

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4566/2011

Order Reserved on: 08.09.2016

Pronounced on:21.09.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

V.K. Bhatnagar
S/o Sh. Late Sh. H.P.Bhatnagar,
R/o D-93 A,
Shakarpur,
Delhi-92.

- Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through its' Secretary,
Ministry of Communication,
Govt. of India,
Dak Tar Bhawan,
New Delhi.
2. The Chief Post Master General,
Delhi Circle,
Department of Posts,
New Delhi-1.
3. Director Postal Services (MB),
Delhi Circle, office of
Pr. Chief Postmaster General,
New Delhi-1.
4. Senior Manager,
Mail Motor Service,
Naraina, New Delhi-28
Department of Agriculture & Cooperation.

-Respondents

(By Advocate: Shri D.S.Mahendru)

ORDER

Hon'ble Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main relief:

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned penalty order dated 31.3.2006, Appellate authority order dated 23.7.2008, Revisional authority order dated 11.07.2011, I.O. report, charge sheet and whole enquiry proceedings, declaring to the effect that the same are illegal, unjust and arbitrary and consequently the applicant is entitled for all the consequential benefits including the restoration of his pay with arrears of difference of pay and allowances and also due promotion which was not granted to the applicant due to pendency of the proceedings.”

2. The brief facts of this case are as under:

2.1 The applicant was appointed as a Group 'D' employee in Postal Department on 13.09.1977. He got promotion as Postal Assistant. Between 01.01.1995 to 05.09.1996 he worked as Storekeeper at Motor Mail Service (MMS), Naraina, New Delhi. The impugned charge-sheet dated 31.03.2009 came to be issued to him for some alleged irregularities committed by him during the period when he worked as Storekeeper at MMS. The articles of charge read as under:

“Article of Charge No.1

Shri Vichitra Kam Bhatnagar PA while functioning/working as Store Keeper at MMS Naraina, New Delhi during the period from 1.1.1995 to 5.9.1996 is alleged to have:-

Misused his official position/authority and adopted unfair means/tactics in recurring spare parts/stores by resorting to local purchases without any immediate/justified requirement violating the procedure as laid down in Para No.44 to 48 and 62 of Revised Accounting procedure.

Accepted/received the defective/unsuitable spares/stores in violation of procedure as contained in Para No.58 of Revised Accounting Procedure.

Failed to maintain proper records for the receipt and issue of stores.

Caused financial loss of Rs.58,936.73 P to the Department due to his gross negligence in the discharge of his duties and arranged excess/over payments, bogus payments and payments towards the cost of unsuitable/defective spare parts in contravention of procedure laid down in Para 70 & 70-A of the Revised Accounting Procedure.

Shri V.K. Bhatnagar is therefore charged for contravening the procedure as laid down in paras 44 to 48, 58 70-70A and 62 of the Revised Accounting Procedure, failed to maintain absolute integrity, lack of devotion to duty and thereby acted in a manner of unbecoming of a Govt. servant infringing rule-3(1) (ii) (iii) of CSS (Conduct) Rules, 1964.

Article of Charge No.2

Shri V.K. Bhatnagar, P.A. while functioning/working as Store Keeper MMS Naraina, New Delhi during the period from 1.1.95 to 5.9.96 is alleged to have failed to maintain proper records for the receipt and issue of spare parts/stores purchased and misappropriated the govt. stores worth Rs.1,20,880.13P as the stores amounting to Rs. 1,20,880.13P was found short under his charge/custody.

In addition to this, his past service records also reveal that he attempted to make theft of K.Oil and was awarded punishment. He has also been found responsible for shortage of nozzles and was awarded punishment for his carelessness, negligence and lack of devotion towards his duties.

Shri V.K. Bhatnagar, P.A is therefore charged for his failure to maintain absolute integrity, lack of devotion to duty and thereby conducted himself in a manner of unbecoming of a Govt. servant infringing the Rule 3(I)(i)(ii)(iii) of C.C.S. (Conduct) Rules, 1964.”

