

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO.1977/99

New Delhi, this the 10th day of July, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

In the matter of:

Mr. Mohd. Ibrahim s/o Haji Abdul Hamid,
Ex. Sorting Assistant, Gali No. 27, H.No.2049,
Tuglakabad Extension, New Delhi-19. Applicant
(By Advocate: Sh. S.C.Luthra)

vs.

1. The Union of India
through the Secretary to the
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi-110001.
2. The Member, Postal Services Board,
Dak Bhawan, New Delhi-110001.
3. The Chief Post Master General U.P.
Circle, Lucknow-226 001, U.P.
4. The Director Postal Services O/O the
Chief Post Master General, U.P. Circles,
Lucknow-226 001, U.P. Circle. Respondents
(By Advocate: Sh. V.S.R.Krishna)

ORDER (ORAL)

By Reddy J.

The applicant, who was ex Sorting Assistant, was served with the charge memo alleging that while he was on duty on 9.5.84 he tore open a registered letter sent by B.S.Rawat which contained a draft of Rs.2000/- and it was not kept in safe custody by him; that he showed a gross sense of negligence by wrongly entering a registered article as 02387 instead of 0238 and that he refused to sign the cover of the registered letter and refused to attend the office of J.K.Rahul, ASRM for enquiry. The applicant denied the charges. An Enquiry Officer had been appointed to conduct the enquiry. The enquiry Officer considering the evidence found the applicant guilty of the charges. The disciplinary

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10

authority agreeing with the findings of the Enquiry Officer imposed the punishment of dismissal by order dated 20.9.95. He submitted an appeal to the Chief Post Master General, Lucknow who rejected the appeal by order dated 26.11.96. The review petition filed by him was also rejected. The petitioner also submitted a mercy petition which also met the same fate. The present OA is filed questioning the penalty of dismissal from service.

2. The learned counsel for the applicant submits that there is no evidence in this case, either oral or documentary in support of the charge. The Enquiry officer has relied upon the statements made by the witnesses who were examined during the preliminary enquiry and the evidence of the Enquiry Officer who conducted the preliminary enquiry. It was contended that the statements of witnesses, examined in preliminary enquiry cannot be relied upon without examining them in the departmental enquiry.

3. Learned counsel for the respondents, however, submits that there is sufficient evidence on record which has been relied upon by the Enquiry Officer and on the basis of the findings of the Enquiry Officer the disciplinary authority imposed punishment which have been confirmed by the higher authorities. Hence the Tribunal will not normally interfere with the findings of the disciplinary authority.

4. We have given careful consideration to the contentions raised by the learned counsel on either side.



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5. It is seen that along with the charge memo the list of documents and list of witnesses were given by which the charges are sought to be proved. In the list of witnesses the written statements of several persons were given along with the enquiry report of the Enquiry Officer who conducted the preliminary enquiry. These statements, as stated supra, were recorded by the Enquiry Officer during the preliminary enquiry held on 9.5.84 and 10.5.85. Additional documents which were given are: the registered letter, the daily report of supervisor, staff composition memo, protected cover on which RL No. was written and registered list received from Bikaner and the registered letter and ER No. 1 & 5 dated 9.5.84 of Supervisor report (extract of the report). In the list of witnesses, 15 witnesses were given. Out of them only Sl. No.14, i.e., Sh. J.K.Rahul, ASRM was examined. Sh. J.K.Rahul is the person who has examined the witnesses in the preliminary enquiry and gave his report. Most of the other witnesses shown were examined during the preliminary enquiry but all these witnesses have not examined in departmental enquiry.

6. We have perused the Enquiry Officer's report. It is seen from his report that the witness Sh. J.K.Rahul only deposed as to the contents of the statement of Sh. K.L.Jain, Supervisor, who was the complainant in this case. The complainant, being K.L.Jain was also not examined in the departmental enquiry. The Enquiry Officer solely relied upon the deposition of Mr. J.K.Rahul, who did not depose about the incident and the statements made by other witnesses during preliminary enquiry. Thus, it is clear the allegations are not proved by any evidence either documentary or oral.

121

7. It is the contention of the learned counsel that the statement made by the witnesses in the preliminary enquiry will not constitute evidence in the departmental enquiry unless the deponents have been examined and were made available to the applicant for cross examination with regard to any evidence found in their deposition. Admittedly, the deponents have not been examined. It is not the case of the respondents that the witnesses were not available for examination during the departmental enquiry. No effort was shown to have been made for procuring the witnesses. In State of Gujarat & others Vs. Surykant Chunilal Shah, 1999 (2) SLJ 28 it was clearly held that the complainant as well as other material witnesses should be examined. In the present case neither the complainant nor any other witnesses have been examined to prove the charge. Again in Government of A.P. & others Vs. M.S.N.Murthy & others 1998 (8) ATC 24, the Tribunal has held that the letter cannot be relied upon unless the person who wrote the letter was examined during the enquiry.

8. The learned counsel for the respondents, however, contends that the applicant has failed to produce the witnesses in order to disprove the charge. We cannot accept this contention. It is for the prosecution to prove the charge. In the absence of any evidence in this case, the punishment imposed on the applicant cannot stand.

9. The OA, therefore, succeeds. The impugned orders of the disciplinary authority dated 20.9.95, the order of the appellate authority dated 26.11.96, the revisional authority order dated 8.9.97 are quashed. The respondents are directed to reinstate the applicant immediately in service within one

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13

month from the date of receipt of the copy of this order with all consequential benefits. The OA is, accordingly, allowed. No costs.

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(SHANTA SHASTRY)
Member (A)

V. Rajagopala Reddy
(V. RAJAGOPALA REDDY)
Vice Chairman (J)

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