

OA. 060/00147/2014

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

**OA. 060/00147/2014
(Reserved on 18.11.2014)**

Chandigarh, this the 21st day of November, 2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

...
Vijay Swarup Asuri, aged 49 years S/o Sh. Shyam Swarup,
Postman, Panipat.

...Applicant

BY ADVOCATE: MR. R.K. SHARMA

Versus

1. Union of India through the Secretary to Government of India, Ministry of Communications & Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General (Post), Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Post Master General, Haryana Circle, Ambala.
4. Senior Superintendent of Post Offices, Karnal Division, Karnal.
5. Postmaster, Head Office, Panipat.
6. Sh. Suraj Bhan Malhotra, Senior Superintendent of Post Offices (Retd.), Karnal Division, Karnal.
7. Sh. Darshan Lal, Postmaster (Retd.) Head Office, Panipat.

...Respondents

BY ADVOCATE: MR. SANJAY GOYAL

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ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- “(i) Quash order No. Memorandum/Decision/Vijay Asuri/Postman/Disciplinary decision-16/Panipat dated 18.11.2011(Annexure A-1), passed by Respondent No. 5 whereby a penalty of stoppage of next one increment for two years was imposed on the applicant and quashing thereof.
- (ii) Quash order Memorandum No. B-2/Vijay Asuri dated 20.03.2012 (Annexure A-2), passed by Respondent No. 4 whereby appeal preferred by the applicant against the orders of Respondent No. 5 dated 18.11.2011 was rejected and quashing thereof.
- (iii) Quash Memo No. Staff/1-4/3/2012 dated 16.05.2013(Annexure A-3) passed by Respondent No. 3 whereby Revision Petition filed by the applicant was rejected and quashing thereof.”

2. In the grounds for relief, it has interalia been stated as follows:-

- (i) The disciplinary proceedings initiated against the applicant are the outcome of malafide and biased mind of respondents No. 6 & 7 as applicant had made written complaint against them to the respondent No. 2 so they wanted to teach lesson to the applicant.
- (ii) Because it is on the record that no documents were supplied to the applicant and the applicant has been deprived of his valuable right to defend himself. As

- (iii) Because it is on the record of the respondents that the persons whose registered letters had allegedly not been delivered by the applicant had given affidavits that the speed post mail was duly delivered to them by the applicant. So there was no reason to discard their statements. Thus, the action of the respondents is illegal, arbitrary and against the law.
- (iv) That the impugned orders have been passed without discussing the points raised by the applicant. None of the submissions have been considered by the Appellate and Revisional Authority. The conclusion drawn is not reasoned, but arbitrary and Government of India decision No. (1) below Rule 15 of CCS(CCA) Rules, 1965 has been completely ignored, which stipulates that self-contained, speaking and reasoned order be passed.
- (v) Because word "Consider" in Rule 27(2) of the CCS(CCA) Rules, casts on the Appellate Authority an obligation to give reasons by applying its mind. A mechanical reproduction of the provision of the rule without marshalling the evidence to sustain the findings of the Disciplinary Authority will not cure the legal flaw in the Appellate Order. Reference in this regard may be made to R.P. Bhatt Vs. UOI (1986) 1 SLR 470 (SC), Ram Chandra Versus Union of India ATR 1986(2) SC 252 (1986) 2 SLR 608; C. Sukumaran Vs. Director General ICAR, (1990) 7 SLR 249 CAT (Ern.). Hence, the impugned orders are unsustainable in the eyes of law.

