

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 26.02.2013

OA No. 79/2011

Mr. P.N. Jatti, counsel for applicant.

Mr. Mukesh Agarwal, counsel for respondents.

Learned counsel for the respondents is directed to inform this Bench of the Tribunal on the next date whether Shri O.P. Nat, who has been given temporary appointment, is still in service or not.

Put up the matter on 28.02.2013 for hearing. Certified copy of this order be made available to the learned counsel for the respondents.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

J.C.S. Rathore

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

Kumawat

28/02/2013

OA No. 79/2011

Mr. P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, 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)

J.C.S. Rathore

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

cc *h*
NR
20/2/13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 79/2011

Jaipur, the 28th day of February, 2013

CORAM :

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

Babu Lal Barolia son of Shri Poona Ram Barolia, by caste Barolia, aged about 53 years, resident of 258, Amer Deep, Pragati Nagar, Kotra-Ajmer. Presently working as Assistant Superintendent (H.Q.), Office of Superintendent Post Offices, Kota Division, Kota.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Southern Region, Ajmer.
4. Director Postal Services, Southern Region, Ajmer.
5. Superintendent Post Offices, Kota City Dn., Kota.
6. Superintendent Post Offices, Tonk Dn., Tonk.

... Respondents

(By Advocate : Mr. Mukesh Agarwal)

ORDER (ORAL)

The brief facts of the case, as stated by the learned counsel for the applicant, are that a charge memo dated 30.01.2009 (Annexure A/3) under Rule 16 of the CCS (CCA) Rules, 1965 was served to the applicant while he was working as Assistant Superintendent, Bharatpur Sub Division, Bharatpur. In the charge Memo, the following charges have been leveled against the applicant:-

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"That the said Shri Babu Lal Barolia while working on the said post during the above period, has received the synopsis duly filled in by Shri Om Prakash Nat for appointment on compassionate grounds. Shri Om Prakash Nat has shown himself as adopted son of Late Shri Bhanwar Lal nat and also not included his name in the particulars of family members in column no. v of Part III of synopsis. The said Shri Babu Lal Barolia has verified all the particulars as correct and forwarded to the higher authorities for further action. Where as Shri Om Prakash Nat was son in law of deceased employee and not family member of deceased employee. These facts were come into notice while considering his case for compassionate appointment by Circle Relaxation Committee. Owing to these facts, his case was rejected by the Circle Relaxation Committee and his provisional appointment was terminated. Therefore, it is alleged that said Shri Babu Lal Barolia verified the particulars incorrectly which resulted into litigation with Shri Om Prakash Nat and the department incurred huge amount of Rs.2,57,900/- on account of payment of back wages to Shri Om Prakash Nat.

By his above, act, it is alleged that the said Shri Babu Lal Barolia has failed to maintain absolute integrity and devotion to duty and thereby violated provisions of Rule 3(1) (i) and (ii) of CCS (Conduct) Rules, 1964."

2. The applicant submitted reply to the charge memo. He requested that since the matter was 15 years old, therefore, he will be able to file a proper reply after the inspection of the concerning file of the matter but this request was denied by the respondents and informed the applicant that the said file is not available in the record. Then on the basis of his memory and other records, the applicant submitted his reply to the charge memo. In his reply, he also submitted that the provisional appointment was given by the applicant in pursuance of the order of Superintendent of Post Office, Tonk.

3. The learned counsel for the applicant further submitted that in Para 7 of the reply, the applicant has clearly mentioned

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that the reason of recovery of the amount of Rs.2,57,900/- is because of the wrong termination of Shri Om Prakash Nat. The services of Shri Om Prakash Nat were not terminated by the applicant, therefore, he is not responsible for the payment of back wages.

4. The applicant has acted correctly as per the directions of the authorities and as per the rules on the subject. The copy of the reply submitted by the applicant has been annexed as Annexure A/6. In spite of the fact that the applicant was not at fault in providing the provisional appointment to Shri Om Prakash Nat, the respondent no. 4 passed the penalty order dated 16.06.2009 (Annexure A/1) vide which he was imposed the penalty of Rs.85,966/- from the applicant. Aggrieved by this order of the Disciplinary Authority, the applicant filed an appeal and the Appellate Authority also rejected his appeal vide order dated 22.10.2010 (Annexure A/2).

