

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 8th day of August 2002.

original Application no. 133 of 1996.

Hon'ble Maj Gen K K Srivastava, Member (A)
Hon'ble Mr. A K Bhatnagar, Member (J)

Radhey Shyam, s/o Sri Ved Prakash,
Ex EDDA Baghra,
R/o Vill & P.O. Nasirpur,
via Baghra, Distt Muzaffarnagar.

.... Applicant

By Adv : Sri R K Singh

versus

1. Union of India, Ministry of Communication,
Department of Posts through Director General (Post)
NEW DELHI.
2. Director Postal Services, Office Post Master General,
DEHRADUN.
3. Senior Supdt. Post Offices,
Muzaffarnagar Postal Division.
4. Sub. Divisional Inspector (Post Office), West Sub
Division, Muzaffarnagar.

.... Respondents

By Adv : Km Sadhna Srivastava

O R D E R

Hon'ble Maj Gen K K Srivastava, AM.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 7.10.1992 (Ann A3) passed by Sr. Supdt. Post Offices (in short SSPOs), Muzaffarnagar, dismissing the applicant as EDDA Baghra, appellate order dated 13.10.1993 (Ann A4) rejecting the appeal of the applicant and order of Director General (Posts) dated 10.2.1995 rejecting the petition and has prayed that

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above orders be quashed and direction be issued to respondents to reinstate the applicant with full back wages.

2. The facts, in short, as per applicant, are that the applicant was appointed as EDDA Baghra Sub Post Office (in short SO) in 1980. He was deputed to work as EDMP in the same office when the regular incumbent proceeded on leave for 3 days. On 3.8.1991 he was handed over 25 Money Orders (in short MOs) valuing Rs. 136/- each remitted by Distt. Harijan Kalyan Office Muzzaffarnagar for payment to back ward and poor students of Primary Pathshala Saidpur. The MOs were paid under the identification and seal of senior most teacher of the said school who was officiating as Head Post Master in leave arrangement. He was served with charge sheet dated 19.9.1991. As usual disciplinary proceedings were conducted, Enquiry was held and Enquiry Officer submitted his report on 12.5.1992. Original disciplinary authority ie respondent no. 4 Sub Divisional Inspector (Post Offices) (in short SDI) West Sub Division Muzaffarnagar awarded minor penalty of debarring the applicant from appearing at promotional examinations for two years by order dated 29.05.1992. However, respondent no. 3 SSPOS Muzaffarnagar on review enhanced the punishment to that of dismissal by order dated 7.10.1992. The appellate authority ie respondent no. 2 rejected the appeal by order dated 3.10.1993 and ultimately the applicants' petition addressed to Director General Posts was also rejected by order dated 10.2.1995. Hence this OA which has been contested by respondents by filing counter reply.

3. Heard Sri R K Singh learned counsel for the applicant and Miss Sadhna Srivastava learned counsel for the respondents and perused records and also the written arguments of learned counsel for the applicant.

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4. Sri R K Singh learned counsel for the applicant submitted that by order dated 29.5.1992 the disciplinary authority punished the applicant by debarring him from appearing at the departmental examination for 2 years and the respondent no. 3 though has the power to re-open the case under Rule 16 of EDA (C&S) Rules 1964 but the provision were not applied by imposing penalty specified in Rule 7 which was not considered necessary by disciplinary authority.

5. The applicants' counsel submitted that in case the Reviewing authority had to reopen the case, he should have ordered fresh enquiry before passing any order if he did not agree with the findings of the enquiry officer or the punishment imposed by the disciplinary authority. The case was neither reopened nor did the reviewing authority hold any enquiry before passing the order dated 7.10.1992. No opportunity of hearing was given to the applicant. These vital aspects have not been taken into account by Director Postal Services (in short DPS) or Director General Posts (in short DGP) while passing orders dated 18.10.1993 & 10.2.1995 respectively.

6. The learned counsel for the applicant further submitted that the amount of the MO alleged to have been misappropriated was deposited by the Headmaster of the institution on whose identification the money was paid to the payees. The guilt of the applicant was not established nor was there any loss to the department.

7. Sri Singh the learned counsel for the applicant submitted that the enquiry was not held in accordance with law as the

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natural and probable witnesses have not been examined by the Enquiry Officer nor there was positive evidence before the Enquiry Officer to establish the guilt. As regards the question of cuttings and overwritings in the address, it should have been ^{As}certained ^{by} the enquiry officer from Harijan Samaj Kalyan office which was not done.

8. Sri Singh also submitted that the charges are vague. The applicant did not commit any misconduct. He paid the MOs to the payees on identification of ~~acting~~ Head Master of Saidpur Pathshala, Sri Chand ^W ^W Rukela whom the applicant personally knew.