2.2 An inquiry was ordered pursuant to the said charge-sheet by appointing Inquiry Officer (IO) and Presenting Officer (PO). The IO submitted its report on 26.09.2005 with the finding as under:

“From the above analysis and assessment of evidence, I hold the article of charge no.1 and 2 levelled against Sh. V.K. Bhatnagar store Keeper vide Sr. Manager Mail Motor Service Naraina vide memo No.B-2/Disc/6-97/3/V.K. Bhatnagar dtd.4.6.97 as proved.”

2.3 Accepting the IO's report, the Disciplinary Authority (DA), i.e., Senior Manager, MMS vide impugned order dated 31.03.2006 (page 24 of the paper-book) imposed the penalty of reduction of pay of the applicant by four stages for a period of four years. The operative part of the DA's order reads as under:

“Taking into account various factors and most importantly the merit of the case, I, S.S. Kushwah, Senior Manager, Mail Motor Service, New Delhi find/hold guilty Shri V.K. Bhatnagar, Postal Asstt. of violation of Para-44 to 48, 58, 62, 70 & 70A of RAP and Rule 3(1)(i)(ii)& (iii) of CCS (Conduct) Rules, 1964 and acted in a manner of unbecoming of Govt. servant and he (C.O) deserves for extreme exemplary punishment for his knowingly conspired offence; but keeping in view the present hard days of livelihood and service as well as social obligations, I am inclined to take a lenient view in the case and hereby order that the pay of Shri V.K. Bhatnagar, Postal Asstt. be reduced by four stages i.e. from Rs.5400/- to Rs.5000/- in the pay scale of Rs.4000-6000/- for a period of four years with immediate effect. It is further directed that Shri V.K. Bhatnagar, Postal Asstt. will not earn increment of pay during the period of reduction and that on the expiry of his period the reduction will have effect the postponing his future increment of pay.

However, the period of suspension of Shri V.K. Bhatnagar, PA i.e. from 6.9.96 to 26.10.97 is ordered to be treated as suspension for all purposes.”

2.4 Aggrieved by the DA's order dated 31.03.2006 the applicant preferred an appeal before the departmental Appellate Authority (AA), i.e., Director, Postal Services (MB), who vide its impugned order dated 18.07.2008 (page 74 of the paper-book) reduced the penalty imposed by the DA. The operative part of the AA's order reads as under:

“As regards the quantum of punishment, a major penalty is justified. However, taking a lenient view the penalty is modified as reduction of pay by two stages from Rs.5400/- to Rs.5200/- in the pay scale of Rs.4000-100-6000 for a period of three years with cumulative effect.”

2.5 The AA in its order, however, also made the following significant observations:

“I may agree with the plea of the appellant that the quantity found short during physical checks of the portion of store were stored in the Almirah but not subjected to physical verification. During the course of proceedings it has also been admitted, parts/store items of the value about Rs.45,000/- have discovered/accounted for. Later on some store items were traced, there arised a difference of opinion on the amount but despite of ample opportunities provided to appellant rest of the items of store could not be traced. There still stands shortage in the store. These are all caused due to incorrect maintenance of records. Article of charge no.2 is proved.”

2.6 Aggrieved by the orders of the AA and DA, the applicant preferred a Revision Petition before the departmental Revisional Authority (RA), i.e., Chief Post Master General. The RA vide impugned order dated 11.07.2011 (page 79 of the paper-book) dismissed the Revision Petition.

2.7 Aggrieved by the impugned orders passed by the DA, AA and the RA, the applicant has preferred the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 08.09.2016. Shri Yogesh Sharma, learned counsel for the applicant and Shri D.S. Mahendru, learned counsel for the respondents argued the case.

4. During the course of his arguments the learned counsel for the applicant made the following important submissions:

i) The applicant had demanded some additional documents from the respondents during the course of the inquiry which were not supplied to him. In this connection the learned counsel drew our attention to Annexure M-3 (page 223 of the paper-book) which is a letter dated 03.02.1998 from the applicant to IO seeking some additional documents and also describing therein the relevance of these documents for the inquiry. He also drew our attention to Annexure M-2 letter dated 05.08.1998 (page 222 of the paper-book) wherein it is stated that some of the documents demanded by the applicant have no relevance to the inquiry proceedings.

ii) The learned counsel also drew our attention to the observations made by the AA in its order dated 18.07.2008 (which are reproduced at para 2.5) in which it is observed that some of the store items which were allegedly missing earlier, were later traced. The learned counsel argued that the charges levied against the applicant would considerably get diluted on account of the said observations of the AA.

