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Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.1150/91

New Delhi this the 22<sup>nd</sup> day of December 1995.

Hon'ble Shri A.V.Haridasan, Vice Chairman (J)  
Hon'ble Shri K.Muthukumar, Member (A)

Duli Chand Sharma  
Last employed as Sub Post Master  
Subhash Nagar (West) Post Office  
New Delhi- 110 027.

R/o C/o Shri Sant Lal

Advocate  
C-21 (B), New Multan Nagar  
Delhi- 110 056.

...Applicant.

(By Advocate: Shri Sant Lal)

Versus

1. Union of India through  
The Secretary  
Ministry of Communication  
Department of Posts  
New Delhi-110 001.

2. The Chief Post Master General  
Delhi Circle, New Delhi-110 001.

3. The Director, Postal Services  
Delhi Circle  
New Delhi-110 001.

...Respondents.

(By Advocate: Shri M.K.Gupta)

O R D E R

Hon'ble Shri A.v.Haridasan, Vice Chairman (J)

Shri Duli Chand Sharma who was working as Sub Post Master, Subhash Nagar West Post Office, New Delhi was proceeded against under Rule 14 of the CCS (CCA) Rules, 1965 by the Senior Superintendent of Post Offices (SSPOs), New Delhi West Division vide memo of charges dated 3.2.88. There are two articles of charges in the memo. The first article of charge related to the period between 17.7.87 and 28.7.87 and it was alleged that the applicant while functioning as Sub Post Master (SPM), Subhash Nagar West Post Office issued money order receipts to the remitters after receiving respective amounts with commission but neither credited the amounts

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to the Government nor despatched the money orders to the destination and therefore he violated the provisions contained in Rule 244, 248, 249, 250 and 251 of P&T Manual Vol. VI Part-I and also Rule 4 of FHB. Vol.I and thus failed to maintain absolute integrity (1) violating the provisions of Rule 3 (1)(i) of CCS (Conduct) Rules, 1964.

The second article of charge was based on the allegation that the applicant while working as SPM Subhash Nagar West Post Office on 9.6.87, 1.7.87, 7.7.87, 11.7.87, 16.7.87 and 22.7.87 performed SB work himself, contrary to the office D.O.W. instructions, accepted amounts for deposit and made entries in the pass books but did not credit the amount, thereby contravening the provisions under Rule 4 of FHB Vol.I and failed to maintain absolute integrity violating the provisions of Rule 3 (1)(i) of CCS (Conduct) Rules 1964.

2. The charges having been denied by the applicant, an enquiry was held. The enquiry officer held an enquiry and submitted the report finding that the charges against the applicant were proved. The SSPOs, on a consideration of the enquiry/ <sup>report</sup> finding that it was necessary to impose on the applicant one of the major penalties which he was not competent to impose, forwarded the file to the Director of Postal Services - Respondent No.3. Respondent No.3, after going through the report of the enquiry and connected papers, agreed with the finding of the enquiry officer, and by order dated 19.4.89 (Annexure A-I) imposed on the applicant the punishment of dismissal from service with immediate effect. The applicant filed an appeal against the order to the second respondent who by his order dated 24.5.90 (Annexure A-3) dismissed the appeal. Aggrieved by the order of the Disciplinary Authority dismissing him from service and of the appellate authority dismissing his appeal, the applicant has filed this application under section 19 of the Administrative

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Tribunals Act, praying that the impugned order at Annexure A-I may be set aside and the respondents may be directed to reinstate the applicant in service with all consequential benefits.

3. The main grounds on which the applicant assails the impugned orders are (i) since a copy of the enquiry report was not furnished to the applicant thereby denying him an opportunity to make a representation to the Disciplinary Authority before it took the decision that the applicant is guilty, there is a violation of the provisions of Article 311 (2) of the Constitution, as has been held by the New Bombay Bench of this Tribunal in the case of Premnath K.Sharma Vs. UOI & Others; (ii) since in the memo of charges, there is no mention that the applicant failed to maintain devotion to duty, as required by Rule 3 (I) (ii) and (iii) of the CCS (Conduct) Rules, it must be presumed that the applicant has acted with full devotion to duty and did not exhibit any conduct unbecoming of a government servant and therefore, the extreme penalty of dismissal from service is unjustified; (iii) that the order of the Disciplinary Authority lacks application of mind and the order being cryptic and non-speaking, and is not based on evidence, the same is liable to be set aside; (iv) that the Enquiry Officer did not give the applicant a fair and reasonable opportunity to defend himself and, therefore, the entire disciplinary proceeding is vitiated; (v) that as in the enquiry report, the enquiry officer said that he examined witnesses, the proceedings are void as the enquiry officer has performed the functions of prosecutor as well as judge; (vi) that the enquiry officer has taken into consideration and relied on statements of witnesses recorded during the preliminary enquiry while those witnesses were not examined at the enquiry; (vii) that Smt.Sushama, postal Assistant,

