

ORDERS OF THE BENCH

Date of Order: 13.07.2012

OA No. 115/2009

Mr. C.B. Sharma, counsel for applicant.
Mr. Gaurav Jain, counsel for respondents.

At the request of learned counsel for the parties, put up the matter on 30.07.2012 for hearing.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

30/07/2012

OA NO. 115/2009

Mr. C.B. Sharma, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 30th day of July, 2012

ORIGINAL APPLICATION No. 115/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Pratibha Hada wife of Shri Laxman Singh Hada, aged about 52 years, resident of 151, Ballabh Badi, Kota. Presently working as Postal Assistant, Saving Bank Control Organisation, Head Post Office, Chittorgarh transferred from Kota (Rajasthan).

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, 20 Ashoka Road, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur – 302 007.
3. Post Master General, Southern Region, Ajmer 305 001.
4. Director Postal Services, Southern Region, Ajmer.
5. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

... Respondents

(By Advocate : Mr. Gaurav Jain)

ORDER (ORAL)

The applicant has filed this OA claiming for the following reliefs:-

- "(i) That entire record relating to the case may kindly be called for from the respondents and after perusing the same order of revising authority vide memo dated 31.03.2008 (Annexure A/1) with the memos dated 16.01.2007 and 23.03.2007 (Annexure A/2 and Annexure A/3) be quashed and set aside with all consequential benefits.
- (ii) That the charge memo dated 06.12.2004 (Annexure A/7) with the inquiry proceedings including inquiry report be quashed and set aside, as the same is not justified as per facts and circumstances.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

Anil Kumar

2. Learned counsel for the applicant submitted that while working as Postal Assistant (SBCO) Kota, the applicant was placed under suspension vide Memo dated 29.09.2004 invoking the provisions of Rule 10 of CCS (CCA) Rules, 1965 on the ground that disciplinary proceeding is contemplated. On 25.05.2004, the applicant made a request to Shri G.S. Nathawat, Postmaster, Kota Head Post Office to avoid smoking in the office or nearby branch of the applicant. Shri Nathawat became annoyed and reported the matter to respondent no. 5 and applicant also reported the matter on 27.09.2004 (Annexure A/4). He further argued that earlier the applicant had made a similar request with respondent no. 5 on 24.06.2003 and 30.07.2003 (Annexure A/5 & A/6 respectively) but no action was taken by respondent no. 5.

3. He further argued that respondent no. 5 served major penalty charge sheet under Rule 14 of the CCS (CCA) Rules vide Memo dated 06.12.2004 with the allegation that the applicant mis-behaved with Shri G.S. Nathawat holding the post of Postmaster (Annexure A/7). The inquiry was conducted against the applicant by the Inquiry officer though the applicant made allegation of bias against the Inquiry Officer. The allegation of the applicant of bias against the Inquiry officer was rejected by Respondent no. 4 and respondent no. 3. The Inquiry Officer completed the inquiry proceedings without following the due procedure. The respondent no. 4 without going into the fact & circumstances of the case and also without considering the quantum of punishment imposed the punishment of compulsory retirement vide

Anil Kumar

Memo dated 16.01.2007 (Annexure A/2). The applicant preferred an appeal against the punishment of compulsory retirement before respondent no. 3. That respondent no. 3 without due consideration of appeal and points raised by the applicant rejected the appeal vide Memo dated 23.03.2007 (Annexure A/3). Thereafter the applicant preferred a Revision Petition dated 09.04.2007 before respondent no. 2. The respondent no. 2 decided the Revision Petition vide Memo dated 31.03.2008 (Annexure A/1) by modifying the punishment of compulsory retirement into reduction of pay in the time scale of pay of Rs.4500-125-7000/- by five stages from Rs.5875/- to Rs.5250/- for a period of three years with effect from the date of her joining. It was further directed that the applicant will not earn increments during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing her future increments of pay inspite of the fact that applicant in the month of July, 2006 was drawing pay at the state of Rs.6000/- in the pay scale of Rs.4500-7000/-. Learned counsel for the applicant further submitted that the Revising Authority no-where passed any order regarding the period of compulsory retirement when he ordered that the modified punishment came into force from the date of joining.

