

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

05.07.2013


OA No. 215/2013


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

Heard learned counsel for the parties.

Learned counsel for the applicant submits he does not want to file rejoinder. Thus the pleadings are complete.

The matter was heard. The OA is disposed of by a separate order.


(S.K. Kaushik)
Member (J)


(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 215/2013

Jaipur, the 05th day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER

Jale Singh Rollan son of Shri Ram Kishore Rollan, aged about 39 years, resident of Village and Post Gorir, Tehsil Khetri, District Jhunjhunu and holding the post of Gramin Dak Sevak, Delivery Agent/ Mail Carrier, Gorir Branch Post Office (Shimla), Tehsil Khetri, District Jhunjhunu.

... 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, Dak Bhawan New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Western Region, Jodhpur (Rajasthan).
4. Superintendent of Post Offices, Jhunjhunu Postal Division, Jhunjhunu.
5. Inspector of Post Offices, Khetri Nagar, District Jhunjhunu.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed the present OA against the order dated 23.01.2013 (Annexure A/1) issued by respondent no.5 by which the applicant has been removed from service on the allegation that the applicant delivered three Registered/Speed Posts with the delay and that too to other persons instead of addressee, by conducting an inquiry by the Disciplinary Authority himself. The Disciplinary Authority also acted as the

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Presenting Officer. According to the learned counsel for the applicant, the Disciplinary Authority cannot act as an Inquiry Officer as well as Presenting Officer and the same is against the provisions of CCS (CCA) Rules, 1965 as well as Department of Posts Gramin Dak Sevak (Conduct and Engagement) Rules, 2011. The learned counsel for the applicant further stated that the inquiry proceedings took place ex-parte. He further submitted that the action of the respondents in connection with removal from service of the applicant is without following the proper procedure and principle of natural justice as well as against the Rules. Therefore, the order passed by the Disciplinary Authority dated 23.01.2013 (Annexure A/1) and charge memo dated 27.02.2012 (Annexure A/4) alongwith the inquiry proceedings be quashed and set aside.

2. On the other hand, learned counsel for the respondents submitted that the order dated 23.01.2013 by which the applicant has been removed from service has been passed by the Disciplinary Authority after conducting an inquiry. The charges have been proved. He submitted that as per Rules 14(2) of the CCS (CCA), 1965, the Disciplinary Authority can act as Inquiry Officer himself, if he decides not to appoint a separate Inquiry Officer. In their written reply, the respondents have quoted relevant provisions of the Rules, which is as under:-

"Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any

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imputation of misconduct or misbehaviour against a Govt. servant, it may itself inquiry into, or appoint under this rule or under the provision of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof:

Explanation – Where the Disciplinary Authority itself holds the inquiry, any reference in sub rule (7) to sub-rule (20) and in sub-rule (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.”

Therefore, he submitted that there is no illegality if the Disciplinary Authority himself acted as an Inquiry Officer.

3. Learned counsel for the respondents further denied the allegation that the proceedings were ex-parte. He submitted that the applicant appeared and cross-examined the witnesses. Hence no constitutional provisions and other rules were breached. He argued that there have been no procedural lapses or violation of natural justice. The charge sheet was issued to the applicant as per the rules. The inquiry was also conducted according to the rules and the Disciplinary Authority has passed the penalty order following the proper procedure and rules. The inquiry report was sent to the applicant for making representation but he did not submit any representation against that.

4. Learned counsel for the respondents further submitted that when the Disciplinary Authority act as a Inquiry Officer, there is no need to appointing a Presenting Officer, hence there is no violation of Rules/Procedure or natural justice. Therefore, OA needs to be dismissed.

