

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00427/2015

Jabalpur, this Wednesday, the 10th day of July, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Vishwas Nimgaonkar, S/o Shri Gajanan Nimgaonkar, Date of Birth – 30.11.1974, Ex-Postal Assistant, R/o 17/2, Bhawanipur Colony, Annapura Road, Indore – 452009 (M.P.) **-Applicant**

(By Advocate – Shri S.K. Nandy)

V e r s u s

1. Union of India through its Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi – 110001.
2. Chief Postmaster General, MP Circle, Hoshangabad Road, Bhopal – 462012 (M.P.).
3. Post Master General, Indore Region, Indore – 452001 (M.P.).
4. Director, Postal Services, Indore Region, Indore – 452001 (M.P.).
5. Sr. Superintendent of Post Offices, Indore City Division, Indore – 452007 (M.P.) **- Respondents**

(By Advocate – Shri S.K. Mishra)

(Date of reserving order : 02.01.2019)

O R D E R

By Ramesh Singh Thakur, JM.

Through this Original Application, the applicant is calling in question the legality, validity and propriety of the departmental

enquiry initiated against him whereby he was removed from service on 13.06.2014 (Annexure A-2).

2. He has, therefore, sought for the following reliefs:

“8(i) Summon the entire record from the possession of the respondents for its kind perusal.

8(ii) Set aside the impugned charge-sheet dated 30.09.2009 Annexure A/1, punishment order dated 13.6.2014 Annexure A/2 and dated 23.2.2015 Annexure A/4.

8(iii) Consequently, command the respondents to reinstate the applicant as if the impugned charge-sheet and the orders are never passed with provide all consequential benefits;

8(iv) Any other order/orders, which this Hon’ble Court deems fit and proper may also be passed;

8(v) Award cost of the litigation in favour of the applicant.”

3. Brief facts of the case are that the applicant was appointed with respondent department as Postal Assistant on 20.07.1998 and was confirmed on the said post on 09.08.2000. On 16.03.2009, he was placed under suspension. His suspension was reviewed and further extended for 90 days by the Reviewing Committee. He approached this Tribunal by filing Original Application No.600/2009. In the meantime, he was served with a major penalty chargesheet dated 30.09.2009 (Annexure A-1), wherein it was alleged that his name was not sponsored by the Employment

Exchange and he was appointed as Postal Assistant without adhering the procedure in the respondent department. Challenging the validity of the major penalty chargesheet, the applicant preferred OA No.819/2009, which was disposed of by this Tribunal vide order dated 31.01.2012 with a direction to the disciplinary authority to take a final decision on representation submitted by the applicant on 10.01.2012 within three months. Thereafter, the respondents proceeded with the inquiry proceedings and the Inquiry Officer submitted his inquiry report vide letter dated 30.12.2011 (Annexure A-8) whereby the charges against the applicant were not proved. However, the applicant was served with a disagreement note of the Disciplinary Authority vide order dated 04.04.2012 (Annexure A-9).

4. The applicant challenged the action of the Disciplinary Authority in issuing the disagreement note by filing Original Application No.370 of 2012. Though this Tribunal in its order dated 28.11.2013 has declined to interfere in the matter, however, the applicant was afforded an opportunity to challenge the disagreement note in his representation. The applicant preferred a Writ Petition No.13798/2013(S) before the Hon'ble High Court of Madhya Pradesh at Indore, which was also dismissed on

10.12.2013. However, the Hon'ble High Court observed that the Disciplinary Authority shall pass an appropriate order after taking into account the applicant's representation to the disagreement note and shall not be influenced nor shall take into account the observations made by this Tribunal in the order dated 30.09.2013 (sic). The applicant preferred a detailed representation dated 26.12.2013 against the disagreement note. Thereafter, the Disciplinary Authority has passed the order dated 13.06.2014 (Annexure A-2) imposing the punishment of removal from service.

5. The applicant preferred a detailed appeal against the order of the Disciplinary Authority on 15.07.2014 (Annexure A-12). Since the appeal was not decided by the Appellate Authority within the stipulate time period, the applicant preferred an Original Application No.48/2015, which was disposed of with a direction to the respondents to decide the applicant's appeal within two months. Accordingly, the respondents have passed the order dated 23.02.2015 (Annexure A-4) and have rejected the appeal of the applicant.