5. Learned counsel for the applicant further argued that in this case, there were two other officers who have been held equally responsible for this loss caused to the Government. They are Shri Mohd. Bashir, the then Superintendent of Post Offices Tonk and Shri L.S. Ratnawat, Inspector Posts, Bundi (West) but no recovery order have been passed against these two officers of the Department. Therefore, the applicant has been discriminated while imposing the penalty and to support his averments, he referred to the findings of the Disciplinary Authority in Para 9 of the penalty order dated 16.06.2009. He

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further argued that since the applicant is not alone responsible for the payment of the back wages, therefore, the orders of recovery dated 16.06.2009 (Annexure A/1) and 22.10.2010 (Annexure A/2) are quite unjust and arbitrary and, therefore, these should be quashed and set aside.

6. On the contrary, the learned counsel for the respondents submitted that the post of EDMC/DA Bamangaon (Nainwan) had fallen vacant on 14.07.1994 due to superannuation of regular incumbent. Then the sub Division Inspector (Post) Deoli now Bundi (W) submitted proposal vide his letter dated 29.06.1994 and 26.07.1994 seeking permission to fill up the post. Respondent no. 6, being competent authority, vide his letter dated 08.08.1994 granted the approval to fill up the post as per the rules (Annexure A/9).

7. The sub Divisional Inspector (Post) Deoli now Bundi vide his letter dated 16.08.1994 (Annexure A/7) requested the Employment Exchange to send a list of eligible candidates. Meanwhile, the case of appointment of one Shri Om Prakash Nat in relaxation of recruitment rules was taken upon on account of the death of his father in law, Shri Bhanwar Lal Nat, EDMC/MD Pagara (Umar), who expired on 30.08.1989 as per the directions received by respondent no. 3 vide letter dated 24.08.1993 and 03.02.1994 (Annexures R/3 and R/4 respectively).

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8. The respondent no. 6 asked the SDI (P) Deoli vide letter dated 01.08.1995 (Annexure A/11) that if Shri Om Prakash Nat fulfils the condition of GSMC/MD, Bamangaon, he may be considered for provisional appointment. The SDI(P) send Bio-data of Shri Om Prakash Nat vide his letter dated 25.10.1995 (Annexure R/6).

9. That the SDI (P) was informed by respondent no. 6 letter dated 20.10.1995 that he is the competent authority, accordingly he should manage at his own level (Annexure R/7).

10. That the applicant, the then SDI (P) Deoli vide letter dated 18.12.1995 decide to provide provisional appointment to Shri Om Prakash Nat (Annexure A/12).

11. That meanwhile, the case of Shri Om Prakash Nat for appointment in relaxation of Recruitment Rules was rejected by CRC and it was directed to terminate the arrangement immediately vide respondent no. 3 letter dated 11.12.1998. The copy of the said letter was given to Shri L.S. Ratnawat, the then SDI (P) Bundi (W) for immediate compliance and report. In compliance of the said orders, the SDI (P) Bundi (W) terminated the arrangement and relieved Shri Om Prakash Nat on 22.12.1998 (Annexure R/11).

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12. Thereafter Shri Om Prakash Nat filed an OA No. 203/1999 on 07.05.1999 before the Central Administrative Tribunal, Jaipur Bench and the same was allowed vide order dated 02.08.2000. The Tribunal directed the respondents to reinstate Shri Om Prakash Nat in service with all consequential benefits (Annexure A/15) on the ground that the principles of natural justice was not followed before terminating the services of Shri Om Prakash Nat.

13. The learned counsel for the respondents further argued that the answering respondents filed a Writ Petition NO. 4599/2000 before the Hon'ble High Court, Jaipur Bench against the decision of CAT, Jaipur Bench dated 02.08.2000 (Annexure A/15), which was also rejected on 14.02.2006. Thereafter, the respondents filed a Review Petition No. 47/2006 before the Hon'ble High Court, Jaipur Bench to review the decision dated 14.02.2006. However, in the meanwhile, Shri Om Prakash Nat was allowed to join the duty subject to the out come of the Review Petition No. 47/2006 vide respondent no. 6 Memo dated 30.06.2006 (Annexure R/12) and Shri Om Prakash Nat joined on 01.07.2007 (Annexure R/13).