iii) The learned counsel submitted that the IO failed to supply proper and valid order on Division of Works (DoW) between Storekeeper and five Store Clerks as issued by the DA. He said that as per Rules 122, 155 and 190 of Postal Manual, Volume-VIII, a Superintendent of Posts/RMs has to issue a memo of distribution of work for various RMs offices and sections and for clerks of Divisional Office. Non-supply of DoW has prejudiced the interest of the applicant. The IO has failed to follow and act upon the statutory provisions of Rule 14 (18) of CCS (CCA) Rules, 1965. Hence, the DE proceedings stand vitiated due to non-compliance of the provisions of Rule 14 (18) of the CCS (CCA) Rules, 1965 as per the ratio laid down in the following judgments:

i) Hon'ble Supreme Court's judgment in **Charanjit Singh Khurana v. Union of India**, SLP no.9816/2002.

ii) Judgment of the Central Administrative Tribunal judgment in **Lalit Kumar v. Union of India & Ors.**, [2006 (1) SLJ 86 CAT].

iii) Judgment of the Central Administrative Tribunal in **Tarsem Lal Verma v. Union of India**, [2005 (1) SLJ 223 CAT].

iv) Judgment of the Central Administrative Tribunal in **M.P. Bansal v. Kendriya Vidyalaya Sangathan & Another**, [2004 (1) SLJ 311 CAT].

v) Judgment of the Mumbai Bench of Central Administrative Tribunal in the case of **Azizullah Khan v. Member (P) Postal Services Board & Others**, [2005 (3) AILSJ 186 CAT], in which it has been held that denial of additional documents to the charged officer during the course of inquiry would prejudice the interest of the charged officer.

vi) Shri H.C. Garg, Assistant Manager, who did stock verification did not possess any knowledge or experience of store verification. He said that Rule 5 (ii) of Appendix 12 of Postal Manual Volume II clearly stipulates that verification of stores is not to be entrusted to a person who is not conversant with the classification nomenclature and technique of the particular classes of stores to be verified.

vii) There has been inordinate delay in the accomplishment of the DE proceedings. The charge-sheet was issued to the applicant on 31.03.2009 whereas the inquiry report was submitted on 09.11.2005 and the DA order was passed on 31.03.2006. The IO had taken almost 3-1/2 years in submitting his report even after completion of the inquiry. As such, the time limit of six months prescribed in Central Vigilance Commission's circular no.000/VGL/18 dated 23.05.2000 has not been adhered to. The learned counsel drew our attention to a judgment of the Hon'ble Delhi High Court in the case of **Ashok Kumar v. DDA & Anr.**, W.P. (C) No.1653/1999, decided on 31.05.2002 and judgment of Hon'ble Delhi High Court in the case of **R.P. Nanda v. DDA & Anr.**, W.P. (C) No.2719/1998, decided on 19.12.2003 and also the judgment of the Hon'ble Supreme Court in **State of Andhra Pradesh v. N. Radhakrishnan**, [JT 1998 (3) SC 123] and submitted that the DE proceedings are liable to be quashed on the ground of delay.

4.1 Concluding his arguments, the learned counsel stated that on the ground on non-supply of copy of DoW, copy of the additional documents demanded by the applicant from the IO during the course of inquiry as well as the *ibid* observations made by the AA in its order regarding recovery of some of the store items allegedly missing earlier, would go to show that

the DE proceedings are severely flawed and as such all the impugned orders, charge-sheet as well as the entire DE proceedings deserve to be quashed and set aside.

5. Per contra, the learned counsel for the respondents denying all the allegations made in the OA as well as rebutting the arguments of the learned counsel of the applicant submitted as under:

a) The physical verification of the store items was done as per Rule 80, Chapter-XII of Revised Accounting Procedure for MMS. Shri H.C. Garg, Assistant Manager was not the only member of store verification party but he was also assisted by Shri Sohan Singh, Technical Supervisor, who was having sufficient knowledge of spare parts. There were few other members in the verification party.

b) The applicant as a Storekeeper was fully responsible for proper upkeep of the spares/store and that the individual store clerks were not required to maintain any separate register. As a Storekeeper the applicant was having supervisory responsibility over the store clerks working under him. For the irregularities noticed, even the delinquent Store Clerks have also been subjected to disciplinary action.

c) The DA in its impugned order dated 31.03.2006 has clearly stated that all the relevant documents relating to the

case were supplied to the applicant through IO and as such allegation of the applicant with regard to non-supply of some of the relevant documents is absolutely incorrect.

d) Explaining the delay in accomplishment of the DE proceedings the learned counsel for the respondents stated that due to administrative reasons, the Inquiring Officers were changed, which resulted into the delay in completing the DE proceedings.

