
(2011) 11 AHC CK 0054

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32610 of 2002

Hari Krishna Upadhyay

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 10(1), 14, 18, 3(1)

Citation : (2012) 2 ADJ 70

Hon'ble Judges : Rakesh Tiwari, J; Dinesh Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties and perused the record.

2. The petitioner was appointed on the post of Postal Assistant by the Superintendent of Post Office, Basti Region Basti on 7.3.1977 and was posted as Postal Assistant at Saltauwa Sub-Post Office. Thereafter, he was posted as Sub-Post Master there. He was put under suspension on 22.5.1992 by the Superintendent of Post Office, Basti Region Basti and was proceeded under Rule 14 of the Central Civil Services Rules, 1965. An FIR was also lodged against the petitioner.

3. The statement of imputation of misconduct/misbehaviour in support of articles of charges framed against the petitioner is as under :

(1) That the said Shri H.K. Upadhyay was functioning as SPM Saltauwa during the period 2.6.1989 to 17.3.1992. Shri H.K. Upadhyay got prepared forged withdrawal form having bogus signature of depositor dated 18.2.1992 in r/o Jinwa EDBO in A/C with Saltauwa SO SB A/C No. 445003 withdraw the sum of Rs. 26,000/- from this a/c fraudulently without P.B. and knowledge of depositor. He himself filled in warrant of payment dated 18.2.1992 and sinned at prescribed place but did not pay the amount of W/D to depositor. The enquiry of this W/D is not available in P.B. and depositor Shri Sheo Shanker r/o village Barahuwa PO Jinwa

Basti in his W/Stt. dated 27.5.1992 denied to have withdrawn this amount and also disowned the signature. The signatures of depositor also does not resemble with signatures available on specimen signature book. Shri Upadhyaya himself prepared LOT dated 18.2.1992 and even did not obtain the signature of SB B/A on LOT. on W/D form there is neither signature nor of Shri Upadhyaya SPM in token of having compared the signature of depositor available on W/D form with that specimen signature book. The said Shri H.K. Upadhyaya is therefore, alleged to have flouted the provisions of Rules 33(2) (i)(iii), 33(5)(i) and 46(6)(1)(2)(3)(4) (5) of PO SB Han. Vol.X.

(2) That the said Shri H.K. Upadhyaya was functioning as SPM Saltauwa during aforesaid period Shri Khadu r/o village & PO Saltauwa postior of Saltauwa SO S.B.A/C No. 444888 tendered the sum of Rs. 8000/- Eight thousand a/2 PB and pay-in-slip duly filled in to Shri H.K. Upadhyaya on 6.8.1991 to deposit in his aforesaid SB A/C. Shri H.K. Upadhyaya kept the amount deposit in his person and got made this entry of deposits in PB and SB ledge by Shri Ram Bhaj counter P/A Saltauwa & thereafter he singed the deposit in PB but did not cost balance in ledger himself also did not return the pay slip to counter P/A. At the close of counter hour when he prepared LOT dated 6.8.1991 himself he did mention this deposit in LOT and destroyed the pay in slip of this deposit and also did not a/c for this deposit money in S.O. A/C. The total of amount of deposit shown in SB log book dated 6.8./91 maintained by Shri H.K. Upadhyaya does not agree with the total of amount of deposit shown in SB LOT dated 6.8.1991. The LOT also does not contain the signature of counter P/A Saltauwa. The said Shri H.K. Upadhyaya is therefore, alleged to have contravened the provision of Rules 10(1), 31(2) (ii) (b) and 46(6) (1)(2)(3)(4) of PO SB Man. Vol.

