

CENTRAL ADMTNTSTRATIVE TRIBUNAL, PRINCIPAL BENCH

CA No. 2789/2002

New Delhi, this the 4th day of September, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member(A)

(S)

Shri Harish Chander Sharma,  
Ex. Postal Assistant,  
S/o Shri Chunni Lal Sharma,  
H.No. 103-A, Bhajan Pura,  
Block - A, Gali No. 9,  
Delhi. . . . . Applicant

(By Shri Rajiv Kumar)

Versus

1. Union of India through  
Secretary,  
Ministry of Communication,  
Department of Post,  
Dak Bhawan,  
New Delhi - 110 001.
2. Chief Post Master General,  
Department of Post of the C.P.M.G.,  
Delhi Circle, Dak Bhawan,  
New Delhi.
3. Senior Superintendent,  
Air Mail Sorting Division,  
New Delhi- 110 021. . . . Respondents

(Shri S.K. Gupta, Advocate)

ORDER(oral)

Justice V.S. Aggarwal

The applicant (H.C. Sharma) was a Postal Assistant. Departmental proceedings had been initiated against the applicant pertaining to six article of charges. The inquiry officer had written the finding that the charge stood proved. The same are as follows:

"Article of Charge: 1 - That Shri Harish Chander Sharma while functioning as P/Asstt. GTB Nagar PO Delhi-9 on 3.4.87 and 10.06.87 did not mail the original & genuine Money Order lists and instead

*V.S. Aggarwal*

Order lists and M.O. Issue journals of the dates he anauthorizedly and fraudulently filled in other fresh Money Order forms (MO-8) payable to himself/his friends/his relatives but not to the genuine payee, with the same MO Nos; amounts and dates as assigned to the original Money Orders. Thus Shri Harish Chander Sharma by his mis-conduct alleged to have caused a pecuniary loss to the tune of Rs. 3120/- (Rs. 3000 Value of the MOs + Rs. 120/- MO commission paid thereon) to the Department of Posts, Govt. of India and thus violated the provision of Rule 58 of P&T FHR Vol. I.

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"Article of Charge: 2 - That Shri Harish Chander Sharma while working as P/Asstt. GTR Nagar PO Delhi-9 on 20.06.1987 did not mail the original and genuine Money Order and instead while preparing the High Value Money Order lists of the date, he anauthorizedly and fraudulently filled in other fresh Money Order forms (MO-8) payable to himself but not to the genuine payee, with the same MO Nos; amount and date as assigned to the original Money Order. Thus Shri Harish Chander Sharma by his mis-conduct alleged to have caused a pecuniary loss to the tune of Rs. 1040/- (Rs. 1000 Value of the MOs + Rs. 40/- MO commission paid thereon) to the Department of Posts, Govt. of India and thus violated the provision of Rule 58 of P&T FHR Vol. I.

"Article of Charge: 3 - That Shri Harish Chander Sharma while working as P/A GTR Nagar PO Delhi-9 on 21.7.87 and 29.7.87 did not mail the original & genuine Money Orders and instead while preparing the High Value Money Order lists of the dates, he anauthorizedly and fraudulently filled in other fresh Money Order forms (MO-8) payable to his friends but not to the genuine payees, with the same MO Nos; and dates as assigned to the original Money Orders but with changed amounts. Thus Shri Harish Chander Sharma by his mis-conduct caused a pecuniary loss to the tune of Rs. 3120/- (Rs. 3000/- the value of the MOs + Rs. 120/- / commission paid thereon) to the Department of Posts, Govt. of India and thus violated the provision of Rule 58 of P&T FHR Vol. I.

"Article of Charge: 4 - That Shri Harish Chander Sharma while journalising the MOs and preparing the High Value Money Order, list at GTR Nagar PO Delhi-9 on 25.8.87 anauthorizedly and fraudulently prepared the High Value Money Orders on fresh fresh Money Order Forms (MO-8) assigned

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the numbers of the Low Value money orders booked on that date and made the said unauthorisedly prepared high value money orders duly entered in the fraudulently made carbonic copy High Value money Order List dt. 25.8.87. The said high value money orders were payable to the friends and relatives of Shri Harish Chander Sharma.

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Thus Shri Harish Chander Sharma by his mis-conduct caused a pecuniary loss to the tune of Rs. 5200/- (Rs. 5000 Value of the MOs + Rs. 200/-/MO Commission admissible thereon) to the Department of Posts, Govt. of India and thus alieved to have violated the provision of Rule 58 of P&T FHB Vol.T.

