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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1984 of 1990

New Delhi: May 25th, 1995.

HON'BLE MR.S.R.ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Durjan Singh,
s/o Shri Faqir Chand,
retired Postal Assistant Lakhota Post Office,
Distt. Ghaziabad.Applicant.

By Advocate Shri Sant Lal.

Versus

1. Union of India through
The Secretary, Ministry of Communications,
Department of Posts,
Dak Bhawan,
New Delhi -110001.

2. The Manager (Personnel),
Postal Services Board,
Department of Posts,
Dak Bhawan,
New Delhi -110001.

3. The Director Postal Services,
Kanpur Region,
Kanpur.

4. The Superintendent of Post Offices,
Bulandshahr Division,
Bulandshahr (UP).Respondents.

By Advocate Mrs. Raj Kumari Chopra.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, Shri Durjan Singh, retired Postal Assistant, Lakhota Post Office, Distt. Ghaziabad has impugned the order dated 28.1.88 (Annexure-A1) imposing the penalty of compulsory retirement from service and the appellate order dated 26.10.88 (Annexure-A2) rejecting the appeal.

2. The applicant who entered the service as Post Man on 22.6.62, and was working as a Postal Assistant in Lakhota Post Office, was suspended on

18.11.83 under Rule 10(1) CCS (CCA) Rules, 1965, as departmental proceedings were reportedly contemplated against him (Annexure-A8), and his headquarter was fixed as Lakhauti Post Office. It appears that the applicant requested that his Headquarter be changed to another place as he felt that there was a conspiracy by the Lakhauti Post Office staff to involve him but he alleges that there was no response. Subsequently, the Superintendent of Post Office Bulandshahr Division, under which Lakhauti Post Office falls, registered two cases of mis-appropriation of Rs.5000/- dated 29.10.83 and Rs.1100/- of Saving Bank Account No.2703693 dated 17.8.83 to the S.O. Incharge Aurangabad Police Station for police investigation and a criminal case was registered. The applicant further states that the contemplated disciplinary proceedings against him did not come ~~last~~ ^{in about} for more than three years and his suspension was subsequently revoked vide order dated 6.2.87 (Annexure-A10) and the applicant was directed to take charge as Postal Assistant in Bulandshahr Post Office. Subsequently, by Memo dated 20.2.87, a charge sheet under Rule 14 CCS (CCA) Rules was issued against the applicant alleging misappropriation of Rs.5000/- dated 29.10.83 and Rs.1100/- in respect of S.B. Account No.2703693 dated 17.8.83, in respect of which a criminal case, referred to above, had been instituted.

3. The charges read as follows:

"(i) On 29.10.83 when Shri Durjan Singh was working as Postal Assistant in Lakhauti Post Office a cash of Rs.5000/- was sent by Buland Shahr Head Post Office to Lakhauti Sub-Office. Shri Durjan Singh in the absence of Shri Manak Chand Sub Postmaster took out the cash of Rs.5000/- after opening the cash bag and noted the false E.B. of non-receipt of Rs.5000/-.

(ii) On 17.8.83 Shri Durjan Singh while working as Postal Assistant in Lakhauti showed deposit of Rs.1100/- in S.B. Pass Book No.2703693 but did not enter this deposit in Govt. records and did not take the amount in account.

Therefore the aforesaid Sh. Durjan Singh violated Rules 424(1) and 433 of P & T Man. Vol. VI Part-II and Rule 4 of P & T Financial Hand Book Vol. I and therefore violated Rule 3 I of CCS (Conduct) Rules, 1964 by failing to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of a Govt. servant."

4. The applicant denied the charges, and an Enquiry Officer was appointed, who submitted his report on 28.1.88 (Annexure-A3) holding charges I and II proved. Accepting the Enquiry Officer's findings, the Disciplinary Authority imposed the impugned order dated 28.9.88 of compulsory retirement, which was upheld vide impugned appellate order dated 28.3.88. Thereafter, the applicant submitted a representation dated 16.3.89 to the D.G. Posts (Annexure-A6) and also submitted a revision petition under Rule 29 CCS (CCA) Rules, 1965 to the Member Personnel, Postal Service Board on 15.4.89 (Annexure-A7), and the revision petition is stated to have been rejected on 14.10.92.

