

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 348/89

New Delhi this 28th Day of February 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

Shri Maha Singh Sharma,
Son of Shri Jug Lal,
Resident of H.No. 105,
Village & P.O. Dhool Siras,
New Delhi-110 061.

... Applicant

(By Advocate: Shri Sant Lal)

Versus

1. The Union of India, through
the Secretary,
Ministry of Communications,
Department of Posts,
New Delhi-110 001.
2. The Member (Personnel)
Postal Services Board,
New Delhi-110 001.
3. The Director Postal Services,
Delhi Circle,
New Delhi-110 001.
4. The Senior Superintendent of Post Offices,
New Delhi West Division,
N.I. Estate,
New Delhi-110 028.

... Respondents

(Shri K.C. Mittal, Advocate)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was employed as Postal Assistant and was posted at Chhawla Post Office. He was suspended on 24.3.1982 on account of disciplinary proceedings by the Senior Superintendent of Post Offices (SSPO). However, he was reinstated in service with effect from 29.9.1984 and was issued a charge sheet vide memo. dated 23.9.1985/8,10.1985 that he contravened the provisions of Rule 424(2)(ii)(a) of p&T Mannual Vol.VI

and further he displayed lack of integrity, devotion to duty and acted in a manner ^{of} unbecoming of a Government servant contravening the provisions of Rule 3(i)(ii)(iii) of CCS (Conduct Rules) 1964.

Shri R.S. Sharma, the then ASRM was appointed as Enquiry Officer. The Enquiry Officer submitted the report on 7.2.1986 holding the charges as proved but the disciplinary authority remanded the enquiry for holding further enquiry into the matter and it was again commenced with effect from 11.4.1986.

The Enquiry Officer submitted his report holding the applicant of the guilty of the charges on which the disciplinary authority awarded the penalty of dismissal from Government Service by the order dated 28.6.1986. The applicant preferred an appeal dated 7.10.1986 which was rejected by the Director Postal Services by the order dated 20.2.1987. The applicant preferred the revision petition dated 7.7.1987 which was rejected by Member (Personnel) Postal Services by the order dated 22.2.1988/10.3.1988.

2. The applicant filed this application in February 1989 and prayed for the grant of the reliefs that the impugned orders of punishment be quashed and set aside and the applicant be reinstated in service with full back wages.

3. The respondents contested the application and stated that the applicant had mis-appropriated the amount to the extent of Rs. 5,000/- from S.B. Account No. 6180132 on 12.2.1982. An amount of Rs. 7,600/- was deposited in this S.B. Account and the applicant had only accounted for Rs.2,600/- in

de

the Government account instead of Rs. 7,600/- on 12.2.1982. He deposited this amount on 20.3.1982 after withdrawing from another account. The charges against the applicant are fully established and he was given adequate opportunity during the enquiry proceedings. The applicant had no case.

4. The applicant had also filed rejoinder reiterating the averments made in the original application. We heard the learned counsel for the Applicant Shri Sant Lal on 22.2.1994 and the case was reserved for orders as the counsel for respondents could not appear at the time of arguments. However, subsequently the counsel for the respondents appeared and so an opportunity was given to the respondents to argue the matter on 22.2.1994. The arguments were again commenced on 23.2.94 and the counsel for the respondents had directed to file the record of the departmental file. The counsel for the applicant, however, raised an objection that the departmental file should not be seen. This objection was over-ruled because the arguments of the respondent's counsel were wholly based on the departmental file and in order to get the truth the departmental file has to be verified. We have heard the learned counsel for the parties and perused the record. The charge against the applicant is that on 12.2.1982 a pay-in-slip of S.B. Account No. 6180132 was filled in by one Shri Ram Kumar for deposit of Rs. 7,600/- in the said passbook raising the balance in that account to Rs. 7617/90 and the applicant after filling in the said amount in the pass-book returned the pass-book alongwith the counter file of pay-in-slip to the depositor. Shri Maha Singh the applicant was functioning as SPM, Chhawla, Post Office in addition to his own duties as SB Clerk.

Shri Maha Singh accounted for Rs. 2,600/- in the aforesaid SB Account instead of Rs. 7,600/-. He also made the entry in SB loan book for Rs. 2,600/- instead of Rs. 7,600/-. He also made alteration in pay-in-slip in original from Rs. 7,600/- to Rs. 2,600/- and sent to Head Office. As such he contravened the provisions of Rule 424(2)(ii)(a) of the P&T Manual Vol. VI. He was also charged for lack of absolute integrity and devotion to duty and acted in a manner of unbecoming of a government servant contravening the provisions of Rule 31(i)(ii)(iii) of CCS (Conduct Rules) 1964. The learned counsel for the applicant argued that there has been an abnormal delay in initiating the disciplinary proceedings as the applicant was put under suspension on 24.3.1982 but reinstated on 21.9.1984. The charge sheet memo was served on 23.9.1985. In fact the delay in this case cannot give any benefit to the applicant because earlier a preliminary enquiry was held by Shri G.D. Gupta. Shri Gupta, the then Assistant Superintendent of Post Offices (ASPO) has been mentioned as a witness in Annexure IV. The delay cannot be said to be on account of any administrative lapse. Though under administrative instructions it is desired that there should not be abnormal delay in initiating proceedings but at the same time these instructions are only a guideline and in a case of fraud and mis-appropriation only time is always taken in arriving to a decision whether to proceed departmentally or not. In this case it also appears that Rs.5,000/- has been withdrawn from another account and deposited in the account. Thus, no benefit can be given to the delinquent in initiating the departmental proceedings. Moreover, it has taken two years or so and the

applicant has already been reinstated in September 1984. The applicant could have any grievance regarding his continuance of suspension without initiating departmental enquiry and that has already been considered by the administration in reinstating him.