6. Learned counsel for the applicant submitted that the respondents have failed to appreciate the fact that the applicant was having all the requisite qualification required for the post and his

name was duly registered with the Employment Exchange bearing Registration No.4485/1995. Further, the chargesheet was issued at a belated stage referring to the period of 1997, which suffers from inordinate, unexplained and improper delay. It has also been submitted that the Inquiry Officer after going through all the documents adduced during the inquiry proceedings, has submitted the inquiry report whereby the charges against the applicant were not proved. The disagreement note dated 04.04.2012 has been served upon the applicant after lapse of much time of supplying the Inquiry Officer's report, which is in violation of Rule 15(1) of the CCS (CCA) Rules, 1965. Learned counsel for the applicant also submitted that the representation of the applicant to the disagreement note dated 04.04.2012 was not properly considered by the Disciplinary Authority and the Disciplinary Authority with a predetermined mind has passed the harsh punishment of removal from service in an arbitrary manner.

7. Learned counsel for the applicant placed reliance on a decision of the Hon'ble Supreme Court in the case of **Union of India v. N. Hargopal and Ors.**, AIR 1987 SC 1227 and submitted that it is not obligatory for any employer to employ only those persons who have been sponsored by Employment Exchange. He

argued that even assuming applicant was not sponsored through the Employment Exchange, but he was fulfilling the eligibility criteria required for appointment on the post of Postal Assistant. He also cited the orders passed by this Tribunal in Original Application No.761 of 2003 dated 05.11.2003 in the matters of **Anand Agrawal vs. Union of India & Ors.**

8. The respondents have filed their reply. In their preliminary submissions, it has been submitted that as per the instruction received for selection to the direct recruitment process for the post of Postal Assistant for the year 1997, five time applications of number of vacancies were to be called from the District Employment Exchange. However, the name of the applicant, who was a outsider candidate not found to be sponsored by the Employment Exchange, Indore. The respondents submit that the then Superintendent of Post Offices, Indore Division had not followed the procedures prescribed in the Recruitment Rules and instructions thereupon due to which the applicant was appointed as Postal Assistant w.e.f. 20.07.1998. Subsequently, as soon as such irregularities came to the notice, the applicant was placed under suspension w.e.f. 16.03.2009.

9. The respondents have further submitted that the applicant along with two others namely Shri Mool Chand Purania and Shri Narayan Chouhan was issued with chargesheet dated 30.09.2009, requiring them to submit statement of defence within 10 days. But the applicant did not submit any statement of defence and directly approached this Tribunal by filing Original Application No.819/2009. Since the respondents have filed their reply denying the claim of the applicant on merit, the OA was disposed of on 31.01.2012 with a direction to the Disciplinary Authority to take decision in the matter within three months.

10. It has also been submitted by the respondents that after completion of departmental enquiry, a copy of inquiry report and thereafter a disagreement note was supplied to the applicant giving him opportunity to make his representation against disagreement note within 10 days. However, the applicant filed another OA No.370/2012 challenging the disagreement note dated 04.04.2012 issued by the Disciplinary Authority. This Tribunal, however, did not find any illegality in the action of the respondents in issuing disagreement note and dismissed the Original Application vide order dated 28.11.2013. The W.P filed by the applicant was also dismissed by the Hon'ble High Court.

11. The respondents have averred that the Disciplinary Authority on due consideration of representation submitted by the applicant and looking to the nature of charges as well as material available on record, has passed the order of punishment of removal from service on 13.06.2014. The appeal of the applicant was also considered on merits and rejected by the Appellate Authority on 23.02.2015. The respondents submit that since the issue of legality of chargesheet, disagreement note as well as competency of officer who issued disagreement note has already been adjudicated by this Tribunal in Original Application No.370/2012, therefore, the instant Original Application is barred by *res judicata*.

12. The applicant has also filed rejoinder to the reply filed by the respondents. Apart from stating what has been stated in the Original Application, he has submitted that he is calling in question the legality and propriety of the entire departmental enquiry initiated against him vide charge memorandum dated 30.9.2009 (Annexure A-1), which is yet to be adjudicated upon. The applicant has further submitted that he was sponsored by the Employment Exchange, which can be seen from the XYZ Register maintained by the respondent department for taking the entire selection (Annexure RJ-2). This aspect was considered by the Inquiry

Officer during the inquiry and, accordingly, the applicant was exonerated from the charges.

13. The respondents have also filed their additional reply and have reiterated their earlier stand. It has also been submitted that as per Government of India's instruction No.(22)2 below Rule 14 of CCS (CCA) Rules, 1965 (Annexure RR-1), the documents mentioned in the memo of charge and statement of witnesses cited on behalf of Disciplinary Authority, should be supplied to the charged officer, which has been duly supplied to him. Therefore, there is no lacuna in the inquiry proceedings and the punishment imposed thereupon.