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was examined as witness at the enquiry while her name was not shown as one of the witnesses to be examined in the annexures to the memo of charges; (viii) that the misconduct for which the applicant was charge-sheeted being a criminal offence and since the applicant was also prosecuted, there was no justification for holding the departmental proceedings simultaneous with the criminal prosecution and therefore, the disciplinary proceedings and the consequential orders are invalid; (ix) that the Appellate Authority has not considered the various grounds raised by the applicant and, therefore, the Appellate Order is also bad for non-application of mind.

4. The respondents have filed their reply and the applicant has filed a rejoinder. We have heard the arguments of the learned counsel appearing for the parties and have perused the pleadings and other materials on record with meticulous care. We have also perused the file relating to the disciplinary proceedings, which was made available for our perusal by the learned counsel appearing for the respondents.

5. We shall deal with the points raised by the learned counsel of the applicant one by one.

(i) The order of the Disciplinary Authority in this case dismissing the applicant from service was dated 19.4.89. It has now been settled that the decision of the Supreme Court in Mohd. Ramzan Khan's case wherein it has been held that non-supply of a copy of the enquiry report and denial of an opportunity to make a representation to the delinquent government servant before the disciplinary authority passed the final order in the disciplinary proceedings is violative of the principles of natural justice. Will be only prospective in operation and that past cases which became concluded need not be re-opened. This case was disposed of by the Disciplinary Authority before the decision of the Supreme Court

in Mohd. Ramzan Khan's case and, therefore, the argument that non-supply of the enquiry report to the applicant in this case before the disciplinary authority imposed the penalty of dismissal from service amounts to violation of principle of natural justice and, therefore, the order is bad in law, cannot be sustained.

(ii) Failure to maintain absolute integrity is sufficient misconduct which can attract the maximum penalty and, therefore, the case of the applicant that as in the charge-sheet, it was not mentioned that he failed to maintain devotion to duty and exhibited conduct unbecoming of a government servant, respondents were not justified in imposing on him the maximum penalty of dismissal from service, has no force at all.

If on the basis of the evidence recorded at the enquiry and if the enquiry is otherwise held in accordance with the procedure laid down under the rules, even in the absence of a mention in the charge-sheet that the applicant failed to maintain devotion to duty and exhibited conduct unbecoming of a government servant, if it is established that the applicant has, by not bringing into account the amounts received by him from the depositors as also from the remitters of money orders, failed to maintain absolute integrity, the penalty of dismissal from service can very well be imposed. Whether on the basis of the materials on record, the disciplinary authority was justified in concluding that the applicant was guilty will be considered later.

(iii) The argument of the applicant that the order of the disciplinary authority being cryptic and non-speaking and the finding being not based on evidence is unsustainable has also no force at all. The disciplinary authority has gone through the entire report of the enquiry officer and has agreed with the finding of the enquiry officer that the applicant is guilty of the charges on the

basis of the evidence recorded at the enquiry. A copy of the enquiry report was also enclosed alongwith the order of dismissal. The enquiry officer has in his report discussed the entire evidence. A perusal of the enquiry report shows that testimonies of the <sup>and SB accounts</sup> depositors and remitters of the money orders /coupled with the evidence of the officials disclosed that the money order forms and pay in slips pertaining to the remittance by the SB account holders were recovered from the possession of the applicant and that the applicant had admitted that he did not bring into account the amounts in to the government account. It is evident from the evidence recorded at the enquiry that the applicant as a Sub Post Master having received the amounts towards money orders and for deposits in the SB account had failed to bring the above amounts into the government account and has appropriated the money for himself. It is on the basis of this evidence that the enquiry officer has found that the applicant was guilty of the misconduct for which he was charge-sheeted. Therefore, there is no merit in the contention that the finding of the enquiry officer that the applicant is guilty which is accepted by the disciplinary authority is based on no evidence at all. It is also not correct to say that the disciplinary authority has not applied his mind to the facts and evidence revealed in the enquiry. The finding of the enquiry officer that the applicant is guilty of the misconduct is clearly borne out from the evidence on record at the enquiry and therefore, the attack against the finding of the disciplinary authority is of no importance at all.

