

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day October, 2010

ORIGINAL APPLICATION No.213/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Bhagwan Sahai Meena
s/o Shri Moti Lal Meena,
r/o Village Nahar Khora,
Post Geejgarh, Tehsil Sikrai,
District Dausa, last employed on
the post of Postal Assistant,
Sambhar Lake Head Post Office,
District Jaipur.

.. Applicant
(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Govt. of India,
Department of Posts,
Ministry of Communications and Information Technology,
Dak Bhawan,
New Delhi.
2. Director, Postal Services,
Jaipur Region,
Jaipur
3. Superintendent of Post Offices,
Jaipur Mofussil Postal Division,
Jaipur

.. Respondents

(By Advocate: Shri Vijay Saini, proxy counsel for Shri S.S.Hasan)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant has filed this OA thereby praying for the following reliefs.

- i) That entire record relating to the case be called for and after perusing the same memo dated 29/07/2005 (Annex.A/1) order of Appellate Authority with the memo dated 27/10/2004 (Annexure-A/2) punishment order be quashed and set aside with all consequential benefits.
- ii) That the charge memo dt. 31/1/2002 (Annex.A/3) be quashed with the enquiry proceedings, as the same is not justified as per facts and circumstances with all consequential benefits.
- iii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant while holding the post of Postal Assistant was issued a chargesheet/memorandum dated 31.1.2002 under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the charges against the applicant was that he submitted an application for the post of Postal Assistant to the Superintendent of Post Offices, Bikaner thereby enclosing two copies of fake and bogus marksheet of Intermediate Examination, 1991 and certificate of Madhyamik Shiksha Parishad, Uttar Pradesh bearing Roll No. 812741 (first division passed) showing higher percentage of marks. On the basis of these documents, he was selected and offer of appointment as Postal Assistant at Bikaner vide order dated 6.7.1993 was given to the applicant and he joined in the said capacity on 8.7.1993. It is stated

that the applicant did not disclose~~s~~ this fact to the departmental authorities, as such, his conduct was of unbecoming of a Govt. servant. The second charge against the applicant relates to his absent from duty w.e.f. 8.1.2001 till the date i.e. 31.1.2002. The said charge memo was accompanied with the statement of imputation as well as list of documents and witnesses by which these charges were required to be proved. Enquiry officer was appointed and the Enquiry Officer after giving due opportunity to the applicant held the applicant guilty of the charges. The applicant was also supplied copy of the enquiry report to which the applicant has filed objection and ultimately, the Disciplinary Authority after considering representation of the applicant and report of the Enquiry Officer awarded penalty of removal from service vide memo dated 27.10.2004 (Ann.A/2). The appeal filed by the applicant against the order passed by the Disciplinary Authority was also rejected vide memo dated 29.7.2005 (Ann.A/1). It is these orders and the chargesheet which have been challenged in this OA and the applicant has prayed that the same may be quashed.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above have not been disputed by the respondents. The stand taken by the respondents is that the applicant was selected on the basis of fake and bogus documents and when this fact came to the notice of the department, the matter was inquired into and it was found that the said documents were fake and bogus. It is further stated that the applicant while working as PA, Sambhar Lake HO applied for

three days Casual Leave from 4.1.2001 to 6.1.2001 and after that he remained absent from duty from 8.1.2001 to 31.1.2002 without prior permission and sanction of leave from the competent authority. Therefore, vide SPOs Jaipur Mofussil Division letter dated 23.3.2001, the applicant was directed to join his duty but instead of joining duty, he submitted a reminder dated 11.4.2001 stating that he has sent his resignation from the post to the office of SPOs but no information about acceptance of the resignation has been received. He, therefore requested to accept his resignation but no resignation letter dated 4.1.2001 was received by the answering respondents till date. Therefore, vide letter dated 23.5.2001, the applicant was again directed to join his duty. However, the applicant again submitted an application dated 30.5.2001 requesting therein to accept his resignation whereupon he was intimated vide SPOs Jaipur (M) Dn. Jaipur letter dated 28.11.2001 that due to administrative reasons, his resignation cannot be accepted and hence, he may join duty immediately. It is only thereafter that the applicant joined the duty at Sambhar Lake HO on 1.3.2002. The respondents have justified the penalty imposed by the Disciplinary Authority and confirmed by the Appellate Authority based on the enquiry report.

