

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 872 of 1998

Jabalpur, this the 1st day of October, 2003.

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member
Hon'ble Mr. G. Shanthappa, Judicial Member

B.P. Dubey S/o Shri R.D. Dubey,
Compulsory retired, as Sorting
Assistant, RMS, RP DN,
Bilaspur(M.P.)

APPLICANT

(By *Advocate - Ku. M. Dadariya)

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Union of India, Through,

1. Ministry of Communication
Department of Post,
New Delhi.
2. Director Postal Services,
Raipur, Region(Department of
Postal, (PMG) Raipur.
3. Assistant Post Master General,
(S.R. and W.L.) Department of
Post (M.P. Circle) Bhopal.

(By Advocate - Shri P. Shankaran holding brief of
Mr. S.C. Sharma)

O R D E R

By G. Shanthappa, Judicial Member -

The applicant has filed this Original Application seeking the relief to quash the orders dated 4.6.1998 (Annexure-A-1) and 12.10.1998(Annexure-A-2) passed by the disciplinary & appellate authorities respectively. The applicant has also prayed for grant of all consequential benefits, from the date of order dt. 12.10.98 at Annexure-A-2

2. The brief facts of the case are that the applicant while he was working as Head Sorting Assistant at Jagdalpur has committed a misconduct. A charge-sheet date 28.5.90 was issued levelling four articles of charges against him. The first charge was that the applicant managed to open unauthorisedly Ramwadi(Bombay-2) Ins. Parcel No. 725 dated 21.6.1989 under transmission through Jagdal-pur Stg/2 dated 25.6.1989 with dishonest intention and managed

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to abstract part of its contents from the said parcel and unauthorisedly shared amongst staff on duty and thereby failed to maintain absolute integrity as required by him under Rule 3(1)(i) of CCS(Conduct) Rules, 1964.

The second charge was that while he was functioning as Head Sorting Assistant he acted in a most unbecoming manner and show lack in devotion to duty in as much as while he was the HSA of the seat was required to exert strict and vigilant supervision for proper functioning of Jagdalpur Stg/2 dated 25.6.1989 as required under Rule 49 of P&T Manual Vol.VII whereas he openly managed to abstract contents from Ramwadi Ins.Parcel No. 725 thereby violated Rule 3(1) (iii) and 3(1)(ii) of CCS(Conduct) Rules.1964. The third charge was that he managed to despatch Ramwadi(Bombay-2) Ins.Parcel No. 725 in tampered condition and less weight with his knowledge from Jagdalpur Stg./2 dtd.25.6.89 to Jagdalpur HO in utter violation of Rule 92(3) of P&T Manual Volume V and Rule 48(3) of P&T Manual Vol.VII and thereby failed to maintain full devotion to duty, and the fourth charge was that he managed to despatch Ins,Bag No. 2 from Jagdalpur Stg/2 dt.25.6.89 to Jagdalpur HO without noting the accurate weight and with an ulterior intention in violation of Rule 92(3) of P&T Manual Vol.V and Rule 48(3) of P&T Manual Vol.VII and thereby exhibited lack of devotion to duty required of him under Rule 3(1)(ii) of CCS(Conduct)Rules,1964. The applicant submitted his reply to the above mentioned charge sheet, denying the charges levelled against him. Thereafter a full-fledged enquiry was held against him. The applicant was served with a notice to attend the enquiry but he refused to sign the order-sheet dt.9.8.1990. Subsequently, he attended the dates of hearing. The enquiry officer has recorded the evidence of witnesses and marked the documents. Though the applicant had represented during the course of oral enquiry on 19.4.1991 the applicant presented an application dated 11.4.1991 and he desired to cross-examine all the PWS

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examined at Jagdalpur and he had also demanded copies of the list of documents. The applicant submitted his written statement of defence and he failed to intimate the names and address of the defence witnesses. The applicant submits without giving an opportunities to the applicant to cross-examine the witnesses, the enquiry officer concluded the enquiry and submitted his findings with an observation that all the charges are proved against the applicant. A copy of the enquiry report was served on the applicant. He submitted his objection to the said enquiry report vide his representation dated 25.9.1991, to the superintendent, RMS, Raipur. The disciplinary authority has considered the objections of the applicant and has passed the impugned order dated 4.6.1998 imposing the penalty of compulsory retirement of the applicant with immediate effect.

3. The case of the applicant is that the respondents including the enquiry officer have violated the principles of natural justice in as much as the applicant was not provided the assistance of defence assistant and copies of the documents sought for, were not provided to him. The applicant further urged that the staff who had received the sarees have not been questioned with regard to possession of stolen article from their possession nor they have been prosecuted for their misconduct. There was an inordinate delay in finalising the enquiry. He has further urged that there was no opportunity to cross-examine the prosecution witnesses and also there was no opportunity to examine the defence witnesses and the documents were not supplied to him. Hence the entire proceedings are vitiated which violates the principles of natural justice and the entire proceedings are liable to be quashed.

