

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

O.A.No.221/2012

Dated this Monday the 25th day of Nov^r, 2019.

Coram: Dr. Bhagwan Sahai, Member (Administrative).
Ravinder Kaur, Member (Judicial).

1. Shri Sambhaji Babu Pradhan
Age: 50 years, Indian Inhabitant
R/Add:
43/B, Habib Plot No.4/A, G K Marg,
Lower Parel, Mumbai 400 013
...Applicant.
(By Advocate Shri A. D. Joshi).

Versus

1. Union of India and Others
Through its Secretary,
Ministry of Communication,
Department of Post,
Sansad Marg,
New Delhi-01.
2. The Chief Post Master General
Maharashtra Circle's Office,
Mumbai Region (HQ)
Old GPO Building,
Maharashtra Circle,
W.H. Marg,
Near C.S.T. Railway Station,
Fort, At P.O. Mumbai GPO,
Mumbai-400 001.
3. Post Master General
Maharashtra Circle's Office,
Mumbai Region (HQ)
Old GPO Building,
Maharashtra Circle,
W.H. Marg,
Near C.S.T. Railway Station,
Fort, At P.O. Mumbai GPO,
Mumbai-400 001.

(Mumbai Region)-I,
Office of Postmaster General,
Mumbai Region (HQ)
Maharashtra Circle's Office,
Old GPO Building, 2nd floor,
Maharashtra Circle,
W.H. Marg, Near C.S.T. Railway Station,
Fort, At P.O. Mumbai GPO,
Mumbai-400 001.

5. The Sr. Superintendent of Post Offices,
Mumbai City North-East Division,
Bhandup (E), Mumbai-42.

... Respondents.

(By Advocate Shri V. S. Masurkar).

Order reserved on: 26.07.2019

Order delivered on: 25.11.2019

O R D E R

Per : Dr. Bhagwan Sahai, Member (A)

1. Shri Sambhaji Bapu Pradhan filed this OA on 14.03.2012. He seeks quashing and setting aside of order dated 02.01.2012 passed by Revisionary Authority, order dated 23.03.2010 passed by Appellate Authority and order dated 14.10.2009 passed by Disciplinary Authority of the respondents. He also seeks direction to the respondents to reinstate him in service with full back wages and other consequential benefits, including promotion in higher post from date of his eligibility for that post under the rules, along with payment of cost of this OA.

2. Summarized facts:-

2(a). The applicant has stated that he was appointed as Postal Assistant on 15.03.1986 and was promoted as Inspector of Postal services in July 2002. While working with the office of SSPO, North Eastern Division, Bhandup, Mumbai, he was served chargesheet dated 18/19.02.2008 by office of chief Post Master General, Maharashtra Circle, Mumbai for holding inquiry against him under Rule 14 of CCS (CCA) Rules, 1965 (copy of the chargesheet annexed as A-4). The chargesheet contained only one article of charge mentioning several allegations of misconduct against him while working as SDI (P) Jawhar Sub-Division, Thane district, from 27.05.2005 such as:-

(i) he engaged and further appointed provisionally five persons as Gramin Dak Sevak (GDS, MD) without prior approval of CPMG/PMG to fill up vacant posts of Gramin Dak Sevaks, which was required as per Department of Posts, Government of India letter dated 17.02.2004 and without arranging work by combining duties within available GDS as provided under DG, posts letter dated 21.10.2002;

without notifying vacancies to Employment Exchange and without issuing any Public advertisement which is mandatory as per DG, P&T letters dated 04.09.1982 and 19.08.1998;

(iii) he had accepted illegal gratification from the engaged/already appointed GDSMD and thereby failed to maintain absolute integrity and devotion to duty, which was unbecoming of a government servant thereby violating provision of Rule 3 (1) (i) (ii) and (iii) of CCS (conduct) Rules, 1964.

2(b). He submitted his written brief to the Competent Authority refusing all the allegations and complaints during the inquiry after completion of examination-in-Chief and cross-examination. He claims that without considering his humble submissions and explanation and defence, the Disciplinary Authority decided to conduct DE against him. After perusing the brief of the Presenting Officer and without application of mind, the inquiry officer prepared his report and submitted it to the Disciplinary Authority (Annex A-8). After perusing the inquiry report, the Disciplinary Authority concurred with his findings and imposed on the

order dated 14.10.2009.

2(c). The applicant submitted an appeal on 03.11.2009 challenging legality, validity and maintainability of the harsh penalty order issued against him and explained on the basis of merits and law points as to how the punishment order of removal from service is invalid or unlawful. He prayed for quashing of his punishment order and to restore him in service.