4. The applicant has not filed rejoinder.
5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The main contention raised by the learned counsel for the applicant is that Secretary, Madhyamik Shiksha Parishad, U.P. and his staff; Principal Shri Nirbhay Singh Oudhyogic Inter College Rampur and his staff and other related persons being material witnesses in the case were not produced for cross examination during the course of departmental enquiry. As such, the finding recorded by the Enquiry Officer to the effect that charge stand proved is contrary to law. For that purpose, reliance has been placed upon the decision of the Tribunal in the case of S.K.Mishra Vs. Union of India, 2004 (2) ATJ 488. The learned counsel for the applicant has also placed reliance upon the decision of the Apex Court in the case of State of UP and Ors. vs. Saroj Kumar Sinha, (2010) 1 SCC (L&S) 675 to contend that Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator and he is not supposed to be a representative of the department/ disciplinary authority/ Government.

7. We have given due consideration to the submissions made by the learned counsel for the parties. The contention which has been raised by the applicant before this Tribunal was also raised by him before the Appellate Authority in para 3(d) of the impugned order Ann.A/1, which thus reads:-

"3....

(d) His next contention is that the Secretary Madhyamik Shiksha Parishad UP and his staff, Principal Shri Nirbhay Singh Oudhyogic Inter College Rampur and his staff and other related persons being material witnesses in the case, were not produced for cross examination during the course of departmental inquiry and basic principles of evidence and rule of natural justice were thereby

defeated. Not only this, but the objection raised by him in this regard was illogically set aside by the disciplinary authority stating that no rule was quoted. He had added that non examination of the material witnesses is serious infirmity of the case and as such the erroneous punishment order requires to be quashed.

The contention is not acceptable. In this regard Shri S.K.Visain, SDI(P) Faizabad (SW-6) has confirmed that the certificate (S-11) and Mark sheet (S-12) were stated to be fake by the concerned authorities. The witness was deputed for verification of the documents and he deposed as to how the same were established to be fake. The witness was duly cross examined."

8. We have also perused the enquiry report and the order passed by the Disciplinary/Administrative authority. As can be seen from the facts as stated above, the gravamen of the charges against the applicant is that he was selected on the basis of fake and bogus mark-sheet of Intermediate Examination, 1991 and certificate of the Madhyamik Shishka Parishad, UP bearing roll No.812741. As can be seen from the statement of imputation of misconduct Ann.II with the chargesheet, in fact the applicant did not appear in the Intermediate Examination, 1991 conducted by the Madhyamik Shiksha Parishad, UP bearing roll No.812741. The charge is very clear. For that purpose, SW-6 was deputed for verification of documents who has testified documents S-11 and S-12. He has categorically stated that on verification of documents S-11 and S-12, these documents were found bogus. Further SW-5 Shri Gajendra Yogi has disclosed the fact that as a result of verification of S-11 and S-12 these were found bogus/forged documents. It may be stated that SW-5 was deputed to visit Allahabad for verification of these documents. Thus on the face of verification of these two documents on the basis of which the applicant procured

employment were fake and bogus, stands fully proved. The contention raised by the learned counsel for the applicant that no person from the Madhyamik Shiksha Parishad/Principal was examined in order to prove the aforesaid two documents, deserves out right rejection. It may be stated that neither the Parishad nor the Principal is the author of the so called fake marksheet/certificate of the Intermediate Examination bearing roll No.812741, as such, they were not required to be examined. Author of such fake/forged documents is the applicant who has procured these documents for the purpose of securing appointment against the post of Postal Assistant. The department has discharged its burden by examining SW-5 and SW-6 in the manner stated above. Thus, according to us, it is full compliance of the principles of natural justice.

9. The matter can also be looked into from another angle. Admittedly, the applicant was selected on the basis of marksheet/certificate of Intermediate Examination, 1991. In case he has not submitted the aforesaid documents at the time of submitting his application for the aforesaid post, he could have produced the original certificates on the basis of which he has procured such appointment. This fact itself proves that the applicant was not selected on the basis of any other marksheet/certificate which in case he would have produced things would have been different and he would have not got 307 marks out of 500 marks on the basis of which he has been selected.

