S. Ramesh Vs. the Senior Superintendent of Post

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Court : Central Administrative Tribunal CAT

Decided On : Jun-21-2001

Judge : H A L., N Prusty

Appellant : S. Ramesh

Respondent : The Senior Superintendent of Post

Judgement :

1. The applicant who was working as Treasurer in Ashok Nagar Post Office having been removed from service in a disciplinary proceedings which has been confirmed by the appellate authority ('AA' for short), has filed the present application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned orders on the ground that the impugned order of punishment is unjust and illegal; enquiry should have been conducted on the basis of old charge sheet instead of serving another charge sheet after the AA directed for de novo enquiry: enquiry has not been conducted as per the provisions of Rule 14 of the CCS (CCA) Rules ('Rules' for short): shortage of cash was due to personal use of the same by Shri Ahmed Hussain, Sub Post Master ('SPM' for short); reasonable opportunity should have been given instead of setting him ex-parte : non conduct of joint enquiry following the provisions of Rule 18 of the Rules and non-production of documents.

2. The respondents filed their reply stating therein that the case of the applicant is not a case of 'no evidence': me charges are proved based on adequate oral and documentary evidence: applicant participated in the enquiry taking assistance of

the Assisting Government Servant ('ACS' for short) : all reasonable opportunities were afforded to the applicant to defend his case : enquiry conducted strictly in accordance with the procedure prescribed under Rule 14 of the Rules: the applicant introduced four defence documents on his behalf: The Enquiry Officer ('EO' for short) cautiously weighed the evidence in arriving at the finding; the Disciplinary Authority ('DA' for short) considered all the aspects before imposing penalty; punishment awarded commensurates with the proven misconduct and final proceeding are in clear speaking order: AA also considered the grounds made out by the applicant and passed a speaking order rejecting the appeal: Furthermore the applicant himself had voluntarily credited the defrauded sum in instalments and also the respondents stated in their reply that joint enquiry in respect of the applicant and Shri Ahmed Hussain, SPM, cannot be conducted as charges against both are completely separate.

3. The brief facts behind the present application is that during the surprise visit to Ashok Nagar, LSG Sub Division, on 17.5.1995 the Assistant Superintendent of Post Offices, Mangalore, North Sub-Division, noticed that there was a huge amount of cash shortage to the tune of Rs. 44,510.50 ps. in the Treasury of the Post Office, the applicant Sri S. Ramesh, Ex-P.A, Mangalore Head Quarter, was working as Treasurer of Ashok Nagar Post Office on that day. He had worked as the Treasurer from 1.7.1994 to 18.5.1995. Immediately an inventory of physical balance of cash and stamps were taken in the presence of the applicant and other witnesses. The applicant gave his written statement owing the responsibility of shortage and assured to credit the shortage sum to the Government. This shortage was duly arranged to Unclassified Payment Heads (UCP) on 17.5.1995. Subsequently the applicant paid the amount in instalments between the period from 22.5.1995 to 19.7.1995; which clearly indicates that the fraud committed by the applicant to the tune of Rs. 44,510.50 ps. This huge amount was misappropriated by him for his personal gain and subsequently credited by him to the Department and hence a disciplinary proceedings was initiated against he delinquent official. The applicant was issued with the chargesheet and as the charged official denied the charge departmental enquiry was conducted and the charge having been proved and as there was unequivocal admission by the applicant vide letter dated 8.12.1995, order of punishment of removal from service

was passed which was set aside by the AA who directed de novo proceedings against the applicant from the stage of issue of charge sheet. Hence fresh charge sheet was issued. The applicant denied the charges and hence oral enquiry under Rule 14 of the Rules was ordered to be conducted against the charged official appointing Shri Rajappa, ASP, Udupi Division as the EO and Shri Sudhakar Devadiga, IPO, Udupi Division as Presenting Officer.

Enquiry was conducted and it was held that the charges proved beyond doubt. The enquiry report was sent to the applicant along with show cause notice for making representation. Applicant submitted his representation on 19.11.1998 and the applicant had filed a bias petition earlier before the Director of Postal Services ('DPS' for short) on 2.2.1998 which was dismissed by the DPS upholding the decision of the DA. The applicant preferred appeal before the Post Master General, SK Region, which was rejected upholding the decision of the DPS. The DA considering the representation dated 19.11.1998 of the applicant and evidence on records passed the order of removal against the applicant from service on 28.2.1999 and the appeal filed by the applicant was also rejected and hence the case.

4. The applicant has urged various points challenging the order of the DA as well as AA, mainly on the ground (i) the enquiry should have been conducted on the basis of earlier charge sheet instead of issuing a fresh charge sheet after the AA directed for de novo enquiry from the state of charge sheet: (ii) enquiry was not conducted as per the provisions of Rule 14 of the Rules: (iii) reasonable opportunity has not been given to the applicant: (iv) a joint enquiry ought to have been conducted along with Shri Ahmed Hussain who was the SPM during the period and main point urged by the applicant is that (v) during the period of enquiry he was on leave on medical grounds from 14.7.1997 to 19.7.1997 and 24.12.1997 to 26.12.1997, which was duly sanctioned by the competent authority. But he was set ex parte by the EO and ex parte enquiry was conducted by the EO and later when he filed petition for summoning the witnesses for cross examination he was not allowed to do so--rejecting his prayer for the same and further (vi) the document required by the applicant were not produced during the enquiry.