2(d). After considering the humble submissions on the basis of law facts and merits, the Appellate Authority modified the punishment order of removal from service to compulsory retirement vide order dated 23.03.2010. But the Appellate Authority failed to consider the case on the basis of submission made by him.

2(e). Being aggrieved of the order of the Appellate Authority, he preferred a Revision Application/Petition under Rule 29 of CCS (CCA) Rules, 1965 for setting aside the order of the Appellate Authority and to allow him to join back in service. But without application of mind and considering factual and lawful aspects, instead of

compulsory retirement, the Revisionary Authority upheld the punishment order issued by the Disciplinary Authority for his removal from service. Because of this, the OA has been filed.

3. Contentions of the parties:-

In the OA, rejoinder, written submissions and during arguments of his counsel on 26.07.2019 the applicant has contended that-

3(a). as per the settled principles of law, it is duty of the Revisionary Authority to state specific reasons for order of enhancement of penalty but in his case it has not been done, which has caused heavy prejudice to him by enhancement of the penalty;

3(b). as per Rule 29 of the CCS (CCA) Rules 1965, it is binding on the Revisionary Authority to give personal hearing to the applicant before enhancing the penalty issued by the Appellate Authority. However, he was not given a personal hearing and the penalty was enhanced from compulsory retirement to removal from service. Therefore, this order of the revisionary authority is liable to be set aside;

without following the statutory provisions and carrying out the statutory duty as stated in Recruitment Rules of the applicant. Therefore, his fundamental rights conferred by Articles 14, 15 and 16 of the Constitution have been violated. The respondents have deliberately violated the principles of natural justice. Therefore, those orders are liable to be set aside;

3(d). there were found lapses against the applicant in the preliminary inquiry but they were overlooked by the Disciplinary Authority while framing the chargesheet and the inspection report was not given to him before framing the memorandum of charges. As per service rules for GDS, and DG, P&T letter dated 30.01.1965, the method of recruitment provides for their appointment by Inspectors. Therefore, while working as Inspector of Post Offices, the applicant was competent to make appointment of GDS in anticipation of formal approval of Superintendent of Post Offices;

3(e). the Superintendent of Post Offices, Thane, West Division, Mira-road (Annex A-12) issued instructions in his letter dated 18.08.2005 for

candidates to work on their place till regular appointment of GDS is made. Therefore, the applicant was right in making the appointment of GDS;

3(f). for alleged acceptance of illegal gratification by the applicant, there should have been separate complaint lodged with prosecuting authority but there has not been lodged any such complaint against him. Therefore, this charge/allegation cannot sustain against him as per Hon'ble Apex Court decision in case of S. Ghose Vs. Union of India, 2007(1) LLN 577 (SC) observing that the allegation against the then applicant was serious but a copy of the complaint was not furnished to him, and hence post decisional hearing was given for foregone conclusion. The charge of illegal gratification against the applicant is the matter to be investigated by CBI or ACB of State Police and is not a subject matter of disciplinary proceedings. Therefore, the conduct of the disciplinary proceedings against him on this charge is with malice and bad in law;

3(g). as held in Apex Court decision in case of U.P. State Road Transport Corporation Vs. Suresh

Suresh Chand Sharma Vs. State of Uttar Pradesh and Another in Civil Appeal No.3088/2007 decided on 26.05.2010, (para 20), while deciding the case the court is under obligation to record reasons. Similarly, as held in the Madras High Court decision (Madurai Bench) in WP No.(MD) 921/2006 in case of V. Lakshaman Vs. Chairman Disciplinary Authority, the Appellate Authority has to give reasons in the decision and to see whether facts were considered adequately by the Disciplinary Authority.

3(h). recording all the statements of the GDS after their termination/ stop-gap appointment to prove the charge against the applicant is bad in law. The statements of those persons were recorded by using pressure tactics by one Shri A. R. Pund to prove the charges against him;

3(i). in the inspection reports of Superintendent of Post Offices, Thane for the period from 11.12.2004 to 20.12.2006, when the applicant was posted as Inspector, Jawhar, Sub-Division, it was mentioned that from 20.12.2007 onwards no appointment of GDS was made. This makes it clear that the applicant did not appoint any GDS and therefore the allegations against him for filling up

the vacant posts of GDS is bad in law;

3(j). the applicant while working as SDI(P) was the Appointing Authority for Group-D officials and GDS in the branch offices in his sub-division and therefore the temporary arrangement made by him through stop-gap appointment of GDS was not illegal. He had submitted satisfactory explanation about this as there was pressure of completing work targets. But his written explanation as above was not considered by the respondents. During the inquiry proceedings, the prosecution was never able to prove beyond reasonable doubt that the applicant had accepted illegal gratification from the persons appointed by him as GDS.