5. The first ground taken is that a copy of the Enquiry Officer's report was not supplied to the applicant before the impugned penalty order was passed. This has been denied by the respondents in their reply; and in any case in the background of the ruling in M/s. Director, ECIL Vs. B. Katunakar - 1994 (4) SCC 727, non-supply of a copy of the Enquiry Officer's report before passing the penalty order prior to 20.11.90 (the date of the Hon'ble Supreme Court's judgment in Ramzan Khan's case - AIR 1991 SC 471

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does not fatally vitiate the departmental action taken against the applicant. Hence this ground fails.

6. The next ground taken is that the respondents' action in initiating departmental proceedings and imposing the penalty of compulsory retirement, when a criminal case was proceeding against the applicant on the same charges is bad in law. The applicant has relied upon Rules 80 and 81 P & T Manual Vol-III read with Home Ministry's letters dated 7.6.55 and 4.9.64, but these do not expressly bar the conduct of departmental proceedings during the pendency of a criminal case. In fact, in UOI Vs. K. Dubey AIR 1988

SC 2118, the Hon'ble Supreme Court has held that no hard and fast rule can be laid down whether departmental proceedings may or may not be conducted during the pendency of a criminal case, and it would depend on the facts and circumstances of that case. Hence this ground also fails.

7. The next ground taken is that the delay of more than three years that elapsed between the date of alleged misconduct (August- October, 1983) and the issue of charge sheet (20.2.87), during which period the applicant was also suspended (18.11.83) and subsequently reinstated (6.2.87) is fatal to the departmental proceedings. Reliance is placed on the Gujrat High Court's ruling in Mohan Bhai Vs. Y.B.Zala & others-1980 (1) SLR 384. That judgment considered the delay of 1½ years fatal having regard to the very nature and content of the charge (emphasis supplied) and doubted whether the charged Constable could offer a satisfactory explanation on the basis of his memory when the charge was

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levelled $1\frac{1}{2}$ years after the occurrence. In the present case, neither before the Enquiry Officer, nor before the Disciplinary Authority or for that matter even before the appellate authority or the revisionary authority has the applicant taken the plea that the passage of time had made it difficult for him to recapitulate the chain of events effectively. In fact in the departmental enquiry, both during his own examination, as well as cross-examination of witnesses, the applicant has been precise and detailed, and has recollected events as they are said to have happened. Hence that ruling has no application to the facts of this case, and this ground also fails.

8. The next ground taken is that a reading of the Articles of charge shows that the Disciplinary Authority has expressed a definite opinion as to the guilt of the applicant. He has thus prejudged the whole issue and the enquiry is a mere formality. Reliance in this connection is placed on the A.P. High Court's judgment in M.A.Narayana Shetty vs. Div. Mgr. 1990 (2) ATLT 41. Merely because the articles of charge did not commence with the words "It is alleged that" does not imply that the Disciplinary Authority prejudged the issue. The inquiry was a detailed and thorough one, and as pointed out by the respondents in their reply, full opportunity was given to the applicant to defend himself. Hence it cannot be said to have been a mere formality. This ground, therefore, also fails.

