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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 555/90

New Delhi: ~~November~~ ^{December} 2nd, 1994

HON'BLE MR. J.P.SHARMA, MEMBER (J)

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

Shri Umrao Singh,
s/o Shri Lekh Raj Singh,
employed as Postal Assistant New Delhi,
West Division & r/o Delhi c/o
Shri Sant Lal, Advocate.

.....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 Director Postal Services,
Delhi Circle, SRT Nagar, New Delhi-110055.
3. The Sr. Supdt. of Post Offices,
New Delhi West Division,
Naraina Industrial Estate,
New Delhi -110028. Respondents.

By Advocate Shri M.K.Gupta.

JUDGMENT

By Hon'ble Mr.S.R.ADIGE, MEMBER(A)

In this application, Shri Umrao Singh, Postal Assistant, West Division, New Delhi has impugned the order dated 30.9.88 (Annexure-A1) reducing his pay to the minimum in the time scale of Rs.975-1660 for six years w.e.f. 1.10.88, with cumulative effect, which has been upheld in appeal vide order dated 10.8.89 (Annexure-A2).

2. The applicant was posted as Postal Assistant in Punjabi Bagh Post Office, West Division, New Delhi during the period May, 1983 to August, 1983. He along with seven others working in that office were proceeded against departmentally under Rule 14 CCS(CCA) Rules, 1965. The charges were as follows:-

i) While working as Postal Assistant, P.O. Punjabi Bagh, New Delhi during the period May, 1983 to August, 1983 ^{the applicant} /dishonestly did not point out the tampering and erasures in MOs, received in the name of fictitious firm M/s Super Electronics and allowed the payment to Shri Satish Kumar, Proprietor of the said firm, causing pecuniary loss to the department amounting to Rs. 3000/- approximately, and gain to the said person thereby contravening the rules, and failed to maintain absolute integrity and devotion to duty.

ii) During the period May, 1983 to August, 1983, while functioning as Postal Asstt. Punjabi Bagh P.O. New Delhi, it was the duty of the applicant to receive MOs, through dak and it was also his duty to enter the MOs in the MO-3 Register. It was also his duty to point out if there was any tampering or erasing in the MOs so received. It was also his duty to point out that there was no delay in the transit. Several MOs of low value were received at Punjabi Bagh, ^{P.O.} New Delhi during the said period from different parts of the country in the name of M/s Super Electronics. In all the MOs received, the addresses of actual payees filled by the issuing Post Offices was erased and the address of M/s Super Electronics, a fictitious firm was substituted. This tampering in the said MOs was quite visible, but he failed to point it out, and dishonestly ~~and~~ allowed the payment of all such MOs to Shri Satish Kumar Prop. of the said Firm, and also failed to point out the delay in the MOs in the transit which resulted in the fraudulent payment of MOs to Shri Satish Kumar thereby causing a pecuniary loss of Rs. 30,000/- approximately by

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allowing the payment of said tampered MOs to the said person and thus contravening the rules and failing to maintain absolute integrity and devotion to duty.

3. The Enquiry Officer in his report dated 10.8.88 (Annexure-A3) held the charges against the applicant to be proved. The Disciplinary Authority accepted the findings of the Enquiry Officer, and imposed the impugned punishment, which was also upheld in appeal, against which the applicant has now filed this D.A.

4. The first ground taken is that a copy of the inquiry report was not supplied to the applicant before imposing the impugned penalty, thus violating the principle of natural justice. Reliance in this connection has been placed on a Full Bench decision of the Tribunal in Prem Nath K. Sharma Vs. UOI, decided on 6.11.87, and also UOI Vs. E.Bhashyam -1988(1) ATR-575 SC. The question whether non-supply of the inquiry report before imposing the penalty in a departmental proceeding will vitiate the entire proceeding or not, has been settled by the judgment of the Hon'ble Supreme Court in 'Managing Directory, ECIL, Hyderabad & others Vs. B.Karunakar & others' - 1993 (25) ATC 704, wherein it has been held that the rule laid down in Mohd. Ramzan Khan's case on 20.11.90 that non-furnishing of a copy of Enquiry Officer's report to the delinquent employee would render the final order passed by the authority against the delinquent void, would apply only prospectively and hence no order of punishment passed before 20.11.90 is challengeable only

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on that ground. Hence this argument fails.

