

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

**Pronounced on : 10.12.2018
Reserved on : 19.11.2018**

OA No. 060/00189/2017

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Charanjit Singh, Postman, aged 55 years, G.P.O. , Ambala Cantt., r/o House No. 1083, Allugodm, Ambala Cantt.

.....Applicant

BY ADVOCATE: **Sh. Balbir Singh Saini**

Versus

1. Union of India, through Senior Superintendent of Post Offices, Ambala Division, Ambala Cantt.
2. Director Postal Services, Haryana Circle, Ambala Cantt.
3. Senior Superintendent of Post Offices, Ambala Division, Ambala Cantt.
4. Sh. R.S. Narwal, Senior Post Master posted in G.P.O. Ambala Cantt in years 2011 and 2012, and now service to be effected through Senior Superintendent Post Offices, Ambala Division, Ambala Cantt.

.....Respondents

BY ADVOCATE: **Sh. Vinod Arya**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant is a person who belonged to a recognized trade union and agitated for his demands relating to working conditions. Applicant admits in para 4(b) of the OA that he was the most active workman in the agitation. The respondent No. 4 suspended the applicant on the ground that a disciplinary proceeding was contemplated. The applicant's suspension order on 27.01.2011 was revoked. The applicant was transferred to Radaur Sub Post Office under Rule 37 of the Postal

Manual, Volume IV. The applicant challenged the transfer by filing OA No. 213/HR/2011 before the Tribunal. The Tribunal in its order of 28.07.2011, quashed the transfer order with directions to the applicant to join at the place of posting at Ambala where he was working before the impugned order of transfer was passed.

2. The applicant was served with a charge memo on 12.11.2011. The applicant requested for copies of the documents relevant to the articles of charge in order to provide reply to the charge memo. Copies of the documents asked, were not supplied to the applicant.

3. The fourth respondent passed the punishment order on 06.02.2012, withholding of one increment for a period of three years without cumulative effect. The appellate authority upheld the orders of the disciplinary authority, and the revisionary authority rejected the revision petition of the applicant.

4. The prayer of the applicant is for quashing Annexures A-1, A-2 and A-3, revision appeal and punishment order.

5. The respondents in the reply statement submit that the applicant indulged in indiscipline and manhandled the Deputy Postmaster of Ambala GPO. Annexure R-2 is the complaint made by the Deputy Postmaster to the Superintendent of Post Offices. Inquiry was conducted by the Assistant Superintendent of Post Offices and the applicant was placed under suspension on 21.07.2011. A recommendation was made by Senior Postmaster, Ambala GPO to transfer the applicant. Under Rule 37 of Postal Manual Volume VI, the applicant was transferred from

Ambala GPO to Radaur in Ambala Division. The orders of suspension were also revoked on 07.02.2011. Applicant challenged the order of his transfer before the Chandigarh Bench of the Tribunal

6. The Inquiry Officer on 19.04.2011 reported that the applicant was not cooperating with the inquiry despite repeated requests made on 08.04.2011, 11.04.2011 and 24.04.2011 to attend the inquiry. The Inquiry Officer complained about unwarranted language in Annexures R-3 and R-4 letters written by the applicant. In Annexure R-3, para 4, the applicant had informed the Inquiry Officer that he had filed an OA in CAT Chandigarh and the next date of hearing is 03.05.2011. He also states in Annexure R-3, "You are trying to become a party in that proceeding". Applicant also states "To me it appears that you are being used by someone who is hell bent to harm me. Kindly before you request me or order me, tell me who are you and how do you exercise command over me". Due to ignoring by the applicant of the notice to attend inquiry proceedings and also going by the wording and tenor of the letter, the Inquiry Officer concludes that the applicant is not likely to participate in the inquiry despite the requested requests of the Inquiry Officer and submitted his inquiry report on 23.08.2011. The Inquiry Officer had concluded that the applicant created indiscipline and spoilt the decorum of the office and also stated that the complaint made by Deputy Postmaster Ambala GPO of manhandling by applicant was also proved. Under Rule 16 of CCS(CCA) Rules, minor penalty of withholding increment for a period of three years without cumulative effect was imposed upon the applicant.