9. The next ground taken is that the appellate order is not a speaking one, as required by Rule 27 (2) CCS (CCA) Rule 1965 and DGPT's letter dated

1.10.20. Reliance is also placed on the Tribunal (Calcutta Bench) judgment in H.P.Kahali Vs. UOI & others -1989(2) ATR 452. The impugned appellate order dated 26.10.88 cannot be said to be a non-speaking one. The appellate authority states that the appeal and other connected papers had been considered carefully, and the appellant in his appeal had not put forward any substantial argument except to make some allegations against the Enquiry Officer, the Disciplinary Authority and others which was not strictly relevant. The appellate authority observed further that the guilt of the appellant stood proved and the allegation of bias on the part of the Enquiry Officer or Disciplinary Authority was not established. The Disciplinary Authority had discussed the grounds taken in the appeal thoroughly before coming to his conclusion and from the record it was clear that the appellant was provided every reasonable opportunity to inspect the records, and the lapses on the part of other officials did not absolve the appellant of his own guilt in the matter. The appellate authority further noted that the Enquiry Officer after holding the enquiry had concluded that both the charges were proved against the appellant, and the Disciplinary Authority having agreed with the Enquiry Officer's findings had awarded the impugned punishment which was fully commensurate with the applicant's guilt which stood proved by the documents and other evidence on record. The appellate authority rejected the appellant's contention that the requisite records and documents had not been made available to him, pointing out that he had made no such request/objection during the course of

the departmental enquiry and having regard to the applicant's moral turpitude and doubtful integrity saw no reason to interfere with the impugned punishment order. This appellate order cannot by any description be categorised as a non-speaking one. The appellate authority has given reasons why the appeal was fit to be rejected, and why after the careful consideration of all the facts, impugned punishment order warranted no interference. Under the circumstance, this ground also fails.

10. The next ground taken is that the applicant has been subjected to hostile discrimination in being picked up and punished, because he was only a Postal Assistant, while on the date the alleged misconduct took place, i.e. 29.10.83 Shri Manak Chand was the Sub-Post Master in charge of the office and was on duty that day. It is contended that the primary responsibility was that of Shri Manak Chand, and the applicant himself had nothing to do with the opening of the account and cash bags and handling of the cash and documents inside those bags. He contends that his role was limited to getting the bags opened when the Sub-Post Master did not turn up in time. Immediately on his arrival in the post office, the applicant claims to have informed the ^{Sub Post Master} about non-receipt of the cash of Rs.5000/- from the cash bag sent by the Bulanshahr Head Office on 29.10.83, and states that the Error Report was noted by him upon the Sub-Post Master's direction who also signed the same along with other officials who also signed it as witnesses. It is alleged that no action was taken against the Sub Post Master, and only he has been singled out for punishment. The respondents deny these averments and point out that the applicant

cannot escape his responsibility by throwing blame on others. Further more he admits having opened the account bag containing the cash bag and also admits opening the cash bag in the Sub Post Mater's absence and accepts having received cash of Rs. 5000/-, which not to him but duty was assigned to the Sub Post Master. As correctly pointed out by the appellate authority in the appellate order, and by the respondents in their reply, irregularities committed by the Sub-Post Master ^{does} not absolve the applicant of his own responsibility in the matter, and the applicant cannot legitimately argue that because no action has been taken against others, therefore, no action should be taken against himself.

11. The next set of grounds taken is that opportunity to inspect the listed documents was not afforded because copies of listed documents other than statements of witnesses were not supplied; order under Rule 14 (11) was not recorded; copies of day to day proceedings were not supplied; and certain relevant documents were deliberately not produced. These grounds have been denied by the respondents. They point out that copies of all the relevant documents were afforded to the applicant and he was given full opportunity of cross-examination, at which point of time the entire file was before him, and he was never denied the right to inspect the file. They also deny that Rule 14 (11) was not followed, and state that under rules it is not necessary to supply minutes of each sitting to the petitioner. It was for ~~them~~ him to obtain copies and the department never refused to supply the same. In so far as the non-production of certain documents is concerned, which

the applicant alleges, were relevant to the case, the respondents state that it was for the Enquiry Officer to collect all the evidence to substantiate the charge, and the respondents ^{were} not bound to submit those documents which the Enquiry Officer did not think proper to produce or to accept the documents mentioned in the said petition. In any event, the applicant has not succeeded in establishing how the various documents listed in paragraph 5 (8) (e) of the O.A. are relevant and their non-production prejudiced him to the extent of vitiating the departmental proceedings, and hence this argument fails.

