

lower appellate court had, for reasons which cannot be appreciated, declined to go into that issue. If the trial Court's finding was erroneous; the Additional District Judge might possibly have said that the Civil Court and not the Revenue Officer had the jurisdiction in the matter. To my mind, section 25 of the Punjab Security of Land Tenures Act confers exclusive jurisdiction on the Revenue Officers and provides that the validity of any proceedings under the Act shall not be called in question in any court or before any other authority, except in accordance with the provisions of this Act. This Act provides for appeals, reviews and revisions and makes sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act applicable. It was up to the unsuccessful party to question the decision of the Collector before the Commissioner or the Financial Commissioner, but that does not appear to have been done in this case.

For reasons stated above, the findings of the lower appellate court are not sustainable. I would, therefore, set aside the judgment of the Additional District Judge, allow the appeal and remand the case for disposal on the first issue which had not been decided. The parties have been directed to appear in the Court of the District Judge on 25th of March, 1968, for further proceedings. Costs of this appeal shall abide the event.

R.N.M.

CIVIL MISCELLANEOUS

Before P. D. Sharma, J.

RAM MURTI CHOPRA,—*Petitioner*

versus

THE SENIOR SUPERINTENDENT OF POST OFFICES, LUDHIANA, AND
OTHERS,—*Respondents.*

Civil Writ No. 2351 of 1966

February 23rd 1966

*Central Civil Services (Classification, Control and Appeal) Rules, 1965—
Rule 10(4)—Whether lays down the circumstances in which the second enquiry
can be ordered.*

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Held, that sub-rule 4 of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 provides that on the setting aside of a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant and on a decision to hold a further enquiry against him he would be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. It nowhere lays down the circumstances in which the second enquiry can be ordered. This decision has to be taken by the Disciplinary Authority on a consideration of the circumstances of each case.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ order or direction be issued quashing the charge sheet annexure A-4, dated 19th April, 1965, and the enquiry which was being held against him; and quashing Annexure A-3 dated 2nd April, 1965 placing the petitioner under suspension with retrospective effect from 8th of June, 1961, and also directing the respondents to treat the petitioner in service and to pay him his full pay from the 8th of June, 1961 up-to-date.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL' for the Respondents.

ORDER

SHARMA, J.—Ram Murti Chopra in his writ petition, under Articles 226 and 227 of the Constitution of India against (1) The Senior Superintendent of Post Offices, Ludhiana Division; (2) The Director of Postal Services, Punjab Circle, Ambala; (3) G. P. Joshi, Inquiry Officer, Post Master, Ludhiana and (4) The Union of India has prayed for quashing the orders copies annexures A-2, and A-3 and charge-sheet A-4.

A few relevant facts may be noticed here. Surinder Singh; Inspector of Post Offices on 7th June, 1961, inspected the Sub-Post Office in the Industrial Colony, which was in the charge of the petitioner. He found that 19 parcels—all booked by Messrs United Hosiery Factory were under-stamped to the value of Rs. 88.59 P. The petitioner, when asked to explain this shortage stated that proper postage was affixed by the Sender and that the stamps were duly checked and defaced by him and that he was at a loss to understand as to how the shortage had taken place. The Superintendent of Post Offices also visited this Sub-Post Office on 8th June, 1961, to look into the

matter. By this time stamps of Rs. 88.59 P. had been found from bags containing the parcels which had been checked by the Inspector on the earlier date. The recovery was made in the presence of certain witnesses. The petitioner was served with a charge-sheet on 11th June, 1961, in the following terms :—

- “(1) Removal of postage stamps from the Foreign Parcels booked by him on 7th June, 1961 causing loss to Government revenues and irregular affixation thereon of incomplete date stamps impressions;
- (2) not defacing the postage stamps on the parcels booked in presence of the senders thereof before granting receipts against the provisions of rules 171(2) and (3), Volume VI;
- (3) alleged giving illegal gratification to a Class IV official of the office.”

As a result of the Departmental Enquiry the petitioner was dismissed from service by respondent No. 1 on 28th April, 1962, who found all the charges established against him. The petitioner filed an appeal against this order of his dismissal which was heard by respondent No. 2, who came to the conclusion that charges Nos. 1 and 3 could not be said to have been proved. He, however, found charge No. 2 as substantiated and further added that the petitioner had pocketed the money realised from the party who booked the parcels and had affixed less stamps and thus modified the order of the Disciplinary Authority to the extent that the petitioner was removed from service. The petitioner against this order of his removal from service filed Civil Writ No. 45 of 1964 which was allowed by Grover, J. (as he then was) by his order on 5th February, 1965, annexure R-6. The learned Judge observed that the appellate authority while passing the order of removal from service took into consideration the circumstances which did not form part of the charges served on the petitioner and thus offended the provisions of Article 311 of the Constitution of India. He allowed the petition in the following terms :—

“In the result, the petition must succeed and it is hereby allowed and the order of the removal is set aside. It would, however, be open to the Departmental Authorities to impose such penalty as it may be open to them to inflict on the petitioner in accordance with law.”

