at their official duties as the alleged parcel was the public property. It is further argued that <sup>by</sup> the said act of the applicants the reputation of the postal department is maligned. He further argued that due opportunity was given to the applicants as they submitted their representations, preferred appeals against the orders passed by the disciplinary authority which were considered <sup>speaking</sup> by the respective authorities and passed appropriate/orders. Hence, no irregularities and illegalities have been committed by the respondents in passing the impugned orders.

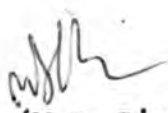
6. After hearing the learned counsel for both the parties and careful perusal of the record in both the OAs, we find that due opportunity of hearing was given to the applicants as they submitted their representations and also preferred appeals before the appellate authority and both the authorities considered their contentions raised in their representations and appeals before passing the impugned orders. Though earlier the appellate authority remitted back the matters to the disciplinary authority for denovo enquiry, but after that also the applicants were given due opportunity of hearing <sup>impugned orders</sup> to submit their representations and appeals and the/were ~~were~~ passed after due consideration of their contentions raised in their respective representation and appeals. We have gone through the impugned orders passed by the concerned authorities and found that them speaking and reasoned orders. So far as allegations of the applicants that the respondents during the enquiry proceedings produced the fabricated seizure memo drawn by Shri Goswami and forcible signature on it and obtaining the statements of certain colleagues of the applicants including themselves in an forceful manner is concerned, the said version



of the applicants cannot be accepted because both the applicants are responsible and experienced employees. Moreover, they did not make any complaint to the higher authorities in this regard and no reasons have been shown for not making the complaint in this regard to the higher authorities. Had it been so, it was the duty of the applicants to apprise the higher authorities well in time about the said fact. When the applicants have failed to do so, the said contention of theirs cannot be accepted being baseless and false. We also find that due opportunity of hearing was given to the applicants following the principles of natural justice. Moreover, in view of the settled legal position the Tribunals/Courts cannot re-appraise the evidence and also cannot go into the quantum of punishment.

7. Having regard to the facts and circumstances of these cases and in the light of observations made above, we are of the considered view that both these OAs lack merit and deserve to be dismissed which are accordingly dismissed. No costs.

  
(Madan Mohan)  
Member (Judicial)

  
(M.P. Singh)  
Vice Chairman

/na/

प्रमाणित सं ओ/या.....जबलपुर, दि.....

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(1) सचिव, जबलपुर, दि.....जबलपुर

(2) सचिव, जबलपुर, दि.....जबलपुर

(3) सचिव, जबलपुर, दि.....जबलपुर

(4) सचिव, जबलपुर, दि.....जबलपुर

सचिना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

AK Singh

an Nandoo

19-7-04

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on 19.7.04