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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 432/99

Jabalpur, this the 16th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Member (J)

B.L. Chouhan,
s/o Shri Bherulal Chouhan,
Ex-A.S.P.O. Bhopal (Cell) Circle,
Office Bhopal,
R/o Ghati-Bharbhujia, H.No. 28,
Chameli Wali Gali, Talaiya, Bhopal.

...Applicant

(By Advocate: Shri S. Paul)

-versus-

1. Union of India through
Secretary,
Ministry of Communication,
Department of Post,
New Delhi.
2. Member (P), Postal Services Board,
Dak Bhawan,
New Delhi.
3. Chief Post Master General,
Madhya Pradesh Circle,
Bhopal (MP).
4. Director,
Postal Services,
(Headquarter) office of Chief
Post Master General,
Madhya Pradesh Circle,
Bhopal (MP).

...Respondents

(By Advocate: Shri P. Shankaran)

O R D E R

By G. Shanthappa, Judicial Member -

The above O.A. has been filed by the applicant seeking the relief to quash the impugned orders dated 20.3.1996(A/1), 23.8.1996(A/2) and 28.7.1998 (A/3) with a further direction to the respondents to give him all consequential benefits of service with further promotion, emoluments and increments.

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2. The brief facts of the case are that the applicant was working as Assistant Superintendent of Post Offices (for short, A.S.P.O.) in Bhopal Sub Division (West) during 15.2.1994 to 17-6-1994. During the said period, the applicant came across a case of Sagir Khan, an E.D. employee of Berasia post office in Bhopal Division who had been put off his duty w.e.f. 21.12.1992 on account of a criminal case. On 16.6.1994, the said Sh. Sagir Khan met the applicant and requested for taking him on duty, on the plea that his family was financially hard hit and that other State Govt. employees, who were arrested by the police in the said criminal case, have been taken back on duty.

2.1 On humanitarian ground, the applicant after getting opinion from the A.P.P. through Mail overseer Lalji Ram's letter dated 16.6.1994 and also on the basis of A.P.P's report on 28.6.1994, revoked the orders of putting off Sagir Khan on 16.6.1994 and the said Sagir Khan resumed his duties at Berasia on 5.7.1994 with medical fitness certificate. On the basis of the said revocation order, the applicant was issued a chargesheet under Rule 14 of CCS(CCA) Rules, 1965 and the enquiry officer was appointed to enquire into the charges framed against the applicant. The article of charges are mentioned below:-

"ARTICLE - I

That the said Shri B.L.Chouhan, while functioning as Asstt. Supdt. of Post Offices, Bhopal West Sub Division during the period from 15.2.1994 to 17.6.94 irregularly revoked the put-off orders of Shri Sagir Khan, EDMC Berasia, and ordered his reinstatement on duty vide his order No. PF/EDMC, shown to have been issued on 16.6.1994, with full knowledge that Shri Sagir Khan had been put-off duty on account of pendency of investigation of crime No. 317/92 under Sections 147, 148, 436 and 435 I.P.C. registered at Berasia Police Station and that as a result of the investigation, a challan had been put up in the court of Judicial Magistrate Ist Class, Berasia on 22.3.1993, and the criminal case is still pending. Shri B.L.Chouhan was also fully aware that the representation dated 17.5.1993 preferred by Shri Sagir Khan against his put-off orders, had been duly considered and rejected by the Senior Supdt. of Post Offices, Bhopal vide

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his memo No. A-24/Berasia/Pt. II/93 dated 8.11.1993. It is, therefore, imputed that Shri B.L.Chouhan, the then A.S.P.Os Bhopal West Sub Division, acted in a manner grossly unbecoming of a Government Servant, and contravened Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE - II

