

OA 817193

08-11-2002

(60)

Pronounced in open court today.

OA has been dismissed

by a bench comprised of Harish the  
Chairman & Harish Sr MPSC, MCA.

by order



CO/CC

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.817/1993

New Delhi, this 27<sup>th</sup> day of ~~October~~<sup>November</sup>, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri M.P. Singh, Member(A)

(b1)

Suresh Chand Sharma  
363, Near Deep Cloth House  
Badli, New Delhi

.. Applicant

(Shri Arun Bhardwaj, Advocate)

versus

Union of India, through

1. Secretary  
Ministry of Communication  
Deptt. of Posts, New Delhi
2. Chief Postmaster (General)  
Dehradun, UP Circle, Dehradun
3. Sr. Supdt. of Post Offices  
Meerut Division, Meerut
4. Sub-Division Inspection (Post)  
Baruat Sub-Division, Baraut, UP

.. Respondent

(Shri N.K. Aggarwal, Advocate)

ORDER

Shri M.P. Singh, Member(A)

The admitted facts of the case are that on 22.8.93, a fraudulent withdrawal of Rs.5500 was made from Nai Mandi, Baraut SO A/c.No.730949 by the then SPM Shri Nagin Chand Sharma, As per enquiries made in the case, the applicant was also found guilty in making fraudulent withdrawal along with one Nagin Chand Sharma He was put-off duty by the SDI(P) Baraut vide Memo dated 15.3.84. FIR No.1403/84 under section 409/420 IPC was also lodged with Police and the case was heard in the trial court of Addl. Munsif Magistrate(7th) Meerut. Thereafter, applicant was proceeded under Rule 8 of EDA (Conduct & Service) Rules, 1964 by SDI(P) vide memo dated 13.2.88. Departmental inquiry was instituted against the applicant in accordance with the procedure prescribed in the relevant rules. Enquiry Officer (EO) submitted his report on 28.6.88 holding that the charges against the applicant

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were proved. Agreeing with the findings of EO, disciplinary authority (DA) imposed the penalty of removal from service on the applicant vide memo dated 14.7.88. Applicant's appeal dated 10.10.88 was rejected by the appellate authority vide its order dated 12.7.89.

2. In the meanwhile, the Munsif Magistrate (7th) Meerut pronounced his judgement in the case cited above. The trial court sentenced the applicant and co-accused Nagin Chand Sharma to two years simple imprisonment with fine of Rs.500 and if they fail to pay the fine, they were required to suffer imprisonment for another 6 months. Applicant filed an appeal and the appellate Criminal court, Meerut acquitted the applicant on technical grounds. Thereafter, applicant filed a review petition which was rejected by the Postmaster General, Dehradun vide his letter dated 4.9.92. Aggrieved by this, applicant has filed the present OA praying for quashing the order dated 14.7.88, 12.7.89 and 4.9.92 and seeking directions to the respondents for his reinstatement with consequential benefits.

3. We have heard the learned counsel for the parties and perused the records.

4. During the course of arguments, the learned counsel for the applicant has taken a variety of grounds in support of the reliefs prayed for by the applicant via. that it is a case of no evidence inasmuch as the depositor (Sukhbir Singh) had admitted his thumb impression on the withdrawal form but his evidence was not properly appreciated; there was an explained del

*[Handwritten signature]*

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of four years in issuing the charge-sheet; DA in the case of applicant's co-accused Nagin Chand Sharma took the role of appellate authority in applicant's case; the applicant informed in advance to IO on 17.6.88 that he would be unable to attend on 20.6.88 as he had to appear in the criminal court on the same date but he was denied any further opportunity to defend his case; that when order of acquittal was completely exonerated the order of DA and appellate authority had become a nullity; that the applicant was not allowed to make his written brief in his defence and thus he was denied reasonable opportunity; and that the department was not justified in initiating departmental proceedings for taking disciplinary action on the charges similar to those pending in the criminal court.


5. On the other hand, respondents' counsel contended that initially the complaint was made by Sukhbir Singh (depositor) about non-withdrawal of said amount by him on 22.8.83 from his SB A/c.No.730949 and this was authenticated by him during the inquiry and therefore it cannot be termed as a case of no evidence; disciplinary action was taken against the applicant after completion of investigation which took time in issuing the charge-sheet; DA in respect of the applicant was sub-Divisional Inspector (Postal), Meerut and applicant's appeal was decided by the Senior Suddt. of Post Offices, Meerut Dn. in his capacity as appellate authority; no application dated 17.6.88 from applicant in respect of non-attending the inquiry on 20.6.88 was ever received by the IO; the acquittal of the applicant was on technical grounds while the penalty of removal from service was a result of departmental enquiry on the grounds




misconduct and doubtful integrity; the applicant never made any request for making written submission either before the enquiry or during the enquiry but he was given full opportunity to explain which he failed to avail; and departmental proceedings against the applicant were conducted on different charges to those of criminal case and they had no link with each other.

6. From the material available on record, we find that the enquiry has been conducted by following the prescribed procedure, applicant was given reasonable opportunity to defend his case and that principles of natural justice were duly observed. The charges against the applicant have been proved by the EO based on evidence on record and after examination of the witnesses and therefore it cannot be termed as a case of no evidence as alleged by the applicant. It is a settled legal position that the Tribunal cannot reappreciate the evidence and come to a different conclusion nor can it interfere with the quantum of punishment. As regards applicant's contention that he was acquitted in the criminal case, that cannot be a ground of challenging the punishment order, since it has been held by the Apex Court that "so long as there was preponderance of probability even on basis of one witness Court cannot interfere" (see N. Rajarathinam Vs. State of Tamil Nadu & Anr. 1997 (1) SLJ 10 (SC)).

7. In view of what has been discussed above, we find no merit in the present OA and the same is accordingly dismissed. No costs.

  
(M.P. Singh)  
Member(A)

  
(V.S. Aggarwal)  
Chairman

/gtv/