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Central Administrative Tribunal, Principal Bench

O.A. No. 241 of 2004

New Delhi this the 24th day of March, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Prempal Singh
S/o Shri Bhullan Singh
Ex-GDS Delivery Agent (EDDA)
Postoffice-Meerpur Bulandshahar (UP)

...Applicant

Residential Address

Sarai Nasrulla-Khurja
(Bulandshahar)

By Advocate: Shri D.P. Sharma.

Versus

1. Union of India through
Secretary,
Ministry of Communication and I.T.,
Department of Posts,
Dak-Bhawan-Sansad Marg,
New Delhi.
2. The Superintendent of Post Office,
Bulandshahar Division,
Bulandshahar (UP).
3. The Assistant Superintendent of Post Offices,
Khurja Sub Division-Khurja,
(Bulandshahar)

...Respondents

By Advocate: Shri D.S. Mahendru.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman(J)

The applicant has challenged his dismissal from service in a disciplinary proceedings and has prayed for reinstatement in service with consequential benefits.

2. The applicant was working as Extra Departmental Delivery Agent (EDDA) now designated as GDS Delivery Agent at Meerpur, Bulandshahar District under the respondents. In 2001 he was asked to look after the work of Extra Departmental Delivery Agent, Branch Post Master at Meerpur. Vide order dated 6.8.2001, he was served with a

charge-sheet for starting disciplinary proceedings against him. The charges, which are in Hindi, on translation into English, read as under:-

“Charge No.I

(i) While working as EDDA in Branch Post Office Meerpur Shri Prem Singh received a sum of Rs.1260/- from the account holder of R/D Account No.292494 and 292632 which were not taken into account of the Post Office thereby misappropriated a sum of Rs.1260/- and contravened Rule 131 (2) (3) and Rule 21 of Gramin Dak Sewak (Employment of Service), Rules 2001.

Charge-II

(ii) Shri Prem Pal Singh, EDDA Meerpur while working on the post of BPM Meerpur on 2.2.2001 received a sum of Rs.5,000/- in S.B. Account No.400529 and on 23.2.2001 received a sum of Rs.6100/- in S.B. Account No.412597 from the respective account holders. He did not took these sums in the accounts and on 3.5.2001 in account No. 400529 and on 23.4.2001 in account No.412597, returned the amount to the account holder, thereby he contravened Branch Post Office Rule 131(2)(3) and Rule 21 of Gramin Dak Sewak (Employment of Service) Rules, 2001”.

3. The Inquiry Officer on completion of the proceedings, submitted a report (Annexure A-7) holding that both the charges have been proved. The disciplinary authority on 27.5.2002 (Annexure A-1), agreed with the findings of the Inquiry Officer and awarded punishment of dismissal from service.

4. The applicant then filed an appeal assailing the said order which has since been dismissed by the appellate authority vide order dated 30.1.2003 (Annexure A-2). The applicant is aggrieved and has filed the present OA.

5. The respondents contested the OA. In the reply it was pleaded that the applicant was working as GDSDA, Meerpur since 15.9.1980. In the meantime post of BPM Meerpur fell vacant and the applicant was allowed to carry out the duties of BPM as a stop gap arrangement. He worked as BPM Meerpur from February, 2001 to May, 2001. The applicant committed fraud in S.B./R.D. accounts and misappropriated a sum of Rs.12,360/-. On 9.5.2001, one Shri Prem Singh, the depositor of RD Account No.292632 handed over to the applicant Pass Book of R.D. Account No.292424 which was in the name of his son Rameshwar Dayal along with paying-in-slip and a sum of Rs.1260/- to

He read me to



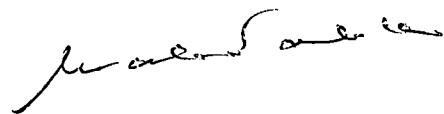
be deposited towards six months instalment in each Pass Book from December, 2000 to May, 2001. The applicant handed over the counterfoil of the paying-in-slip to Shri Prem Singh duly signed and affixing stamp of the Post Office, but he did not make the deposit entry. He subsequently credited the amount on 22.5.2001 and made entries in the Pass Book on the same date, thereby misappropriated temporarily the amount of Rs.1260/-. The copies of the Pass Books and the counterfoils were filed as Annexures R-1 to R-3. Furthermore, the applicant made a deposit entry of Rs.6100/- in the Saving Bank Pass Book of Account No.412597 in the name of Mehmood Khan on 23.2.2001. But he did not account for this amount in the Government account and, thus, misappropriated the said amount. The applicant returned Rs.6100/- to Mehmood Khan on 23.4.2001, the copies of Pass Book, the B.O. daily account and statement of the depositor were annexed as Annexures R-4 and R-5. Besides the applicant on 8.2.201 received a sum of Rs.5,000/- along with paying-in-slip of Saving Bank Pass Book of Account No.400529 from one Shri Kehar Singh and made deposit entry in the Pass Book but did not account the amount into the Government amount. He thus misappropriated the said amount. Afterwards the applicant returned the amount of Rs.5,000/- to Shri Kehar Singh on 3.5.2001. Copies of the SB Pass Books and the statement of Kehar Singh was annexed as Annexures R-6 and R-7. The applicant, as such, had misappropriated various amounts deposited by the account holders temporarily and for this he was proceeded against under Rule 10 of GDS (Employment and Service) Rules, 2001 vide Memo dated 6.8.2001. The charges against the delinquent official were proved as per enquiry report dated 26.3.2002. The disciplinary authority awarded the penalty of dismissal of service vide order dated 27.5.2002 and the appeal against the said order was also dismissed by the appellate authority's order dated 30.1.2003. Other allegations of the applicant were denied.