That the said Shri B.L. Chouhan, while functioning as ASPOS, Bhopal West Sub Division during the period from 15.2.94 to 17.6.94 obtained a false and back dated report from Shri Lalji Ram Sharma, Mail overseer that he had contacted the Public Proxecutor in Sagir Khan's case, and that the Prosecutor had no objection if Shri Sagir Khan was allowed to resume duty. Shri B.L. Chouhan then issued an order No. PF/EDMC revoking the put-off orders of Shri Sagir Khan, EDMC, Berasia, anti dating the date of issue as 16.6.1994 instead of putting the correct date of issue i.e. 4.7.1994 to give an impression that the order was issued while Shri B.L. Chouhan was still holding office of the ASPOS, Bhopal West Sub Division. Shri B.L. Chouhan had been transferred from the post of ASPOS, Bhopal West Sub Division to the post of ASPOS, Bhopal East Sub Division vide CPMG Bhopal order No. STA.2-4/1994 dated 16.6.1994 ~~xxxxx~~ and had been relieved to avail EL/EL on M/C on 17.6.1994 A/N. Shri B.L. Chouhan enclosed the said anti dated order in a departmental envelope, and used his influence on Shri Purshottam Sahu, Packer, Kamla Park TSO Bhopal to have it stamped with the date stamp of that post office dated 16.6.1994. Shri B.L. Chouhan handed over that envelope to Shri Sagir Khan, with instructions to have it stamped with date stamps dated 18.6.1994 of Berasia Post Office. He also directed Shri Sagir Khan to impress date stamp of 18.6.1994 of Berasia Post office, on the order of revocation enclosed in that envelope. Shri Sagir Khan manged to comply with the instructions of Shri B.L.Chouhan on 5.7.1994 and resumed his duty at Berasia S.O. on 5.7.1994 itself. It is, therefore, imputed that Shri B.L.Chouhan the then ASPOS, Bhopal West Sub Division acted with an out of way and ill motive to oblige Shri Sagir Khan, EDMC, Berasia, failed to maintain absolute integrity, and also exhibited a conduct grossly unbecoming of a Government servant, contravening Rule 3(1)(iii) of CCS (Conduct) Rules, 1964".

2.2 The chargesheet and the necessary documents were served on the applicant on 28.10.1994.



2.3 The enquiry officer has conducted the enquiry and submitted his report on 25.1.1996 with the finding that the charges are proved. During the course of enquiry, the applicant was afforded reasonable opportunity and was served with the documents mentioned in the chargesheet. ~~The enquiry report~~ ~~which~~ ~~runs~~ ~~in~~ ~~22~~ ~~pages~~, was served on the applicant to submit his representation. The applicant submitted his representation against the said enquiry report.

2.4 The case of the applicant is that he, being a quasi judicial authority, exercised his powers and if anybody is aggrieved, he can prefer an appeal or revision before the higher authorities. Hence, there is no question of violation of any rules or procedure by the applicant as he had obtained the opinion of APP before revoking the order of put-off duty of Shri Sagir Khan. Since there is no illegality committed by the applicant, the respondents have unnecessarily issued the chargesheet against him.

2.5 During the enquiry, the enquiry officer has violated the procedure of enquiry. The evidence as per Ex.P4 was not properly proved by the prosecution witness. The person, who was holding the seal, stamp of the office has stated that he had not supplied the seal to anybody. When the person, who was holding the stamps, seals types and keys, the question of obtaining the seal and cover, as alleged in the enquiry proceedings which is beyond the procedure of enquiry. The enquiry officer has not considered the case of the applicant as per the Misc. Rule in Chapter-I regarding procedure of using the stamps, seals in the post office. Since the stamps, seals were kept under lock and key, the question of using the same by putting anti date from the post office does not arise. Hence, the prosecution has failed to prove the charges. Even then, the enquiry officer has given the finding that the charges

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are proved.

2.6 The statement of Sagir Khan was also recorded in which he has also stated that the applicant has not committed any irregularity as alleged in the chargesheet. There is a discrepancy in the evidence. Though the enquiry report runs in so many pages, all the statements adduced by the witnesses are in favour of the applicant. Hence, the procedure followed by the enquiry officer is illegal and the result of violation of principles of natural justice. The said stand has been taken by the applicant in his representation against the report of the enquiry officer.

2.7 While considering the enquiry report as well as the representation submitted by the applicant, the disciplinary authority has illegally passed the impugned order of imposition of penalty of removal of the applicant from service, which is disproportionate to the charges framed against him. Hence the impugned order passed by the disciplinary authority is liable to be quashed.

2.8 Being aggrieved by the said order of the disciplinary authority, the applicant preferred an appeal before the appellate authority. The appellate authority has also not considered the case of the applicant on the basis of grounds urged in the Memorandum of Appeal, while rejecting the appeal and confirmed the orders of the disciplinary authority. It is further submitted by the applicant that the appellate authority has passed a non-speaking order and the same is also liable to be quashed.

