

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00678/2015

Jabalpur, this Wednesday, the 31st day of July, 2019

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

Narayan Chouhan, S/o Shri Dwarka Prasad Chouhan, Date of Birth – 30.10.1970, Ex-Postal Assistant, R/o – 45-II, Postal Quarter, Khathiwala Tank, Indore – 452014 (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 D.S. Baghel)

O R D E R (O R A L)

By Ramesh Singh Thakur, JM.

This Original Application has been filed by the applicant challenging the chargesheet dated 30.09.2009 (Annexure A-1) and thereafter imposition of punishment of removal from service dated

13.06.2014 (Annexure A-2). He is also challenging the order dated 15.04.2015 (Annexure A-4), whereby his appeal has been rejected.

2. The applicant, 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. Heard learned counsel for the parties.

4. Learned counsel for the applicant submitted that a common chargesheet was served to the applicant as well as to one Vishwas Nimgaonkar, who has also filed Original Application No.200/00427/2015 before this Tribunal. This Tribunal, vide order dated 10.07.2019, has partly allowed the Original Application by quashing the punishment order dated 13.06.2014 passed by the Disciplinary Authority as also the order of the Appellate Authority

dated 23.05.2015. Since the applicant is also challenging the impugned punishment orders dated 13.06.2014 (Annexure A-2) and 20.03.2015 (Annexure A-4) on the similar grounds, as have been raised by Vishwas Nimgaonkar, therefore, this Original Application may be disposed of in similar terms. He has also placed copy of the disagreement note dated 04.04.2012, which is taken on record.

5. We find that issue involved in this Original Application has already been adjudicated upon by us in the case of **Vishwas Nimgaonkar** (supra). The relevant portion of the orders read as under:

“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 reveals 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 very 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 जाँच के दौरान दिए गए कथन दिनांक 01.03.2005 जिसे इस प्रकरण में अभियोजन दस्तावेज (EXP - 4) के रूप में प्रस्तुत किया गया है में पृष्ठ – 1 पर इस बात का यह स्पष्ट 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 स्पष्ट 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 जाँच 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. जॉच अधिकारी ने बचाव गवाह DW -1 को आधार मानते हुए यह निष्कर्ष निकला कि आरोपित कर्मचारी श्री विश्वास 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 जॉच 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."*

6. In the instant case also, though the Inquiry Officer found that the charges are not proved by the applicant, however, Disciplinary Authority did not agree to it and served a disagreement note to the applicant. A bare reading of the disagreement note makes it clear that the reasons recorded by the Disciplinary Authority are almost

similar to the reasons recorded in the case of **Vishwas Nimgaonkar** (supra), which has already been dealt by us by setting aside the same. Therefore, in our view the dissenting note sent to the applicant as well as the subsequent proceedings based thereon are also liable to be set aside.

7. In the result, the O.A is partly allowed and the orders dated 13.06.2014 (Annexure A-2) and 20.03.2015 (Annexure A-4) are quashed and set aside. The matter is remanded back to the Disciplinary Authority for the purposes of proceeding afresh from the stage of recording a dissenting note. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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