6. In the rejoinder, the applicant reiterated his own case and denied the allegations of the respondents.

7. We have heard the learned counsel for the parties and we have gone through the record.

8. The orders of the disciplinary authority and the appellate authority are challenged by the applicant on the ground that the charges Annexure A-3 are not definite and distinct so the charge-sheet is not legally maintainable; the order of punishment is not self-contained, speaking and a reasoned order; the disciplinary authority has not discussed the case of the parties and the evidence but has merely agreed with the findings recorded in the enquiry report, therefore, there was no application of mind. For this reason, the order of punishment is not legally sustainable; in the charge No.I the imputation is that the charged official had accepted Rs.1260/- but did not make entry in the Pass Book and in the relative record of the Post Office; in the appellate order it has been mentioned that the charged official had accepted Rs.1260/- from the depositor Shri Prem Singh and had made forged entries also in the Pass Book on 9.5.2001. As such, the finding of the appellate authority is perverse and out of record and the appellate order is liable to be quashed; Shri Prem Singh, who allegedly tendered Rs.1260/- to be deposited in RD Account has not been examined as a witness in the enquiry. His statement which was recorded in the preliminary enquiry, has been taken into consideration, which is not legally permissible; as the applicant did not have any opportunity to cross-examine him; the statement of the defence witness Kumari Madhu Sharma has been wrongly rejected. She had deposited Rs.1400/- in her account on 23.2.2001, the date on which the occurrence relating to Charge No.II had taken place; there was no evidence for proving the charge against the applicant and; the Inquiry Officer illegally dropped three defence witnesses, which were not properly summoned. The enquiry proceedings were violative of Article 311 (2) of the Constitution of India.

9. It is now well settled that the judicial review is limited to the review of the manner in which the decision is made and it is not review of the decision itself. Vide Commercial Secretary to Government of India Vs. S. Shanmugham (1998) 2 SCC 394 the Tribunal cannot sit as a court of appeal over the decision based on the finding of Inquiring Authority in a disciplinary proceedings. The Tribunal cannot reappreciate the



credence unless the finding is perverse, mala fide or it is a case of no evidence. It is also a settled law that every fault or irregularity in the disciplinary proceedings is not fatal. But in case the irregularity in the proceedings has caused prejudice to the delinquent in defence, the Tribunal may interfere see B.C. Chandra Vs. U.O.I. & Others (1995) 6 SCC 749, State of Tamil Nadu Vs. T.V. Venugopalan, (1994) 6 SCC 357 and State of Tamil Nadu Vs. Subramaniam, (1996) 7 SCC 509.

10. The Hon'ble Supreme Court in B.C. Chaturvedi Vs. U.O.I. & Others (1995) 6 SCC 749 has succinctly summarized the law as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

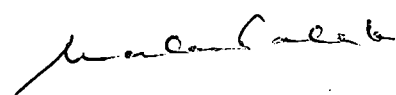
13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

11. It is now well settled that the irregularities committed in the disciplinary proceedings have to be tested on the test of prejudice caused to the applicant in his

M. S. Subramanian

defence. Every irregularity in the proceedings is fatal. In the present case the applicant laid a great deal of emphasis on the statement of Ku. Madhu Sharma, who is a Saving Bank Account holder. She has filed a copy of her statement as Annexure A-5 to the OA. She is a minor and has claimed that she herself was operating the account. According to her, on 23.2.2001, she went to the Post Office Meerpur and deposited Rs.1400/- in her Account No.421206. One Mehmood Khan also present in the Post Office. He gave money to the Post Master Shri Prem Pal Singh for deposit in to his account. Some of the currency notes were defective. The Post Master asked Mehmood Khan to change the currency notes and Mehmood Khan took away the money. He did not come back to the Post Office in her presence. In the cross-examination he could not say whether the Post Master had made entry in the Pass Book of Mehmood Khan or not. She also did not know how many other persons were there and what were their names. She know the Post Master but was not related to him.

12. Firstly it is not the case of the applicant that he had returned the amount of Rs.6100/- which Mehmood Khan, the account holder had given him for deposit in his account because the currency notes were soiled or mutilated and he asked them to be changed. He admitted his signature on the entry made in the Pass Book. No explanation was given why the entry was made and why the paying-in-slip was signed by him when the amount was not received by him from the account holder. Conversely, Shri Mehmood Khan, account holder in his deposition has corroborated the allegation against the applicant. Shri Mehmood Kahn did not have any axe to grind against the applicant. Though in the grounds the applicant also pleaded that three other defence witnesses were not allowed to be produced but it is not the case set up in the appeal and further the applicant has not been able to satisfy as to who were they and how the statements of those witnesses were relevant in the enquiry. Though the Tribunal will not be able to appreciate the evidence but as a court of first instance it has to look into the evidence because it was one of the main plank of the applicant that statement of Kumari Madhu Sharma was not given due weight.