14. Learned counsel for the respondents placed reliance on a decision of Hon'ble Supreme Court of India in the case of **State of Bihar vs. Upendra Narayan & Ors.**, (2009) 1 SCC (L&S) 1019 and submitted that if the services of an employee has been terminated on the ground that his initial appointment was not as per rules, therefore, he cannot be protected by the Court of Law. Learned counsel also placed reliance on another decision of Hon'ble Apex Court in the matters of **Renu and Others vs. District and Sessions Judge, Tis Hazari Courts, Delhi and Another**, 2014 14 SCC 50: AIR 2014 SC 2175, wherein the

Hon'ble Apex Court has reiterated the basic fulfillment of Article 14 and 16 of the Constitution of India when the appointment was not as per the statutory rules.

15. We have heard the learned counsel for the parties and perused the pleadings and documents available on record.

16. The facts are not in dispute. The applicant was issued with a major penalty chargesheet under Rule 14 of CCS (CCA) Rules, 1965 on 30.09.2009. Alongwith the applicant, there were two employees viz; Shri Mool Chand Purania and Shri Narayan Chouhan, who were served with a common chargesheet with the same set of charge that despite not being sponsored by the Employment Exchange, Indore, the then Superintendent of Post Offices, had allowed them to appear in the selection for the post of Postal Assistant, which resulted in their appointment. A detailed enquiry was conducted into the matter and after examining the witnesses and the material produced before him, the Inquiry Officer submitted his inquiry report and the charges were not found to be proved against all the three employees. However, the Disciplinary Authority sent a disagreement note to the applicant on 04.04.2012. The applicant had challenged the action of the Disciplinary Authority in issuing the disagreement note by filing

Original Application No.370/2012, which was dismissed on 28.11.2013. Writ Petition No.13798/2013 filed by the applicant against the orders of this Tribunal, was also dismissed by the Hon'ble High Court of Madhya Pradesh at Indore.

17. It is the contention of the applicant that once the Inquiry Officer after examining the witnesses adduced during the enquiry, has exonerated the applicant from the charges, there was no occasion for the Disciplinary Authority to issue a disagreement note and thereafter impose harsh punishment of removal from service. Further, the applicant was given appointment in the respondent department after adhering due process and he fulfils all the requisite qualification required for the post. It has also been submitted that the entire action against the applicant has been initiated in pursuance to the recommendations given by the CVC as the letter dated 25.02.2009 (page 114 of the O.A) clearly indicates that upon the dictate of vigilance, the Disciplinary Authority has already taken a decision for imposing a harsh punishment on the applicant.

18. The applicant has earlier approached this Tribunal by filing Original Application No.370 of 2012 challenging the disagreement note dated 4.4.2012 issued by the Disciplinary Authority. This

Tribunal by way of common order dated 28.11.2013 has dismissed the OA the ground that no injustice has been caused to the applicant by supply of disagreement of note dated 4.4.12, as it does not prejudice the defence of the applicant in any way. The Hon'ble High Court of Madhya Pradesh had also declined to interfere with the decision of this Tribunal in the aforesaid O.A. Now, through this Original Application, the applicant is challenging the issuance of chargesheet as well as the punishment of removal from service imposed on him.

19. The applicant has filed copy of the note-sheets as well as copy of letter dated 25/27.02.2009 from the Vigilance Department, which has been addressed to Chief Post Master General, M.P. Circle. A bare reading of the same revels that a complaint against Shri Vasudeo Sharma, Assistant Post Master General (Retired) was received in the Vigilance Department for conducting the charges of corruption/irregularities done by him while he was in service. The Vigilance Department submitted its report on 25.02.2009, wherein it was stated that the allegation against Shri Vasudeo Sharma that he grossly misused his official position and manipulated records to secure employment for his children as Postal Assistants during the year 1997-1998 was found substantiated. However, no

departmental action was proposed against him as Shri Vasudeo Sharma stood voluntarily retired on 23.11.2005. It was also observed that out of the ten Postal Assistants appointed in the recruitment process for the year 1997, five candidates were not sponsored by the concerned Employment Exchanges and, therefore, their appointments were not made following the procedures prescribed in the statutory Recruitment Rules. Therefore, the Vigilance Department suggested for placing them under suspension and institute major penalty action against them. Accordingly, the applicant was placed under suspension and a major penalty chargesheet was served to him. Thus, it cannot be denied that the enquiry proceedings were contemplated against the applicant as per the directives of the Vigilance Department for the irregularities committed by Shri Vasudeo Sharma, the then Assistant Post Master General, who was alleged to have misused his official position to secure employment for his children including the applicant as Postal Assistants during the year 1997.