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Respondent No. 1 subsequent to the disposal of the writ petition filed by the petitioner ordered on 2nd April, 1965, annexure A-2 that the petitioner should be reinstated with effect from 28th April, 1962. By another order of the same date, annexure A-3 the petitioner was placed under suspension with effect from the 28th April, 1962. He was further informed by another letter, dated the 19th April, 1965, that it was proposed to hold an enquiry against him under rule 15 of the Central Civil Services Rules, 1957, on the basis of the charge-sheet which was in the following terms :—

- “(1) Removal of postage stamps from the Foreign Parcels booked by him on 7th June, 1961, causing loss to the Government revenue;
- (2) non-defacing of postage stamps on the parcels booked before granting receipts against the provision of rule 171 (2) and (3) of P. & T. Manual, Volume VI;
- (3) alleged giving illegal gratification to Class IV official of his office;
- (4) Affixation of incomplete date stamp impressions to create impression that the stamps affixed thereon might have fallen.”

The petitioner requested respondent No. 1 and thereafter respondent No. 2 that it was not proper to hold a second enquiry almost on similar charges but to no effect. Respondent No. 1 by his order, dated 17th September, 1965, appointed respondent No. 3 as the Enquiry Officer, annexure A-3. The petitioner made some unsuccessful attempt to get the enquiry postponed. Thereupon he filed the present writ petition for quashing the order passed by respondent No. 1 suspending him from service with effect from 28th April, 1962, annexure A-3, and directing a fresh enquiry against him, annexure A-4. It is alleged that it was against law to hold an enquiry against him second time on the same charges and that after re-instatement he should not have been suspended, with effect from 28th April, 1962. He went on to say that what the order of the learned Judge in his previous writ petition meant was that the appellate authority should proceed to punish him on the basis of his finding on charge No. 2 alone and that it nowhere provided that a second enquiry should be held against him almost on the same charges.

Respondent No. 1 in his written statement admitted the sequence of events given by the petitioner in the writ petition as correct and also conceded that the new charges framed against him were more or less the same as were framed against him earlier. He further pleaded that the order removing the petitioner from service had been set aside by the High Court, therefore, a second enquiry could be instituted against the petitioner in view of the provisions made in sub-rule (4) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He also explained that the order in regard to the petitioner's re-instatement after acceptance of his writ petition by the High Court on review was set aside, and the necessary information was conveyed to the petitioner. Respondent No. 3 in his written statement denied the allegation made against him that he was holding the second enquiry against the petitioner in a prejudicial manner.

Respondent No. 1 in support of his contention that second enquiry could be ordered against the petitioner almost on the same charges relied on sub-rule (4) rule 10 *ibid* which runs as under :—

“Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.”

What the above sub-rule provides is that on the setting aside of a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant and on a decision to hold a further enquiry against him he would be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. It nowhere laid down the circumstances in which the second enquiry

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could be ordered. This decision has to be taken by the Disciplinary Authority on a consideration of the circumstances of each case. Therefore, respondent No. 1 was not correct in alleging as he did that this sub-rule provides for holding of a second enquiry against the petitioner. In my opinion to order such an enquiry he had to consider the circumstances of the case. As already pointed out, respondent No. 1 on consideration of the report submitted by the Enquiry Officer dismissed the petitioner from service. Respondent No. 2 on an appeal preferred by the petitioner held that only charge No. 2 had been established and not charges Nos. 1 and 3. He also relied on a certain circumstance which was not included in these three charges while ordering removal of petitioner from service. The High Court while allowing the petitioner's writ petition, held that respondent No. 2 could not have taken into consideration the circumstances which were not subject-matter of the charges while imposing the penalty of removal from service on the petitioner. What in fact the order meant was that the order passed by the Appellate Authority, respondent No. 2, was bad in law, and so it was quashed. As a result of the order of this Court the case of the petitioner stood at the stage of the appeal meaning thereby that his appeal which had not been disposed of previously according to law should now be disposed of. It was never the intention of the order that a fresh enquiry should be held against the petitioner. The report of the Enquiry Officer or order of the Disciplinary Authority were not quashed. Their validity will have to be gone into by respondent No. 2, the Appellate Authority while disposing of the appeal now. The second enquiry almost on the same charges against the petitioner was uncalled for and is quashed and with it falls the order suspending him from service with effect from 28th April, 1962, since it was superfluous. He now stands in the same position as he was on the date he preferred the appeal before respondent No. 2 against the order of respondent No. 1.

For the above reasons, the writ petition is allowed and the order directing second enquiry against the petitioner as also the order suspending him again from service, with effect from 28th April, 1962, are quashed. Respondent No. 2 will now proceed to dispose of the appeal preferred by the petitioner against the order of respondent No. 1 dismissing him from service.

R. N. M.