

(17)

23-5-2011

6A. 110/2007

Mr. S.L. Songara Ad. counsel for appellant.

Mr. Vijay Seini proxy for

Mr. S.S. Haider Ad. counsel for respondents.

Argument heard. The OA
stands disposed of by a separate Order.

Anil Kumar
(Anil Kumar)
Member (A)

I.S. Rathore
(Justice I.S. Rathore)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 23rd day of May, 2011

Original Application No.110/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Mahendra Singh Meena
Ex Postal Assistant,
Hanumangarh J.,
at present 4-G, GS Apartments,
Hawa Sarak, Jaipur

.. Applicant

(By Advocate,: Shri S.L.Songara)

Versus

1. Union of India
through Secretary,
Ministry of Communication & I.T.
Department of Posts,
Sansad Marg,
New Delhi.
2. Director Postal Services,
Post Master General (West Region),
Jodhpur
3. Superintendent of Posts Offices,
Sri Ganganagar Division,
Sri Ganganagar.

.. Respondents

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

ORDER (ORAL)

Brief facts of the case are that a chargesheet dated 9.2.2004 (Ann.A/3) under Rule 14 of CCS (CCA) Rules, 1965 for major penalty was served upon the applicant wherein it was alleged that the applicant misappropriated the amount of Rs. 3309/- by not entering the VP goods in the VP Register and he has not maintained the correct record of VP goods.

After conducting enquiry and after considering reply submitted by the applicant, the disciplinary authority awarded a penalty of removal from service vide order dated 30.11.2005 (Ann.A/1) against which the applicant preferred appeal dated 12.1.2006 and the same was also rejected vide order dated 21.9.2006 upholding the order passed by the disciplinary authority.

The main challenge to the impugned order of the disciplinary authority as well as the appellate authority is on the ground that mandatory provisions were not complied with during the enquiry by providing reasonable opportunity of hearing and thus the respondents have violated the provisions of Article 14 of the Constitution of India. Further, the statement of Shri Gopal Dutt Kaushik recorded during preliminary enquiry was used against the applicant who was not examined during the enquiry and no opportunity to cross-examine was provided to the applicant. It is alleged that the statement recorded during the enquiry cannot be relied upon by the department to prove the charges against the applicant.



As regards the charge of misappropriate of Rs. 3309/- is concerned, the applicant has deposited Rs. 2692/- vide receipt dated 13.3.2003, Rs. 10,000/- vide receipt dated 8.4.2003 and Rs. 2207/- vide receipt dated 26.5.2003 to the department. It is alleged that the same has not been taken into consideration.

It is also alleged that defence nominee was not made available by the department, thus the applicant was deprived to make proper defence and these all aspects have not been considered by the appellate authority although the applicant has raised all these points in the appeal and during the departmental enquiry primary evidence, delivery slip and proved postman book were not produced.

The applicant has also stated that since the Enquiry Officer held the charge under Rule 219 of Postal Manual proved against the applicant but as per Rule 219 and 220 of Postal Manual, entry of register of VP Articles was not checked every day by Shri Ramchander Singh, Sub Post Master, SW-3, therefore, Sub Post Master was also liable for joint/common disciplinary enquiry as held by the by the Rajasthan High Court, Jaipur Bench in the case of Prem Shankar vs. The High Court of Judicature for Rajasthan and Ors. reported in WLC 1991 (1) 170 and in the case of Yog Raj vs. State of Rajasthan and Anr. reported in RLR 1997 (1) 371.

With regard to denial of opportunity to defend himself, the applicant alleged that he being lower class employee was not allowed any departmental representative trained/expert Postal Inspector or the help of departmental employee/defence assistant.



of his choice, which is clear violation of Rule 14(8) of CCS (CCA) Rules and placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of C.L.Subramaniam vs. The Collector of Customs, Cochin, reported in AIR 1972 SC 2178 and also the judgment in the case of Bhagat Ram vs. State of Himachal Pradesh and ors., report in (1983) 2 SCC 442.

The learned counsel appearing for the applicant in support of his submission that copy of documents not supplied/inspection of original documents were not allowed stated that only statement were allowed to inspect, original documents at Sl.No. 1 to 22 were not made available for inspection, as they are seized by the police during investigation. Since the documents were not provided, the applicant placed reliance on the judgment rendered by the Supreme Court in the case of State of U.P. vs. Shatrughan Lal, reported in AIR 1998 SC 3038. It is also contended that mandatory provision regarding procedure for imposition of penalty under Rule 14 of CCS (CCA) was not followed and the action of the respondents is in contravention of the judgment rendered by the Hon'ble Supreme Court in the case of K.N.Ganatra vs. Morvi Municipality, Morvi, reported in AIR 1996 SC 2520 and Ministry of Finance vs. S.B.Ramesh reported in AIR 1998 SC 853.

