

**Azizullahkhan Vs. Member (P), Postal Services Board**

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**Court :** Central Administrative Tribunal CAT Mumbai

**Decided On :** Jun-24-2005

**Reported in :** (2005)(3)SLJ186CAT

**Judge :** K B Anand, S Deshmukh

**Appellant :** Azizullahkhan

**Respondent :** Member (P), Postal Services Board

**Judgement :**

1. The present O.A. is filed for quashing and setting aside the order dated 4.10.1996 passed by the Disciplinary Authority imposing the penalty of reduction in pay by six stages from Rs. 1330/- to Rs. 1150/- in the time scale of pay of Rs. 975-1660 for a period of five years and the reduction will have the effect of postponing the future increments and the order dated 31.3.1997 reducing the penalty by two stages from Rs. 1330/- to Rs. 1270/- in the time scale of Rs. 975-1660 for a period of two years passed by Appellate Authority and the order dated 20.9.2001 reducing the penalty of withholding of next increment for a period of one year with cumulative effect by Re visional Authority.

2. The applicant's case is that he was working as Postal Assistant in Sakkarsath Post Office, Amravati under the administrative control of respondent No. 3. In May 1991 Maheshwari Kanya Vidyalaya, Amravati handed over covers containing result of the students to the peon of the school to send the same by post. On 9.5.1991 one Shri Lalit Balkisanji Zanwar resident of Machhisath came to the post

office and demanded the delivery of the cover containing the result of his sister. The applicant did not deliver the cover to the boy. Shri Balkishanji Zanwar, the father of Lalit Zanwar lodged a complaint with the Senior Superintendent of Post Offices, who, made preliminary inquiry on the complaint through Complaint Inspector Shri J.D. Kulkarni and severely wanted the Sub-Postmaster as well as the entire staff of Sakkarsath post office including the applicant vide order dated 14.6.1991. It is contended that because of persuasion of the complainant, who is said to be connected with Grahak Sanghatna, Amravati, the S.S.P.O.reinvestigated the matter and placed the applicant under suspension with effect from 4.10.1991. The suspension was revoked on 4.11.1991 and the applicant was transferred to Morshi. In the meantime Respondent No.3 issued charge sheet under Rule 14 of CCS (CCA) Rules, 1965 on 2.11.1991 and the Inquiry Officer was appointed. After completion of inquiry, the Inquiry Officer submitted the report on 2.1.1996. The Inquiry Officer held that out of three charges, charge No. 1 and 3 are not proved against the applicant, but held charge No. 2 as proved.

Applicant submitted his representation on 22.1.1996. Respondent No. 3 disagreed with the finding of the Inquiry Officer in respect of charges 1 and 3 and recorded his finding and held that all the charges 1, 2 and 3 are proved and imposed the penalty of reduction of pay by four stages from Rs. 1300 to Rs. 1180/- in the time scale of Rs. 975-1660 for a period of five years with effect from 1.3.1996 with direction that he will not earn increment during the said period and on expiry of the period, the reduction will have the effect of postponing the future increment. The applicant preferred an appeal against the order of Disciplinary Authority. The Appellate Authority by his order dated 4.6.1996 remitted, the case back to the Disciplinary Authority for de novo consideration from the stage of receipt of Inquiry Officer's report. The Disciplinary Authority sent letter dated 16.8.96 along with disagreement note in respect of charge 1 and 3. Applicant submitted his representation on 7.9.1996. Respondent No. 3 thereafter issued a fresh punishment order dated 4.10.1996 imposing the penalty of reduction in the pay by the stages from Rs. 1330/- to Rs. 1150/- for a period of five years directing that he will not earn increment during the period of reduction and on the expiry of punishment, the reduction will have the effect of postponing his future increment of

pay. The applicant preferred an appeal against the order of Disciplinary Authority. The Appellate Authority decided the appeal by his order dated 31.3.1997 and reduced the punishment by two stages from Rs. 1330/- to Rs. 1270/- in the scale of Rs. 975-1660 for a period of two years directing that he will not earn normal increment of pay during the period of reduction and on expiry of the period it will have the effect of postponing the future increment. The applicant has filed revision petition before respondent No. 1, which was disposed of by his order dated 20.9.2001 reducing to that withholding of next increment for a period of one year with cumulative effect.

3. Respondents have filed their counter affidavit and resisted the claim of the applicant.

4. Heard learned Counsel Mr. M.R. Parkhi for the applicant and Mr.

Govind Mishra for the respondents.

5. Mr. Parkhi submitted that the charge sheet was issued to the applicant by Shri R.K. Sawai the then S.S.P.O. on 2.11.1991. Learned Counsel submitted that Shri R.K. Sawai had already inquired the matter through Shri J.D. Kulkarni, Complaint Inspector under his control. On the basis of the said report Shri R.K. Sawai had openly come out with the finding about the guilt and severely warned the applicant and others. Learned Counsel submitted that Shri Sawai S.S.P.O. reinvestigated the matter. Learned Counsel also submitted that he should not have acted as Disciplinary Authority and issue charge sheet as per instruction 5 below Rule 12 of CCS (CCA) Rules, 1965. Learned Counsel also submitted that the Disciplinary Authority deliberately denied to supply the additional documents demanded by the applicant at the time of inquiry. Denial of additional documents amounts to denial of reasonable opportunity, which vitiates the inquiry in question.

