

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.321/1999

Debalpur, this the 19th day of December, 2003

Hon'ble Shri M. P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Hardayal Bhagirathi Vahatwar, aged 52 years,
s/o Shri Bhagirathi Vahatwar
r/o Near Old Post Office
Gulabra
Chhindwara (MP). ... Applicant

(By Advocate: Shri V. Tripathi)

Versus

1. Union of India through its Secretary Ministry of Communication Department of Post New Delhi.
2. Post Master General Raipur Region Raipur.
3. Director Postal Services Raipur Region Raipur.
4. Superintendent of Post Offices Head Post Office Chhindwara. .. Respondents

(By Advocate: Sh. P. Shankaran)

ORDER

By G. Shanthappa, Judicial Member -

The said Original Application is filed seeking the relief to set aside the impugned order dated 24.11.1998 at Annexure A-1, direction to the respondents to reinstate the applicant with all consequential benefits as if the impugned order dated 24.11.1998 is never passed and also by way of amendment it was prayed to hold the second enquiry as bad in law for same set of allegation, set aside the second charge sheet dated 29.04.1997 (Annexure A-2) and to set aside the appellate order dated 29/30.09.1999 (Annexure A-15).

2. The case of the applicant is that the applicant was served with a charge sheet dated 29.04.1997 vide Annexure A-2 under Rule 14 of the CCS(CCA) Rules, 1965, with the allegation that the applicant has unauthorisedly occupied land of P-ostal Department which has been purchased by the Postal Department from Nazul Department, Chhindwara to construct official quarters. It is further alleged that the applicant has constructed a house on the said land and he is claiming that he is ostensible owner of the house. The said house was occupied by unauthorised person Mr. Anita Dixit and she is residing with her family and she is also claiming ostensible owner of the house.

3. The applicant had submitted his reply to the said charges. The respondents were not satisfied with the reply of the applicant and initiated departmental enquiry against him. The applicant participated in the enquiry with effect from 12.01.1998. Three prosecution witnesses were ^{examined} ~~produced~~ out of 4 witnesses. The applicant presented himself for ~~examination and cross-examination~~ ^{of witness}. During the departmental enquiry the presenting officer submitted his brief on 24.08.1998 (Annexure A-4) and the applicant has also submitted his defence brief on 07.09.1998. After submitting written brief from both the sides, the enquiry officer ^{after conducting enquiry} ~~submitted his~~ report on 21.09.1998 (Annexure A-6), wherein the applicant was found guilty without considering the defence of the applicant. The applicant submitted his representation on 25.10.1998 and very categorically pointed out the defencs of the enquiry report and requested for considering his defence. The disciplinary authority ignored the representation of the applicant and imposed punishment of removal from service on 24.11.98, which was passed without application of

mind and to save real culprits of the Department who were involved in the encroachment of the land.

4. Against the order of the disciplinary authority the applicant had preferred an appeal to the Post Master General, Raipur on 07.12.1998 vide Annexure A-8. In the appeal the applicant has taken his defence that the applicant is not the actual owner and the actual owner of the alleged house was one Mr. Anita Dixit who is living with her family and the applicant has nothing to do with her occupation. The enquiry officer has not properly conducted the enquiry and no action has been taken against Mr. Anita Dixit to get the land vacated. To show that Mr. Anita Dixit is in occupation she had obtained water connection from Municipal Corporation and the electricity connection from the Electricity Board in her name. The Department has also not approached the competent authority under the Public Premises (Unauthorised Occupant) Eviction Act, 1971 to evict the unauthorised encroachers of the Department land. The applicant was made scape goat to save officers of the respondent Department.

5. The enquiry officer has relied on the statement of witnesses which was recorded during the fact finding enquiry by Mr. Ahirver behind the back of the applicant. The prosecution witnesses namely Shri Phool Chand Brajawar and Shri Rajendra Alias Raju Contractor were never produced before the Enquiry Officer for cross examinations. The statement of Rajendra alias Raju Contractor was heavily relied by the prosecution which was given in the facts finding enquiry. One prosecution witness Shri Radheshyam's statement was also recorded during the facts finding enquiry and the same statement was produced during the Departmental

enquiry. The appellate authority has dismissed the appeal confirming the orders of the disciplinary authority. The grounds urged in the appeal memo was not considered by the appellate authority. Hence the entire proceedings initiated against the applicant was against the principles of natural justice.