4. Learned counsel for the applicant also submitted that Shri Nathawat also managed complaint through his subordinate staff members because Shri Nathawat at the relevant time was holding the post of Postmaster. The applicant on 25.09.2004 protested against his habit of smoking, which was well known to the staff as well as to the authorities. The applicant became victim alleging that the applicant

Anil Kumar

used unparliamentary language with Shri Nathawat. During the course of inquiry proceedings, statement of state witnesses were obtained after two days and the same has been considered whereas the statement of defence witnesses have not been duly considered inspite of fact that the statement obtained from the subordinate staff under pressure by calling them in the chamber of Shri Nathawat and this fact has not been denied by some of the witnesses during the course of inquiry proceedings and applicant also produced defence witnesses with the affidavits of some of them. All the defence witnesses admitted that Shri Nathawat was in the habit of smoking in the Post office. Shri Nathawat managed the complaint against the applicant on 27.09.2004 by some of the staff members. The respondents have never taken action against Shri Nathawat for smoking in the office.

5. Learned counsel for the applicant also drew our attention to statement of K.S. Narain, Senior Superintendent, Hosiarpur, Punjab, in which he has stated that he had scolded Shri Nathawat for smoking in the office. Though he had seen Shri Nathawat smoking in the office several times but Shri Nathawat did not leave smoking in the office. That the applicant had complained to him about some objectionable behaviour with another employee and on the basis of that, he called Shri Nathawat in his chamber and asked him orally to say 'sorry' to the applicant. He argued that with this statement of Shri Narain, it is proved that Shri Nathawat had personal grudge against the applicant. Therefore, he argued that the charge sheet is itself based on bias and it should be quashed and subsequent to that departmental inquiry, which has been conducted without following the due procedure and

Anil Kumar

orders passed by the Disciplinary authority – compulsorily retiring the applicant and the order passed by the Appellate Authority – rejecting the appeal of the applicant and the order passed by the Revising authority modifying the order of compulsory retirement to that of reduction of pay be quashed and set aside. He further argued that even if it is accepted that the charges leveled against the applicant is proved even then no major penalty can be imposed on the applicant because as per Rule 14 of CCS (CCA) Rules – Types of cases which may merit action for imposing one of the major penalties, the case of the applicant does not fall in any of the categories. Therefore, the punishment awarded by the Revising Authority is disproportionate & harsh looking to the gravity of the charges. Therefore, it should be quashed and set aside.

6. On the other hand, learned counsel for the respondents argued that while working as Postal Assistant (SBCO) Kota, Head Office, the applicant misbehaved and abused Shri G.S. Nathawat, Postmaster, Kota Head Office on 23.09.2004. Accordingly, Shri G.S. Nathawat reported the case to SSPOs Kota. The staff of Kota Head Office also submitted a memorandum signed by 27 officials demanding action against the applicant. The SSPOs Kota, who is the disciplinary authority of the Postal Assistant SBCO staff, placed her under suspension w.e.f. 29.09.2004 on contemplation of disciplinary action against the applicant. The disciplinary proceedings were contemplated as per the rules and the Disciplinary Authority awarded the punishment of compulsory retirement vide Memo dated 16.01.2007. The applicant preferred an appeal to the Postmaster General, Ajmer,

Anil Kumar

which was rejected vide Memo dated 23.03.2007. That the applicant preferred petition to the Chief Post Master General, Rajasthan Circle, Jaipur who though, found the charges leveled against the applicant as established but felt that she could be given a precious chance to show distinct improvement in the work conduct and accordingly modified the penalty to reduction of her pay in the time scale of pay Rs.4500-125-7000/- by five stages from 5875/- to 5250/- for a period of three years with effect from the date of her joining vide order dated 31.03.2008.

7. Learned counsel for the respondents further argued that allegation of the applicant that Shri G.S. Nathawat, Postmaster Head Post Office, Kota was habitual smoker, is baseless. There was a separate cabin for the Postmaster and place of sitting of the applicant was far from his cabin on the ground floor of Kota Head Post Office. In fact Shri G.S. Nathawat, the Postmaster, Kota found the applicant often loitering in the office and not sitting to attend her daily work. So he asked the applicant on 25.09.2004 to go her seat and work thereupon. The applicant became annoyed and misbehaved and used abusive language with the in-charge of the office in a manner that the other 27 staff members also complained against her. That during the departmental inquiry, the allegation of being habitual smoker against Shri G.S. Nathawat was not proved but it proved beyond doubt that the applicant misbehaved and used abusive language against him who was supervisor/in-charge of her and was also senior in age. He further submitted that respondent no. 5 is competent Disciplinary Authority of Group C cadre officials of SBCO Branch. The proceedings for imposition