5- The second ground taken is that Rule 14(14) lays down that after the inspection of the listed documents under Rule 14(11) and additional documents under Rule 14(12) and (13), the oral and documentary evidence by which the articles of charges are proposed to be proved, shall be produced by or on behalf of the Disciplinary authority, but in the instant case, the evidence was produced and the witnesses were examined on behalf of the Disciplinary Authority before completion of the process of inspection of the listed documents and additional documents. In this connection, the applicant contends that by his application dated 12.8.87, he sought for arranging supply of the following additional documents:-

1. Distribution of work in Punjabi Bagh P.O in 1983;
2. Sanction memo in c/w payment of compensation of the alleged loss;
3. Money orders or particulars thereof relating to the alleged loss;
4. Objections, if any, raised by Ramesh Nagar, H.O and various other Audit Offices relating to the money orders in question.

He alleges that the same were not produced for inspection, while the witnesses on behalf of the Disciplinary Authority were examined and cross-examined in disregard of the statutory provisions of the CCS(CCA) Rules. He states that there are notings in the enquiry proceeding dated 15.9.87 stating that these documents were not available in the office as they were seized by the CBI and the CBI Inspector concerned had been requested to produce these

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documents if available with the CBI authority on the next date, but the same were not produced at all, which resulted in the applicant being denied a reasonable opportunity for his defence and the proceedings were, therefore, vitiated as held by CAT Ernakulam Bench in the case of I. Badhan Vs. SDI of PCs & others-1990(1) ATLT-297.

6. The respondents in their reply have denied this allegation and point out that Rule 14(14) CCS (CCA) Rules, 1965 nowhere states that the oral and documentary evidence by which the articles of charges are proposed to be proved, shall be produced only after the inspection of the listed documents under Rule 14(12) and additional documents under Rule 14(13). Rule 14(14) merely provides that on the date fixed for enquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the Disciplinary Authority. If the examination of the witnesses before completion of the inspection of the listed documents or the additional documents had prejudiced the applicant, he would have raised an objection to this procedure at that time, but he ~~cross-~~ *examined the witnesses and* raised no objection, and from the appellate order it appears that on 16.12.87, he signed the proceedings without any demur. The additional documents relied upon by the respondents were

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duly inspected by the applicant, and as regards the further additional documents asked for by the applicant and referred to above, namely distribution of work, sanction-memo, money orders relating to the alleged loss and objections etc, they were not necessarily to be admitted. The applicant has failed to establish, in what manner, the non-production of these documents prejudiced the applicant. No doubt, as held in Badhan's case (Supra), the non-production of certain relevant documents which resulted in the applicant being denied a reasonable opportunity for his defence, would vitiate the proceedings. But the applicant in the first instance has to establish that these documents were of such relevance that, in their absence, he was seriously prejudiced in his defence. In this connection, to quote from Karunakar's case (Supra) again their Lordship of the Hon'ble Supreme Court have observed that:-

"If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctitious or fanatical as if the rules of natural justice were sacred scriptures."

Thus, this ground also fails.

7. The next ground taken is that the statements of the witnesses alleged to have been recorded by the CBI in the preliminary enquiry were not included in the list of the charge-sheet. Also the same were neither shown to the applicant nor were their copies supplied, but these statements were shown to the

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witnesses produced on behalf of the Disciplinary Authority to get them confirmed. If this action of the respondents so seriously prejudiced the applicant, it is ^{not} understood how the applicant was able to cross-examine these witnesses.

From the perusal of the enquiry report, it is clear that the applicant cross-examined the witnesses, from which it must be concluded that he was in no way handicapped by the non-inclusion of their statements in the list of documents attached with the charge-sheet. In fact, these witnesses were not new witnesses, but it is only to save time that their statements recorded during the preliminary enquiry were shown to them on behalf of the Disciplinary Authority to get them confirmed, and when the applicant proceeded to cross-examine them without asking for copies of their statements which were recorded in the preliminary enquiry, it must be presumed that it waived his right to call for the same. This ground also fails.

8. The next ground taken is that the statements of three witnesses allegedly recorded by the CBI in the preliminary enquiry behind the back of the applicant, which were neither listed nor were shown to the applicant, were taken on record of the inquiry proceedings and were relied upon by the Inquiry Officer. It is further asserted that the said witnesses were not produced for the cross-examination. The respondents in their reply have pointed out that

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the statements of these three persons were testified by the CBI Inspector Shri Sukh Ram on 9.7.88 before the I.O. Shri Sukh Ram was examined and was cross-examined by the applicant and the Disciplinary Authority and they raised no objection regarding the genuineness of these documents.

These documents were kept on record as exhibits under the signatures of the applicant. That being the position, it cannot be said that the applicant was prejudiced in any manner. This argument also,

therefore, fails, because even if the statements of these 3 witnesses is disregarded, it is not a case where there was no evidence for the F.O. to come to his conclusion.