It is further contended that previous statement of witness cannot be brought on record and the evidence should always be recorded in presence of delinquent employee who should always be given opportunity to cross-examine the witness. Thus, the statement recorded in the preliminary enquiry of Shri Gopal Dutt



SW-3 was taken on record, used against the applicant without producing Shri Gopal Dutt in evidence and on the basis of statement of SW-3 the applicant was held responsible for misappropriate on the amount of Rs. 137/- paid by Shri Gopal Dutt and consideration of statement of Shri Gopal Dutt is not only contrary to the provisions of law but also against the law laid down by the Hon'ble Supreme Court in the case of Kuldeep Singh vs. The Commissioner of Police, reported in AIR 1999 SC 677.

2. On the contrary, the learned counsel appearing for the respondents has strongly controverted the submissions made on behalf of the applicant. As the present OA is directed against the order dated 30.11.2005 passed by the disciplinary authority and order dated 21.9.2006 passed by the Appellate Authority and the applicant was working as Postal Assistant under the SPO, Sriganganagar Division which was under the direct control of Director, Postal Service, Post Master General (Western Region), Jodhpur, as such, the cause of action has arisen in the territorial jurisdiction of Sriganganagar and Jodhpur and, therefore, the present OA filed by the applicant is not maintainable before this Tribunal. The applicant was working as Postal Assistant at Raisingh Nagar Sub Post Office w.e.f. 29.5.2001. He has misappropriated the value of the sum of the VP articles and the amount of the VP Articles was not sent to the sender of the articles. The fraud was detected by a telegram of Sub Postmaster, Raisingh Nagar dated 11.3.2003. Thereupon, a detailed departmental enquiry was



conducted and it was established that the applicant has misappropriated the amount of many VP articles and also committed some other procedural irregularities. Therefore, he was issued a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 vide memo dated 9.2.2004.

In order to enquire the matter, Shri Uday Ram Saharan, ASPO, Sri Ganganagar and Shri Bhagirath Prasad SDI (P) Sriganganagar were appointed as Enquiry Officer and Presenting Officer respectively vide memo dated 9.3.2004. The Enquiry Officer has conducted the enquiry in accordance with the procedure laid down in Rule 14 of CCS(CCA) Rules and after several sittings reached to the conclusion that the charges framed against the applicant have been proved and thereafter the disciplinary authority after careful consideration of the enquiry report alongwith the documents and statement of witnesses etc. has decided to remove the applicant from service as he has indulged in misappropriation of government money which has damaged the reputation of the department and the appellate authority has upheld the order passed by the disciplinary authority.

With regard to appointing authority, the respondents have drawn our attention towards the service rules for Postal Gramin Dak Service Rule 4 under which Superintendent Post Office Sri Ganganagar is the appointing authority of the applicant.

With regard to statement of Gopal Dutt Kaushik is concerned, it is stated that listed witnesses in the charge memo kept himself absent in spite of three summons issued to him to attend the enquiry



therefore, his name was dropped by the Presenting Officer and his statement was not used against the applicant and enough evidence documentary as well as witness are available to prove the charge and referred para-6 of the case of Hon'ble High Court in the case of Fiyaz Mohammed vs. State of Rajasthan reported in 1992 WLN (UC) 63.

As regards defence nominee is concerned, it is stated that ample opportunity has been provided to the applicant but he himself showed his intention to defend himself as is evident from Ann.R/1 and even in appeal he has not contended that he has not been given opportunity of appointing defence nominee and in view of the ratio decided by the Rajasthan High Court in the case of Roop Chand vs. State of Rajasthan reported in 1990 WLC (UC) 292, the Government servant is only required to indicate the names of the employee whom he wishes to be appointed as defence nominee and the disciplinary authority may give its approval to the appointment of said person as defence nominee and while doing so the disciplinary authority may inquire from the Government servant so named as to whether he has agreeable to act as the defence nominee.

It is also denied that the required documents were not provided to the applicant. Page 29 and 30 of the enquiry report Ann.R/1 shows that all the relevant documents have been inspected by the applicant and copies of the same were also given to him and this plea has not been taken by the applicant in appeal and for the first time it has been taken before this Tribunal, thus there



is no violation of principles of natural justice or Article 14 as held by the Rajasthan High Court in the case of Kishan Chand vs. Ganganagar Central Cooperative Bank reported in RLW 2007 (2) 1458 wherein it is observed that "the petitioner has not disclosed precisely owing to non supply of which document any real prejudice was caused to him. Besides mere non supply of certain documents does not by itself prove prejudice to the petitioner" and same view has been taken by the Hon'ble Supreme Court in the case of State Bank of India vs. Bidyut Kumar Mitra reported in SCC 2011(2) 316 wherein it has been held that prejudice has to be shown on account of non supply of documents for which pleadings and proof is necessary.

As the applicant is putting allegation against Sub Postmaster Shri Ramchandra Singh for negligence whereas the Postmaster has written "checked and verified" only on the VP articles which has been physically lying in deposit or delivered as per rule and the value of which has been correctly account for in the Government account after making preliminary enquiry it was found that the applicant has misappropriated the value of VP articles. Even in the OA ground (i) at page 4 and also in rejoinder at page -3 para 2 of rejoinder to the para wise reply of respondents the applicant has admitted his misconduct.

