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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 30-04-93

OA 2162/89

SHRI RAM PAL SINGH ... APPLICANT.

VS.

POSTAL SERVICES BOARD & ORS. ... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant ... SHRI SANT LAL.

For the Respondents ... NONE.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

The applicant Shri Ram Pal Singh, a compulsorily retired Sub Postmaster, Rohana Mills, Post Office, Muzaffarnagar, has impugned the order of compulsory retirement dated 22.12.87 (Annexure A-1), the Appellate Order dated 31.5.88 (Annexure A-3), rejecting the appeal, and the Revisional Order dated 28.3.89 (Annexure A-4), rejecting the revision petition.

2. The applicant, ^{1/1} joined service as a Postman in the Postal Department on 1.8.59, and was promoted as a Clerk (Postal Asstt.) on 23.10.66, ^{1/1} was placed under

suspension w.e.f. 25.6.83 on the ground of contemplated disciplinary proceedings, ~~and~~ the charges were finally served upon him on 29.4.86/3.9.86 (Annexure A-8), alleging;

i) That the applicant while functioning as Sub Postmaster, Rohana Mills, on 22.4.82, accepted a Pass Book alongwith the application for withdrawal of a three year T.D. Account for premature closure before expiry of time. The applicant authorised sanction of premature closure with interest of Rs.850/- in contravention of Rule 15 of Chapter XIV of P.O. Book, which amounted to gross negligence and put the department to an embarrassing position on receipt of claim from the said depositor.

ii) That the applicant while functioning as SPM, Rohana Mills, on 22.4.82, authorised premature closure of another three year T.D. Account before expiry of one year in contravention of Rule 15 of Ch.XIV, put the department to embarrassing position on receipt of claim from the said depositor.

3. In the statement of imputation of misconduct, annexed with the charges, additional material ~~was~~ ^{was} furnished in respect of the two charges, in which it was ~~was~~ ^{was} stated that the applicant did not make any entry

in the Pass Books of the two accounts relating to this transaction, and no interest was payable in the accounts, and moreover, the applicant was not competent to sanction premature closure.

4. ^{My} Departmental proceedings were drawn up against the applicant and the EO submitted his report dated 15.12.87 (Annexure A-2), holding the charges as proved. The Disciplinary Authority, accepted the findings of the EO and ordered compulsory retirement of the applicant from Govt. service with immediate effect, which was upheld in appeal and sustained in revision, and it is against those orders that the applicant has now come before this Tribunal.

5. The main grounds taken in the application are that; the impugned punishment order is violative of Rule 8, Postal Manual Vol.III, which lays down what the punishment order should contain; there was considerable delay between the date the applicant was suspended, the date disciplinary proceedings were initiated against him, and the date the Enquiry Officer was appointed, and this delay prejudiced the applicant in showing cause against the charges. ^{and} reference in this connection has been made to Gujarat High Court's decision in the case of Mohan Bhai Vs. Y.B. Zala & Ors. (1980 (1) SLR 384); the statement of imputation

of misconduct states that the two three years TD Accounts, which had been opened on 24.2.81, had been presented on 22.4.82 for premature closure, before the expiry of one year, but the period 24.2.81 to 22.4.82 comes to about 14 months, hence the charge sheet is vitiated; although there was only one charge of alleged premature closure of two three years T.D. Accounts, this charge was deliberately split into two to impose a heavier penalty; the Articles of charge are vague and indefinite, inasmuch as there is no mention of alleged violation of certain rules in Annexure-II of the charge memo, whereas these find place in Articles 1 and 2 of the charge. It is also averred that the applicant is alleged to have contravened the provisions of Rule 15 of Chapter XIV of the book on Post Offices Small Saving Scheme by Shri A.S. Dureja read with certain other rules, but the same has no concern with the case and moreover, Shri Dureja's book is a private publication, which cannot be used for penal action; no mention was made in the charge sheet of contravention of any specific sub-rule and, therefore, the charges are vague, cryptic and indefinite, which vitiates the proceedings as has been held by the CAT (Calcutta Bench) in the case Mohd. Akbar Vs. UOI (1987 (1) ATR 188); non supply of the copy of the preliminary investigation report seriously prejudiced the applicant in his defence; the

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Presenting Officer was required to produce the documentary evidence by which the charges were to be proved, but the original documents were not produced and only photo-copies of the same were produced; after the prosecution of case and the applicant submitted his statement of defence, certain new evidence were taken on record, which vitiated the proceedings; opportunity for explanation was denied to the applicant; the Enquiry Officer's findings were beyond jurisdiction and he made certain observations on allegations not included in the charge sheet; the applicant was not given an opportunity of making his representation on the enquiry report before the Disciplinary Authority passed orders. In a CAT Bombay Bench decision in the case Prem Nath K. Sharma Vs. UOI & Ors. (1988 (3) SLJ CAT 449), it has been held that it was obligatory for the Disciplinary Authority to supply a copy of the Inquiry Report to the delinquent to enable him to represent before the punishment was meted out; the penalty of compulsory retirement was excessive; the Appellate Authority's order was a non-speaking, non-reasoned one, and no opportunity was given to the applicant for ^a~~the~~ personal hearing, which violates the Hon'ble Supreme Court's dictum in the case Ram Chander Vs. UOI & Ors. (1986 (2) ATR 252); the Appellate Authority had already made up its mind to reject the appeal even before considering the records of the proceedings and the various

contentions raised in the appeal. Moreover, the Appellate Authority in his order, brought in certain new charges, not included in the charge sheet, ^{and} the Revising Authority's order also was erroneous, illegal and contrary to rules.