5. The learned counsel have also referred to the non enquiry officer's report but subsequently this plea has been given up because of Ramzan Khan case reported in ATR 1991 (1) SC P 120 where the non supply of enquiry officer's report is mandatory after the decision of that case in November 1980.

6. The learned counsel also argued that the copies of the listed documents were not supplied to the delinquent. However, it is not a fact. Before Shri G.D. Gupta was produced as a witness before the Enquiry Officer, the report of the preliminary enquiry was made available to the applicant and he has also been given a chance to cross-examine the witness and he has also been cross-examined. Against from the order sheet it appears that on 6.1.1986 the applicant was also asked to take abstract from the said report but he did not opt for the same. In this case this is also not so much material because the first enquiry report was submitted on 7.2.1986 but the disciplinary authority remitted back to the Enquiry Officer on 21.2.1986 to proceed further with the enquiry. The applicant if he had any grievance for non-supply of any document he should have raised at that time and was free to recall any of the witnesses earlier examined for further cross-examination. The applicant did not seek the help of any defence assistant and he himself has cross examined the departmental witnesses. The other grievance

16

13

of the applicant is that pay-in-slip dated 20.3.1982 for Rs. 5,000/- was not included in the list of documents nor was shown to the applicant for inspection. However, pay-in-slip of Rs. 5,000/- has been considered by the Enquiry Officer but that has no material effect on the proof of the charge because the nature of the charge is that the applicant instead of accounting for Rs.7,600/- has accounted for Rs. 2,600/- in the Government account. That is based on the documentary evidence produced before the Enquiry Officer. Thus, the contention of the learned counsel that the listed documents were not supplied has no basis at all.

7. The learned counsel for the applicant also argued that the Enquiry Officer was also appointed simulatenously with the initiation of the departmental proceedings and issuing of charge-sheet. Though it is irregular but it is not illegal because already a preliminary enquiry has been held to establish a prima facie case against the applicant.

8. The next contention of the learned counsel is that the enquiry officer at the beginning of the proceedings on 20.12.1985 asked the applicant to process the list of defence documents and witnesses which is not provided under the rules of enquiry. This, of course, has been done by the enquiry officer only to facilitate the mention of documents by the applicant so that the same may be summoned and by the time the applicant enters on his defence be available on record. This step by the Enquiry Officer cannot be said to be illegal. Further as said above the disciplinary authority has limited the enquiry to the Enquiry Officer the applicant has not been prejudiced in his defence.

le

The applicant has also not filed any defence documents nor examined any witness in defence. Even though the Enquiry Officer has directed him at the initial stage of the enquiry to produce defence documents that would not make the enquiry faulty or in any way against the rules. The contention of the learned counsel, therefore, has no force.


9. The contention of the learned counsel is that the prosecution witnesses have also been cross examined by the Enquiry Officer. The Enquiry Officer is not prohibited from putting any question to the witness to clarify the position. The applicant has himself appeared as a defence witness and so he has been rightly cross examined by the presenting officer and the Enquiry Officer was also justified in putting certain questions to the applicant as a defence witness in order to clarify the position. Under Rule 14 sub-rule 14 the Presenting Officer has a power to cross examine the witness produced by the department. The Enquiry Officer may also put such questions to the witness as he thinks fit. Even the Enquiry Officer is authorised to take further evidence after giving due opportunity to the applicant under rule 14 sub-rule 17 the defence witness can be cross examined and there is no bar.

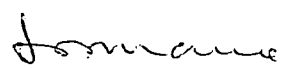
10. The learned counsel for the applicant has argued that Ram Kumar ki witness did not support the prosecution version but this is not so. Ram Kumar was examined as PW 4 has resiled from his earlier statement and the Enquiry Officer relied on the statement on record before the Enquiry Officer and the documents filed by Shri Ram Kumar himself of pay-slip of Rs. 7,600/- has been taken into account while giving the findings. Thus, there is no irregularities in

le

the examination of the witnesses or their cross-examination during the enquiry. The contention of the learned counsel, therefore, has no force. The findings arrived by the Enquiry Officer cannot be said to be in any way perverse or that it is not based on admissible evidence. The disciplinary authority as well as the higher authorities have scrutinised the findings and upheld the findings of the Enquiry Officer as well as the punishment imposed on the applicant. The orders passed by the appellate authority as well as the divisional authority are speaking orders and cannot be faulted with. We have gone through the statement of the witnesses examined as well as the statement of the applicant as a defence witness and we find that the findings of the Enquiry Officer are fully justified. There was a flaw by the Enquiry Officer while he submitted his earlier report on 7.2.86 where the applicant was not given any opportunity of producing his defence. The disciplinary authority therefore, rightly remitted the case to the Enquiry Officer on 21.2.1986 and thereafter the statement of Laxmi Chand and Ram Kumar were also recorded and the applicant also examined himself as a defence witness. The report therefore submitted by the Enquiry Officer second time cannot be said to be in any way against the rules. The Enquiry Officer, therefore, has rightly proceeded with the Enquiry and held that the charges stand proved against the applicant.

11. We do not find any merit in this application to interfere with the punishment order. The Enquiry is not in any way faulty and does not call for any interference. The application is devoid of merit and therefore is dismissed. Costs on parties.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member (J)