7. In the inquiry report, a summary is made of the complaint to the Deputy Postmaster for which the inquiry was conducted which reveals that the behaviour of the applicant was unwarranted. This is a conclusion we draw from the contents of the complaint produced in the inquiry report. This includes the allegation that the applicant asked Deputy Postmaster not to enter the delivery hall, applicant pushed the Deputy Postmaster and he fell down, applicant also threatened him to death if he again enters the delivery hall. In the concluding part of the inquiry report, it was stated as follows:-

“From the above discussion and evidence (Statements of the staff) that came on record, all the allegations levelled by the Dy. PM in his report/complaint against Sh. Charanjeet Singh Postman are fully proved except late attendance by Sh. Charanjeet Singh as no supporting evidence came on record during inquiry. Thus, it is evident that the said Sh. Charanjeet Singh created indiscipline in the office and spoiled the decorum of the office.”

8. The argument of the respondents is that they were forced to proceed ex parte in view of the non-cooperative attitude of the applicant. The disciplinary authority while imposing the punishment held as follows:-

“As discussed above, charges levelled against Sh. Charanjit Singh Postman are true and proved without any iota of doubt as the charged official has nothing to say. The charges proved against Sh. Charanjit Singh Postman are of serious nature as creating indiscipline in the office and indulging in manhandling with the seniors is not at all tolerable. No one can be allowed to take Law in his hand. The official, therefore, deserves stern action. Accordingly, it is ordered that next one increment of the said Sh. Charanjit Singh Postman Ambala GPO be withheld for a period of three years without cumulative effect.”

9. The appellate authority have passed a five page detailed order, the relevant portion of which is reproduced below:-

“5.2.4 The documents demanded by the appellant vide his application dated 25.11.11 were irrelevant to the case and he was adopting the dilatory tactics. So the documents were not supplied by the disciplinary authority to the appellant. The memo of charge served upon him by Sr. Postmaster Ambala GPO was based on the evidences and material on record. As such the contention of the appellant is not tenable at all.

5.2.5 The appellant was directed to submit his defence representation, if any, within 10 days of the receipt of the memo of charges. But the appellant demanded irrelevant documents and he was adopting dilatory tactics as such those irrelevant documents were denied by the disciplinary authority vide his letter No. Mail/Misc/Charanjit Singh postman date 29.11.2011. The appellant was afforded full opportunity to submit his defence if any but no defence representation was received from the appellant till passing the orders. Hence, the case was decided by the disciplinary authority on 06.02.2012 without awaiting more for his defence representation. As such the contention of the official has no force and is not tenable.

5.2.6 The information and documents demanded by the appellant were irrelevant to the case. Full opportunity was afforded to the appellant by the disciplinary authority to defend himself against the charges levelled against him. But the appellant did not submit his representation within stipulated time and even upto passing the orders by the disciplinary authority. As such the contention of the official is not tenable.

5.2.7 In the punishment orders the disciplinary authority has clearly mentioned the material in support of account of the misconduct against the appellant. There were sufficient reasons /grounds upon which the conclusion that the appellant was guilty has been arrived at, the appellant created indiscipline in the office and manhandled with Deputy Postmaster Ambala GPO in the very presence of the staff. Dy. Postmaster fell down on the floor and had a narrow escape. The orders passed by the Disciplinary Authority are quite clear and speaking orders.

The appellant was proceeded against under Rule 16 of CCS (CCA) Rules, 1965 and charge sheet was issued to him in English, as requested by him vide his application dated 13.10.2011, Hindi Version was supplied to him vide Sr. Postmaster Ambala GPO memo No. even dated 12.11.2011. Hence, sufficient opportunity was given to the appellant and after taking into consideration each and every aspect and record/documents clear and speaking punishment orders were issued by the disciplinary authority. Therefore, the pleadings of the appellant have no force, hence, not tenable at all.