5. The learned Addl. Standing Counsel for the Central Government, who appeared in the case for the respondents produced the connected records relating to the case before us. So far as allegation regarding issuance of second charge sheet is concerned, the same has been done as per the direction of the AA in the appeal filed by the applicant at the first instance--who directed for de novo enquiry for the stage of issue of charge sheet. The second charge sheet is same as the first one. No new/fresh charge has been framed in the second charge sheet against the official. As such no bias can be attributed in this case and also there is no illegality committed by the authority in serving the same charge sheet on the delinquent official as the AA directed for de novo enquiry from the stage of charge sheet. The second contention of the applicant is that enquiry has not been conducted as per the provisions of Rule 14 of the Rules. But, however, the record shows otherwise. All the procedures as per the Rules/Rule 14 and Government of India instructions No. 6 have been followed in the case. All reasonable opportunity has been offered to the applicant at each stage. But it is the applicant who has not availed all the opportunities as he has remained absent along with his defence assistant during the enquiry on the dates fixed, which was also duly, intimated to him. The applicant/charged official along with his defence assistant remained absent without praying for adjournment before the EO or intimating regarding his illness through his defence assistant more particularly on 14.7.1997, 15.7.1997, 16.7.1997 and ex parte evidence of witness were taken up by the EO on those dates. The applicant further alleged reasonable opportunity has not been given to him and there should have been a joint enquiry against him along with Ahmed Hussain, the then SPM. The records clearly indicates that in each stage of enquiry proper opportunity has been given to the applicant to defend himself rather at some stages, the applicant has remained absent without informing the EQ and so far as joint enquiry is concerned the respondents have stated that separate charges were framed against Ahmed Hussain, the dates of charge are completely different and as such joint enquiry could not have been conducted against both. As regards Ahmed Hussain, it has been submitted by the respondents that on completion of enquiry penalty of removal from service has also been imposed on him. We do not find any reason on the part of the applicant to be prejudiced in a separate enquiry as separate charges were framed against both the applicant and Ahmed Hussain on

different dates and in that view of the matter both the contentions are not sustainable. Finally the main point for consideration urged by the applicant is that during the period of enquiry he was on leave on medical grounds from 14.7.1997 to 19.7.1997 and 24.12.1997 to 26.12.1997 which was duly sanctioned by the competent authority and he was set ex parte, ex parte evidence was taken during the period of illness without giving him reasonable opportunity for cross examining the witnesses. In this regard the applicant also mainly relied on the decision 1996(1) SLR 229. A bare perusal of the daily order sheets clearly indicates that the charged official along with his defence assistant remained absent on 14.7.1997, 15.7.1997, 16.7.1997 and 26.12.1997 without informing the E.O. in any manner. The charged official was given prior/ proper notice of the dates, which was received by him and hence the EO proceeded with the enquiry making the applicant/charged official ex parte. The applicant's main ground of attack to the ex parte hearing is that he was ill during the period and leave for the period was sanctioned by tbe competent authority. But he has not stated any thing as to what prevented him from sending proper application to the EO either through the defence assistant or any of his authorised agents. As it appears the applicant had sent leave application to the senior Post Master along with the Medical Certificate for the purpose of sanctioning leave. The Senior Post Master sent an intimation to the EO regarding medical leave of the charged official which was received by EO on 16.7.1997 by the time enquiry on the date was over and ex parte evidence was already taken.

As such no illegality has been committed by the EO in this regard as the applicant or his defence assistant did not chose to remain present or to file any application before him for adjourning the case on medical ground. The counsel for the applicant also stated that the applicant later filed application to recall the witnesses for the purpose of cross examination. But no such application is available in the record nor daily order sheet indicate anything regarding filing and rejection of the said application. In case any such application would have been available in the record or available in the daily order sheet rejecting such application then we would have no hesitation to hold that rules of natural justice has been violated. But the records indicates otherwise. As such the backdrop of the decision reported in 1996(1) SLR 229 is completely different and the decision is no way applicable to the case on hand.

6. Lastly the Counsel for the applicant submitted that the documents required by the applicant were not produced during the enquiry. But the order sheet No. 7 dated 24.6.1997 (page 3) indicates otherwise. All opportunities had been given to the charged official to examine the documents and also about their availability and non-availability. As regards the allegations of bias the applicant had filed applications time and again alleging bias and to stay the proceeding on that ground and all the times the said applications were rejected by the competent authority. Hence no illegality has been committed by the EO in proceeding with the case.

7. Furthermore the applicant in his written statement dated 17.5.1995 had admitted the fact of shortage of cash of Rs. 44,510.50 ps. and also stated that he had utilised the amount for his personal use and also paid back the amount in instalments.

8. Considering the facts and circumstances of the case and the decision rendered by the Hon'ble Supreme Court in AIR 1963 SC 1723 and JT 1996(3) SC 772 in our view the proceeding before the departmental authorities were not vitiated for breach of rules of natural justice.

The conclusion of the departmental officers were fully borne put of evidence and considering the gravity of the offence committed by a public servant. In the interest of justice the guilty should be punished.

9. As such the application is dismissed. There will be no order as to costs.