Learned Counsel further submitted that the finding of Inquiry Officer in respect of charge No. 2 confirmed by Appellate Authority and Revisional Authority is perverse as it is not based on evidence on record. Learned Counsel further submitted that even the finding on charge No. 1 and 3 arrived at by Disciplinary Authority disagreeing with the finding of Inquiry Officer upheld by Appellate

Authority and Revisional Authority is also perverse. Learned Counsel submitted that the entire finding on charge number, 1, 2 & 3 are not based on evidence.

6. Learned Counsel further submitted that the applicant was already warned by S.S.P.O. in respect of the complaint of Shri Balkishanji.

Departmental inquiry was initiated on the same fact and the applicant was imposed penalty as alleged. Learned Counsel submitted that no person can be punished twice for the same fact, which is barred by principle of double jeopardy. The authorities have over looked the principle of double jeopardy. Learned Counsel further submitted that Appellate Authority while disposing the appeal did not give an opportunity of personal hearing to the applicant before imposing the penalty which is against the principle of natural justice. Learned Counsel further submitted that the punishment imposed is not proportionate to the charges alleged to have been proved against the applicant.

7. Learned Counsel for respondents Mr. Govind Mishra submitted that the question of double jeopardy is not applicable in this case as there is no inquiry held when he was warned. Learned Counsel further submitted that the Tribunal cannot re-appreciate the evidence and disturb the findings arrived by the authority and come to its own conclusion.

Learned Counsel further submitted that sufficient opportunity was given to the applicant by the Inquiry Officer. It is for the Inquiry Officer to decide the relevancy of the documents asked by the delinquent. No prejudice has been caused to the applicant because of non-supply of documents. Learned Counsel submitted that there is ample evidence to prove the charges in question. The Disciplinary Authority after recording disagreement note and giving an opportunity to represent against the disagreement, came to the conclusion about charge No. 1 and 3. Learned Counsel submitted that no punishment was imposed by S.S.P.O. and thus he is competent to issue the charge sheet. Learned Counsel further submitted that the applicant cannot claim personal hearing before Appellate Authority as of right as it is discretion of Appellate Authority to give personal hearing. Learned Counsel further submitted that the punishment imposed by the authorities looking into the nature and gravity of the charges proved against the applicant cannot be said to

be excessive. The inquiry has been conducted as per rules and observing the principles of natural justice.

That the said Shri A.R. Khan while working as P.A. Sakkarsath on 6.5.1991 did not despatch all covers containing result sheets posted by Maheshwari Kanya Vidyalaya and thereby violated the provisions of Rule 60-B of P and T Manual Vol. V and Rule 3(1) (ii) of CCS (Conduct) Rules, 1964.

That the said Shri A.R. Khan while functioning as P.A. Sakkarsath on 9.5.91 delivered covers containing result sheets of Maheshwari Kanya Vidyalaya to Shri Lalit Balkisanji Zanwar and while delivering the said article demanded and accepted Re. 1/- (One only) from him and thereby violated the provisions of Rule 185 of P&T Manual Vol. III and Rule 3 (iii) of CCS (Conduct) Rules, 1964.

That the said Shri A.R. Khan while working as P.A. Sakkarsath on 8.5.91 delivered covers containing result sheets of Maheshwari Kanya Vidyalaya to daughter of Mahesh Kumar Sharma and Gangadhar Mahadeorao Sharma from Sakkarsath TSO which is no deliver SO and thereby contravened the provisions of Rule 3(i)(ii) and Rule 3 (iii) of CCS (Conduct) Rules, 1964." It is the contention of the applicant that he has requested for production of additional documents which were not brought on record by the Inquiry Officer. It appears from the record that the applicant had filed an application for production of documents on 2.1.1993 and 17.1.1994. It appears from the record that the applicant had demanded and given list of nine documents. Out of which only one document was produced. That the applicant has demanded original complaint lodged by Balkisanji Zanwar, Mahesh Kumar Sharma and Gangadhar Mahadeorao Sharma.

It appears that the Inquiry Officer has mentioned that these documents are not relevant as in the charge sheet they have not been mentioned.

Document No. 2, 3, and 9 in the list of additional documents demanded by applicant were also not produced as they were not available with the authorities. Document No. 5 and 6 were also not produced. It appears that the complaint of Mahesh Kumar Sharma and Gangadhar Mahadeorao Sharma are important for preparing defence of the applicant. The Inquiry Officer had mentioned in the order

dated 16.9.1994 that "No doubt the Disciplinary Authority can deny the access of official records if in its opinion such records are not relevant to the case.