9. The next ground taken is that the report dated 31.7.85 of the Senior Scientific Officer of Central Forensic Science Laboratory (CBI) was produced as an additional document on behalf of the Disciplinary Authority on 9.7.88 and taken on record at the fag end of the proceedings without providing an opportunity for its inspection before its production. It is also stated that the Officer who prepared the said report, was not produced to testify his report or face cross-examination, and Shri Sukh Ram who confirmed the report, was not competent to confirm it as the same was not prepared by him. The appellate authority has pointed out that the genuineness of this forensic report was confirmed by Shri Sukh Ram who was examined and cross-examined by the applicant and his defence assistant and, therefore, the applicant had no grievance on this count. The authenticity of this document cannot be questioned as the applicant cross-examined Shri Sukh Ram who confirmed the said report on 9.7.88 and the

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the same was kept on record as exhibit under the signature of the applicant. Hence this argument also fails. The delinquent had an opportunity to examine a defence witness to rebut the report of the Sr. Sci. Officer, ^{As} approved by Shri Sukh Ram.

10. The next ground taken is that while examining the applicant under Rule 14(18), the Inquiry Officer did not put any question regarding the circumstances appearing against him in the evidence, enabling him to explain those circumstances. The respondents in their reply have denied this allegation and stated that the circumstances appearing against the applicant were brought to the notice by the Inquiring Authority who called upon him to put forward whatever he wanted to state. It is clear that during the course of enquiry the applicant was given full opportunity to put forward whatever he had stated in the evidence and this ground also fails. Further, the Hon'ble Supreme Court has held in the case of Sunil Kumar Banerjee Vs. State of West Bengal-AIR 1980 SC 1976 that an omission to ask such question to the delinquent by the E.O. shall not ~~initiate~~ ^{initiate} the enquiry unless prejudice is caused to the delinquent.

11. The next ground taken is that the charge sheet states the alleged loss of Rs.3000/- approx. and whereas Annexure-II states the alleged loss of Rs.30,000/- approx. which is self-contradictory. No evidence was produced to support these figures of the alleged loss, although the Inquiry Officer had confirmed this fact in his report and the appellate authority also agreed but no relief has been granted. The Inquiry Officer in his report has observed that the prosecution has not produced any evidence to establish that the alleged loss was to the tune of Rs.30,000/- approx. and the value of 21 MQs comes to Rs.625/- only as against the loss of Rs.30000/- approx. shown in the article of charge. The respondents have also admitted.

that through a bonafide mistake, Rs. 30,000/- was wrongly typed as Rs. 3000/- but the question of amount involved does not make any difference so far as the culpability of the applicant is concerned.

The stand of the respondents appears to be correct that the question is not regarding the quantum of the alleged loss but whether the applicant is fully alive of his duties and has done his work in the manner that was expected from him. Hence the fact that the alleged loss was not of Rs. 3000/- but much less, makes no difference to the fact that the applicant did not perform his duties with vigilance and devotion. Hence this ground also fails.

12. The next ground taken is that only the photostat copies of the original documents as alleged were produced and taken on record. The original documents were neither available before the Inquiry Officer while giving his findings nor before the Disciplinary Authority while passing the impugned punishment orders, which is a legal infirmity vitiating the enquiry proceedings. It appears that this ground was urged before the Disciplinary Authority as well as the Appellate Authority who have discussed it in their impugned orders and have rejected it, stating that the original documents as listed in Annexure-A3 were examined by the applicant on 29.7.87. In their reply also the respondents have confirmed that the applicant examined the original documents which were produced before the Inquiry Officer on 29.7.87 with the help of defence assistant, which is more than sufficient because an action can proceed thereafter by taking of the photostat copies in case the original are not immediately available, as per the D.G. P & I's letter dated 11.11.83 (Annexure-R2). As the applicant was given an opportunity to examine the original documents as listed in Annexure-A3,

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and he examined the same with the help of his defence assistant on 29.7.87 vide copy of daily order-sheet dated 29.7.87 (Annexure-R1), it cannot be said that any prejudice was caused to the applicant by utilising the photostat copies of the same. Hence this ground also fails.

13. The next ground taken is that there was only one article of the charge but the same has been made into five articles of charge by the Inquiry Officer illegally and without jurisdiction or authority. This allegation is unfounded because it is only for the purpose of analysis that the memo of charge was sub-divided into five parts by the Inquiry Officer, to give a clear and cohesiver presentation which was neither illegal nor without jurisdiction.