2.9 Against the orders of the appellate authority, the applicant preferred a revision petition before the revisional authority. The revisional authority has also confirmed the orders of the appellate authority as well as of the disciplinary authority and rejected the revision by passing a non-speaking order. Hence, all the impugned orders are liable to be quashed with a direction to the respondents to



re-instate the applicant in service with all consequential benefits, as prayed for in the O.A.

3. The respondents have filed their detailed reply denying the averments made in the O.A. They have admitted that the applicant was working as ASPO in Bhopal West Sub Division from 15.2.1994 to 17.6.1994 at Berasia Sub Division. One Sagir Khan, EDMC, Berasia has been put off duty w.e.f. 21.12.1992 by the then ASPO, Berasia as investigation of criminal case under No. 317/92 was pending against the applicant. After completion of investigation by the police authorities, the case was challaned in the court of Judicial Magistrate Berasia on 22.3.1993. Shri Sagir Khan preferred an appeal to Sr. Supdt. of Post Offices, Bhopal on 17.5.93 which was rejected by the said competent authority on 8.11.1993. The applicant revoked the put off orders of Sagir Khan after his relief from the post on transfer by an order purported to have been issued on 16.6.1994. The applicant, therefore, manipulated the reasons by antedating the issue^{date}/of order as 16.6.1994. Infact the order was issued by him on 4.7.1994 when he was medically unfit.

3.1 The Senior Superintendent of Post Offices, Bhopal directed ASPO, Bhopal West Sub Division to investigate the reasons for the delay in posting of the copy of the said orders. On the basis of preliminary enquiry, the disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 were initiated against the applicant by the disciplinary authority vide memo dated 28.10.1994. As the applicant denied all the charges framed against him, the enquiry officer was appointed to enquire into the charges.

3.2 The enquiry officer conducted the enquiry on different dates and submitted the enquiry report holding both the charges are proved. The enquiry report was supplied to the applicant on 6.2.1996 and 15 days time

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was granted to submit his representation against the said report, which was submitted by him.

After considering the enquiry report, representation of the applicant and all other relevant records, the disciplinary authority awarded the punishment of compulsorily retirement from service vide order dated 20.3.1996. Against the order of the disciplinary authority the applicant preferred an appeal before the appellate authority. The appellate authority after due consideration rejected the same and confirmed the penalty awarded to him. The applicant thereafter preferred a revision before the revisional authority i.e. Member(P) Postal Services Board, New Delhi against the punishment of compulsory retirement. The said petition was also rejected by the revisional authority on 28.7.1998.

3.3 When the authorities from the stage of enquiry officer upto the revisional authority have considered the case of the applicant following the procedure of enquiry and exercising the powers vested with them, it is a specific case that the applicant has manipulated by antedating the issue of the order as 16.6.1994 while the same was issued by him on 4.7.1994, which is a grave misconduct. The senior officer of the department is not supposed to do all these kinds of manipulation. While exercising the powers, the applicant has lost the integrity and devotion to duty, hence he does not deserve to be taken back in service. Resultantly, the O.A. is liable to be dismissed.

4. We have heard the learned counsel for the parties and have perused the pleadings and other relevant documents submitted by the applicant alongwith an MA No. 149/2004.

5. The main questions involved in this case are:

- 1) Whether the applicant has proved his case before the enquiry officer to show that the charges levelled against him are illegal?

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- ii) Whether the principles of natural justice are violated while conducting the enquiry ^{by} and also/the other authorities i.e. disciplinary authority, appellate authority and revisional authority while exercising their powers?
- iii) Whether this Tribunal can interfere with the powers vested with the authorities concerned in respect of quantum of punishment?

6. We have perused the enquiry proceedings in consonance with the article of charges. In the enquiry proceedings, all the witnesses are examined and the applicant has cross-examined them. The grievance of the applicant is that he has not committed any offence but exercised the powers vested with him being a quasi judicial authority. Hence, the respondents are not supposed to initiate any kind of enquiry on the allegations levelled against him.