4. Having heard the rival submissions of the respective parties and upon careful perusal of the material placed on record as well as the relevant rules referred to by the respective parties and the judgment relied upon. Much emphasis has been given by the



learned counsel appearing for the applicant that as per Rule 219 and 220 of Postal Manual, entry of register of VP articles was not checked every day by Shri Ramchander Singh, Sub Postmaster, SW-3, therefore, the Sub Postmaster was also equally liable for misappropriation and submitted that common enquiry is required to be initiated and placed reliance on the judgment rendered by the Rajasthan High Court, Jaipur Bench in the case of Prem Shanker vs. The High Court of Judicature for Rajasthan and ors, (supra) wherein the High Court observed that Rule 18 is attracted only in case where there are two disciplinary authorities of the Government servants but the nature of enquiry is such that charges are identical they relate to the same subject matter, the evidence likely to be produced is common and, therefore, such authority who may be competent to inflict penalty may be appointed to function as disciplinary authority for the purpose of common proceedings. Even if there are two disciplinary authorities there is no bar to appoint any one of them for purpose of common enquiry wherein in the instant case enquiry is initiated only against the applicant and no enquiry whatsoever has been initiated against Shri Ramchander Singh, Sub Postmaster SW-3, therefore, the ratio decided by Hon'ble High Court in the case of Prem Shanker (supra) is not applicable to the facts and circumstances of the present case.

5. Further, we have examined the matter with regard to denial of reasonable opportunity to the applicant to defend as the departmental representative has not been provided to the applicant. We have carefully perused the judgment rendered by



the Hon'ble Supreme Court in the case of C.L.Subramaniam (supra). In the aforesaid case, the Hon'ble Supreme Court has observed as under:-

"13. The grievance of the appellant was that he was pitted against a trained legal prosecutor and not that Sivaraman was a legal practitioner. The Disciplinary Authority did not consider that grievance. It brushed aside the request of the appellant on the ground that Sivaraman was not a legal practitioner, a consideration which was not relied on by the appellant. The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no mean irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstances. Therefore that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority refused to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself."

As observed by the Hon'ble Supreme Court, the opportunity to engage legal practitioner was refused by the disciplinary authority and this has caused serious prejudice to the appellant. Applying the above ratio in the instant case, the applicant has himself not given any name of defence nominee and showed his willingness to defend his case at his own. Thus, it is not a case of refusal on the part of respondents but on the part of the applicant. Thus, the ratio decided by the Hon'ble Supreme Court is not applicable in the facts and circumstances of the present case.



6. With regard to not providing copies of documents to the applicant, the respondents have specifically mentioned in their reply that they have provided required copies of the documents to the applicant. Thus the ratio decided by the Hon'ble Supreme Court in the case of State of UP vs. Shatrughan Lal (supra) wherein the Hon'ble Supreme Court in para 10 held as under:-

"10. It has also been found that during the course of preliminary enquiry, a number of witnesses were examined against the respondent in his absence and rightly so as the delinquent are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondents, were not supplied to him. Since there was failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent as not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of the statements recorded during preliminary enquiry has not caused any prejudice to the respondent in defending himself."

In the instant case, the documents were already made available to the applicant and the statement which has been recorded at the time of preliminary enquiry has not been used against the applicant, thus the case referred by the applicant is not applicable in the facts and circumstance of this case.

7. The learned counsel appearing for the respondents submits that the applicant has not raised any objection before the appellate authority nor before the disciplinary authority regarding non-supply of documents as held by the Hon'ble Supreme Court in the case of State Bank of India vs. Bidyut Kumar Mitra, and the plea



of non-supply of documents has to be raised at the earlier stage. As held by the Hon'ble Supreme Court in the case of V. Raman vs. A.P.SRTC, reported in SSC 2005 (7) 338, the scope of judicial review is very limited and the disciplinary authority and appellate authority having considered the entire material before them have passed the orders which require no interence. The interference is not permissible unless the findings of the disciplinary authority are found to be perverse i.e. not based on legal evidence as held by the Hon'ble Supreme Court in the case of Principal Secretary, Govt. of A. vs. M.Andinarayana, reported in SSC 2004 (12) 579.

8. Having considered the ratio decided by the Hon'ble Supreme Court, the scope of judicial interference is very limited with regard to the orders passed by the disciplinary authority and the appellate authority unless the same is shocking to the conscience of the court.

9. Upon considering the memorandum of charges as well as enquiry report and the order passed by the disciplinary authority, the applicant himself admitted the charge and it is not disputed that the amount which has been misappropriated by the applicant has been deposited on various occasions as discussed hereinabove. Thus, the disciplinary authority considering seriousness of the charges since the charges have been fully proved against the applicant and also admitted by the applicant himself, as such the rightly vide its order dated 30.11.2005 Imposed a penalty of dismissal and the order of the disciplinary authority has rightly been upheld by the appellate authority vide order dated 21.9.2006.



10. Consequently, no interference is called for and the OA is dismissed being devoid of merit with no order as to costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/