"Article of Charge: 5 - That as per P.O.W. Shri Harish Chander Sharma P/A GTB Nagar PO Delhi-9 was to work as Regn. Counter & despatch P/A in the said office on 3.4.1987, 10.06.1987, 20.06.1987, 21.7.1987, 29.7.1987 and 25.8.1987. He was required to perform the duties of booking of Regd. articles and despatch of Regd. articles and money order bundles. The said Shri Harish Chander Sharma allegedly journalise the money orders booked by the money order booking counter PA on 3.4.87, 10.06.87 and 25.8.87 and also prepared the high value money order lists on 3.4.87, 10.06.87, 20.06.87, 21.7.87, 29.7.87 and 25.8.87 without the written orders of the competent authority as required under Rule 4 of P & T man. Vol. VI Part-I.

Article of charge no. 6 - That Shri Harish Chander Sharma while working as Regn. Counter and despatch PA at GTB Nagar PO Delhi-9 on 3.4.87, 10.6.87 and 25.8.87 unauthorisedly prepared the M.O. Issue journals and high value money order lists and on 20.6.87, 21.7.87 and 29.7.87 unauthorisedly prepared the high value money order lists of the said dates and during the course of such preparation of MO Issue journals and high value money order lists he is alleged to have unauthorisedly and fraudulently filled up high value money orders on frsh money order frms (MO-8) payable to himself/his friends/his relatives and mailed them duly entered in the HVMO lists of the respective dates as alleged in Article of charges 1 to 5 above."

In pursuance of the same, the disciplinary authority had passed an order dated 9.1.1992. The applicant preferred

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an appeal and on 23.09.1993 the appellate authority had passed an order compulsorily retiring the applicant. Needless to say that before passing this order, the appellate authority had served a notice to the applicant to show cause for enhancement of the punishment.

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2. The applicant was simultaneously being tried before the court of the competent jurisdiction and in the trial that had ensued the applicant had been acquitted by the learned Metropolitan Magistrate on 1.3.2001. The charge framed against the applicant by the learned Metropolitan Magistrate pertained to offences punishable under Sections 419, 420, 468, 471 and 120B of the Indian Penal Code. When the applicant was acquitted, he submitted a review application before the appellate authority on 7.4.2001 but the appellate authority on 23.04.2002 rejected the said application.

3. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary as well as appellate authority besides the present order of 23.04.2002.

4. According to the learned counsel, since the applicant has been acquitted by the learned Metropolitan Magistrate, necessarily in the departmental proceedings, it must follow with the charges pertaining to misappropriation of the amount and other co-related facts must be held to have not been proved. He further urges that the review application that was filed has been dismissed in which there is no consideration of the

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judgement of the learned Metropolitan Magistrate. Learned counsel relies upon the decision rendered by the Supreme Court in the case of Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456.

5. The application has been opposed. In reply filed it has been pointed that while the applicant was working in the Registration Counter of the Post office from February, 1987 to August, 1987, he issued bogus money orders in his own name and in the name of his friends by using the office oblong money order stamp. He replaced the genuine high value money order entered in HVMO list and inserted the bogus money orders, which have been found to be paid from different post offices. It is not denied that the applicant has since been acquitted by the court but it is insisted that the order passed rejecting the application is valid and there is no scope of interference.

6. We have heard the parties' counsel.

7. The principle is well settled that in a criminal trial the proof required is of 'beyond a reasonable doubt' while it is not so in departmental proceedings. Herein on preponderance of probabilities even the conclusion can be so arrived.

8. The above said principle would very much apply to the facts of the present case. Acquittal by the court of the competent jurisdiction at Delhi will not, *ipso facto* set aside the defence in the departmental

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proceedings. The decision rendered by the Supreme Court in the case of Capt. M. Paul Anthony (supra) would also not come to the rescue of the applicant. Reliance on behalf of the applicant was being placed on paragraph 34 of the decision in the case of Capt. M. Paul Anthony (supra), which reads:

"Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

9. The position before the Supreme Court in the case referred to above was that the whole of the case of the prosecution had been thrown out as incorrect and the applicant had been acquitted. The present case stands altogether on a different footing. The decision of the disciplinary authority and thereafter the appellate authority had attained finality way back in the year 1993. Acquittal, after almost eight years, of the same will not put the clock behind, nor would it go to the root of the matter, which has become final. Otherwise also, perusal of the orders passed by the disciplinary authority and the appellate authority clearly shows that they had proceeded on the basis of the evidence before them. Cumulative effect of these facts would be that it is not a proper and fit case where the applicant can take advantage of the decision of the court of learned Metropolitan Magistrate.



10. The other contention that the reviewing authority has not considered the judgement of the learned Metropolitan Magistrate is also devoid of any merit. At best, the fact to be taken note of was that the applicant had been acquitted. The competent authority was not in a position nor was it proper on its part to make comment on the judgement of the learned Metropolitan Magistrate.

11. No other arguments have been advanced. Resultantly OA, being without merit, fails and is rejected.

Naik  
(S.K.Naik)  
Member (A)

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(V.S.Agarwal)  
Chairman

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