20. The charge against the applicant was that his name was not sponsored for the post of Postal Assistant by the employment office Indore in the year 1997 but the then Superintendent of Post Offices Indore, without following the recruitment formalities, gave

undue benefit to the charged official, which is in violation of the Government of India's instructions dated 19.05.1993. The applicant, in reply, has denied the charge. In his written defence, the applicant has submitted that his name was sponsored by the Employment office Indore. However, the Disciplinary Authority has not mentioned this point in Article of Charges and statement of imputation. The Disciplinary Authority also suppressed the vary fact relating to inquiry already conducted in the year 1998 by the then DPS Indore.

21. A detailed enquiry was conducted into the matter and the Inquiry Officer recorded its findings, qua the applicant, which read as under:

“Findings:- The Exhibit P.1 and P.2 produced in support of the Article of charge are meaning less in view of above conclusion. Exhibit P.4 is a statement of the CO which has nothing to do with the Article of Charge and cannot be termed as supportive evidence to the Article of Charge. The Prosecution witness PW.1, PW.2 and PW.3 failed to prove the charge as they were only dummy witnesses in order to confirm the Exhibit P.1 and P.2. and P.4. The name of the candidate was sponsored by the Employment Exchange for the Post of PA along with other candidates. The SPOs had on the basis of list sent an application form to the charged official. The application was submitted by the charged official marked as Exhibit D.2. The burden of proof lies on the prosecution to establish that the name of the candidate was not sponsored by the Employment Exchange by

producing the list received by the employer but it was not produced on the plea that it was not available. The defence has refuted the evidence Exhibit P.1, P.2 and witnesses PW.1, PW.2 and PW.3. Exhibit D.2.D.3, D.4, D.5 D.5 and D.7 establish that a list of candidates was received from the Employment Exchange Indore. It is more clear from the allegation itself that list was received from the Employment Exchange which negates the version contained in Exhibit P.1 and P.2. It was for the prosecution to produce the said list to establish that the name of the official was not sponsored being material evidence. On the basis of conclusion arrived at the allegation against the charged official in Article of Charge set out under Memo No.B2ectt./Indore Mfl./Disc. Case/Com.Proc./09-10 dated 30.09.2009 is not proved.”

Thus, the charge against the applicant could not be proved as the prosecution failed to establish that applicant's name was not sponsored through Employment Exchange. From the inquiry report itself, it can be seen that the report of the Inquiry Officer is a detailed one containing the brief history of the case, the articles of charges, the statements of imputation of misconduct, the case as set up by the applicant and the analyses of the evidence.

22. The Disciplinary Authority, however, did not agree with the findings of the Inquiry Officer and sent a disagreement note dated 04.04.2012 to the applicant with the following reasons:

“01. श्री विश्वास निमगावकर डाक सहायक नगरेत्तर मंडल इंदौर ने प्रकरण कि प्राथमिक जॉच के दौरान दिए गए कथन दिनांक 01. 03.2005 जिसे इस प्रकरण में अभियोजन दस्तावेज (EXP - 4) के

रूप में प्रस्तुत किया गया है मैं पृष्ठ - 1 पर इस बात का यह स्पस्ट उल्लेख किया गया है कि डाक सहायक की भर्ती हेतु आवेदन उनके द्वारा भरकर डाक अधीक्षक कार्यालय में रखे बक्से में दल दिया था। अतः उनका यह कथन ही स्पस्ट करता है कि उक्त फॉर्म रोजगार कार्यालय द्वारा डाक सहायक भर्ती हेतु नहीं भेजा गया था।

02. बचाव पक्ष द्वारा प्रस्तुत किये गए गवाह श्री ए.पी.श्रीवास्तव मुख्य सतर्कत अधिकारी पोर्ट ट्रस्ट मुम्बई ने भी अपने कथन (D.W.-3) में इस बात का उल्लेख नहीं किया है कि उनके द्वारा रोजगार कार्यालय से प्राप्त सूचि का अवलोकन किया गया था तथा उक्त सूचि में श्री विश्वास निमगावकर के नाम का उल्लेख था। अपितु उन्होंने मात्र यह कहा है कि डाक सहायक भर्ती 1997 की जांच के सम्बन्ध में सितम्बर 98 में तैयार की गयी नोट शीट उनके द्वारा देखी गयी थी जिसमें रोजगार कार्यालय इंदौर/देवास से प्राप्त सूचि का उल्लेख था।