14. That the Review Petition was dismissed by the Hon'ble High Court, Jaipur Bench dated 12.04.2007. Therefore, the whole case was reported to respondent no. 1. The respondent no. 1 directed to implement the CAT, Jaipur Bench's order

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dated 02.08.2000 and the amount paid to Shri Om Prakash Nat be recovered from the officials who have processed this case and are found responsible in facilitating the irregular appointment under relaxation of rules vide letter dated 10.05.2007 (Annexure A/18).

15. That the respondent department estimated a loss of Rs.2,57,908/- to the Department on account of payment of back wages to Shri Om Prakash Nat.

16. That the competent authority has identified Shri Mohd. Basir Ahmed (the then Superintendent of Post Office Tonk), Shri L.S. Ratnawat (the SDI (P) Bundi (W) and Shri Babu Lal Barolia (the applicant) as the officials at fault. Therefore, the disciplinary inquiry against the applicant was initiated under Rule 16 of the CCS (CCA) Rules, 1965 by serving charge memo dated 30.01.2009 (Annexure A/3).

17. The applicant while working as Inspector Post Deoli during the period from 31.01.1994 to 31.12.1996 did not take action to select a suitable successor of the incumbent for the post of GDSMC/MD Bamangaon but appointed provisionally one Shri Om Prakash Nat on the said post for indefinite period in contravention on the subject.

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18. That the applicant also verified incorrect particulars of Shri Om Prakash Nat in the synopsis for his appointment on compassionate grounds showing him adopted son of Late Shri Bhanwar Lal Nat instead of son-in-law. For these irregularities, a charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 was served on the applicant.

19. The applicant preferred his representation dated 20.04.2009. The Disciplinary Authority after taking into consideration the circumstances of the case imposed the penalty of recovery of Rs. 85,966/- (Annexure A/1). The appeal filed by the applicant was also rejected by the Appellate Authority.

20. The learned counsel for the respondents further argued that the action against the applicant has been taken according to the procedure laid down and according to the facts & circumstances of the case. There is no illegality/irregularity either in the issuance of the charge memo, the order of the Disciplinary Authority and the order of the Appellate Authority.

21. The learned counsel further submitted that no disciplinary action could be taken against Shri Mohd Bashir Ahmed, the then SPOs Tonk due to his retirement and Shri L.S.

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Ratnawat, the then SDI (P) Bundi West has been left off by inflicting the punishment of 'Censure' only.

22. The learned counsel for the respondents submitted that as the action of the respondents against the applicant is according to the rules, this OA has no force and it should be dismissed with costs.

23. Heard the learned counsel for the parties, perused the documents and the case law referred to by the learned counsel for the parties. Both the parties have also submitted their written submissions.

24. It is not disputed that the applicant issued the orders of provisional appointment to Shri Om Prakash Nat. From the perusal of the Annexure A/11, which is a letter dated 11.08.1995 from the Superintendent of Post Offices Tonk, it is clear that directions were issued by him to give provisional appointment. Thus it cannot be said that the applicant provided provisional appointment to Shri Om Prakash Nat at his level. The respondents have admitted in their reply as well as while arguing the case that three persons were identified by the Department for the loss caused to the Government on account of back wages paid to Shri Om Prakash Nat. These three persons are the applicant (Babu Lal Barolia), Shri Mohd. Bashir