(iv) The applicant has contended that the enquiry officer has not given the applicant a reasonable opportunity to defend himself and that holding of the ex-parte enquiry was not justified. We have carefully gone through the enquiry proceedings and the file relating to that. It is seen that registered notices sent to the applicant

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were not received by him and that when effort was made to send notice of the enquiry to the applicant through Public Relations Inspector, the applicant refused to accept the same and therefore, the Public Relations Inspector reported that the applicant refused to accept the notice. It was under these circumstances that the enquiry officer decided to hold the enquiry ex-parte, and he did so. It is also seen from the file that day to day proceedings were sent to the applicant in his last known address. The enquiry officer could only send notice to the applicant by registered post or through a messenger and if the applicant chose to refuse to accept the notice and to participate in the proceedings, the enquiry officer can have no alternative but to hold the enquiry ex-parte. We are, therefore, of the considered view that there is no merit in the contention of the applicant that the applicant was denied a reasonable opportunity to defend himself. On the other hand, inspite of having given a fair and reasonable opportunity to defend himself, the applicant, for reasons best known to him, failed to avail of that opportunity.

(v) The contention raised by the applicant that the enquiry officer has acted as prosecutor and judge and therefore the proceeding is void is seen to be baseless because the witnesses were examined by the presenting officer in the presence of the enquiry officer as it should be.

(vi) A careful reading of the enquiry report would reveal that the conclusion that the applicant was guilty of the charges has been arrived at by the enquiry officer on the basis of the evidence recorded at the regular enquiry and not basing on any material collected behind the back of the applicant. This contention is, therefore, devoid of merit.

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(vii) It is permissible for the enquiry authority to accept additional witnesses if the presenting officer requests that statements of such witnesses are material. In an enquiry held ex-parte where the delinquent government servant refused to accept the notice sent, it is not practicable for the enquiry officer to take a decision with the concurrence or after hearing the official. Therefore, the examination of Smt. Sushama at the enquiry cannot be faulted. Further the testimony of this witness is not very material. Even dehors the testimony of the witness, there was sufficient material to find that the charges against the applicant have been established.

(viii) The applicant has contended that the misconduct for which he was charge-sheeted amounted to a criminal offence and that as the <sup>the same accusations,</sup> applicant was being prosecuted for, / there was no justification in proceeding with the departmental proceeding simultaneous with the criminal prosecution.. The respondents in their reply have contended that the default in bringing into account the amounts collected by the applicant towards money orders and as deposits in the SB account which is the subject matter of the charge-sheet was not reported to the police and, therefore, the subject matter of charge was not the basis of the criminal case, and that there was no irregularity in holding the departmental proceeding in respect of these allegations. This is not controverted by the applicant. Further, the Supreme Court has consistently held that there is no hard and fast rule that departmental proceeding cannot be proceeded with while prosecution is pending. Each case has to be decided on its facts. Therefore, the argument of the applicant that the departmental proceeding which concluded while prosecution is pending is invalid has no merit at all.

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The learned counsel for the applicant argued the order of the appellant authority lacks application of mind to the grounds raised in application. The appellate order is a fairly detailed one discussing all the grounds raised in appeal and it contains reasons for the findings. Therefore, we do not find any merit in this argument.

6. The last argument of the learned counsel of the applicant is that since the applicant has served the postal department for a long time, even if it is admitted for argument's sake that the charges against the applicant have been established, the respondents were not justified in imposing on the applicant the maximum penalty of dismissal from service. The disciplinary authority or appellate authority has not considered whether any of the lesser penalties would meet the end of justice. The order of dismissal has to be set aside, argued the counsel. The disciplinary authority has held that the misconduct committed by the applicant being of a grave nature, he deserved the maximum penalty of dismissal from service. The appellate authority has also considered this aspect and has found that the conduct of the applicant was such that it would bring disreputation and lack of faith on the part of the public at large towards the postal department, and as such a penalty other than dismissal from service would not satisfy the ends of justice. We are completely in agreement with this view by the Disciplinary Authority as also the Appellate Authority.

7. In the result, on a careful consideration of the pleadings, other materials on record and various points raised by the learned counsel of the applicant, we are of the considered view that there is absolutely no merit in the application and that the penalty of dismissal imposed on the applicant was well deserved.

8. In the result, the application fails and the same is dismissed, leaving the parties to bear their own costs.

  
(K. Muthukumar)  
Member (A)

  
(A.V. Haridasan)  
Vice Chairman (J)