(3) That the said Shri H.K. Upadhyaya was functioning as SPM Saltauwa during aforesaid period and as discussed above in Article of charge Nos. 1 and 2 above. He made fraudulent withdrawal from Jinwa BO SB A/C No. 445003 on 18.3.1992 for Rs. 26,000/- twenty six thousand only and further did not a/c for amt. of depositor for Rs. 8000/- tendered by depositor of SB A/C No. 444888 to him on 6.8.1991 to deposit in his a/c. Thus Shri H.K. Upadhyaya did not maintain absolute integrity & devotion to duty and acted in a manner which is unbecoming of Government servant. Sri H.K. Upadhyaya is therefore alleged to have contravened the provisions of Rules 3(1)(i)(ii) of CCS (Conduct) Rules, 1964.

4. It appears that the petitioner had moved an application requesting for providing him the copies of the statements of the witnesses mentioned in the charge-sheet by the next date of enquiry. Though 7.8.1992 was fixed in the enquiry but the petitioner did not receive any information about the said date. Thereafter, he was transferred from Sub-Post Office Saltauwa Basti to Head Post Office, Basti on 17.3.1992. The petitioner filed O.A. No. 876 of 1992 before the Central Administrative Tribunal against the order of transfer and suspension which was disposed of finally vide judgment and order dated 20.12.1992 by quashing the order of transfer.

5. A second charge-sheet also appears to have been submitted against the petitioner on 16.10.1992 in which he again moved an application before the Enquiry Officer praying for supply of the documents demanded by him. However, the Enquiry Officer submitted ex parte enquiry report dated 3/5.7.1993. The petitioner also submitted representation on 20.7.1993. However, respondent No. 4, Superintendent of Post Office Basti Region, Basti vide his order dated 23.7.1993 dismissed the petitioner from service.

6. Aggrieved by the aforesaid order dated 23.7.1993 the petitioner filed an "appeal before the Director Postal Services Gorakhpur Region, Gorakhpur which was rejected by him vide order dated 4.12.1993. Revision filed by the petitioner against the order dated 4.12.1993 before the Member (P) Postal Services Board Dak Bhawan, " New Delhi was also rejected vide order dated 14.2.1996. In the circumstances, O.A. No. 1003 of 1996, Hari Krishna Upadhyaya v. Union of India and 5 others was preferred by him before the Central Administrative Tribunal, Allahabad which was also dismissed vide judgment and order dated 19th April, 2002.

7. The petitioner has challenged the impugned order dated 19.4.2002 passed by the Central Administrative Tribunal alongwith impugned orders dated 14.2.1996, 4.12.1993 and 23.7.1993 passed by respondent Nos. 2, 3 and 4 respectively. It has also been prayed that a writ of mandamus be issued commanding the respondents to reinstate the petitioner in service and pay his salary.

8. Learned counsel for the petitioner has assailed the impugned orders on the grounds that the enquiry proceedings have been concluded by the Enquiry Officer on two dates i.e. 17.4.1993 and 11.5.1993 at Saltaua Sub-Post Office which could not be attended by the petitioner for two reasons firstly because he was restrained by the Court from entering into the territory region of Saltaua Sub-Post Office and secondly because his continued illness. In this regard he has relied upon SRA-2 letters dated 6.4.1993, 17.4.1993 and 30.4.1993 appended with the supplementary rejoinder-affidavit. It appears from supplementary rejoinder affidavit-II i.e. letter dated 6.4.1993 that petitioner was directed to attend the enquiry at Saltauwa Sub-Post Office on 17.4.1993 for cross-examining the witnesses and that if the petitioner is absent in the enquiry for whatsoever reasons it would be construed an evasive attitude and non-cooperation in the enquiry which may be concluded ex parte.

9. In reply to the aforesaid letter the petitioner vide his letters dated 17.4.1993 and 30.4.1993 informed the Enquiry Officer that he is not only ill but Hon. Mr. Justice S.K.Dhawan, Vice-Chairman, Central Administrative Tribunal, Allahabad also vide order dated 22.11.92 has restrained him from entering into the territory of Saltauwa Region. He also appended the copy of the aforesaid order for information to the Enquiry Officer and the authorities about this fact. Letters dated 17.4.93 and 30.4.93 read thus :

10. Further the contention of learned counsel for the petitioner is that he has

been denied opportunity of hearing and that the enquiry was deliberately fixed at Saltauwa though he had informed the authority that he has been restrained from entering into the territory of Saltauwa region. One of the grounds for assailing the impugned orders is also that the petitioner was not supplied the copies of the documents demanded by him and as such an opportunity to defend himself was denied.