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Ahmed, the then SPOs Tonk and Shri L.S. Ratnawat, the then SDI (P) Bundi West. No action could be taken against Shri Mohd. Bashir Ahmed, the then SPOs Tonk due to his retirement. Shri L.S. Ratnawat, the then SDI (P) Bundi West has been left off by inflicting the punishment of 'Censure' only. Thus only the applicant has been punished with one third recovery of the loss caused to the Department. The learned counsel for the respondents could not clarify as to why no recovery was ordered from Shri L.S. Ratnawat while he was also identified as an official responsible for the loss caused to the Government. This fact is also clear from the order of the Disciplinary Authority dated 16.06.2009 (Annexure A/1). He has clearly given the finding in Para No. 9 of the order that Shri Mohd. Bashir Ahmed (the then SPOs Tonk), Shri L.S. Ratnawat (the then SDI (P) Bundi West) and Shri Babu Lal Barolia (applicant) are equally responsible for this loss caused to the Government on account of back wages paid to Shri Om Prakash Nat. Thus it appears to be a case of discrimination against the applicant because only he has been inflicted the punishment of recovery.

25. The Department of Posts vide letter dated 10.05.2007 (Annexure A/18) had directed that the amount to be paid to Shri Om Prakash Nat be recovered from the officials who have processed the case of Shri Om Prakash Nat. This direction is dated 10.05.2007. The respondents have not mentioned the date of retirement of Shri Mohd. Bashir Ahmed, the then SPOs

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Tonk to prove that it was not possible to take action against Shri Mohd. Bashir Ahmed as he had already retired prior to the instructions received by the Department of Posts dated 10.05.2007. On the other hand, the Disciplinary Authority in its order dated 16.06.2009 (Annexure A/1) has stated that the then SPO Tonk, Shri Mohd. Bashir Ahmed is equally responsible for this loss. It suggests that had Shri Mohd. Bashir Ahmed had retired prior to the date of passing this order then the Disciplinary Authority would not mentioned this fact in the order dated 16.06.2009 (Annexure A/1) and processed to recover the amount of loss caused to the Government from two other officials namely; Shri L.S. Ratnawat, the then SDI (P) Bundi (West) and the applicant (Shri Babu Lal Barolia).

26. From the perusal of the record, it is not disputed that the respondent department has not inflicted any recovery on Shri L.S. Ratnawat, the then SDI (P) Bundi (West). The finding of the Disciplinary Authority on this count that Shri L.S. Ratnawat is also equally responsible for the loss caused to the Government have not been superseded by the Appellate Authority while passing the order dated 22.10.2010 (Annexure A/2). Shri L.S. Ratnawat has been left off by inflicting the punishment of 'Censure' only.

27. We have perused the order passed by the CAT, Jaipur Bench in OA No. 203/1999 dated 02.08.2000 [Om Prakash Nat

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vs. Union of India & Others]. Para 6 of the order is quoted below:-

"6. In the instant case, the applicant's appointment was on compassionate grounds in relaxed standards. Therefore, merely writing out provisional in the order of appointment does not make the appointment of the applicant as provisional whereas according to the settled legal position, nature of such appointment is permanent one. Services of permanent appointee can only be terminated after following the due process of law. In this case, same has not been applied, therefore, we are of the considered opinion that the order at Ann.A1 by which services of the applicant were terminated is per-se illegal and liable to be quashed."

From the perusal of this order, it is clear that termination of the applicant was quashed because respondent department did not follow the due process of law while terminating the services of the applicant. If the appointment of Shri Om Prakash Nat was given on the basis of wrong facts, the Department was free to take action against Shri Om Prakash Nat by following the due process of law or at least the Department could have sought a clarification on this point from the Tribunal as to whether they can proceed against Shri Om Prakash Nat by following the due process of law. But no such action was taken by the respondent department. The learned counsel for the respondents submitted at Bar that Shri Om Prakash Nat is still working with the Department.

28. Thus considering all the facts & circumstances of the case, we are of the opinion that the applicant has been discriminated against while imposing the penalty of recovery on him while no such recovery has been ordered against Shri L.S.

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Ratnawat, the then SDI (P) Bundi West. He has been imposed the penalty of 'Censure' only. Thus it appears to be case of discrimination against the applicant because only he has been inflicted the punishment of recovery. Therefore, we quash the penalty order of the Disciplinary Authority dated 16.06.2009 and the order of the Appellate Authority dated 22.10.2010 (Annexure A/2) and directed the respondents to re-consider the case of the applicant in the light of the observations made above.

29. 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)