03. अभियोजन पक्ष के गवाह (PW -1) श्री आई. एस. मंडलोई (उप संचालक रोजगार) ने भी बचाव पक्ष द्वारा किये गए प्रति परिक्षण के दौरान प्रश्न 3 के उत्तर में इस बात की पुष्टि नहीं कि है कि कथित भर्ती हेतु आवेदन (प्रादर्श डी -2ss) रोजगार कार्यालय द्वारा प्रेषित किया गया था।

04. जांच अधिकारी ने बचाव गवाह DW -1 को आधार मानते हुए यह निष्कर्ष निकला कि आरोपित कर्मचारी श्री विश्वाश निमगावकर का नाम डाक सहायक की भर्ती हेतु प्रायोजित था। मूल्यवान नहीं है क्यों कि बचाव गवाह DW -1 के बयान की पुष्टि हेतु उपलब्ध करवाया गया दस्तावेज विधि अनुसार मान्य नहीं है। क्योंकि उक्त बचाव दस्तावेज जांच कार्यवाही दिनांक 29.11.2010 के दौरान प्रस्तुत नहीं किया गया था। दस्तावेज कि छाया प्रति भी दस्तावेज प्रदान करने वाले सक्षम अधिकारी द्वारा सत्यापित नहीं है।”

23. In his representation to the dissenting note, the applicant has pointed out that the disagreement note is altogether different from the allegation. Regarding point No.4 of the disagreement note,

wherein it has been stated that the Inquiry Officer by relying upon the statement of defence witness-1 (DW -1) has arrived to the conclusion that the name of the applicant was sponsored by the Employment Exchange, Indore was not as per rules, as the document relied upon by the DW -1 was not produced during the enquiry proceedings on 29.11.2010 and the document was not certified by the officer who had issued the same, the applicant submitted that there is no rule which prescribes the condition of providing certified copies of documents. Since the said document was testified by the witness during the hearing, there was no occasion for the Disciplinary Authority to question its authenticity.

24. We find that the Disciplinary Authority in case of disagreement with the finding of the Inquiry Officer was required to record its reasons for the disagreement and then it was obligatory to record its finding on such charge in case the evidence on record is sufficient for the purpose. The obligation casts on the disciplinary Authority is more heavier because the evidence on record has to be 'sufficient' to sustain the finding on any such disagreement, which the disciplinary authority may proceed to record. Ordinarily sufficiency and in-sufficiency of evidence to sustain the charge would be a question which would not be

required to be gone into but the rule imposes an obligation on the disciplinary authority to record a finding on a charge where it expresses disagreement only if the evidence on record is 'sufficient' for that purpose. It may be for the reason that once Inquiry Officer has concluded one way or the other then to reverse those findings sufficient evidence would be necessary. Therefore, findings cannot be reversed on flimsy evidence. There is not an iota of evidence which has been made part of discussion in order to reach a conclusion that there is sufficient evidence to sustain the charge in support of disagreement. There is virtually no evidence discussed to sustain the charges nor any reasoning has been adopted to reach the conclusion that the applicant is guilty of those charges. Therefore, the Disciplinary Authority should have recorded reasons after looking into sufficiency of evidence to sustain the charges before it could disagree with the findings of the inquiry officer. Hence, the dissenting note as well as the subsequent proceedings based thereon are liable to be set aside.

25. In Upendra Narayan & Ors (supra) and Renu and Others (supra), relied upon by learned counsel for the respondents, the issue before the Hon'ble Apex Court was regarding regularisation of the services of the Casual Labourers/Daily Wagers/ad-hoc

employees, who were not appointed as per the Recruitment Rules, whereas in the instant case, the applicant was appointed as Postal Assistant on regular basis and is being terminated after conducting a regular departmental enquiry. Moreover, the charge of his appointment being not as per rules, could not be established during the departmental enquiry. Therefore, it cannot be said that appointment of the applicant was contrary to the departmental rules.

26. In the above backdrop of the case, we quash and set aside the punishment order dated 13.06.2014 (Annexure A-2) passed by the Disciplinary Authority as well as the order dated 23.05.2015 (Annexure A-4) of the Appellate Authority and remand the case back to the disciplinary authority for the purposes of proceeding afresh from the stage of recording a dissenting note.

27. Accordingly, the O.A is partly allowed. No order as to costs.

**(Ramesh Singh Thakur)
Judicial Member**

am/-

**(Navin Tandon)
Administrative Member**