11. It is then submitted by him that on some of the dates fixed for cross-examination of the witnesses in the enquiry the petitioner was ill and he has informed about this fact to the authority but respondent No. 4 has passed the impugned order dated 23.7.1993 without giving any show-cause notice for the action proposed.

12. Lastly it is submitted that disciplinary enquiry was also initiated against Sri Maheshwar Prasad Shukla, Ram Laut Gupta, Ishwar Prasad Srivastava, Ram Achal, Abdul Azij, Ram Bhejh and Chandra Pratap Shahi, who were also posted at Sub-Post Office Saltauwa but all of them have been retained in service with punishment of recovery of the alleged misappropriated amount from them, hence the disciplinary proceedings initiated against the petitioner alone are violative of Rule 18 of Central Civil Services Rules, 1965 and is illegal.

13. Sri Harish Chandra Dubey, learned counsel appearing for the Department has submitted on basis of paragraph No. 4 of the affidavit that the petitioner was given many opportunities of hearing to cross-examine the witnesses in the enquiry but did not cross-examine the witnesses and ultimately two dates were fixed where the enquiry was concluded. According to him, the dates were fixed in the enquiry at Saltauwa as the witnesses were too old to travel.

14. In reply learned counsel for the petitioner has submitted that the allegation of the department that the petitioner did not attend the enquiry knowingly and purposely is incorrect as he could not attend the enquiry on 9.9.1992 and 21.9.1992 because he was in lockup. He attended the enquiry on 1.10.1992, 16.10.1992, 30.10.1992, 14.11.1992, 4.12.1992, 29.12.1992, 21.1.1993 but could not attend the enquiry on 4.2.1993, 13.4.1993 to 31.5.1993 on account of his illness. In this regard he had submitted a medical certificate before the Enquiry Officer which was accepted and that the impugned orders passed by the appellate authority and the Revisional authority are without application of mind and also the orders passed by respondent Nos. 2 and 3 are violative of Rules 27 and 29 of Central Civil Services Rules, 1965 as such are liable to be quashed.

15. After hearing learned counsel for the parties and on perusal of the record it appears that vide order dated 25.8.2011 the Court directed the respondents to furnish following information. It reads thus :

On the request of the counsel for the respondent list after two weeks. In the mean time he may file supplementary counter-affidavit to the rejoinder-affidavit as well as supplementary rejoinder-affidavit. In filing the reply they will also give the following informations:

- (i) On what date the statements were recorded in village Satauwa;
- (ii) Whether after recording the evidence in village Satauwa any date in the inquiry was fixed at any other place or not;
- (iii) Whether any objection was taken by the petitioner that the inquiry be not held in village Satauwa, because the Central Administrative Tribunal has prohibited him not to appear there.

16. In paragraph 4 of the affidavit filed alongwith an application on behalf of the respondents a chart of dates in the enquiry fixed by the Enquiry Officer on which the petitioner attended/not attended the enquiry are shown. It is revealed from the chart that the petitioner had attended the enquiry at various places on various dates in the Office of the Superintendent Post Offices, Basti. It has been averred therein that ample opportunity was given to the petitioner to cross-examine the witnesses and the last three dates fixed in the enquiry were 4.2.1993, 17.4.1993 and 11.5.1993 out of which the last two dates for enquiry were fixed at Saltauwa and since the petitioner did not attend the enquiry on these dates the enquiry was concluded. For ready reference paragraph 4 of the affidavit showing chart of dates fixed in the enquiry is quoted below.

4. That the following dates of hearing were fixed by the Inquiry Officer in Disciplinary case against petition during open enquiry.