3. Malafide has been alleged on the part of private Respondents No. 6 & 7 as the applicant made representation for considering his case for appointment as "Mail Overseer" and against the appointment of Sh. Phool Kumar, Postman, Jind, as the "Mail Overseer". It has further been stated that since serious

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charges were leveled against the applicant of not distributing the mail, the applicant sought the copies of the following documents vide his application dated 21.02.2011 (Annexure A-10):-

- (i) Special list dated 30.10.2010 which was got distributed from Sh. Kapur Singh, Postman.
- (ii) Attested photo copies of the postal documents distribution slips which were distributed by the applicant on 18.10.2010, 21.10.2010, 22.10.2010, 23.10.2010, 25.10.2010 and 26.10.2010.
- (iii) Attested photo copy of report submitted against the applicant by P.R.I. Rajan.
- (iv) Name and address of the tea stall from where the postal documents were found and attested photocopy of the statement taken by Sh. Rajan of the tea stall owner and photocopies of wrappers of the postal documents.

In spite of a number of representations in this regard, the documents were not supplied and respondent No. 5 imposed penalty of withholding of next one increment for two years vide impugned order dated 18.11.2011. The applicant submitted a detailed appeal dated 3.12.2012 highlighting all the facts leading to annoyance of respondents No. 4 & 5 against the applicant and also submitted parawise reply to the charge sheet (Annexure A-11). However, respondent No. 3 without considering the appeal of the applicant in right perspective and without appreciating the fact

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that no document was supplied to the applicant as was relied upon by the Disciplinary Authority, rejected the appeal of the applicant vide impugned order dated 20.3.2012 (Annexure A-2).

4. In the written statement filed on behalf of the respondents No. 1 to 5, the facts of the matter have not been disputed. It has been stated that a memorandum of charge under Rule 16 of CCS (CCA) Rules, 1965 was issued against the applicant by Respondent No. 5 vide memo dated 13.01.2011, which reveals that the applicant, while serving as Postman in Panipat H.O. showed the speed post and registered articles as delivered to their addresses which were entrusted to him for delivery during the period from 18.10.2010, 21.10.2010, 23.10.2010, 25.10.2010 and 26.10.2010, but the articles as particularized in the charge sheet were actually not delivered by him to their addressees. In fact, on enquiry, the Public Relation Inspector (Postal), Panipat H.O. found these articles lying undelivered in a Tea Stall on 29.10.2010, which revealed that the applicant had made false entries of delivery of these articles in his books. Thus, he was alleged to have violated the provisions of Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964. This charge sheet memo was delivered to the

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applicant on 21.2.2011. He was given opportunity to represent against the charges leveled against him. Applicant was addressed vide Postmaster Panipat letter No. 20.4.2011 to submit his defence and was again addressed on 13.5.2011, 17.8.2011 and 13.9.2011 to submit his defence statement. But applicant did not submit the same. The respondent No. 5 being Disciplinary Authority, taking into consideration all facts and records and due to non-submission of representation by the applicant, awarded the applicant the punishment of stoppage of his next one increment for two years vide order dated 18.11.2011 (Annexure A-1). The appeal dated 03.02.2012 (Annexure A-11) submitted by the applicant was considered with reference to facts and records of the case and rejected by the Appellate Authority i.e. respondent No. 4 vide orders dated 20.3.2012 (Annexure A-2). Thereafter, the applicant preferred a petition dated 03.08.2012 (Annexure A-12) to respondent No. 3 which was also considered and rejected on merit vide order dated 16.5.2013 (Annexure A-3).

5. The relief being sought for in the present OA for seeking quashing of order dated 18.11.2011 (Annexure A-1) and 20.03.2012 (Annexure A-2) passed in appeal against the order

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dated 18.11.2011 and quashing of order dated 16.5.2013 passed in Revision Petition was not admissible as the answering respondents have rightly issued the orders after considering each and every relevant point in detail and also have complied with the necessary procedure before issuing penalty order thereby meeting the principles of natural justice. The present OA is liable to be dismissed as the quantum of punishment imposed is not harsh and disproportionate keeping in view the facts and circumstances of the case.