But it is equally important that this power to refuse access to official records has to be very sparingly exercised. The Disciplinary Authority's version concerning production/non-production of demanded additional documents has been communicated by the Presenting Officer and placed on proceedings record. Further relevancy if discussed during the course of future proceedings will be appropriately dealt with in proper perspective of natural justice." During the course of examination of prosecution witness Balkishanji Zanwar he admitted that he lodged a complaint to S.S.P.O. Amravati. And reference to the complaint dated 9.5.1991 has been made in the warning letter of S.S.P.O. Amravati addressed to SPM Sakkarsath issued on 14.6.1991. As per this complaint J.D. Kulkarni who has been examined by the applicant as defence witness had investigated into the matter and recorded the statement of K.G. Pawar, applicant himself D.N. Bhore and others. Four more witnesses have been examined by the Presenting Officer during the course of inquiry before Inquiry Officer. The earlier statement can be used for the purpose of cross examination. The documents, complaint of Zanwar, Sharma, Talhar, D.N. Bhore, K.G. Pawar, which were demanded by the applicant were not produced on record. That the applicant has been deprived of from confrontation of witnesses by showing their earlier statement. The right to cross examine the witnesses who gave evidence against the applicant is a valuable right.

As the applicant has been deprived of his right by not producing the documents i.e., earlier statements and complaint, he has been prevented by the Inquiry Officer by not giving him the relevant documents. In Chitaranjan Choudhary v. State of Bihar, it has been held by the Apex Court that the relevant and vital documents withheld by prosecution-action against should be quashed. It has also come on record that the copies of earlier investigation done by Shri J.D.Kulkarni, S.S.P.O. Sawai were not supplied to the applicant though he had demanded, which were required for cross examination of the witness.

The earlier investigation was also in respect of the same incident in question. The denial of right to access to the documents for preparing defence vitiates the inquiry in question. A.K. Datta v. Union of India, Their Lordships held that denial of right to access to documents for preparing defence vitiates the inquiry.

9. It has come on record that R.K. Sawai then S.S.P.O. Amravati had got the matter inquired through J.D. Kulkarni, Complaint Inspector under his control. On the basis of inquiry report of J.D. Kulkarni R.K.Sawai, S.S.P.O. had severely warned the applicant. He had openly given his finding about the guilt of applicant, it has been brought on record at page 27 Annexure-I. The S.S.P.O. Sawai got re-investigated the matter. It has also come on record that the charge sheet dated 4.10.1991 has been issued by the S.S.P.O. R.K. Sawai, who had given his opinion regarding guilt of the applicant and had severely warned. Shri R.K. Sawai who had formed opinion about the guilt of applicant should not have acted as Disciplinary Authority and should not have issued the charge sheet as per instruction No. 5 below Rule 12 of CCS (CCA) Rules, 1965. The person who had already formed his opinion regarding the guilt, after issuing the charge sheet, cannot be expected to change his opinion. The inquiry vitiates as the charge sheet has been issued by Shri R.K. Sawai in cotravention to instruction No. 5 below Rule 12 of CCS (CCA) Rules.

10. It has also come on record that R.K. Sawai S.S.P.O. had made inquiry through J.D. Kulkarni on the complaint of L.B. Zanwar and on the basis of inquiry held by J.D. Kulkarni, he has warned the applicant holding him guilty. The applicant was charge sheeted on the same set of facts and has been imposed the punishment. Once the inquiry was conducted and the person is punished by way of warning issued to him, then on the principle of natural justice it is not proper to punish the said person again for the same misconduct. General principle is that no one is put to double jeopardy on the same set of facts. Once a properly constituted forum had arrived at a decision and issued the warning, then its successor in the office cannot enter upon reconsideration of the matter and to impose some other penalty in addition to earlier one already imposed. In the instant case the applicant has been held guilty and has been warned by S.S.P.O.--Disciplinary Authority regarding the incident of delivery of articles, he cannot be put in double jeopardy

on the same set of facts.

11. It has also come on record that the applicant had preferred an appeal on 12.1.1996 and requested the Appellate Authority to grant him personal hearing along with his defence assistant to present his case more effectively. The Appellate Authority did not grant him the personal hearing. As per instruction No. 5 under Rule 27 of CCS (CCA) Rules, the Appellate Authority should have granted the personal hearing to the applicant. In *Ramchander v. Union of India*, AIR 1986 SC 43=1986(2) SLJ 249 (SC), it is held that in case of major penalty the Appellate Authority should give personal hearing before deciding the appeal. No personal hearing was given to the applicant.

12. In view of the foregoing discussion as the applicant was deprived of additional documents, which were essential for preparing his defence, the charge sheet was issued by the S.S.P.O. Shri R.K. Sawai who had already formed the opinion regarding guilt of the applicant and the double jeopardy meted out to the applicant, the impugned orders are required to be quashed and set aside. Accordingly we quash and set aside the impugned orders. Applicant stands exonerated. No order as to costs.

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