Anil Kumar

of major penalty under Rule 14 of the CCS (CCA) Rules, 1965 are fully justified against the applicant, who has acted in violation to Rule 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964 and has failed to maintain devotion to duty and behaved in a manner not suitable to a Government servant. He argued that types of cases, which has been referred to by the learned counsel for the applicant, which merit action for imposing one of the major penalties, is not limited only to these cases. The type of cases which may merit action for imposing major penalty has been enclosed by the respondents as Annexure R/6. He argued that charge memo was issued to the applicant as per the procedure laid down. Similarly, the inquiry Officer has conducted the inquiry properly. Statement of defence witnesses were considered suitably by the Inquiry Officer during the course of oral inquiry and discussed properly by the Inquiry officer in his inquiry report, which was also shown to the applicant. The Disciplinary Authority has taken into account the inquiry report as well as the statement made by the applicant and after careful consideration of all facts and evidence passed the order of punishment. Therefore, the action of the Disciplinary Authority is also as per the rules on the subject. Similarly, the Appellate Authority considered the appeal of the applicant and did not find any merit, therefore, rejected it. The Revising Authority, however, taking a lenient view modified the punishment of compulsory retirement to that of reduction of pay. The order of the Revising Authority is according to the rules and as per the procedure prescribed for the same.

Anil Kumar

8. He further argued that it is not mandatory to pass any order in the decision of the Revising Authority about the treatment of the intervening period till re-joining and as a result of reinstatement of applicant. The order to this effect can be passed separately as per the provisions of Fundamental Right 54(1) and accordingly the same is under active consideration of respondent no. 2. Thus the entire action of the respondents is according to the rules, instructions on the subject governing the disciplinary proceedings and this OA has no merit and it should be dismissed with costs.

9. Heard the rival submissions of the respective parties and perused the documents on record. As per Annexure A/5, the applicant made a representation on 24.06.2003 with regard to the smoking by the Postmaster in the office due to which she complained that there is suffocation in the hall and that since she suffer from allergy and bronchitis, therefore, she find it very difficult to work. Similarly she brought this fact again to the notice of superior officer vide request dated 30.07.2003 (Annexure A/6). She also made a complaint against Shri G.S. Nathawat vide letter dated 27.09.2004 (Annexure A/4). However, on a complaint by Shri G.S. Nathawat, the applicant was issued charge memo dated 06.12.2004 (Annexure A/7). Thereafter, an Inquiry officer was appointed who conducted the departmental inquiry and submitted the report. The applicant was supplied copy of the inquiry report. The Disciplinary Authority after considering the inquiry report and other material on record, came to the conclusion that the charge against the applicant is proved and imposed the penalty of compulsory retirement (Annexure A/2). The Appellate Authority also

Anil Kumar

considered the points raised by the applicant in her appeal and after careful examining the appeal, rejected it vide order dated 23.03.2007 (Annexure A/3). Thereafter the applicant preferred a Revision Petition before the Revising Authority and the Revising Authority carefully considered the petition, taken into account the entire case file. In the Revision order dated 31.03.2008, he has mentioned that smoking of Shri G.S. Nathawat, Post Master, Head Post Office, Kota does not permit the applicant to abuse and misbehave with officer incharge, who was sufficiently senior to her in service and age as well. Obviously the words admitted to have been spoken by her were against the discipline and office decorum. Such conduct is unacceptable. He has also stated that the joint memorandum dated 27.09.2004 submitted by staff of Kota Head Office was submitted two days after the said incidence and was supportive evidence to the applicant's mis-conduct. After considering all the aspects, the Revising Authority felt that the quantum of penalty awarded was rather harsh and not exactly commensurate with the gravity of charge. Therefore, he modified the punishment of compulsory retirement to reduction of her pay in the time scale of pay of Rs.4500-125-7000/- by five stages from Rs.5875/- to Rs.5250/- for a period of three years with effect from the date of her joining. It was further directed that the applicant will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing her future increments of pay.

10. After going through the averments of both the parties and after careful perusal of the documents on record, we are of the opinion that

Anil Kumar

Shri G.S. Nathawat was in the habit of smoking in the office and on being objected by the applicant, he made a complaint to the superior authorities about the conduct of the applicant. Even for the sake of arguments, it is held that charge leveled against the applicant is proved, in our considered opinion, the punishment awarded to the applicant is shockingly disproportionate to the proved mis-conduct of the applicant. Therefore, we quash the order of the Revising Authority dated 31.03.2008 (Annexure A/1) and the order of the Appellate Authority issued vide Memo dated 23.03.2007 (Annexure A/3) and order of the Disciplinary Authority issued vide Memo dated 16.01.2007 (Annexure A/2). We are of the view that ends of justice would be met if the applicant is awarded any of the minor penalties as prescribed under the rules. Therefore, we direct the respondents to pass a fresh order imposing any of the minor penalties against the applicant. This exercise of imposing minor penalty against the applicant shall be completed expeditiously but in any case not later than a period of four months from the date of receipt of a copy of this order.

11. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)
AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)