6. It has further been stated that the post of "Mail Overseer" fell vacant in Jind Sub Division and the willingness of eligible/willing officials was called for vide letter dated 23.7.2010 (Annexure R-1). The last date of 06.08.2010 was fixed for receipt of applications. Sh. Phool Kumar, Postman Jind had earlier refused TBOP promotion, but since the appointment of "Mail Overseer" was not a promotion, Sh. Phool Kumar, the seniormost among the postman staff, was appointed as such. The application of the present applicant was received after the last date i.e. 06.08.2010 and hence, the same was not considered.

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7. Regarding non-supply of documents as sought by the applicant, it has been stated that respondent No. 5 vide letter dated 6.4.2011 (Annexure R-5) asked the applicant to collect the desired documents from the office of respondent No. 5 during working hours on 13.4.2011. Documents that were not considered relevant, were disallowed and the applicant was asked to submit his representation against the charge sheet by 20.01.2011. Reminders were also issued in this regard and hence full opportunity was given to the applicant by the Postmaster, Panipat to defend himself, but since the applicant refused to submit his defence statement, the disciplinary case was decided on merits vide Annexure R-1.

8. No reply has been filed despite service on behalf of respondents No. 6 and 7 who are retired employees of the respondent department.

9. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant stated that the charge against the applicant regarding non-delivery of postal items was not proved as the affidavits of the persons who had received the delivery of the items, have been appended with the

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OA. Learned counsel alleged malafide on the part of the respondents who in spite of non-supply of documents sought by the applicant, went ahead with the disciplinary proceedings and issued the impugned order regarding imposition of penalty.

10. Learned counsel for the respondents referred to the content of the written statement. He stated that the applicant did not submit any defence to the charge sheet. The penalty had been imposed vide order dated 18.11.2011 based upon the material available with the Disciplinary Authority. The appeal and the revision petition had also been dismissed after due consideration of the points raised by the applicant. Detailed orders had been passed and there was no flaw in the disciplinary proceedings. Learned counsel also stated that the applicant could not prove the delivery of postal items to the addressees and mere submission of the affidavits of the concerned persons that they have received the articles, could not support the cause of the applicant.

11. We have carefully considered the pleadings of the parties, the material on record and the arguments advanced by the learned counsel. It is seen that the charge sheet was issued under Rule 16 of the CCS(CCA) Rules for imposition of minor penalty and

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therefore no list of "Relied upon Documents" was attached with the charge sheet. Also, from the content of document at Annexure R-5 dated 6.4.2011, it is clear that documents sought vide Sr. No. 1 & 2 of letter dated 21.2.2011 were to be obtained by the applicant from one Sh. Surender Singh Malik working in the office. Regarding document at Sr. No. 3, it was concluded that this could not be released to the applicant and document at Sr. No. 4 was also not related to the applicant and hence was not provided to him. Hence, the contention of the applicant that he was not provided any of the documents relied upon by the respondents is patently incorrect. It is also seen from the content of the charge sheet that the eight speed post registered items which were shown by the applicant to have been distributed on different dates between 18.10.2010 to 26.10.2010 were actually delivered on 30.10.2010 through Sh. Kapoor Singh, Postman Beat No. 19 through special delivery slip. The respondents had retained the covers of these letters (after obtaining signatures) of the recipients and hence the claim of the applicant that he had actually delivered these postal articles is false. The applicant has not been able to prove that he himself delivered these articles and hence, the affidavits obtained

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by him subsequently from the recipients (copies of which have been annexed with the OA) are of little value. The applicant failed to even submit his representation against the charge sheet in spite of having been afforded ample opportunity to do so. His appeal as well as revision petition have been rejected with very detailed and speaking orders passed by the Appellate Authority on 20.03.2012 and Revisionary Authority on 16.05.2013. Mala fide as alleged by the applicant has not been established.

12. In view of the observations above, we conclude that there is no procedural lapse in the disciplinary proceedings against the applicant and the impugned orders do not merit judicial interference. The OA is rejected. No costs.

**(RAJWANT SANDHU)
MEMBER(A)**

**(DR. BRAHM A.AGRAWAL)
MEMBER(J)**

Dated: November 21, 2014.

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