6. Having regards to the foregoing, the appeal is devoid of any merit. The disciplinary authority has processed the case in accordance with departmental rules and punishment inflicted is commensurate to the guilt proved. I find no reason to intercede on behalf of appellant. Therefore, in exercise of the powers vested in me vide Rule 27 of CCS (CCA) Rules, 1965, I, H.S. Yadav, Senior Superintendent of Post Offices, Ambala Division, Ambala, do hereby "REJECT" the appeal and uphold the orders issued by the Disciplinary Authority vide his Memo No. Mail/Misc/Charanjit Singh dated 06.02.2012."

10. The revisionary authority has also passed a detailed order wherein he had also noted that the actual date of incident is 24.01.2011 and not 22.01.2011 which was a typographical error. He has also noted that the misbehaviour of the applicant with the superior Deputy Postmaster was not acceptable, as a certain modicum of respect and disciplined behaviour has to be maintained between superior and

subordinate. He also contends that the disciplinary authority had processed the case in accordance with the departmental rules and the punishment inflicted is commensurate to the guilt proved and goes on to reject the petition.

11. In OA No. 213/HR/2011, the Tribunal had held that the transfer of the applicant on the ground of misconduct was a punitive order and set aside the same.

12. The respondents submit that the applicant did not cooperate with the inquiry and the applicant submits that he was proceeded ex parte. Whereas, we would not like to enter into this dispute, the fact is that there was an act of indiscipline in the form of a physical attack on the senior functionary of the office. Whereas trade union activities are recognized, and applicant had a right to agitate his cause, misbehaviour with any office functionary is not to be tolerated as this would extend and encourage the freedom to indulge in indiscipline and misbehaviour in the respondent office which has dealings with members of the public.

13. Postal service under clause 2(1)(a) of Essential Service Maintenance Act, 1968, has been declared as essential service. The Supervisor against whom the applicant had misbehaved, was required under clause 2(1)(b) of Essential Service Maintenance Act, 1968 to ascertain whether the applicant was causing temporary cessation or retardation of work, which would have caused cessation or retardation of work in an essential service. Thus, the applicant because of his behaviour had obstructed the implementation of ESMA by the Supervisor which could have very well been avoided.

14. The scope of judicial review of disciplinary actions has been succinctly stated by the Apex Court in **B.C. Chaturvedi Vs. UOI and Ors., 1996 SCC (L&S) 80**. The Apex Court held as follows:-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

The same position has been reiterated in **R.S. Saini Vs. State of Punjab and Ors., (1999) 8 SCC 90** wherein it was observed by the Apex Court as follows:-

“.....If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.”

In Damoh Panna Sagar Rural Regional Bank and Another Vs. Munnal Lal Jain (2005) 10 SCC 84, it was held as follows:-

“.....the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to

that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.....”

15. We also called for the original record file pertaining to this case and find that Deputy Postmaster, Ambala GPO had made a complaint on 24.01.2011 regarding assault made on him by the applicant. The file also contains several newspaper cuttings regarding this incident. Further, the Senior Postmaster, Ambala GPO has also addressed the Senior Superintendent of Post Office, Ambala regarding speedy inquiry on the complaint made by Tarsem Singh Rana, Deputy Postmaster, Ambala GPO regarding manhandling by Charanjit Singh, Postman, Ambala GPO, applicant in this case.

16. Taking stock of the facts and circumstances of the case, we are of the view that there is no need to interfere with the findings of the disciplinary authority, appellate authority and revisionary authority. The appellate and revisionary authorities have taken into consideration the relevant facts and circumstances of the case while agreeing with the decision taken by the disciplinary authority. We also do not think that the punishment awarded to the applicant is disproportionate to the gravity of the delinquent act, or against the principles of proportionality. The penalty imposed is not so outrageously disproportionate so as to persuade us to interfere with the same. Judicial review of an administrative action in a disciplinary case is not against a decision, but against the decision making process. The Tribunal is not sitting in judgement on the correctness of the decision made by the statutory authorities appointed under the CCS (CCA) Rules. Applicant chose to not cooperate with the inquiry, thereby, forcing the Inquiry Officer to

proceed ex parte in the matter. Any technicalities which do not occasion failure of justice, cannot be allowed to defeat the ends of justice.

17. For the foregoing discussion and observations, this OA, being devoid of merit, is dismissed. There shall be no order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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