6. Per contra the respondents have filed a detailed reply denying the allegations and the averments made in the application. The area measuring 60,000 Sq. Ft for construction of staff quarters was purchased in Chhindwara town in Untkhana area from the State Government in the year of 1984, by the Department. The Board indicating the ownership of postal Department of this vacant land was exhibited cautioning against illegal construction on this land. The applicant ^{then} ~~then~~ Postal Assistant, Chhindwara was found provoking some postal officials working in Chhindwara town to acquire ^{the} ~~encroach~~ ^{land} ~~land~~ illegally the plot on this vacant land for construction of houses. Some of the postal officials have constructed the plinth on that land acquiring it illegally. The Superintendent of Post Offices got the land vacated by way of serving notices on such postal officials. After service of notice on the applicant on 20.07.1993 the applicant stopped the construction of the house on the Government land. Then after completion of the construction of the house the applicant had given the house to Ku. Anita Dixit. The said house is constructed by encroaching the land measuring 25 X 35 feet. The applicant and another postal official Shri Phoolchand Bazaria did not vacate the illegal construction of house on that land even after issuance of notices to them. The postal official Shri Phoolchand Bazaria was proceeded against under CCS (CCA) Rules 1965, for encroachment and illegal construction

of house on the Government land and was compulsorily retired from service. Similarly the applicant was also served with a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 for illegal encroachment and construction of house on the Government land. In the departmental proceedings the applicant did not raise any objections, participated in the proceedings, cross-examined the witnesses and he did not produce his defence witnesses. Even in his defence statement he did not take any ground regarding his additional witnesses.

7. The enquiry officer has completed his enquiry and recommended for punishment on the basis of the preliminary enquiry conducted by the departmental officials. There is no defect in conducting the enquiry and the enquiry officer has followed all the procedure and ample opportunity was given to the applicant to participate in the enquiry. The enquiry officer has recorded the evidence in the presence of the applicant. It is specifically mentioned that the enquiry officer has ^{not} examined the prosecution witness one Shri V.K. Purohit in the absence of the presenting officer. The mis-conduct of the applicant was proved under Rule 3(1)(i) (ii) of CCS (Conduct) Rules, 1964. The charges levelled against the applicant has been established by the prosecution, on the basis of the evidence recorded during the course of the enquiry and also on the basis of the enquiry report the disciplinary authority has imposed the punishment of removal from service. The disciplinary authority has passed a detailed and considered order on the basis of the enquiry report. There is no colourable exercise of powers and also there is no violation of principles of natural justice. There was a fair enquiry conducted by the enquiry officer and also a fair consideration by the disciplinary authority.

8. Whatever grounds is urged by the applicant in

his appeal, the appellate authority has considered the same and passed the order confirming the order of the disciplinary authority. The entire procedure followed by the respondents is legal and there is no violation of principles of natural justice. Hence the applicant is not ~~entitled to be granted~~ of any relief as prayed in the OA, and the same deserves to be dismissed.

9. Subsequently to filing of the reply the applicant has submitted his rejoinder. In the rejoinder he has not brought any extra facts clarifying the reply submitted by the respondents. Alongwith the rejoinder he has submitted the notice dated 27.01.1993 and 10.02.1993 and order sheets dated 27.07.1998 and 05.03.1998. It is also further contended that the respondents' contentions are misleading and baseless that ~~Ku.~~ Anita Dixit has nothing to do with the allegation made against the applicant. It is further mentioned that ~~for/very~~ ^{the} same misconduct the respondents issued charge sheet dated ^{the name of} 16.01.1996, wherein Ku. Anita Dixit was included as prosecution witness but when Ku. Anita Dixit refused to give her statement as per instruction of the respondents her name was deleted from the list of witness in the second charge sheet. Even otherwise Ku. Anita Dixit was an important witness, whose name should have been mentioned in the second charge sheet, because she is directly concerned with the present dispute. The proceedings dated 27.07.1998 vide Annexure RJ-3 shows that on the said date the presenting officer was absent and enquiry officer has examined the prosecution witness in the absence of the presenting officer. Therefore the allegation of the applicant is correct that the enquiry officer has acted as a prosecutor rather than a Judge. Hence the said statement cannot be considered and the averments made in the reply statement should be rejected.



