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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-880/89

New Delhi this the 22nd Day of April, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)
Hon'ble Mr. B.S. Hegde, Member(J)

Shri Umed Singh,
S/o Sh. Sanjeev Singh,
R/O Vill.&P.O. Leghan,
Distt. Bhiwani.

Applicant

(By advocate Shri Sant Lal)

versus

1. The Union of India,
through the Secretary,
Ministry of Communications,
Department of Posts,
New Delhi-110001.
2. The Member(P),
Postal Services Board,
Deptt. of Posts,
New Delhi-110001.
3. The Director Postal Services,
Haryana Circle,
Ambala-133001.
4. The Superintendent of Post Offices,
Hissar Division,
Hissar.

Respondents

(By advocate Sh. Madhav Panikar)

O R D E R

Delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

While working as Postman in Hissar Postal Division, the applicant was placed under suspension on 16.3.1985. A chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was issued on 9.9.1986 alleging contravention of Rule 31(i)(ii) and (iii) of CCS (Conduct) Rules, 1964 and Rule 709 of P&T Manual Vol.VI Part-III. Shri S.C. Pujara Asstt. Supdt. of Post Offices was appointed as enquiry officer who submitted his report on 29.4.1987. Agreeing with the report of the enquiry officer, the disciplinary

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authority awarded the extreme penalty of removal from service vide memo dated 12/14-5-87. His appeal to Director Postal Services Ambala was rejected vide impugned order dated 9.11.1987. His revision petition to the Member(P), Postal Services Board, New Delhi was rejected vide impugned order dated 19.9.1988. The applicant prays for setting aside the afore-mentioned impugned orders and directions to respondents to allow him to join his duties and give him full back wages treating the entire period as spent on duty.

Heard the learned counsel for the parties. The learned counsel for the applicant has challenged the impugned order on the ground that both the charges referred to wrong payment of money orders and it is nowhere stated that the applicant had misappropriated the funds. There is no complaint on the file on which action was taken by the respondents. The documents requested for were not made available. The chargesheet was served 1 year after the suspension for an event which has taken place in October, 1984. The complainant was never produced before the enquiry officer. The enquiry officer acted as a prosecution officer and asked as many as 29 questions from the applicant during the enquiry. As held by the Tribunal in the case of Sh. Prem Baboo Vs. Union of India & Others (1987(2) ATR 13), the factum of enquiry officer acting as prosecuting officer vitiates the departmental proceedings. It was necessary to take the opinion of the handwriting expert to prove forged signatures but

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this was not done. Preliminary statements given by Sh. Shanti Kaur were used during the enquiry without producing her. The testimony of one of the witnesses viz. Sh. Om Prakash was relied upon when it was clear that he was busy at his work in the counter sitting at a distance of 22 feet from the enquiry officer.

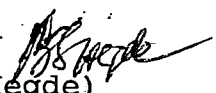
The respondents have explained the delay on the ground that the case came to light in February, 1985 when SSPO, New Delhi, West Division vide his letter dated 16.2.1985 reported the office about non-payment of Vishnu Garden, New Delhi MG No.2247 dated 5.10.1984 for Rs.100/- to the real payee. Accordingly, the applicant was placed under suspension. His past work was verified and another case of non-payment of Rs.16.70 came to light. This took some time and soon a available documents/records were made available, a chargesheet was issued. The enquiry officer questioned the applicant only to find out truth in the capacity as enquiry officer and did not play the role of prosecutor. All the available documents were produced during the enquiry but the time barred documents could not be produced. The original complaint of Smt. Sheela Kaur could not be produced due to non receipt from SSPO, New Delhi. She was summoned a number of times to attend the enquiry but failed to do so and was dropped on this ground. The applicant did not object to this at that time. The report of handwriting expert was not found to be necessary as the applicant himself admitted his lapses.

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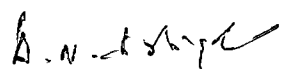
A perusal of Annexure A-6 shows that the enquiry officer asked the detailed question which go much beyond ascertaining the bare facts of the case. The enquiry is vitiated by the role of enquiry officer acting as prosecuting officer. The O A. is partly allowed and is disposed of with the following directions:-

- (i) The impugned orders dated 9.11.87 & 19.9.88 are hereby set aside and quashed;
- (ii) The applicant shall be reinstated in service with immediate effect;
- (iii) In the circumstances of this case, arrears of salary all not be payable for the period he has not worked but his past service shall be counted for the purposes of seniority and pension;
- (iv) These orders shall be implemented within a period of three months from the date of communication of this order.

There will be no order as to costs.


(B.S. Hegde)

Member (J)


(B.N. Dhoundiyal)

Member (A)

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