As per Karnataka High Court decision in case of C. D. Venkatraman Shetty Vs. State of Karnataka 2007, if the prosecutor fails to discharge the burden of proof, the charge levelled against the delinquent would automatically fail;

3(k). Shri Pund, who investigated the case admitted in his deposition on 13.01.2009 that on appointment of one Shri Mankar as GDS was incomplete as documents were not verified, required documents were not submitted, and there was no signature of

the applicant on the attestation form as Appointing Authority which makes it clear that the applicant did not make any provisional appointment of GDS by violating the rules. The order had been issued by him to draw pay and allowances and to clear work of public mail;

3(1). the inquiry officer stated in his report that the applicant did not produce any documentary evidence or material witness to disprove allegation against him about taking illegal gratification from those persons who were appointed as GDS. Thus the inquiry officer failed to understand that the burden to prove allegation was on him and not on the applicant i.e. the charged officer;

3(m). before the applicant joined on his post as SDI, Jawhar, the earlier SDI Shri R. S. Sonwate had already relieved the officers without making any alternative arrangement and therefore the burden of making such appointment was on the applicant for which he made the stop-gap arrangement for 60 days as per the powers vested in him and as per the directions of superintendent of post officers, Thane

did not make any appointment or provisional appointment of GDS during his tenure; and

3(n). there was no witness to prove the allegation against the applicant about acceptance of illegal gratification. For the candidates appointed on the basis of stop-gap arrangement, maximum monthly salary was of Rs.2000/- and in the statements those candidates have alleged to have paid Rs.50,000/- or Rs.10,000/- to the applicant, which is unbelievable because no man or employee would pay Rs.50,000/- or Rs.10,000/- as illegal gratification for seeking employment for six months with a small monthly payment of Rs.2000/-. The applicant had not taken any action beyond the instructions of Senior Superintendent of Post Offices, Thane West Division but the respondents have attempted to mislead the Tribunal by stating that the applicant had made appointments as GDS violating the provisions and instructions of the department. The case law relied upon by the respondents (Union of India Vs. Tulsiram Patel and Challapan case) are not applicable to his case; and

3(o). there is no gravity or seriousness

the candidates who had been appointed as GDS. Therefore, this OA should be allowed.

In their reply, written statements filed on 29.08.2012, reply to the rejoinder filed on 18.06.2014 and during the hearing, the respondents have contended that:-

3(p). the applicant while working as SDI (Post Offices) Jawhar Sub-Division under Thane West Division from 27.05.2005 showed utter disregard of rules and prevailing instructions of the department and appointed five persons as GDS without following mandatory procedure and seeking prior approval of the departmental authorities as required vide Government of India, Department of Posts letter dated 17.02.2004 and without arranging work by combining duties of then available GDS as per the instructions in the DG, Posts letter dated 21.10.2002. With malafide intention, he did not notify the vacancies to the employment exchange, and did not issue public advertisement which is mandatory as per DGP&T letter dated 04.09.1982, and he engaged/appointed those five persons as GDS from different dates by accepting illegal gratification

appointed on regular basis;

3(q). those candidates have admitted in writing about having given money as illegal gratification to the applicant. Four of those candidate again confirmed this during their oral deposition before the inquiry officer and the 5th candidate also admitted that he had made written complaint about taking of illegal gratification from him by the applicant. The charges levelled against the applicant have been proved during the inquiry proceedings and thus the applicant failed to maintain absolute integrity and devotion to duty and the charges levelled against him were duly proved. Those five persons were appointed provisionally as GDS by the applicant Shri Anant Dattu Mankar, Shri Ganesh Anant Rane, Shri Ganesh Bhagoji Mulmule, Shri Ajit Vasant Kharpade and Shri Vasudeo Madan Patil vide orders dated 21.11.2005, 18.09.2006, 27.11.2006, 18.02.2006, 01.08.2006, 28.11.2005, 16.10.2006 and 24.08.2006.

