

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day of May, 2011

Original Application No.302/2010

CORAM:

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

J.K.Hingorani
s/o Late Shri Moti Hingorani,
Inspector of Posts (Public Grievance),
O/o Superintendent of Posts, Tonk
Rajasthan and resident of
Government Quarter, Tonk.

.. Applicant

(By Advocate,: Shri S.K.Saxena)

Versus

1. Union of India
through the Postmaster General,
Rajasthan Southern Region
Department of Posts-India,
Ajmer.
2. The Assistant Director,
Office of the Postmaster General,
Rajasthan Southern Region,
Ajmer.
3. The Superintendent of Posts Offices,
Tonk Division,
Tonk.

4. Shri Prahlad Sharma,
Superintendent of Post Offices,
Tonk Dn. Tonk,
at present Suptdt. Beawar Dn.
BEawar.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Brief facts of the case are that the applicant while holding the post of Inspector (Public Grievance) in the office of Superintendent of Post Offices, Tonk Postal Division was issued a charge memo dated 14.5.2010 (Ann.A/1). The charge memo has been challenged by the applicant on the ground that the applicant's appointing authority/disciplinary authority is Director, Postal Services, Office of the Post Master General, Rajasthan Southern Region, Ajmer. Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules] provide for procedure for drawing up of articles of charges and envisages that "where it is proposed to hold an inquiry against a Government Servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge, a statement of imputation i.e. a statement of all relevant facts and a list of documents". By referring Rule 14 of CCS (CCA) Rules, the applicant submits that appointing authority in the case of the applicant is Director of Postal Services and appointing authority is defined under Rule 2(a) of the CCS (CCA) Rules.

The memorandum of charge is not only challenged on the ground that the same has not been issued by the competent authority but also on the ground that this memorandum is an outcome of the mala-fide or bias attitude of respondents and thus, action of the respondents is malice in law as well as in facts. The memorandum of charges does not contain misconduct or irregularity on the part of the applicant which construed the word misconduct. Misconduct means misconduct arising ill motive, acts of negligence, error of judgment or innocent mistake did not constitute such misconduct as held by the Apex Court in the case of Union of India vs. J.Amhed reported at 1979 SLT 308 and in the case of Gauri Shankar Mishra vs. State of Rajasthan reported at 1987 (2) RLR 560.

With regard to competence of issuing chargesheet is concerned, the applicant submits that the chargesheet has been issued by the Superintendent of Post Offices, Tonk Division Tonk. It is further contended that before initiating action, the Disciplinary Authority is under obligation for verification of facts before initiating action against the employee as per provisions of Rule 69 of the P&T Manual Vol.III.

It is also contended that complaint regarding gratification/bribe from GDS of Salumber Sub Division by the applicant does not appear to be correct and the enquiry has been initiated against the applicant on the recommendation of the Shri H.P.Soni, Assistant Director PMG, Raj. S/R Ajmer who had advised



Shri Prahlad Sharma, Superintendent of Post Offices, Tonk for initiation of disciplinary action against the applicant.

2. On the contrary, the learned counsel appearing for the respondents submits that as per notification dated 12.12.2006 published in official Gazette dated 23.12.2006, Superintendent of Post Offices, Tonk being Head of Division is competent to impose penalty specified in clauses (i) to (iv) to Rule 11 of the CCS (CCA) Rules, 1965.

As per provisions contained under Rule 13 of CCS (CCA) Rules, it is not mandatory that disciplinary proceedings can only be initiated by the appointing authority and it can be initiated by any other authority empowered by the President of India. As per Rule 13 (2) of CCS (CCA) Rules, the authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11, notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties.

It is further stated that the applicant has challenged the charge memo dated 14.5.2010 issued by respondent No.4 under Rule 14 of the CCS (CCA) Rules. As per the law laid down by the Hon'ble Supreme Court in the series of decisions and also in the case of Union of India vs. Kunisetty Satyanarayana reported at (2006) 12 SCC 28, the Original Application against chargesheet is premature as by mere issuing chargesheet to the employee does

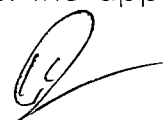


not give any cause of action and referred para-14 of the judgment, which reads as under:-

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because, it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party infringed. A mere show-cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

The applicant was interrogated by the ASP (Vigilance) R.O. in for the complaint received by the Department on 3.9.2009 and 4.9.2009 in respect of lapses committed by him i.e. inspection of Branch Post Offices was conducted by applicant in the office of SDI (P) Salumber and verification of money orders paid on Saturday and Sunday was not mentioned by the applicant in his diary as per Rule 293 of P&T Manual, Vol. VIII, but during such interrogation no questionnaire was given to the applicant. However, questions were given to him during the course of investigation, as required to get the conclusion.

3. Having considered the judgment referred before us as well as relevant provisions of law, the applicant utterly failed to establish any case of interfere in the matter at the stage of issuance of memorandum of charge dated 14.5.2010 (Ann.A/1) and bare perusal of articles of charge framed against the applicant reveals



that the applicant while working as SDI (P) Salumber during the period from 1.9.2008 to 27.11.2009 prepared false MO paid verification list showing false verification of 8 MOs in respect of Lahagarh EDBO on 29.4.2009 and 10.5 and 6 MOs in respect of Samoda Seria and Chandora EDBOs on 21.5.2009, 16.5.2009 and 4.6.2009 respectively and sent the same to SSPOs Udaipur for the month of April, 2009 and June 2009. Thus the applicant has violated the instructions contained Rule 293 of Postal Manual Vol. VIII and by the above act failed to maintain devotion to duty as required under the provisions of Rule 3(I)(ii) of CCS (Conduct) Rules, 1964. Thus from perusal of articles of charge framed against the applicant, it is not a case where at the initial stage the memorandum of charges requires to be quashed and set-aside. The applicant still has full opportunity to defend his case before the Disciplinary Authority by way of filing detailed reply to the chargesheet and he is also at liberty to raise the grounds which are taken in the present OA before the Disciplinary Authority, but in any case, we find no merit in the OA and the memorandum of chargesheet Ann.A/1 dated 14.5.2010 at this stage does not require any interference.

4. Consequently, the OA is dismissed being bereft of merit with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/