6. The respondents have contested the application and ^{in their counter affidavit} have pointed out that the case is essentially one of fraud, which was committed by one Atma Ram, Ex.EDBP, Badhai Kalan, in account with Rohana Mills Sub Post Office, Distt. Muzaffarnagar, where the applicant was the Sub Postmaster. The total amount involved was over Rs.7 lakhs, and the applicant ^{was in} in connivance with the said Atma Ram, a co-accused in a case pending trial. During the course of the departmental enquiries, the applicant was found to have committed serious irregularities and it was on the basis of these glaring lapses that he was proceeded against departmentally and compulsory retired from service after observing all the prescribed rules and regulations. On 24.4.81, while working as Sub Postmaster at Rohana Mills, the applicant received index cards from Badhai Kalan Branch Office and opened two three years T.D. Accounts in the names of Smt. Kunthlesh and Shiv Kumar respectively. The Pass Books of these accounts were sent to Badhai Kalan Post Office for delivery to the depositors. As these accounts were for three years period,

the normal date of maturity should have been 24.4.84, and premature closure of these accounts before expiry of one year could be sanctioned by the Head Post Office alone. However, the two accounts were closed by the applicant on 22.4.82, and in addition he allowed interest of one year amounting to Rs.850/- in each account. Surprisingly, the Pass Books under reference were not available with the applicant while allowing premature closure. It is contended that the said Atma Ram, who is the main offender in the case, had brought by hand two petitions for withdrawal of these accounts, and the applicant accepted the same and sanctioned premature closure without the Pass Books and authorised payment of Rs.21700/- inclusive of interest which was paid at Rohana Mills Sub Post Office itself. It is further contended that this intentional contributory negligence and connivance on the part of the applicant allowed Atma Ram to continue defalcations putting the department to a heavy loss.

7. *pointwise*
In reply to the grounds taken by the applicant, it has been averred that the impugned punishment order was fully in accordance with the rules and contained all the related matter. As there was fraud involving several lakhs of rupees in which about 160 accounts were involved, some

time was taken in the completion of the enquiry resulting in late issue of charge sheet to the offenders. It has been stated that the three years T.D. Accounts were opened on 24.4.81, and the date 24.2.81 was a typographical mistake which was accordingly corrected, which did not vitiate the charge sheet. It has been denied that the charge was deliberately split up to impose a heavier penalty and it has been averred that the charge sheet has been prepared fully in accordance with the rules. Regarding the non-supply of the copy of the preliminary investigation report, it has been stated that the same is a privileged document and as such a copy of the same was not supplied, but copies of all other relevant documents were supplied and examined during the course of the enquiry. A copy of Rule-14 enquiry report was ~~however~~ supplied, and attested photo-stat copies of the documents were also supplied which are as good as original. The original documents were also shown to the applicant and his defence Assistant during the course of the enquiry. It is denied that after the applicant had submitted the statement of defence, certain new evidence were taken on record, and it has been contended that the Enquiry Officer was fully competent to make ~~any~~ ^{certain}

observations on the allegations. It has also been urged that the applicant was given full opportunity to submit his defence to the Enquiry Officer, and there is no such provision in the CCA Rules which requires that the applicant be given an opportunity of making his representation on the enquiry report before imposing the order of punishment. It has been urged that the punishment of compulsory retirement was awarded keeping in view the gravity of the case, and the Appellate, as well as the Revisionary orders were speaking, reasoned orders, and fully in accordance with the prescribed rules and regulations. It has, therefore, been contended that the application is devoid of merit and is fit to be dismissed.

8. We have heard Shri Sant Lal, learned counsel for the applicant. None appeared for the respondents. We have also perused the materials on record.

9. The contention that the impugned punishment order is violative of Rule-8 Postal Manual Vol.III is without merit, as the punishment order contains all the relevant material, including the charges against the delinquent, and the findings of the Enquiry Officer. The delay in initiation of the disciplinary proceedings, is also explained in terms of respondents' averment that the act of omission

and commission of the delinquent came to light during the course of departmental enquiries relating to fraud committed by one Atma Ram, Ex.EDBP, Badhai ^{an}alan, in account with the Rohana Mills Sub Post Office, Distt. Muzaffarnagar, where the applicant was Sub Postmaster and as the fraud involved several lakhs of rupees, in which about 160 accounts were involved, some time ^{an}elapsed in the completion of the enquiry resulting in late issue of charge sheet to the applicant. In any case, the applicant has not established how the late issue of charge sheet prejudiced him, more particularly when every opportunity was given to him to put forward his defence, which he availed of fully. The date '24.2.81' was obviously a typographical error for the figure 24.4.81, which was accordingly corrected, and this minor clerical error is definitely not one which would vitiate the charge sheet. The allegation that the charge sheet was deliberately split up to impose heavier penalty, also does not have merit because there were two clear instances of premature closure of T.D. Accounts in violation of rules, and hence naturally, they had to form two distinct charges. Regarding the non-supply of the copy of the preliminary investigation report, the applicant cannot make a legitimate grievance of the same, because it is only a fact finding report, of ^{an}preliminary nature, to enable the authorities to decide whether they should proceed further in the matter or not, and the applicant