3(r). based on the chargesheet issued to the applicant and denial of those charges by him, departmental enquiry was conducted against him on 11

prosecution documents, witnesses, deposition of the charged officer, etc. The applicant participated in the inquiry proceedings. Based on the proved charges, the inquiry report was received on 09.04.2009 in which all the charges levelled against the applicant had been proved. The Disciplinary Authority ordered his removal from service by order dated 14.10.2009, the Appellate Authority on his appeal modified the punishment order to compulsory retirement vide order dated 23.03.2010. But the Revisionary Authority upheld the punishment order of removal from service as issued by the Disciplinary Authority;

3(s). there was ban on recruitment of GDS staff imposed by the department of posts during the relevant period but even then the applicant appointed those five candidates as GDSMD without prior approval of the Competent Authority and without following instructions of the department and rules. While making those appointments, he did not make them as stop-gap arrangement for a specified short period of time but issued the orders in a format to convey to the appointed candidates as if

was permanent. This was done with malafide intention. The instructions in GDP&T letter dated 30.01.1965 (quoted by the applicant), were not relevant for the applicant because they were not for the posts of GDS branch post masters but for GDS delivery agent/packers. Those instructions clearly stipulated that the appointment orders will be issued only by the Divisional Superintendent and in case of urgency if Inspector of Post Offices has to make appointment for short period, he has to obtain approval of the Divisional Head but in this case the applicant did not seek prior or subsequent approval of the Superintendent of Post Offices, Thane West Division;

3(t). the applicant has attempted to deliberately distort the contents of the letter of Superintendent of Posts Offices, Thane West Division, Mira-road dated 18.08.2005 In last para of that letter, the SPO had clearly mentioned that the officials selected for promotion as Postmen should be asked to apply for 60 days leave before their relief and the officials selected for promotional posts be able to provide substitute to work in their

is made. These instructions never authorized the applicant to make appointment of the candidates as GDS in violation of instructions of the department;

3(u). the applicant's contention is that for the alleged acceptance of illegal gratification by him from the appointed candidates, separate prosecution should have been launched by lodging of FIR with the police. But the respondents have been lenient towards him in not lodging the FIR against him;

3(v). the CPMG, Maharashtra Circle, Mumbai while deciding the Revision Application of the applicant has followed the provisions of Rule 29 of CCS (CCA) Rules 1965, in letter and spirit, and there has not been any violation as alleged by the applicant. It is to be noted that by the order of the Revisionary Authority, there was no enhancement of penalty as wrongly claimed by the applicant. It only upheld the punishment order of the Disciplinary Authority. As held in the Hon'ble Apex Court decision in the case of the Union of India Vs. Tulsiram Patel, there was no need for the Revisionary Authority to issue notice again to the

There was neither any procedural flaw nor violation of any statutory rules by the respondents in conducting the disciplinary proceedings and awarding punishment to the applicant.

3(w). the respondents have also relied upon and made available copies of these case laws:

(I) AIR 1996 SC 1232 S/O Tamil V/S. S. Subramaniam.

(II) 1997 (1) SCSLJ 227 Govt. of Tamil Nadu V/S K. N. Ramamurthy.

(III) JT 1998 (4) SC 2366 Commissioner and Secretary to the Govt. V/S. Shanmugam.

(IV) 1998 (1) SCSLJ 74 Union of India V/S. B. K. Srivastava.

(V) 1998 (1) SCSLJ 78 Union of India V/S A. Nagamalleshwari.

(VI) JT 1998 SC 61 Apparel Export Promotion Council V/S A. K. Chopra;

3(x). during the Disciplinary Proceedings, the applicant was provided reasonable opportunity to defend himself and principles of natural justice have been followed in letter and spirit. The finding of the inquiry officer were based on reasons

evidence proving the charges. During the inquiry proceedings the applicant could not submit any specific reasons as to why he repeatedly committed 05 times violation of rules and instructions of the department in appointing the five persons as GDS. He exhibited not only lack of integrity but total loss of trust in his position. The prosecution witnesses were also examined by the applicant; and

3(y). in fact the claim of the applicant that he had not kept any record of appointment of those candidates in his office was a deliberate misconduct committed by him, of which in the OA he has attempted to take advantage. As held in the Hon'ble Apex Court decision in case of Union of India Vs. Subramaniam dated 24.01.1996, the Tribunal, which adjudicates the OA, does not have power to appreciate the evidence itself and come to its own conclusion in place of those reached by the Competent Authority based on evidence. As regards the quantum of punishment, as held by the Hon'ble Apex Court in State of Government of Tamil Nadu Vs. V. N. Ramamurthy, the Tribunal cannot interfere with findings about punishment if there is no flaw in the

In view of the submissions, the OA should be dismissed.