13. As regards accepting Rs.5,000/- for depositing it in account No.412597 on 23.2.2001 and its refund to the account holder on 23.4.2001 without making entries in the record of the Post Office, the charge is proved by the account holder in his statement. The applicant has admitted his signature on the entry in the Pass Book and paying-in-slip. There is no explanation for not accounting this money in the record of the Branch Post Office.

14. As regards para 5.3 of the OA the allegation in charge No.1 is that the applicant had accepted Rs.1260/- but did not make entry in the pass-book and books of account of the post office while in the appellate order it has been stated that the applicant had accepted Rs.1260/- from Shri Prem Singh and made forged entries in the pass book on 9.5.2001. It is contended that this discrepancy showed that the finding is perverse. We have carefully perused the appellate order (Annexure A) but do not find it discrepant. The appellate authority has simply stated that as per the inquiry report the applicant had returned the pass book to the depositor after making entries in them and without recording entries in the Post Office accounts returned the amount at his own leve to the depositors. As regards Rs.1260/- it was observed that by no entering the amount of Rs.1260/- deposited in R.D. accounts No.292486 and 292632 on 9.5.2001 the embezzlement of the money is fully proved.

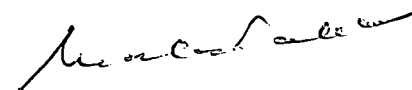
15. The report of the Inquiry Officer which has been accepted by the disciplinary authority by order Annexure A-1 can by no stretch of reasoning be said "not based on evidence".

165. It is also argued that the order of the disciplinary authority, Annexure A-I and the appellate order, Annexure A-2 are non-speaking and reasoned orders and show that there was no application of mind by the authorities. We have perused both the orders impugned in the OA. We do not find that these orders could be said to be cryptic and result of non-application of mind by the authorities before taking decision and imposing penalty. The reasons have been given. The reason may be not elaborate as the applicant wanted to be. But the impugned orders cannot be held to be legally infirm for these



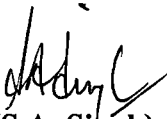
reasons. The applicant has also relied upon Surender Nath Sarma Vs. Union of India and Others, (1991) 16 ATC 101 wherein the disciplinary authority had disposed of the matter with one line only that "the petitioner had been found guilty of serious misconduct and hence removed from service". He had not discussed at all the evidence and has also not assigned any reason for coming to this conclusion. Similarly the appellate authority had also disposed of the appeal in one line saying "previous order of removal stand". The Hon'ble Supreme Court had deprecated this approach in Ram Chander Vs. U.O.I., AIR 1986 SC 1173. As such, it was a cryptic order without discussing all the evidence and reasoning given. It is not the fact in the present case. The orders of the disciplinary authority as well as the appellate authority are not non-speaking and non-reasoned orders as they were in the case cited.

17. But it is true that Shri Prem Singh who had allegedly given Rs.1260/- to the applicant for depositing in his own and his son's R/D account has not been examined. The enquiry report, Annexure A-7 has taken into account his statement, which was recorded in the preliminary enquiry. The applicant was not given opportunity to cross-examine him. His untested statement in the preliminary enquiry is not a legally admissible evidence. In N.V. Sivanandan Vs. Superintendent of Post Offices, Irinjalakuda and 3 others, (1991) 15 ATC 362 it was held that the "evidence which was collected during preliminary enquiry, in the absence of opportunity to cross-examine the witnesses, could not be used against the charged official and as a result, the order of punishment, i.e., dismissal from service was bad". In the present case though Shri Prem Singh account holder has not been examined but the documentary evidence has been produced and there is no explanation why the entries and initials were made in the Pass Books and why no entry of the amount was not made in the relevant Post Office record. Even if the statement of Shri Prem Singh recorded in the preliminary enquiry is excluded, there is material before the Inquiry Officer to record the finding on this charge also. Therefore, the judgment cited would not come to the rescue of the applicant.

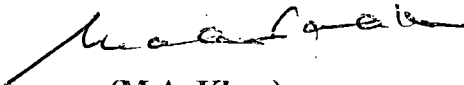


18. The imputation of charge against the applicant was of a serious nature. He had misappropriated even though temporarily the money received by him as Branch Post Master. The return of the money to the deposit holders after a few days would not dilute the gravity of the charge against him. For this reason, it cannot be stated that the penalty imposed by the disciplinary authority and affirmed by the appellate authority was not proportionate to the gravity of the charge.

19. For the reasons stated above, the OA has no merit and the same is dismissed but without any order as to costs.


(S.A. Singh)
Member (A)

Rakesh


(M.A. Khan)
Vice Chairman (J)

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