cannot allege that the non-supply of this preliminary investigation report, in any way, prejudiced him in his defence, because copies of all other relevant documents, including the departmental enquiry report, were supplied to him and examined during the course of the ~~proceedings~~. As photo-copies of all relevant documents were supplied to the applicant, and their originals were also shown to him as his defence Asstt. during the course of the enquiry, the grievance that original documents were not supplied has no merit. The Articles of charges were specific, clear and definite, and the applicant's allegations to the contrary carry no weight. The enquiry report, and the punishment order have limited themselves strictly to a discussion of the prosecution case and the defence statement submitted by the applicant, and the fact that the Enquiry Officer noted the failure of the applicant to maintain the Stock Register or Log Book, or failure to exercise proper control over his office, and knowingly allowed premature closure does not in any way invalidate his findings, or imply that he went beyond the contents of the charge sheet. The allegation that the Appellate Authority brought in new charges, not included in the charge sheet or that evidence was brought on record after the prosecution had closed his case and the applicant had submitted his statement of defence also does not carry weight, because the Appellate Authority has merely

elaborated upon the findings of the Enquiry Officer which were upheld by the Disciplinary Authority. The orders of the Appellate Authority, as well as the Revising Authority are detailed, speaking, well reasoned one, wherein the Articles of charges, the case of the prosecution and the defence tendered by the applicant have been fully discussed.

10. The applicant has sought to demolish the Appellate Authority's order on the ground that the charge sheet states that the applicant accepted the Pass Books alongwith the applications for withdrawal and authorised withdrawal, whereas the Appellate Authority has stated in his order that the applicant permitted premature withdrawal of money from the 3 years T.D. Accounts without the production of the Pass Books. It is also alleged that while there is absolutely no mention of misappropriation in the charge-sheet, the Appellate Authority in his order has stated that "misappropriation took place entirely because of the negligence of the applicant". What actually emerges from the enquiry is that applications for premature closure of the two accounts were put up alongwith the two Pass Books to the applicant by Shri Brahm Dutt on 22.4.82. The applicant authorised premature closure on the body of the two applications and also sanctioned payment of interest thereon, both of which were irregular. While doing so, he failed to make corresponding entries in the two Pass Books. Had the two Pass Books been produced before him at the time he authorised premature closure on the body of the two applications, and had he made corresponding entries in the two Pass Books, without doubt he would have realised his error, if indeed his intentions were bonafide. This failure on his part led to the out flow of principle as well as interest to those who were not entitled to receive it at that point of time, and in that context, the Appellate Authority's observations, referred to above, are not incorrect.

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11. Much has been sought to be made by the applicant about the observation contained in the Revising Authority's order that the depositors have disowned their signatures on the applications for withdrawal and receipt of payment during the course of the enquiry and their claims had also been sanctioned vide orders dated 6.1.88 and 4.2.88. It has been argued that the sanctions stated to have been issued on 6.1.88 and 4.2.88 did not form part of the evidence produced in the enquiry which concluded on 15.12.87 and it has also been averred that the same Revising Authority while considering the revision petition filed by one Shri Brahm Dutt, SB Postal Assistant, in the same case, observed on 25.10.88, as;

"Due to his not making an entry in the Pass Books, the Department did not suffer any loss and the signatures of the depositors tallied with those on record."

The applicant has stated that these observations are supported by the findings of the E.O. in the instant case, where the EO had found that the signatures of the depositors tallied with their actual signatures, but the same had no concern with the allegation. The Revising Authority has ⁱⁿ held otherwise and in his order dated 25.10.88, on Shri Brahm Dutt's petition, had held that the department did not

suffer any loss, which contradicted his findings in the instant case. In the counter-affidavit, the respondents have pointed out that the actual ^{import} of the Revising Authority's observation was that while no departmental losses were caused by Shri Brahm Dutt's lapses, no such conclusion was arrived at by the Revising Authority on the basis of the materials before him, in the case of the applicant. This appears to be the correct ~~projection~~ of facts, and under the circumstances, the applicant cannot take advantage of the Revising Authority's findings in the case relating to Shri Brahm Dutt.

12. As regards the punishment being excessive in relation to the gravity of the findings, it is well settled that where the departmental proceedings themselves have been conducted fully in accordance with the prescribed rules and procedure, this Tribunal should not go into the quantum of punishment.

13. In view of all that has been stated above, we are not inclined to interfere with the impugned orders, and this application is accordingly dismissed. No costs.

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(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
3-4-93
(J.P. SHARMA)
MEMBER (J)