

Md. Jonab Ali Vs. Union of India.

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Court : Guwahati

Decided On : Aug-25-2010

Judge : The Chief Justice Mr. Madan B. Lokur; Mr. Justice Hrishikesh Roy, Jj.

Acts : IPC - Section 468/420

Appeal No. : W.P.(C) No. 3460 OF 2010

Appellant : Md. Jonab Ali.

Respondent : Union of India.

Advocate for Def. : Mrs. M.Das, Adv.

Advocate for Pet/Ap. : Mr. A. Khaleque; Mr. Z. Khalid, Advs.

Judgement :

1. Heard Mr. A. Khaleque, learned counsel for the petitioner. Ms. M. Das, learned counsel appears for the official respondents.

2. The petitioner challenges the order dated 7th May, 2010 in Original Application No. 132/09 rendered by the learned Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as 'the Tribunal'), whereby the Tribunal dismissed the petitioners application in which he had challenged his removal in pursuant to a disciplinary proceeding. At the relevant time, the petitioner was functioning as a Branch Post Master of Kalajal Chowk P. O.

3. Initially an FIR was filed against the petitioner with the allegation of forged drawal of Govt. money in the shape of agents commission. But since enough evidence was not found to prosecute the petitioner under Section 468/420 of the IPC no final action on the criminal side was taken against him.

4. Thereafter on the basis a report of the Sub-Divisional Inspector of Post Offices, a disciplinary proceeding was drawn up against the petitioner on the following charges :-

?(i) That the applicant obtained MPKBY Agency in the name of Smt. Mira Begum and acted himself in the name of the said agent. (ii) Applicant operated the said fake agency.

(iii) The applicant earned undue & illegal commission amounting to Rs. 37,616/- in the aforesaid MPKBY Agency.

(iv) That the applicant by his above acts diverted and caused reduction in workload and income of the BO. ?

5. When the charges were denied, an enquiry was ordered against the petitioner. In the enquiry 9 witnesses were presented by the prosecution and the enquiry finding was given that all the charges were established. The Disciplinary Authority on considering the report of the enquiry officer thereafter passed the impugned order for removal of the petitioner from service. After the Appellate Authority rejected the Appeal and confirmed the penalty on 3. 3. 2009, the appellant moved the learned Tribunal. But the Tribunal found no merit in the petitioners application and dismissed the same. Aggrieved by the dismissal of O. A., the petitioner has presented this writ petition.

6. Before us, the learned counsel for the petitioner contends that the enquiry proceeding is vitiated as the delinquent was denied access to the relevant documents. When we asked the petitioner to indicate the documents that he wanted to be made available to him, the learned counsel for the petitioner submits that the petitioner did not keep the copy of the letter, containing the list of the requested documents, sent to the Disciplinary Authority. Accordingly the learned

counsel is unable to specify as to which are the specific documents withheld from the petitioner. On the other hand, we find from the letter dated 25. 6. 2007 of the Sr. Supdt. of Post Offices that all the relevant documents were made available for the petitioners inspection. The petitioner admits that inspection of the documents was afforded to him. Therefore we find no merit in this submission.

7. The next submission made by the petitioner is that he was denied the opportunity to adduce his witness. In so far as defence witness issue is concerned, there is nothing on record to show that the petitioner furnished any list of defence witnesses or that he requested the Enquiry Officer for presentation of any witness on his behalf. Under the circumstances, we see no substance in the contention made that the petitioner was denied of the opportunity to produce his witnesses during the enquiry proceedings.

8. Although the petitioner also makes a general submission that a fair opportunity to rebut the charges was denied to him, we find that the petitioner participated in the enquiry without raising any protest and he also subjected the witnesses to cross-examination. The enquiry report shows that the evidence of the witnesses were duly noted. Written brief of the Presenting Officer and of the charged officer were also received by the enquiry officer and they too were considered. Therefore according to us, a fair enquiry was held where the petitioner was afforded due opportunity and the charges have been proved through a lawful proceeding.

9. We have considered the petitioners contention and are of the opinion that a fair opportunity was afforded to the petitioner to defend the charges. He participated in the enquiry and cross-examined the prosecution witnesses. No basis is available to conclude that the petitioner ever made any request to adduce defence witnesses as the petitioner has failed to show that any such request or list of defence witnesses. Furthermore the petitioner has failed to specify the documents that he wanted to be made available to him.

10. In such circumstances, we find little substance in the petitioners contention that relevant documents were withheld from him or that he was denied any opportunity to produce any defence witnesses.

11. In view of our foregoing conclusion, we see no reason to differ with the view taken by the learned Tribunal. Accordingly this writ petition is found devoid of any merit and the same is dismissed.

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