

A.V. Mohal

Vs

Senior Superintendent of Post Office and Others

Civil Appeal No. 1236 of 1985

(Kuldip Singh, K. Ramaswamy JJ)

06.12.1990

JUDGMENT

KULDIP SINGH J

1. A. V. Mohal, a clerk serving in the Posts and Telegraphs Department, was charge-sheeted on three counts. It was alleged that he did not observe departmental rules and orders, disobeyed the orders of the higher authorities and behaved with the Sub-Postmaster and his colleagues in a manner which was unbecoming of a Government servant. Departmental inquiry under the Central Civil Service (Classification, Control and Appeal) Rules, 1965 was held and ultimately he was removed from service by an order dated April 11, 1972. After exhausting the departmental remedies he challenged the order by way of writ petition under Art. 226 of the Constitution before the Nagpur Branch of the Bombay High Court.

2. The challenged to the order of removal before the High Court was on the following grounds:

1. The subsistence allowance was not paid during the period of suspension from Dec. 12, 1968 to Nov. 26, 1971. Relying upon the judgment of this Court in Ghanshyam Das Srivastava v. State of Madhya Pradesh AIR 1973 SC 1183 it was contended that the non payment of subsistence allowance resulted in denial of reasonable opportunity to him, thereby vitiating the order of removal.

2. The charge-sheet served on him was vague and as such he was denied the opportunity to defend himself.

3. Since he could not present himself before the Inquiry Officer due to paucity of funds, it was incumbent on the enquiry Officer to have summoned the person deputed to represent him at the enquiry.

4. The punishment of removal from service was disproportionate to the alleged misconduct.

3. The High Court rejected all the contentions and dismissed the writ petition. On the first point the High Court held that under sub-rule (2) of Rule 53 of the Fundamental Rules no payment in respect of subsistence allowance during suspension period can be made unless the Government servant furnishes a certificate to the effect that he was not engaged in any other employment, business, profession or vocation and since A. V. Mohal did not submit the said certificate, he was rightly

denied the subsistence allowance. The High Court also rejected the other three contentions being without any substance. This appeal via special leave petition is against the judgment of the High Court.

4. Mr. M. C. Dhingra, learned counsel for the appellant has confined his arguments before us on the first point. According to him, the appellant was residing at Amravati whereas the inquiry was being held at Achalpur which he could not attend because of non-payment of subsistence allowance. The appellant by a letter dated July 4, 1969 informed the Inquiry Officer that he would be unable to come to Achalpur to attend the inquiry unless he was paid travelling allowance and in any case he asked for an advance payment of Rs. 50 to meet the travelling expenses. He also complained that he was not being paid his subsistence allowance and further requested the enquiry officer to hold the enquiry at Amravati. Thereafter the appellant wrote a letter dated June 16, 1971 to the Enquiry Officer informing him that he had already despatched the non-employment certificate on May 19, 1971 to Senior Supdt. of Post Offices, Amravati. Mr. Dhingra has taken us through various other letters written by the appellant and has contended that the appellant had done what was required to be done under the rules but in spite of that the subsistence allowance was not paid to him. We are inclined to agree with Mr. Dhingra that there was no reason whatsoever for the appellant not to send the non-employment certificate to enable him to receive the subsistence allowance. At the same time we are conscious that the High Court, on the basis of the pleadings and appreciation of the documents before it, has come to the finding that the appellant did not send the non-employment certificate. The High Court observed as under:

"However, the fact remains that till 26-11-1971 the subsistence allowance was not paid to the petitioner simply because he did not furnish the non-employment certificate. Now if this was the attitude taken by the petitioner, the authorities concerned cannot be blamed for not paying the subsistence allowance. The petitioner by his own conduct prevented the authorities from making payment of the said allowance."

5. Mr. Dhingra has also questioned the interpretation placed on Rule 53(2) of the Fundamental Rules by the respondents and. has gone to the extent of challenging the vires of the said rule.

6. It is not necessary for us to go into the various points raised by Mr. Dhingra. In view of the facts and circumstances of this case as detailed above, we are of the view that interest of justice would be met if we reduce the penalty of removal from service to that of compulsory retirement. We, therefore, set aside the order dated April 11, 1972 removing the appellant from service and instead we direct that he be deemed to have compulsorily retired from service on April 11, 1972. The appellant shall be entitled to his full pension with effect from November 1, 1990. So far as backarrears of pension are concerned we direct that he shall be entitled to only 20% of the arrears of pension from April 11, 1972 to October 31, 1990. The arrears be paid to the appellant by March 31, 1991. In the event of non-payment by that date the appellant. shall be entitled to interest on the said amount from April 1, 1991 at 12% per annum. The appeal is allowed in the above terms. There shall be no order as to costs.

Order accordingly.

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