

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.225/99

Indore, this the 29th day of September 2004.

CORAM

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

Om Prakash Sharma
S/o Shri Genda Lal Sharma
Postal Assistant (Treasurer)
Head Office Khargone
R/o 48, Shani Gali
Indore (M.P.)

...Applicant

(Applicant in person)

Versus

1. Union of India through
The Secretary
Ministry of Communication
New Delhi.
2. The Director General
Postal Services (Dak Bhawan)
Sansad Marg, New Delhi.
3. The Director
Postal Services
Indore Region Indore
Office of the Postmaster General
G.P.O. Indore.
4. The Superintendent of Post offices
Khandwa Division Khandwa (M.P.)
5. The Assistant Supdt. of Post offices
Bhopal (West) Sub Division
Bhopal (Inquiry Officer).

...Respondents

(By advocate Mr.S.A.Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member

The applicant seeks the following reliefs:

- (i) To quash impugned order dated 30.6.97 (Annexure A1).
- (ii) Direct the respondents to provide all the service benefits to the applicant by reinstating him in service.

2. The brief facts of the OA are as follows:


The applicant was appointed as postman on 1.7.66 by the Inspector of Post offices, Indore Division, Indore and since 13.2.1974 he was working at Post Office, Khargone Head office. The applicant was granted 4 days casual leave with effect from 12th to 15th June, 1989 with prefix general holiday of Sunday the 11.6.89 with permission to leave HQ. on 12.6.89 at 18.45 hrs, a report of embezzlement was made

at Police Station, Khargone against the applicant and others. A criminal case for the offence punishable under Section 409 of I.P.C. was registered and investigation proceeded. During investigation the police broke open the lock of the residential house of the applicant in his absence and conducted a search on 13.6.89 and threw all the domestic materials on the road (Annexure A-4). The applicant was suspended w.e.f. 14.6.1989. Thereafter a charge sheet dated 9.1.1990 was issued to the applicant (Annexure A-6) for causing financial loss amounting to Rs. 1,91,000/- to the Department. Despite request, the applicant was not given the copies of relevant and necessary documents to enable him to submit the facts and true written statement of defence. The applicant was not paid subsistence allowance since March 1990 for 17 months. The applicant made a representation but nothing was heard in response. The applicant could not have been provided the services of defence assistant and the whole departmental enquiry was conducted behind his back. During the pendency of the departmental enquiry, respondent No. 3 without assigning any reason revoked the suspension order dated 14.6.89 of the applicant vide order dated 10.8.93. Repeatedly the enquiry officers were changed by the respondents. The whole departmental enquiry was conducted behind the back of the applicant in ex-parte manner. No opportunity had been given to the applicant to defend himself. The letter dated 16.4.1997 along with the enquiry report showed that the charges of irregularities have been alleged to be proved against the applicant. The applicant sent his reply on 5.5.1997. Thereafter the applicant came to know about his removal from service with effect from 30.6.1997. The applicant filed an appeal before the appellate authority which is pending with the respondents. Hence, this Original Application.

3. Heard the learned counsel for the respondents and the applicant and perused the records carefully.

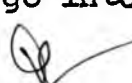
4. The applicant who is present in person has submitted his written submissions. He has drawn our attention to an order passed in this OA dated 4.9.2003 in which it is mentioned that in the present case, the applicant has assailed Annexure A-1 dated 30.6.1997, whereby the applicant has been removed from service w.e.f. 30.6.1997 in the departmental proceedings initiated against him under CCS(CCA) Rules, 1965. He has further mentioned in his written submission dated 19/20.7.2004 that after the order of the Tribunal dated 4.9.2003 to dispose of the appeal of the applicant by the respondents, the appellate authority vide order dated 10.11.2003 had rejected the appeal of the applicant dated 11.6.1998. The appellate authority has not applied his mind while rejecting the appeal of the applicant. No opportunity of hearing was granted to the applicant. Thus, the OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the applicant acted in contravention of Rule 54 of FHB Vol. II Rule 128 of FHB Vol. I. Rule 58 Aof FHB Vol. II, 31(B) (1) of FHB Vol. II and also failed to maintain absolute integrity and devotion to duty by contravening Rule 3(1) (i) (ii) of CCS(Conduct) Rule, 1964 and also the Department has sustained loss of cash worth Rs. 1,91,000/-. In reply to the memo of charges the applicant requested for extension of one month period for submission of his representation. His request was considered and he was given 15 days time and he was also informed that on expiry of extended period of submission of his representation ex-parte decision would be taken. When the applicant did not submit any representation, then the respondents decided to hold the departmental enquiry. The copy of the enquiry report was given to the applicant. The applicant submitted his representation and the disciplinary authority vide



order dated 30.6.1997 imposed the penalty of removal from service. Against the order of the disciplinary authority the applicant preferred an appeal which was also rejected. The order of payment of subsistence allowance to the applicant was issued on 8.3.1989. The applicant has been given full opportunity of being heard and to participate in the departmental enquiry before the enquiry officer, but inspite of that he has not participated in the departmental enquiry and hence, the enquiry officer has conducted the ex-parte enquiry. The orders of the respondents are speaking and reasoned orders and no interference of the ^{Tribunal} is required. Hence, the OA is liable to be dismissed.

6. After hearing the learned counsel for the respondents and the applicant and after carefully perusing the records, we find that the applicant was given full opportunity of hearing during the course of departmental proceedings. We also find that the applicant did not participate in the enquiry on several dates and due to this the enquiry officer decided to conduct the enquiry ex-parte. Now at this stage the applicant cannot allege that he has not been given full opportunity to defend his case. The charges levelled against the applicant have been proved during the course of enquiry and the enquiry officer also submitted his report holding that the charges are proved. The disciplinary authority vide the impugned order dated 30.6.1997 imposed the penalty of removal from service on the applicant and as he did not accept the order of removal from service the same was published in the daily newspaper Nav Bharat, Indore dated 1.4.1998 (Annexure A-1). The applicant submitted his appeal and the appellate authority vide order dated 10.11.2003 has rejected the appeal of the applicant during the course of this O.A. This is not a case of no evidence. 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. Thus, we are of the considered opinion that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पृथक्कन से औ/न्य.....जबलपुर, दि.....
पतिलिपि वाच्योक्ति:-
(1) सचिव, उच्च न्यायालय, उच्च न्यायालय, जबलपुर
(2) जज (अधीनस्थ) श्री/श्रीमती के कार्यालय
(3) जज (अधीनस्थ) श्री/श्रीमती के कार्यालय
(4) वाच्योक्ति, उच्च न्यायालय, जबलपुर न्यायालय
मुख्य न्यायाधीश उच्च न्यायालय, जबलपुर

Shri K.K. Sharma HC JB
Shri S.A. Dhadhcar HC JB

न्यायालय

Issued
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