10. At this stage, we also wish to notice conduct of the applicant. It appears that when the applicant came to know about the so

called enquiry and that chargesheet is going to ~~be~~ issued against him, he proceeded three days Casual Leave w.e.f. 4.1.2001 to 6.1.2001 and thereafter absented from duty for a considerable period of about one year w.e.f. 8.1.2001 to 31.1.2002. He did not return for duty despite repeated reminders issued by the respondents, as already notice above. Rather he submitted his resignation which request of the applicant was rejected. This material fact cannot be lost sight of. Further, the charge against the applicant for remaining absent from 8.1.2001 till issue of the chargesheet on 31.1.2002 stands fully proved. The learned counsel for the applicant has not made any grievance qua this aspect, rightly so, as the charge against the applicant for his absence for the aforesaid period stands fully proved and further no satisfactory explanation for remaining absent for the aforesaid period is forthcoming from the applicant. Thus, it can be held that the second charge against the applicant for remaining absent from duty for the aforesaid period stands fully proved. As already stated above, according to us, neither any official from the Madhyamik Shiksha Parishad ~~nor~~ the Principal was required to be examined in order to prove the charge against the applicant and we see no infirmity whereby the charges against the applicant stand fully proved on the basis of the documentary evidence SW-11 and S-12 which were also proved on the basis of the statement made by SW-5 and SW-6.

11. In some what similar circumstances, in the case of U.P. State Road Transport Corporation v. Suresh Chand Sharma, JT 2010 (6) SC

320, the Apex Court set-aside the judgment of the High Court whereby the material witnesses were not examined. That was a case where the respondent before the Apex Court was bus Conductor. The checking party found that the bus was carrying 13 passengers without ticket from whom the respondent has already recovered fare. The checking authority also conducted checking of another bus subsequently on 10.5.1988 in which the respondent was Conductor and found that 10 passengers were found without ticket whereas the respondent has already recovered the fare from the passengers. For these two misconducts, chargesheet was issued against the respondent and enquiry was conducted. The charges were proved and the respondent was dismissed from service. Thereafter the matter was referred to the Labour Court and the Labour Court held that the enquiry was held strictly in accordance with law and charges in respect of both the incidents were found proved. The award of the Labour Court was challenged before the High Court. The High Court set-aside the award given by the Labour Court. Before the Apex Court, submission was made on behalf of the respondent was that material witnesses were not examined, thus, no disciplinary proceedings could be initiated against the employee and there was no justification of punishment of dismissal by the authority. The Apex Court has negated the contention so raised by the learned counsel for the respondent. At this stage, we wish to reproduce para-11, 12 and 13 of the judgment, which thus reads:-

"11. The High Court dealt with the matter in a most cryptic manner. Relevant/main part of the judgment of the High Court reads as under:-

"5..... the Inspector in the cross-examination has also stated on oath that the cash was not checked. The learned counsel for the petitioner further submitted that when the bus was checked, ten passengers were boarded on the bus and they were drunk and they were also denying taking the tickets. The learned Tribunal has not considered this fact at all. I find force in the contention of the learned counsel for the petitioner. The learned Tribunal ought to have considered this fact that neither the passengers were examined, nor the cash was checked. Therefore the order of the learned Tribunal cannot be sustained in the eye of law."

12. The High Court has decided the Writ Petition only on the ground that the passengers found without tickets, had not been examined and the cash with the employee was checked. No other reasoning has been given whatsoever by the Court.

13. In State of Haryana & Anr. v. Rattan Singh (AIR 1977 SC 1512), this Court has categorically held that in a domestic enquiry, complicated principles and procedure laid down in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not apply. The only right of a delinquent employee is that he must be informed as to what are the charges against him and he must be given full opportunity to defend himself on the said charges. However, the Court rejected the contention that enquiry report stood vitiated for not recording the statement of the passengers who were found traveling without ticket. The Court held as under:-

"We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think courts below were right in over-turning the finding of the domestic tribunal."

12. Thus, in view of the law laid down by the Apex Court in the case of UP State Transport Corporation (supra) based upon the decision in the case of Rattan Singh, the submission made by the applicant that no person from the Madhyamik Shiksha Parishad and *Co*

the Principal was examined, as such, charge against the applicant had not proved and punishment could not have been awarded, cannot be accepted.

13. Even if for arguments sake, it is to be held that first charge against the applicant has not been proved, the facts remain that the second charge regarding absence from duty stands already proved. Thus, even if the charge is partly proved, keeping in view the facts and circumstances of this case, it cannot be said that imposition of penalty of removal from service against the applicant is harsh especially when the applicant himself was not willing to work with the department and has submitted resignation on different occasions.

14. For the foregoing reasons, the OA being bereft of merit is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

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