4. The respondents have submitted ~~in~~ their reply denying the contentions raised by the applicant. The respondents

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submit that the applicant was the Head Sorting Assistant and his duty was to supervise the staff who has tampered with the parcel. According to Paragraphs 15 and 16 of the reply they have specifically contended that sufficient opportunity was given to the applicant for cross-examination from 18.2.1991 to 22.2.1991, but the applicant failed to make use of the opportunities to cross-examine the witnesses. Even on subsequent date of enquiry proceedings, the applicant failed to make any request for cross-examination. The applicant has submitted his representation on the basis of the enquiry report. The enquiry report and other documents were given to the applicant, even then the applicant submitted that no documents were supplied to him. The applicant failed to attend the enquiry on 23.2.1994, 18.3.1994 and 27.6.1994, deliberately for one reason or the other. The enquiry officer had no other way but to proceed with the enquiry. All the grounds urged in the application are denied by the respondents.

5. The applicant submitted his rejoinder to the reply. In the rejoinder the applicant has reiterated the same contentions as mentioned in the OA except delay in concluding the enquiry.

6. We have heard the learned counsel for the parties and have carefully perused the pleadings and records.

7. The learned counsel of the applicant has argued, that the order of the disciplinary authority is not a speaking order. He has not considered the enquiry report in detail and passed the order of punishment, ^{of} compulsory retirement from service with immediate effect. The learned counsel further submitted that the appellate authority has also not given an opportunity of personal hearing, while confirming the order of punishment, ^{of} compulsory retirement imposed by the disciplinary authority. He submitted that that the orders passed by the Disciplinary Authority and the Appellate Authority ^{are} illegal which amounts to violation of principles of natural justice.

8. The learned counsel for the respondents argued on the basis of the reply and also on the basis of the documents. The learned counsel contended that though sufficient opportunities were afforded to the applicant, to cross-examine the prosecution witnesses but he did not choose to cross-examine the witnesses and he failed to examine his defence witnesses. Now at this stage he cannot be permitted to say that, no opportunity was given to him. It is further submitted that the respondents including the enquiry officer have followed the procedure laid down in the rules and also the principle of natural justice. There is no error or illegality in the proceedings of enquiry, and while passing the impugned order and confirmity the penalty. Accordingly this application deserves to be dismissed.

9. We perused the enquiry report at Annexur-1(a). The enquiry report speaks, the applicant himself attended the enquiry and on 9.8.90, he refused to sign the order sheet. para 5 of the said report is extracted below :-

5. Next hearing was fixed on 9.8.90 at Bilaspur the official attended but he refused to sign the order-sheet No. 02 dt 9.8.90. The hearing was fixed for production of documents and its examination but official again showed his inability to examine the documents without his Defence assistant. The SPS did not comply with the instructions contained in this office memo No. DE 7/90 dated 2.7.90, 22.7.90 and order sheet No. 01.dtd. 14.7.90.

On 5.11.90 at 12.00 hrs the applicant and D.A Shri A.L. Baiswade did not attend the enquiry and he was placed ex-parte. Subsequently at 12.15 hrs. he approached the enquiry officer, standing that, he was unable to attend hearing without his DA Shri A.L. Baiswade. The applicant did not submit an application for setting aside the ex-parte order. Later on 20.11.90 the applicant nominated Shri C.P. Tiwari Rtd. LSG. S.A. Raipur as Defence Assistant, Though the enquiry proceedings were posted for cross-examination of witness, the applicant failed to make use of cross-examination.

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10. D.E. was held ex-parte at Jagdalpur from 19.2.91 to 22.2.91. Though the applicant and his Defence Assistant attended the enquiry proceeding, he failed to cross-examine 13 witnesses. All witnessess have given evidence in supporting the charges levelled against the applicant. The applicant has shown dilatory tactic before the enquiry officer. He tried to stall the enquiry proceedings ~~by one~~ ^{by one} way or the other method. The rejection of the request of the applicant, will not vitiate the enquiry.

11. Para 5 to 19 of the enquiry report speaks about the assigning the reasons of the different dates of hearing, the statement of witnesses and the material placed before the enquiry officer. Hence we are of the opinion, that there is no illegality and violation of procedure in conducting the D.E.

