

(2017) 04 RAJ CK 0168
In the Rajasthan High Court
Case No : 3309 of 2011

Union Of India & Ors.

APPELLANT

Vs

Dal Chand Balai

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Citation : (2017) 04 RAJ CK 0168

Hon'ble Judges : Pradeep Nandrajog, Pushpendra Singh Bhati

Bench : DIVISION BENCH

Advocate : D.P.Dhaka, S.K.Malik

Judgement

1. The petitioners have preferred this writ petition against the order dated December 15, 2010 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Original Application No.83/2008, whereby the original application filed by the applicant/respondent has been allowed.

2. Brief facts of the case, as noticed by this Court, are that the applicant/respondent was working as Gram Dak Sevak Branch Post Master at Dariba Post Office, since his appointment on January 28, 1997. The applicant/respondent was issued a chargesheet on June 08, 2004 for retaining certain cash in the post office beyond the payable liability on several dates and shortage of certain cash balance at the time of physical verification by the authority concerned. The disciplinary proceedings were conducted against the applicant/respondent and after perusing the enquiry report, a punishment debarring the applicant from appearing in the departmental examination of Postman and Postal Assistant for a period of three years was imposed upon the applicant vide order dated March 31, 2005. However, on November 05, 2007, the Revisionary Authority issued a show cause notice to the applicant and sought to enhance the penalty awarded to the applicant/ respondent. After such notice, the Revisionary Authority enhanced the punishment to dismissal from service with immediate effect.

3. Learned counsel for the applicant/respondent relied upon the judgment

rendered by the Rajasthan High Court at Jodhpur in D.B.Civil Writ Petition No.1476/2001 (Bhagwan Singh Vs. Union of India & Ors. decided on March 05, 2010). He has also relied upon the judgments reported as (1998) 7 SCC 84, Punjab National Bank & Ors. Vs. Kunj Behari Misra and (1999) 7 SCC 739, Yoginath D. Bogde Vs. State of Maharashtra & Anr.).

4. In the aforementioned judgments, the Hon"ble Apex Court has laid down the law that if the Disciplinary Authority disagrees with the findings of the Inquiry Authority or the Reviewing Authority disagrees with the findings of the Disciplinary Authority, then reasons of such disagreement have to be recorded and communicated to the delinquent employee alongwith communication of intention of disagreeing authority to enhance the penalty. As per counsel for the applicant/respondent, no such reasons were recorded by the Revisionary Authority and there was a mere communication of intention to enhance the penalty without assigning any reasons, and therefore, the learned Tribunal held that the show cause notice dated November 05, 2007, which is Annexure-A/4 of the Original Application given by the Revisionary Authority did not reveal any reasons to disagree with the earlier conclusion of the Disciplinary Authority, and therefore, the order dated March 17, 2008 was rightly quashed and set aside.

5. Learned counsel for the petitioner however, states that the aforementioned case laws do not apply to the present case as the facts of this case are clearly distinguishable from the facts of those cases. It is not in this case that the Revisionary Authority has disagreed with the findings of the Disciplinary Authority, but in fact, while agreeing with the findings of the Disciplinary Authority, the Revisionary Authority has merely enhanced the punishment already awarded to the applicant/respondent on the ground that the punishment was too less and was practically not having any impact upon the applicant/respondent. The language of the notice dated November 05, 2007 was categorical in its own sense, as the Revisionary Authority had clearly stated that it had provisionally come to the conclusion that gravity of the charges is such so as to warrant enhancement of the penalty already awarded to the applicant/respondent to the extent of dismissal from service, and therefore, full opportunity of hearing was given to the applicant/respondent to represent against the proposed enhanced punishment. Since the Revisionary Authority was not having any difference of opinion so as to disagree with the contents of the enquiry report, therefore, there was no necessity to give any reason for such disagreement with the enquiry report. The only limited intervention that the Revisionary Authority has made was that it has enhanced the punishment after giving proper notice to the applicant/respondent.

6. After hearing the learned counsel for the parties and perusing the record of the case, we are of the opinion that the precedent laws cited by the learned counsel for the applicant/respondent do not apply to the facts of the present case, as the Revisionary Authority has not disagreed with the findings of the Disciplinary Authority, but has merely interfered with the same to the extent of

quantum of punishment, thereby, enhancing the punishment after giving proper notice and proper opportunity of hearing to the applicant/respondent.

7. Since the Revisionary Authority had only enhanced the punishment by substituting the earlier punishment with dismissal from service, therefore, the precedent laws cited by the learned counsel for the applicant/respondent do not apply to the facts of the present case.

8. In light of the aforesaid discussion, we do not find any irregularity in the impugned order dated March 17, 2008 passed by the Revisionary Authority after giving proper show cause notice to the applicant/respondent dated November 05, 2007 and March 05, 2008, and therefore, the same is upheld.

9. In the result, the writ petition is allowed. The impugned order dated December 15, 2010 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur is quashed and set aside.

10. No order as to costs.