10. Subsequent to filing the rejoinder the respondents have filed an additional reply to the rejoinder mentioning that the enquiry officer in his enquiry report at page 12 line No. 21 to 24 has clearly indicated about the provocation made by the applicant. As far as the question of giving the house to one Ku. Anita Dixit is concerned, neither this issue was taken in the Article of charge nor it was related to the charge specifically levelled against him. It was denied that the respondents have issued the charge sheet only on the basis of suspicion. Infact the same has been passed on the documentary and oral evidence which was produced during the enquiry vide Annexure-III and IV of the charge sheet. All the relevant points raised by the applicant in his defence have been fully considered and discussed by the disciplinary authority as well as by the appellate authority. Hence the contention in the rejoinder are denied. Regarding dropping the charge sheet, it has no relevance with the charge in question. The earlier charge sheet dated 16.01.1996 was dropped stating clearly its cause and such action was taken without prejudice to further action as prescribed in CCS(CCA) Rules, 1965. The applicant was free to produce any witness including Ku. Anita Dixit in his defence, during the course of departmental enquiry and it was upto him to have considered the necessity of producing any witness in his defence for which the due opportunity was given to him. Hence the contention made in the rejoinder are denied.

11. After hearing the advocate for the applicant and the advocate for the respondents and after perusal of the pleadings and the documents on record, we have proceeded to decide the application on merits.

12. The admitted facts are that the land belonged to

the Department and it has been unauthorisedly occupied by the employees of the Department. All the employees who have encroached the land was served with a notice and all of them have vacated except the applicant and one Shri Bazaria. The applicant was served with a charge sheet and he submitted his reply, participation^{ed} in the proceedings. In the departmental enquiry he was allowed to cross-examine and an opportunity was given to submit his witnesses from his side. The applicant failed to make use of ~~the~~ opportunity given by the enquiry officer. The case of the applicant is that the Contractor who had constructed the house and also the person who is in occupation of the house were not examined. Hence the entire proceeding is vitiated. The charges levelled against him is also illegal and the same are also liable to be quashed. It is further alleged that the Department has shown discrimination among one Shri Bazaria and the applicant. Shri Bazaria has been served with a charge sheet and he has been imposed a lesser penalty. The applicant submits that there is a discrimination^{shown} against the applicant and Shri Bazaria. He himself has admitted that both of them has encroached the land of the Department and the Department has imposed lesser punishment to Shri Bazaria. The applicant submits that no charge has been proved against him. This argument cannot be accepted. Hence the argument is rejected. The enquiry officer has given ample opportunity to the applicant to produce his evidence. The applicant^{has} not make use the opportunity and this fact cannot be considered at this stage.

13. On the basis of the enquiry report the disciplinary authority has imposed the penalty of removal from service. While imposing the penalty the disciplinary authority has considered all the aspects including the procedure of enquiry and also the statement submitted by the witnesses. The disciplinary authority has correctly exercised its po-

wers. Hence the impugned order of punishment is correct.

14. Being aggrieved by the said order of imposing the penalty, the applicant has preferred an appeal. The appellate authority has considered all the aspects including procedure of the enquiry and also the statement given by the witnesses and also the facts and the records. The powers exercised by the appellate authority is correct and there is therefore no illegality or irregularity in the order of the appellate authority. Accordingly, the order of the appellate authority is also proper and there is no violation of the principles of natural justice.