12. We have perused Annexure-A-1 i.e. the order passed by the disciplinary authority. We find that the disciplinary authority has given the reasons and a speaking order has been passed. Paras 12.2.2 and 13.3 of the said order which are relevant and reproduced below :-

12.2.2. From the findings of enquiry it transpired that the parcel detailed in the charge was received from Bilaspur R.M.S. on 25.6.89 in good condition at Jagdalpur Sorting II, of which Shri Dubey was Head Sorting Asstt. The article was meant for onward transmission to Jagdalpur H.O. for delivery to addressee. It was opened at Jagdalpur Stg.2 unauthorisedly and dishonestly, and six sarees were abstracted from it. In order to make up the loss in its weight, pieces of brick were kept in it. This resulted in the parcel looking outwardly to be loose. Some of the seals and posted stamps got detatched during the process of abstraction. The suspicious and damaged condition of the parcel was noticed at Jagdalpur H.O. by the Parcel Clerk and the Postmaster, in whose presence the insured bag was opened. It was found to be weighing 4340 grams against 4600 grams noted on it. It was protected and kept with the Treasurer. Open delivery was given to the addressee. At the time of delivery it was found that six sarees were received short. These six sarees were distributed amongst the staff of Jagdalpur Stg.2. Shri Dubey took two and gave one each to the other four staff namely the RSA, RSA, Mailman and DRM. Though it was not clear from the evidence adduced during enquiries as to whether the abstraction was done by or in the presence Shri Dubey, the evidence was overwhelming to sustain the charge that contents of the parcel were abstracted and shared by the staff including Shri Dubey.

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13.3. Shri B.P. Dubey has also contended that the ~~de~~ novo proceedings were not held as per the direction of the APMG(Staff)(i.e.) the proceedings were not held from the stage of examination of prosecution documents. The record of enquiry does not show the reasons for holding ~~de~~ novo enquiry from the stage of examination of Defence Witnesses instead of from the stage of prosecution documents. However, taking it consideration the outcome of the proceedings, the continued no-co-operative attitude of Shri Dubey and the time that has elapsed since the occurrence of the incident, I find that the evidence is overwhelming against Shri Dubey. I hold all the four charges as proved beyond any reasonable doubt. It is very serious that Shri Dubey, who as HSA was incharge of the set, had stooped to the extent of abstracting the contents of/having the contents abstracted from an Insured Parcel which was received during the course of it journey to the destination. The abstracted contents were brazenly appropriated by the staff who were on duty. Shri Dubey took two sarees after giving one to each of the other four staff members. To make up for the drop in weight caused by the abstraction pieces of brick were put. To conceal the difference in weight which might still be there, the six insured parcels were unevenly divided into two insured bags-five in one bag and only one in the other - and weight of one of the bags was not recorded. Instead, a remark 'heavy' was noted. There is no doubt that Shri Dubey had acquiesced, abetted and contributed to the tampering and abstraction of the Insured parcel in contravention of rules of procedure and conduct Rules. The gravity of Shri Dubey's misconduct is more serious if the fact that he is the supervisor of the Set is taken into consideration. This calls for and justifies a deterrent action. However, taking into consideration the length of service rendered by Shri Dubey, lenience is being shown.

We find that the disciplinary authority has assigned while the reasons ~~in~~/passing the order and finally come to the conclusion that all the charges against the applicant are proved and passed the order of compulsory retirement of the applicant from service with immediate effect. The appellate authority has also carefully considered the memorandum of appeal and decided the appeal, confirming the punishment awarded by the disciplinary authority and rejected the appeal. The appellate authority has also gone through the entire documents, deposition of witnessess, enquiry reports and brief submitted by ^{the applicant} ~~all concerned~~, and found that there is no doubt that the applicant had abetted and contributed to the tampering and abstraction of the insured parcel no. 725. When the charges were proved, on

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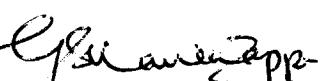
the basis of the evidence, the appellate authority had no other option to decide the appeal in accordance with law. Accordingly the appellate authority has rejected the appeal. The impugned orders are passed by following the procedure and principles of natural justice.

13. The D.A. has properly assigned reasons on the enquiry report and passed the order, on the basis of the findings of the enquiry officer. The reasons are assigned which are extracted in earlier para 12 of this order. There is no illegality or irregularity while passing the order of punishment.

14. The appellate authority has also assigned the reasons for confirming the order of D.Authority. The finding recorded by the appellate authority are considered in the earlier para of this order. The Hon'ble Supreme Court held, the enquiry proceedings will not vitiate in view of the reported judgment reported in (2002)8 SCC 68 Debotosh Pal Chaudhary Vs, Punjab National Bank & Ors.

15. After perusal of the D.E. proceedings, the relevant records and hearing the learned counsels for both the parties, we are of the firm opinion that the respondents have followed the principles of natural justice and passed a speaking order by assigning the reasons for proving the charges levelled against the applicant. On the basis of the pleadings and records the applicant has failed to prove his case. There is no infirmity in the action of the respondents and does not call for any interference. Therefore we hardly find any merit in the grievance made by the applicant.

16. In the result, this application is dismissed, however without any order as to cost.


(G. Shanthappa)
Judicial Member


(Anand Kumar Bhatt)
Administrative Member