5.1 Concluding his arguments, the learned counsel submitted that the irregularities have been detected during the stock verification process and the misdemeanour of the applicant for these irregularities has been clearly proved on record. As such, the OA is liable to be dismissed, having no merit.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto, including the departmental record produced by the learned counsel for the respondents.

7. Admittedly, the applicant was working as a Storekeeper at MMS, Naraina, New Delhi during the relevant period of time. There were Store Clerks assisting him. We do not agree with the argument put-forth on behalf of the applicant that DoW between the Storekeeper (applicant) and the Store

Clerks was not there. In any set up where establishment and operation of stores is involved, it is a standard practice that the Storekeeper is the ultimate authority for the management of the stores. The other subordinate staff work under the Storekeeper. The case of MMS of the Postal Department at Naraina, New Delhi could not have been any different.

8. The stock verification has been done by a team led by Shri H.C. Garg, who was assisted by other members having the requisite technical qualification and experience in store verification. We, therefore, repel the allegation of the applicant that the store verification was done by incompetent persons.

9. The charges levelled against the applicant are with regard to misappropriation of the store items and procurement of defective/unsuitable spare parts and other store items. It is alleged in the charge-sheet that the applicant had misappropriated stores worth Rs.1,20,880/-. However, as observed by the AA in its order that some of the missing store items worth about Rs.45,000/- were later traced out. This development does not wipe out the misdemeanour of the applicant altogether.

10. Regarding the DA not making available some of the additional documents sought by the applicant during the

course of the inquiry, it is seen that the applicant in his letter dated 03.02.1998 had indicated additional documents that he was wanting and also given relevancy of the same. But the DA vide its letter dated 05.08.1998 addressed to IO has indicated that some of the documents required are not at all relevant. These are:

- (a) The register being maintained at 'K' gate, Netaji Nagar;
- (b) Requisition slip, demand letter receipts of various depots at the related job cards;
- (c) Leave account of the applicant from 01.01.1995 to 05.09.1996;
- (d) List/detail of items found surplus at Naraina Stores during the checking in question carried out in July, August & Sept, 96;
- (e) Challans for the period 1.1.95 to 5.9.96 on the strength of which different items had been received in the store at Naraina etc.

Prima facie, these documents do not appear to be relevant in any way with regard to the charges levied against the applicant. As such, we do not find anything wrong in the decision of the DA in holding that these documents were not relevant to the case.

11. The very basis of the DE proceedings against the applicant is misappropriation of stores items and procurement of sub-standard store items at inflated prices as detected during the course of store verification. No doubt, some of the store items alleged to have been misappropriated amounting to Rs.45,000/- were traced out later, but still several items amounting to about Rs.77,000/- were still missing. In this view of the matter, we do not find any infirmity, illegality or perversity in the impugned charge-sheet, IO report and orders passed by the DA, AA and RA. The AA taking cognizance of the fact that some of the missing store items worth about Rs.45,000/- were traced out later, has reduced the quantum of punishment imposed by the DA.

12. We also observe that the DA has conducted the DE proceedings in accordance with the prescribed procedure and principles of natural justice have been followed at every stage of the proceedings. The final punishment of reduction of pay of the applicant by two stages from Rs.5400/- to Rs.5200/- in the pay scale of Rs.4000-6000 for a period of three years with cumulative effect, as imposed by the AA is proportionate to the offence committed by the applicant.

13. For the reasons stated in the foregoing paras, we do not find any merit in the OA and accordingly it is dismissed.

14. No order as to costs.

15. The departmental record submitted by the respondents be returned to the learned counsel for the respondents under proper receipt.

(K.N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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