9.9.1992

O/O the Supt.Post Offices Basti Dn. Basti.

Petitioner did not attend enquiry

21.9.1992

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner did not attend enquiry

1.10.1992

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner attended enquiry.

16.10.1992

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner attended enquiry.

30.10.1992

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner attended enquiry.

14.11.1992

Basti Head Post Office

Petitioner attended enquiry.

4.10.1992

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner attended enquiry.

29.12.1992

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner attended enquiry.

21.1.1993

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner attended enquiry.

4.2.1993

O/O the Supt.Post Offices BastiDn.Basti.

Petitioner did not attend enquiry.

17.4.1993

Saltauwa S.O.

Petitioner did not attend enquiry.

11.5.1993

Saltauwa S.O.

Petitioner did not attend enquiry.

From paragraph 4 of the affidavit filed alongwith application by the respondents it is apparent that the petitioner had attended the enquiry proceedings on all the dates fixed therein from 1.10.1992 up to 21.1.1993 but did not appear on 4.2.1993 as he was ill for which he has also submitted medical certificate as well as on last two dates i.e. 17.4.1993 and 11.5.1993 for the reasons that he was restrained by a judicial order passed by the Vice-Chairman, Central Administrative Tribunal from entering into Saltauwa region. He had also informed the authority concerned in this regard and a copy of the order was also sent to the respondents. However, the respondent concluded the enquiry proceedings at Saltauwa inspite of having information about the order passed by CAT restraining the petitioner from entering into Saltauwa region which is deliberate and bona fide.

17. In so far as the contention of learned counsel for the respondents that the enquiry was fixed at Saltauwa for the reasons that the witnesses were too old and could not travel to Basti is concerned, it is incorrect on the face of record. Suffice is to say that from paragraph 4 of the affidavit filed by the respondents themselves it is apparent that the witnesses had been attending the enquiry proceedings at Basti Post Office. It is also evident from the affidavit that the witnesses had been examined in the enquiry fixed at Basti, therefore, they could not become too old to go to Basti for being cross-examined within a span of 4 months. After 21.1.1993 they were examined and 11.5.1993 when the enquiry was concluded. It appears that the dates at Saltauwa have been deliberately fixed by the department so that the petitioner may not attend the enquiry proceedings as there was restraint order of the CAT prohibiting the petitioner from entering into Saltauwa region of the post office and if he attends enquiry at Saltauwa, he would be certain of committing contempt of Court.

18. In the facts and circumstances of this case, we are of the considered opinion that the order passed against the petitioner is motivated and the enquiry has not been conducted in a fair manner. It has been proceeded in a vindictive manner and is against the principles of natural justice. Admittedly, criminal proceeding into the same charge was pending before the Court in which the evidence and witnesses are also same. Therefore, it was incumbent upon the respondents to have restrained themselves from passing any order in a hurried manner in the domestic enquiry particularly when the similarly situated persons against whom the charge of embezzlement was levelled have been awarded a lesser punishment but the services of the petitioner have been terminated. This action is discriminating. The CAT has misdirected itself in concluding that the petitioner was not cooperating in the enquiry proceedings is fallacious for it did not notice the order of Vice-Chairman of the CAT restraining the respondents from going to Saltauwa.

19. For all the reasons stated above, the impugned order dated 19.4.2002 passed by the Central Administrative Tribunal and the orders dated 14.2.96, 4.12.1993 and 23.7.1993 passed by respondent Nos. 2, 3 and 4 are quashed.

20. The writ petition is accordingly, allowed and the matter is remanded back for fresh enquiry to the Department concerned from the stage of cross-examination of witness. In the circumstances, the petitioner shall be paid 50% of the salary from the date of illegal termination of his services till the conclusion of the enquiry for subsistence of the petitioner and 50% of the salary shall be subject to final decision of the Disciplinary authority. Needless to say that he shall also be paid subsistence allowance month to month as and when it falls due till final orders are passed in the enquiry proceedings.

No order as to costs.