15. The case of the applicant is that in view of the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Rajkishore Pandey Vs. Rewa Sidhi Gramin Bank and another reported in 1989 MPLJ 530, disciplinary enquiry- previously recorded statements of witnesses recorded by CBI Inspector-Statement not read over during Departmental Enquiry-Termination invalid being in violation of principles of natural justice - Necessity of evidence in enquiry in presence of delinquent. The said case is not applicable to the facts of this case, since opportunity was given to the applicant to cross-examine the witnesses and also to produce his defence witnesses. The statement of the fact finding authority i.e. the departmental enquiry officer has been perused and the same has been examined. The same is also correct. The applicant has also cross-examined ^{the witness} before the enquiry officer. The Hon'ble High Court has exercised its powers under Article 226 of the Constitution of the India.

16. The applicant has also referred another judgment of the Hon'ble High Court of Bombay in the case of Chandra-kumar Madhukar Deshmukh & etc. Vs. The Board of Trustees of

Port of Bombay & Ors. reported in 1997 ILLJ 206 (Bombay High Court), in which the Hon'ble High Court has dealt with regarding domestic enquiry. It is well settled law that normally courts should not interfere with the findings of enquiry officer and the decision taken by the disciplinary authority based on the enquiry report unless the principle of natural justice is violated or the findings are perverse or biased- In departmental proceedings, guilt need not be established beyond reasonable doubt-Proof of misconduct may be sufficient- The standard of proof required is that of preponderance of probability. In the present case, it was found that the finding against the delinquent employees was a perverse finding and was in violation of the principle of natural justice-Orders against the employees ranging from dismissal to compulsory retirement, those by the Government in appeal and those by the reviewing authority were all quashed and set aside. In the said referred case the Hon'ble High Court has exercised their powers under Article 226 of the Constitution of the India keeping in view the judgment of the Apex Court. In the said case the petitioners have committed theft and that statements of the culprits become evidence before the enquiry officer even though the statements came before the enquiry officer purely as hearsay. In the said case some of the officials were charged and some officials were discharged from the charge. On that ground there was a discrimination in enquiry proceedings and to that effect the discriminatory treatment given by the authorities to the petitioners/delinquents. In that all the charge sheeted employees were charge sheeted for the same misconduct and the articles of imputation of charges were the same and evidence is the same against all the charge sheeted employees. However the appellate authority has partly allowed the appeals of some of the charge sheeted employees and they were ordered to be reinstated by reducing

the punishment of dismissal to stoppage of increment, whereas the appellate authority has dismissed the appeals of the petitioners-delinquents. It is violation of Article 14 of the Constitution of India. The facts of the said case are not applicable to the facts of this case. Hence the said judgment is not applicable to the present case.

17. When there is no violation of principles of natural justice and ample opportunity was given to the applicant to defend himself and also to cross-examine the witnesses, at this stage the applicant cannot say that this Tribunal has to go into the defects committed by the enquiry officer and also dis-proportionate of punishment was imposed against him and one Shri Bazarria. After careful consideration we are of the view that the Tribunal cannot go into the factual aspects of the enquiry proceedings, when there is a procedure followed by the enquiry officer and when there is no defects in the procedure. The applicant did not make use of the opportunities given to him and this Tribunal is not a fact finding authority and it cannot go into the factual aspects of the case. Since the appointing authorities have considered all the documents and the statement of witnesses and imposed the penalty, as they have powers to do so. Hence there is no defects in exercising the powers by the appointing authority.

18. The appellate authority has also considered all and the the aspects of procedure followed by the enquiry officer and the disciplinary authority and has confirmed the orders of the disciplinary authority. Hence there is no violation of the principles of natural justice.

19. After careful consideration of the records available and also the judgments referred by the applicant,

we find that there is no illegality or irregularity committed by the respondents and no principles of natural justice have been violated. The applicant has failed to prove his case for grant of any reliefs as prayed in the Original Application. Accordingly, the Original Application is dismissed. No costs.

G. Shanthappa

(G. Shanthappa)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

"SA"

कृतिकाल सं. अ/स/....., दिन....., वर्ष.....

संसदीय विधायिका

- (1) स. Paul, Adm.
- (2) P. Shankar, Adm.
- (3) अमृता, अधिकारी
- (4) अमृता, अधिकारी

Bejumla
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