14. The next ground taken is that in the articles of charge, it is alleged that the applicant dishonestly did not point out the tampering and erasures in the MOs. To prove the charge of dishonesty, the Inquiry Officer in his findings recorded that the payment of the listed documents was made through the Punjabi Bagh Post Office to the M/s Super Electronics after tampering or erasing the addresses of the payees and substituting the name and address of the M/s Super Electronics, which was an act of dishonest. The applicant also becomes responsible for this dishonest act by not pointing out the erasers and substitution in the payees' address which was his duty as Money Orders Paid Clerk. The applicant cannot evade his responsibility on this count. Admittedly, the applicant was working as M.O. Paid Clerk in Punjabi Bagh Post Office during May, 1983 to August, 1983 when the payments of MOs Exh. P.W.2/1 to P.W.2/18 were

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made to the M/s Super Electronics. He was ^{also involved} ~~the payment~~ ^{in the payment} of all these money orders and it was his duty to check each and every money order before payment vide Rule 254 of P & T Manual Volume VI Part I. The applicant has no doubt contended that the erasures were not visible with the naked eyes and in this connection has relied upon the evidence given by Shri Balwan Singh (P.W.4) but the Inquiry Officer has discussed this point in his report and has stated that Shri Balwan Singh's statement cannot be relied upon because he was one of the Postmen who paid some of the money orders. In any case, we in Tribunal would be exceeding our jurisdiction if we reappraise the evidence. Suffice it to say that this is not a case where there is no evidence to establish that there were tampering/erasers of the original names and addresses of the payees, and hence this argument also fails.

15. The next ground taken by the applicant is that had there been the visible erasures as alleged, the Sub-Post Master while exercising the prescribed checks as mentioned in Rule 256 P & T Manual Volume VI Part I would not have authorised the same for payment. The respondents in their reply have pointed out that this does not mean that the applicant was absolved of his responsibility in scrutinising the money orders in accordance with the procedure laid down in Rule 254 P & T Manual Vol. VI Part I, according to which the applicant should have pointed out the irregularities to the notice of the Sub-Post Master immediately. He cannot shirk of his own responsibilities and take shelter ^{behind} ~~under~~ the ^{back} ~~quise~~ ^{quise}.

of the Sub-Post Master. The respondents emphasised that it was the applicant who primarily did not follow the correct procedure which resulted in payment of M.Os to the wrong person. Moreover, the disciplinary action for not following the proper procedure has also been taken against the Sub- Post Master.

16. The next ground taken is that the penalty is excessive, unjust, whimsical and violates all canons of justice. In UOI Vs. Perma Nanda- AIR 1989 SC 1185, it has been laid down that if the penalty can lawfully be imposed and is proved, the Tribunal has no power to substitute its own discretion for that of authority. Under the circumstances, this ground also fails.

17. The next ground taken is that the Inquiry Officer in his report discussed the defence statement of the applicant before discussing the evidence produced on behalf of the Disciplinary Authority, which was illegal and biased. The respondents in their reply have correctly pointed out that there is no legal bar to this procedure being adopted and merely because the Inquiry Officer had discussed the defence statement before discussing the evidence against him, does not amount to any illegality or bias. This argument also fails.

18. Lastly, it has been urged that the applicant^{was} denied the opportunity of a personal hearing before rejecting his appeal which violates the principle of natural justice as laid down by the Hon'ble Supreme Court in Ram Chander Vs. UOI & others- 1986(2) ATR -262 and by the CAT Chandigarh

Bench in Ram Singh Vs. UOI & Others-1988(2) ATLT 421. The facts in Ram Chander's case and Ram Singh's case are distinguishable and different from the facts in the present case, and, therefore, those two judgments have no application in the present case. The respondents have correctly pointed out that those judgments do not lay down any law that the appellate authority is bound to give a personal hearing in each and every case. In fact, the DP & AR O.M. dated 28.10.85, lays down that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all the relevant circumstances of the case allow the appellant at its 'discretion' the relevant personal hearing. It is to be noted that in his appeal dated 16.11.88, addressed to the Director, Postal Services (Annexure-A4), the applicant did not make any prayer for a personal hearing. Under the circumstances, this ground also fails.

19. In UOI Vs. Upendra Singh -1994(27) ATC 200, the Hon'ble Supreme Court while quoting the decision in H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons-1992 Supp (2) SCC 312, affirmed the following procedure:-

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to 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. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think

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that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

20. Applying the above principle to the facts and circumstances of the case, we are satisfied that the applicant received fair treatment and we see no good reason to interfere in the impugned orders. This application, therefore, fails and is dismissed. No costs.

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

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

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