12. The next argument advanced is that Rule 14(18) CCS(CCA) Rules ^{was not followed} the applicant was denied the opportunity of explaining any circumstances appearing in the evidence against him. In this connection, Shri Sant Lal for the applicant has relied on the rulings in R. Robert vs. UOI -1991(2) SLJ 138 and Ram Singh vs. UOI -1980 (4) SLJ 414. Rule 14(18) becomes mandatory when the Govt. servant had not examined himself, but in the present case, the applicant was subjected to a detailed examination and hence this rule has no relevance to the facts of this case.

13. The next argument advanced is that there is no mention of the names and other particulars of the persons/witnesses who produced the documents marked S/1 to S/19. The veracity of these documents has not been challenged and hence this argument also fails.

in the list of transaction and in the Sub Post Office accounts on 17.8.83, and the charge has been held as proved, without producing the list of transaction nor the Sub Office account dated 17.8.83 of the Lakhnauti P.O. during the inquiry.

15. All these contentions have been denied by the respondents who state that the E.O. held the enquiry independently and did everything which the law required. The points which have been raised in the paragraph above basically involve the appreciation of evidence, which the Tribunal is not competent to do, as it is not an appellate forum. The Tribunal exercises jurisdiction ^{under Article 226 of} ~~under Article 226 of~~ the Constitution and has to limit itself to ensuring that the applicant has received a fair trial, and the impugned decision is not arbitrary, ^{or} ~~or~~ malafide, or based merely on conjectures and surmises, or on no evidence at all. There are enough materials to show that the applicant had received a fair trial and the decision of the Disciplinary Authority which was upheld by the appellate authority is based upon the testimony of the prosecution witnesses, which has not been shaken in cross-examination, or rebutted effectively by the defence witnesses.

16. The next ground taken is that the impugned punishment is biased and malafide and a conspiracy was hatched to defame the applicant, because of the late attendance of the Sub Post Master on 29.10.83 and again on 31.10.83; not taking action in the Bulandshahr P.O. on 29.10.93 on information of alleged non-receipt of Rs.5000/-; non-

14. The next argument advanced is that the Enquiry Officer's findings are biased, perverse and based on no evidence, because i) Sub-Office slip of Lakhnauti Post Office dated 29.10.83 has been ignored, which shows remittance of Rs.5000/- by Bulanshahr H.O. and its receipt by SPM Manak Chand on the same date; ii) S/Shri Mishra and Pawan Kumar left Balandshahr H.O. on 31.10.83 without the Post Master's permission and unauthorisedly visited Lakhnauti P.O. and did not inform their superiors about the non-receipt of Rs.5000/- and took upon themselves the job of the Investigating Officers, when the report of short receipt was directly against them; iii) contradictions in the statements of S/Shri C.M.Mishra and Pawan Kumar on the one hand and those of S/Shri Manak Chand SPM and Chokhey Lal Postman/ on the other about their time of arrival at Lakhnauti P.O. on 31.10.83 were ignored; iv) The inquiry report is silent on the question of the alleged loan of Rs.2000/- by Devi Sharan Packer; v) None of the witnesses state having seen the applicant taking out the cash from the bag and pocketing it; vi) At page 12 of the Inquiry report it is said that Durjan Singh cut the cord of the account bag and handed it to one Durjan Singh; vii) The Inquiry Officer at page 12 of the report observed that Manak Chand SPM attended office at 11 a.m. on 29.10.83 and the charge sheet states that the mail arrived at the Lakhnauti P.O at 11 a.m. on 29.10.83, and the applicant received the mail and got it opened in the absence of the SPM, which is self-contradictory; viii) Exhibit S/4 which was Error Book No.21 of Lakhnauti P.O. written on 29.10.83 confirmed that the cash bag was received in an open condition and was empty when taken out of the account bag, but this fact was ignored by the I.O.; ix) Article II of the Charge says that the applicant failed to take the alleged deposit of Rs.1100/-