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5. Heard learned counsel for the parties and perused the documents on record. The proceedings against the applicant were drawn under Rule 10 of the Gramin Dak Sevak (Conduct and Engagement) Rules, 2011. It has been provided under Rule 10 that the penalty of dismissal/removal from engagement shall not be imposed except after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. The administrative instructions as contained in DGPT letter No. 151/4/77-Disc. II, dated 16.01.1980 provide that:-

"Enquiry against ED Agents following Rule 14 of CCS (CCA) Rules in spirit. – While it may not be necessary to follow the provisions of Rule 14 of CCS (CCA) Rules, 1965, literally in the cases of ED Agents, it would be desirable to follow the provisions of that rule in spirit so that there may be no occasion to challenge that the opportunity under Article 311 (2) of the Constitution were not provided.

6. According to Rule 14(2) of CCS (CCA) Rules, 1965, which have been quoted by the respondents in the reply, it is clear that the Disciplinary Authority can himself inquire into the charges against the charged officer. Therefore, we are of the considered opinion that if the Disciplinary Authority has himself acted as an Inquiry Officer, there is no violation of procedure or any rule. However, Rule 14 (5) (c) of CCS (CCA) provides as under:-

"14. Procedure for imposing major penalties

5(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, be by

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an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."

This provision makes it clear that even where the Disciplinary Authority itself inquires into any article of charge then he himself cannot act as Presenting Officer. In the present case, one Shri Omveer Singh was appointed as a Presenting Officer but he could not attend the proceeding on 08.06.2012, therefore, the Disciplinary Authority himself acted as Presenting Officer. The Disciplinary Authority either should have adjourned the inquiry to some other date may be next day or should have appointed any other Presenting Officer. But in any case he could not act as Presenting Officer himself. It was also necessary to remove any apprehension of bias on the part of the applicant.

7. In the case of **T.N. Govindarajan vs. Management, Indian Overseas Bank**, 1992 LAB. I.C. 1832, the Hon'ble Madras High Court in Para No. 7 of the judgment has held as under:-

"7. With reference to the contention that in the instant case there should be a Presenting Officer, it may be considered that if the Enquiring Authority is to consider only the documentary evidence, it may not be necessary to appoint a Presenting Officer. But if the Enquiring Authority is to consider the evidence let it on behalf of the Prosecution, it is necessary that the Disciplinary Authority should appoint a Presenting Officer. In the instant case, the Enquiring Authority has acted as the Presenting Officer. I am of the view that he cannot play the role of the Prosecutor as well as the Judge. Mr. Vednkaraman may also be right in contending that there is likelihood of the Enquiring Authority being influenced by reason of the fact that he himself acts as the Presenting Officer. Though the

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Regulation provides that the Disciplinary Authority may appoint a Presenting Officer, in case of this kind the Disciplinary Authority should appoint a Presenting Officer, for the reason that the Enquiring Authority should not be left with the position to examine the witnesses on behalf of the prosecution.

The ratio decided by the Hon'ble High Court in this case is squarely applicable in this case under the facts & circumstances of the present case. In the instant case, the Inquiry Officer has acted as a Presenting Officer. Therefore, as laid down by the Hon'ble High Court, the Inquiry Officer cannot play the role of the Prosecutor as well as the Judge.

8. Thus the Disciplinary Authority could not have acted as a Presenting Officer. This is clear violation of Rule 14 (5) (c) of the CCS (CCA) Rules, 1965 and is against the principle of natural justice that the Disciplinary Authority himself can act as a Inquiry Officer as well as Presenting Officer. Learned counsel for the respondents also could not show any rule whereby the Disciplinary can also act as a Presenting Officer. Therefore, in our considered view, the order dated 23.01.2013 has been passed in violation of Rule 14(5)(c) of the CCS (CCA) Rules, 1965 and is also against the principle of natural justice.


9. Therefore, we quash the penalty order dated 23.01.2013 (Annexure A/1). However, the respondents are at liberty to start denovo proceedings from the stage of inquiry and pass a fresh order, following the due procedure and in accordance with the provisions of law.

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10. With these observations, the QA is disposed of with no order as to costs.


(S.K. Kaushik)
Member (J)

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(Anil Kumar)
Member (A)