4. Analysis and Conclusions:-

4(a). We have perused the OA memo, with its annexes and rejoinder of the applicant and reply as well as sur-rejoinder of the respondents. We have considered the arguments advanced by both the parties on 26.07.2019. After analyzing all these, our conclusions are as follows;

4(b). the applicant's attempt to defend his action in view of letter of DGP&T dated 30.01.1965 cannot help him, as explained by the respondents. The instructions in that letter were not relevant for appointment on the post of GDS branch post masters. Instructions in that letter were for GDS delivery agents or packers. The instructions in that letter also stipulated that the appointment orders will be issued only by the Divisional Superintendent and in case of urgency if the inspector has to make appointment for short period, he has to obtain approval of the Divisional Head. The applicant did not seek prior or even subsequent approval of Superintendent of Post Offices, Thane (W) Division

4(c). The contention of the respondents is also correct that the applicant deliberately defied the instructions contained in the letters of the department dated 17.02.2004, 21.10.2002, 04.09.1992, 14.12.1987 and 19.08.1998. In fact the letter of Superintendent of Post Offices dated 18.08.2005 never authorized the applicant to make appointment of candidates as GDS in violation of instructions of the department and it was meant to rearrange work among the available GDS and the officials selected promotional posts were expected to provide substitutes to work in their posts till regular appointment could be made. The contention of the applicant that the letter of 08.08.2005 authorized him to make appointments of GDS is misleading and false. While making the appointment of 05 candidates as GDSMD, the applicant neither sought sponsoring of candidates from the Employment Exchange nor he published the vacancies.

4(d). This action was in defiance and violation of department's instructions. The applicant has made contradictory and irrelevant claims about the Inquiry Officer and the Disciplinary Authority in

Officer made the Inquiry Report without application of mind, in para 5(f) claiming that without entrusting the allegation of illegal gratification to CBI or ACB of State Police, it cannot be a subject matter of disciplinary inquiry and the Disciplinary Authority did not consider this aspect while proceeding with the disciplinary inquiry.

4(e). In his Revision Petition in para 1E he admitted that it was mistake on his part to issue provisional appointment to 05 GDS employees instead of issuing leave memo as substitutes. In para-2 he submitted that he did not obtain pre-appointment papers from those persons and in para 7 and 8 he clearly admitted that there were lapses on his part but they were without any ill intention and that he may be retained in the department in any capacity, even on reversion and prayed for mercy (Page n0.235 to 239).

4(f). In utter dis-regard of relevant instructions of the department, the applicant appointed those candidates not only provisionally but on temporary basis conveying that those appointments were based on selection. He also issued order of regular

Shri Mankar dated 27.11.2006. He did not make those appointments as leave substitutes. He seems to have deliberately not completed the process of appointing them by not obtaining the attestation forms and signing them as Appointing Authority. In fact, this appears to have been done by him craftily. This was not done by negligence but as a deliberate attempt to keep escape route to claim that he had not issued the appointment orders as he has attempted to plead in para-5 of the OA. But his claim that he had not issued their appointment orders is totally false.

4(g). The orders issued by the Disciplinary Authority and the Revisionary Authority are detailed and well reasoned. The order of removal from service issued by the Disciplinary Authority was modified by the Appellate Authority in his order dated 23.03.2010 only on humanitarian grounds while observing that there were no grounds to interfere in the Disciplinary case and the punishment awarded by the Disciplinary Authority. The Appellate Authority modified the punishment from removal from service to compulsory retired. However, the Revisionary Authority in its order dated 02.01.2012 very clearly

appointment orders five times for those candidates by accepting illegal gratification from them which was against the instructions and rules of the department. Based on this reason, the Revisionary Authority restored the order of removal from service which had been issued by the disciplinary authority. It was not enhancement of the punishment.

4(h). The contention of the applicant that as per Rule 29 of CCS (CCA) Rules, it was mandatory for the Revisionary Authority to provide personal hearing to him is not correct. Under that Rule to provide personal hearing is dependent on discretion of concerned authority and it is not mandatory. From the Revision Application submitted by the applicant it is clear that at page 235 to 239 he had not made any request for personal hearing to be given to him. In that application he only repeatedly begged for mercy stating that the Revisionary Authority was a messiah and almighty to give him another chance to remain in the service of the department!

4(i). From the case record and submissions of the respondents, it is clear that there was unambiguous admission by the applicant of the charges in the

negligence and accepting of illegal gratification, and he promised not to repeat those lapses in future.

4(j). Based on above analysis and inferences, we conclude that during the Disciplinary Proceedings, the respondents have properly followed the prescribed procedure for conducting them, the applicant was given sufficient opportunities to defend himself and the principles of natural justice have been observed. We do not find any infirmity in their orders.

4(d). In view of the proved charges against the applicant during the inquiry proceedings, the punishment awarded to him was fully justified and it is not disproportionate to the charges proved. Thus OA has no merits and the applicant has failed to make out a justified case for our interference with the orders issued by the respondents.

5. Decision:-

The OA is dismissed. No order as to costs.

(Kavinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)'
Member (A)