issue of telegraphic report regarding its alleged non-receipt; non-issue of a copy of error report dated 29.10.83; alleged concealment of the report of short receipt of cash from Asstt. Post Master and Post Master Bulandshahr; unauthorised visit of S/Shri C.M. Mishra Cashier and Pawan Kumar, Sub-Acct. Clerk, Bulandshahr H.O to Lakhnauti Sub Post Office on 31.10.83; non recording of their statements on 1.11.83 or soon after by the Superintendent of Post Office when he held the preliminary inquiry; and suppression of the factual position of shortage of cash in Lakhnauti P.O. As stated earlier, any act of omission and commission on the parts of others does not absolve the applicant of his own culpability in the matter. This argument, therefore, also fails.

17. It has also been contended that no one actually saw the applicant taking the money out of the cash bag, but it is not always necessary for a person to be actually caught in the act, for culpability in a departmental proceeding to be established. In a departmental proceeding for a charge to be established it is sufficient if there is a preponderance of probability, and in the present case, there is sufficient evidence on record to bring home the two charges against the applicant.

18. The next argument advanced is that the Disciplinary Authority passed the impugned order the same day he received the inquiry report which betrays non-application of mind. A perusal of the disciplinary authority's order makes it clear that there has been proper application of mind and hence this argument



also fails.

19. The next argument taken is that the Disciplinary Authority has not given any findings on the charges of violation of Rules 106 and 433 of the P & T Manual, Rule 4 FHB Vol.I and Rule 3(I) of CCS(Conduct) Rules, and that no evidence was led before the Enquiry Officer to prove the charges of violation of these rules. It is also contended that there is no Rule 106 in the P & T Manual and there is no mention of these charges in the impugned punishment order. In their reply, the respondents have correctly stated that the charge of misappropriation was based on facts which were proved, and no benefit can accrue to the applicant because of any typographic error or clerical omission.

20. The next ground taken is that the inquiry report and the impugned punishment order are silent about the disposal of Rs.2000/- which the applicant was compelled to pay and which was credited in the Lakhnauti P.O. under unclassified receipts. The respondents have denied this. The disposal of the Rs.2000/- does not affect the validity of the conclusions reached in the departmental enquiry.

21. The fact that 3 years elapsed between the preliminary inquiry and the recording of the statements of the officials in the P.O., which is the next ground taken, also does not affect the validity of the conclusions arrived at in the departmental enquiry.

22. The other grounds taken are that the applicant was compelled to make good the loss

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under pressure, and that certain documents were not produced. These grounds also do not carry any weight in the light of the findings arrived at in the departmental enquiry.

23. Shri Sant Lal for the applicant has asserted that the provisions of Rule 14(18) CCS (CCA) Rules have not been followed, which vitiates the inquiry and have relied on R. Robert Vs. UOI -1991 (2) SLJ 138 and Ram Singh Vs. UOI -1980 (4) SLJ 414. As in the present case, the applicant was examined, this argument fails.

24. Reliance has also been placed on the rulings in K.N. Dixit Vs. UOI -ATR 1986(2) 186 and Ramchander Vs. UOI -1986(2) ATR 252. These rulings also do not help the applicant in the light of the Hon'ble Supreme Court's ruling in UOI Vs. Upendra Singh-1994 (27) ATC 200 wherein, while quoting the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons-1992 Supp. (2) SCC 312, have laid down the parameters of judicial review by Courts/Tribunals while exercising jurisdiction in matters of this nature;

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

Upon a perusal of the materials on record and after hearing both counsel, we are satisfied that the applicant received fair treatment and we

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see no legal infirmity in the decision making process leading upto the impugned punishment being inflicted upon the applicant. Under the circumstances for the reasons explained above, we are not inclined to interfere with the same.

25. This application therefore fails and is dismissed. No costs.

Lakshmi Swaminathan

(LAKSHMI SWAMINATHAN)
MEMBER(J)

S.R.Adige

(S.R.ADIGE)
MEMBER(A).

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