6.1 We have also perused the statement of witnesses and the documents referred in the evidence, relevant portion of which is given as under:-

"Shri Chauhan produced Shri Moinuddin Khan, Clerk, O/O Chief PMG Bhopal as defence witness. This witness confirmed that he had written a letter to Shri Chauhan, recommending the case of Shoeb Khan, who is the brother of Shri Sagir Khan (Ex-D/13). He also said that Sagir Khan had given two photo copies of his complaint dated 26/07/1994 (Ex.D/14A). He had posted one copy to Shri V.P. Singh, SSPOS Bhopal from Harrakhed EDBO on 28.7.1994 vide receipt No. 987 (Ex.D/15) A.D. Card of the said letter is Ex.D-16. Shri Sagir Khan appeared as a state witness. He denied to have given any photo copy of D/14-A to Shri Khan, and said that his complaint dated 26.7.1994 (Ex.D/14) was all false, that it was written as per dictation of Shri B.L. Chauhan, and that he did not send the complaint to Shri V.P. Singh, SSPOS, Bhopal. In support of his statement, he also produced the original copy of the complaint which he had not posted. He also said that he had not authorised Shri Moinuddin Khan to make the complaint on his behalf. On the face of statement of Shri Sagir Khan, and production of original copy of the complaint, the evidence tendered by Shri Moinuddin Khan is proved to be un-reliable. The contents of Ex.D/14 are also proved to be false.

Shri Chauhan had got produced the hand-to-hand receipt book of ASPOS Bhopal West Sub Division (Ex-D/18) to prove the despatch of copies of

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of revocation order (Ex-S/10) to SPM Berasia, Sagir Khan, SSPOS Bhopal and Senior Postmaster, Bhopal, GPO. But later he changed his stand, and said that the entry was made only for the sake of his memory. In any case, the said exhibit does not prove that the copies of the said order were despatched on 16.6.1994. The said hand-to-hand receipt book was meant for transferring letters by hand to SSPOS Bhopal and Senior Postmaster, Bhopal, GPO. It cannot be believed that Sh. Chauhan was carrying it with him during his tour out of Bhopal. Hence it could not have been available with him on 16.6.1994, at Berasia, or Kamla Park T.S.O. where he claims to have gone immediately after getting down from SSP's vehicle. The entry in Ex D-8 is not proved to have been made on 16.6.1994 even for memory."

6.2 The applicant has relied on the orders passed against one Mr. D.K. Dubey, the charges against whom were of misappropriation of funds of the department and he was imposed the penalty reducing his pay from the stage of Rs. 5125/- to the stage of Rs. 4500/- with immediate effect for a period of seven years with cumulative effect. The official did not earn the increments during the period of reduction.

6.3 The applicant contended that when the stamps, seals and keys were under the custody of concerned officer, there was no question of utilising those stamps/seals to manipulate the antedating of the issue of the order.

6.4 We have perused the impugned orders passed by the disciplinary authority, appellate authority and revisional authority and have examined all aspects of the matter including reasons assigned by the enquiry officer, statements of witnesses as well as documents referred in the enquiry report..

7. On careful examination of the facts and circumstances of the case together with the impugned orders and other relevant material produced on either side, we are of the considered view that none of the authorities have violated principle of natural justice or committed any mistake while passing their respective orders and have followed the proper procedure of enquiry. As such the impugned orders are

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proper. On the face of the record, our conscious does not permit us to interfere with the said orders. This view of ours find support from the various judgements of the Hon'ble Supreme Court which provide that the Tribunal should not re-appraise the evidence and also cannot go into the quantum of punishment. Hence, the judgement cited by the applicant on the issue of 'disproportionate punishment' rendered by the Hon'ble Supreme Court reported in 1993(2) SCC 56 is not applicable to the facts of the present case.

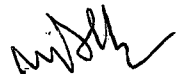
7.1 In view of the reasons mentioned above, the applicant has failed to prove his case before the enquiry officer on the charges levelled against him. Accordingly, the question referred to above is negative.

7.2 When the principles of natural justice have been applied and followed by the enquiry officer, disciplinary authority and appellate authority, we find that the said authorities have exercised their powers vested with them. Accordingly, the question no. 2 is also innegative.

7.3 Regarding quantum of punishment, the Hon'ble Supreme Court has time and again held that interference by the Tribunal into the quantum of punishment is not proper. When the applicant has lost faith, integrity and public confidence on the basis of the charges levelled against him, the punishment imposed on the applicant is proper. We, therefore, decline to interfere with the orders passed by the authorities concerned regarding quantum of punishment. Accordingly, third question, referred to above, is also negative.

8. For the reasons stated above, we find no merit in the O.A. and the same is accordingly dismissed with no order as to costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman