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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 06.09.2012

OA No. 265/2012

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter on 27.09.2012.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Kumawat

27.9.2012
Mr. C.B. Sharma, Counsel for applicant
Mr. Mukesh Agarwal, Counsel for respondents

Heard. The OA is disposed
of by a separate order.

Anil Kumar
(Anil Kumar)
M (A)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of September, 2012

ORIGINAL APPLICATION No. 265/2012

CORAM :

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

M.L. Sharma son of Bodu Ram Sharma, aged about 50 years, resident of Govind Garh, District Jaipur and presently holding the post of Assistant Superintendent of Post Offices, East Sub Division, Jaipur City Division, Jaipur (under suspension) with Headquarter at Jaipur.

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

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Sardar Patel Marg, Jaipur.
3. Director, Postal Services (H.Q.), Office of Chief Post Master General, Rajasthan Circle, Sardar Patel Marg, Jaipur.
4. Assistant Post Master General (S&V), Office of Chief Post Master General, Rajasthan Circle, Sardar Patel Marg, Jaipur.

... Respondents
(By Advocate : Mr. Mukesh Agarwal)

ORDER (ORAL)

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

"(i) That the entire record relating to the case be called for and after perusing the same letter dated 29.08.2011 (Annexure A/1) with the memo dated 26.05.2010 (Annexure A/4) with the further review orders Annexure A/5, A/7, A/8 and A/9 be quashed and set aside with all consequential benefits including arrears of pay and allowances.

Anil Kumar

- (ii) That the respondents be further directed to allow the applicant to work on the post of Assistant Superintendent of Post Offices, East Sub Division, Jaipur City by revocation of suspension of the applicant with all consequential benefits.
- (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."

2. Learned counsel for the submitted that the applicant is working in the cadre of Assistant Superintendent of Post Offices (presently under suspension). The appointing authority of the applicant is respondent no. 2 that is Chief Post Master General, Rajasthan Circle, Jaipur. The Disciplinary Authority of the applicant is also respondent no. 2.

3. The respondent no. 3 that is Director, Postal Services (H.Q.), Office of the Chief Post Master General, Rajasthan Circle, Jaipur, who lower authority than respondent no. 2 placed the applicant under suspension vide Memo dated 26.05.2010. The respondent no. 3 can impose only minor penalty. The Review Committee had reviewed the case of the applicant on 16.08.2010 (Annexure A/5) and extended the suspension for a further period for 180 days w.e.f. 25.08.2010. The suspension was further extended vide Memo dated 18.01.2011 (Annexure A/7), 24.08.2011 (Annexure A/8), 06.02.2012 (Annexure A/9) and 03.08.2012. The order dated 03.08.2012 was given by the learned counsel for the applicant at the time of hearing.

Anil Kumar

4. Learned counsel for the applicant argued that from the perusal of the orders of extension of the suspension period would reveal that the period from 21.02.2011 to 02.03.2011 never extended as suspension and on this ground alone, suspension order became ineffective. He further argued that the applicant was placed under suspension vide order dated 26.05.2010 (Annexure A/4) on the ground that disciplinary proceedings is contemplated against him but in the review order, the respondents have mentioned that the period of suspension is extended till the finalization of the criminal/disciplinary case against him. He further submitted that the applicant was placed under suspension by respondent no. 3 who is not the appointing authority of the applicant. The applicant also filed an appeal on 26.07.2011 (Annexure A/11) against the suspension order and also for review for suspension allowance on 27.07.2011 (Annexure A/12).

5. Respondent no. 2 who is competent authority to consider the appeal being the appointing authority and higher authority than the respondent no. 3, who placed the applicant under suspension but respondent no. 4 without any base and without competency rejected the same vide letter dated 29.08.2011 (Annexure A/1). In the list of witness annexed with the charge memo, the name of Shri Dushyant Mudgal, APMG (S&B) has been shown as prosecution witness and the same Shri Mudgal has decided the appeal of the applicant vide impugned order dated 29.08.2011 (Annexure A/1). He has also communicated

Anil Kumar

the decisions of the Review Committee from time to time which is evident from Annexure A/7 and Annexure A/8. Shri Mudgal cannot decide the appeal as he is junior to respondent nos. 2 and 3 and also because of witness in the departmental proceedings.

6. Learned counsel for the applicant argued that the action of the respondents is against the provisions of Articles 14, 16 and 21 of the Constitution of India and also against the rules and procedure which provides mandatory provisions and the same has not been followed in the present case. Therefore, the OA be allowed and the suspension may be revoked and all subsequent orders of suspensions may also be revoked with all consequential benefits.

7. On the other, learned counsel for the respondents argued that the applicant was placed under suspension w.e.f. 26.05.2010 (A/N) by respondent no.3, who is the disciplinary authority in the case of the applicant. The respondent no. 3, Director, Postal Services (HQ), Office of Chief Post Master General, Rajasthan Circle, Jaipur was competent to impose minor penalty on the applicant and in that capacity, he was competent authority to pass the suspension order of the applicant. Thus the suspension order has been issued by the competent authority. Therefore, the averment of the learned counsel for the applicant that respondent no. 3 is not competent authority to issue the suspension order is not correct.

Aml Kumar

8. He further submitted according to Sub Rule 6 & 7 of Rule 10 of the CCS (CCA) Rules, 1965, the first review was carried within 90 days of the suspension and after first review, the order of extension of the suspension order was issued on 16.08.2010 (Annexure A/5). Similarly thereafter of the extension order of suspension were issued within the stipulated period of 180 days. Subsequent orders of extension of suspension period were issued on 18.01.2011, 24.08.2011 and 16.02.2012, which were within the stipulated period of 180 days. Thus there is no irregularity or violation of provision of any rule in the issuance of these extension orders. All these extension orders were issued on the recommendations of the Review Committee.

9. With regard to the submission made by the learned counsel for the applicant that these extension orders dated 16.08.2010 (Annexure A/5), 17/18.01.2011 (Annexure A/7), 24.08.2011 (Annexure A/8) and 16.02.2012 (Annexure A/9) have been issued under the signature of respondent no. 4 who is the lower authority than the disciplinary authority or the appointing authority and who is also a witness in the disciplinary proceedings, the contention of the respondents is that the orders have been issued by the competent authority on the recommendation of the Review Committee and respondent no. 4 has only communicated the decision of the competent authority. Therefore, there is no illegality/irregularity in the orders passed for extension of suspension.

Anil Kumar

10. With regard to the averment made by the learned counsel for the applicant that the period w.e.f. 21.02.2011 to 02.03.2011 has not been covered in any of the extension order, the learned counsel for the respondents submitted that it is a human error and it has been corrected vide order 03.08.2012 while calculating the period of extending period. The date of extension of suspension period was erroneously and inadvertently written in the review committee report as 03.03.2011 instead of 21.02.2011. Therefore, the applicant is not entitled for relief on this ground.

11. Learned counsel for the respondents argued that the appeal of the applicant has been decided by the competent authority vide order dated 29.08.2011 (Annexure A/1) after considering all the points raised by the applicant in his appeal. The respondent no. 4 has only communicated the decision of the Appellate authority. Therefore, the order dated 29.08.2011 cannot to be arbitrary or against the provisions of any rule/law. Therefore, on this ground, no relief can be granted to the applicant. The disciplinary proceedings as well as criminal proceedings are still pending against the applicant. The Appellate Authority has categorically mentioned in his order that the applicant was under judicial custody at the time of completion of three months suspension, as such the revision of the subsistence allowance could not be ordered from the retrospective dates. However, the subsistence allowance of the applicant has been



increased from 02.05.2011 vide C.O. Memo dated 02.05.2011. Thus the subsistence allowance has also been increased and on this point, the applicant is not entitled for any relief.

12. Heard the rival submissions of the parties and perused the relevant documents on record. The applicant was suspended vide order dated 26.05.2010 (Annexure A/4) by the Director Postal Services (HQ), Rajasthan Circle, Jaipur on the ground that a disciplinary proceeding is contemplated against the applicant. This suspension order has been passed in exercise of powers conferred by Sub Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965. The contention of the learned counsel for the applicant that Director Postal Services was not competent authority to issue the suspension order is not correct. Rule 13 (2) of the CCS (CCA) Rules reads as under:-

"13. Authority to institute proceedings

(2) A Disciplinary Authority competent under these rules to impose any of the penalties specified in Clause (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 later penalties."

Under these rules, the Director Postal Services is competent authority to initiate disciplinary proceedings under Rule 14 against the applicant and also to pass suspension order. Thus in our considered view, the suspension order has been passed by the competent authority. There is no infirmity in the suspension order dated 26.05.2010 (Annexure A/4) passed by the Director Postal Services.

Anil Kumar

13. The contention of the learned counsel for the applicant that respondent no. 4 has been included as prosecution witness in disciplinary proceeding and, therefore, he could not have issued the order of extension of suspension dated 16.08.2010 (Annexure A/5), 17/18.01.2011 (Annexure A/7), 24.08.2011 (Annexure A/8) and 06.02.2012 (Annexure A/9). Learned counsel for the respondents submitted that these orders have been issued on behalf of the competent authority i.e. Chief Post Master General, Rajasthan Circle, and respondent no. 4 has only communicated the decision of the competent authority. We have carefully gone through the orders of extension of suspension which have been issued under the signature of respondent no. 4 and we are of the opinion that respondent no. 4 has only communicated the decision taken by the competent authority that is Chief Post Master General, Rajasthan Circle,, Jaipur. The decision to extend the period of suspension has been taken by the competent authority. In our considered view, if the order of the competent authority has been communicated by respondent no. 4 then there is no irregularity/illegality in such communication.

14. Learned counsel for the applicant also argued that the period from 21.02.2011 to 02.03.2011 has not been covered in any order of suspension. Therefore, his suspension order becomes ineffective on this ground. Learned counsel for the respondents has pointed out that while calculating the period of

Anil Kumar

extending the suspension, the date of extension period was erroneously/inadvertently written in the review committee report as w.e.f. 03.03.2011 instead of 21.02.2011, which is a human error. This error has subsequently been corrected vide Memo No. Vig.14-2(1)2010 dated 03.08.2012. In view of the submission made by the learned counsel for the respondents that non-inclusion of the period from 21.02.2011 to 02.03.2011 in the extension of suspension period was a human error and which has been subsequently corrected, we are of the opinion that the applicant is not entitled for any relief on this ground also.

15. Learned counsel for the applicant drew our attention to the fact that the order on appeal dated 29.08.2011 (Annexure A/1) has been issued by respondent no. 4, who is junior in rank to both respondent nos. 2 & 3. Therefore, this order passed in appeal may be quashed and set aside. Learned counsel for the respondents has already explained that the decision on appeal was taken by the competent authority i.e. Chief Post Master General and the order dated 29.08.2011 (Annexure A/1) has only been communicated by respondent no. 4. All the points raised by the applicant in his appeal have been considered by the Appellate Authority. Therefore, there is no irregularity/infirmity in the order dated 29.08.2011 (Annexure A/1) and we are of the view that this order has been passed by the Chief Post Master General, who is the competent authority to decide the appeal of the applicant. The order dated 29.08.2011 is a speaking and reasoned order. Respondent no. 4 has only



communicated the decision of the Chief Post Master General, Rajasthan Circle, Jaipur. Therefore, order cannot be said to be either arbitrary or illegal. We do not find any infirmity/illegality in the order dated 29.08.2011 (Annexure A/1).

16. The applicant was suspended vide order dated 26.05.2010 (Annexure A/4). Thereafter the respondents have reviewed the suspension within 90 days as prescribed under the rules. Thereafter the respondents have again reviewed the decision of extension of suspension of the applicant from time to time within 180 days as prescribed under the rules. Therefore, looking from any angle, we do not find any illegality/infirmity in the action of the respondents. In our view the applicant is not entitled for any relief in the present OA.

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

Anil Kumar
(Anil Kumar)
Member (A)

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

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