9. The learned counsel for the applicant finally submitted that the applicant has been punished wrongly, illegally, arbitrarily and the punishment of dismissal from service is shockingly disproportionate. The learned counsel has placed reliance on the decision of Hon'ble Allahabad High Court in Gopal Das Rawat Vs. The UP State Road Transport Corporation & ors, 1994 (68) FLR 291, the decision of Hon'ble Supreme Court in UP Road Transport Corporation & Ors Vs Mahesh Kumar Mishra & ors 2000 (85) FLR 291, Gulzar Singh Vs. State of Punjab 1986 (suppl) SCC 738, Colour Chem Ltd Vs A L Alaspurkar & Ors 1998 (78) FLR 625, B C Chaturvedi Vs U O I & Ors 1996 (72) FLR 316 (SC) and Sheo Prakash Rai Vs State of UP & Ors 2001 (90) FLR 737.

10. Resisting the claim of the applicant Miss Sadhna Srivastava learned counsel for the respondents submitted that charges are not vague but specific about the payment of MOs. Full fledged enquiry was held & the applicant was afforded reasonable opportunity to defend himself. The

immediate superior authority has the powers to review the disciplinary cases within 6 months, *suo motu* under Rule 16 of EDA (C&S) Rules 1964. Since the full fledged enquiry had been held there was no need to institute fresh enquiry. The reviewing authority followed the procedure meticulously, issued show cause notice and after considering all the aspects passed the order dated 7.10.1992. Besides the *also* orders dated 13.10.1993 and 10.2.1995 are ¹ detailed and speaking orders.

11. Miss Sadhna Srivastava also submitted that the applicant has failed to mention as to which documents he wanted and also in what way the reasonable opportunity was not afforded, hence the submission of the applicant in this regard has no meaning. The applicant has misappropriated the amount of MOs and the punishment awarded is commensurate.

12. We have carefully considered the submissions of learned counsel for the parties. As per respondents this is a case of misappropriation of the money in respect of 25 MOs remitted by Harijan Kalyan Office Muzaffarnagar for payment to backward and poor students of Primary Pathshala Saidpur. The applicant admits that the MOs were paid at the school on the identification of Sri Chand *Rohela*, Assistant Teacher of Primary Pathshala Saidpur who was officiating as Head Master. In the enquiry he has also admitted that he did not know other witnesses but since Srichand *Rohela* knew them he accepted them as witness. If the MOs were paid to the payees, what was the requirement of Srichand *Rohela* to deposit Rs. 3536/- in State Bank of India *Rohela* Challan no. 19 dated 23.9.1991. Obviously, the

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applicant was in collusion with Srichand ^hRohela and cannot absolve himself. The applicant should not have accepted others, whom he did not know, as witnesses. The MOs were meant for the students of primary classes and the plea that they were paid to the payees after identification of the senior teacher of the school has no force. The MO should have ^{been} paid to the payees at their addresses and not in school. The submission of the learned counsel for the applicant that there has been no loss to the department as entire amount was ^hdeposited ^hby Srichand ^hRohela ^hhas no substance. The fact, that the MOs were not paid to the correct payees, establishes the misconduct on the part of applicant for which action has been correctly taken by the respondents.

13. We find substance in the submission of learned counsel for the respondents that there has been a full fledged enquiry and reasonable opportunity was afforded to the applicant to defend himself. The applicant has failed to establish that the principles of natural justice have been violated. We have perused impugned orders dated 7.10.1992, 13.10.1993 and 10.2.1995 and we find that these are detailed and speaking orders.

14. The reviewing authority is empowered suo moto to review the discipline cases of his subordinates within 6 months under Rule 16 of EDA (C&S) Rules 1964. Since the enquiry was conducted properly there was no requirement of holding another enquiry. The reviewing authority has decided the case and passed order dated 7.10.1992 after full application of mind on the basis of enquiry report and the documents. So has been done by the appellate authority while passing order dated ^hD G Pesta ^h13.10.1993 and also DGP while passing orders dated 10.2.1995.

15. Another argument advanced by the learned counsel for the applicant is that the charge is vague. It is not so. The charge reads as under :-

"That while working as EDDA, Baghara Branch Office, Shri Radhey Shyam failed to make payment of 25 (Twenty five) money orders at the given addresses on 03.08.91 thereby violating Rules 127 (1) and 127 (3) of P&T Mannal volume VI part III and Rules 17 of the P&T EDAs (Conduct and Service) Rules, 1964."

The charge is quite specific and the contention of the learned counsel for the applicant has no basis.

16. The learned counsel for the applicant has also submitted that the punishment of dismissal from service is too severe and shockingly disproportionate. He has relied upon number of judgments of superior court. Before we decide the issue we would like to go through the facts of the cases relied upon by the applicants counsel as under:-

i. Gopal Das Rawat's case : The petitioner was a conductor in UP State Road Transport Corporation. He entered into office of bus station in drunken ~~state~~ with his friend, ~~twisted~~ arm of one and abused another employee. Hon'ble Allahabad High Court held that punishment of dismissal from service is excessive and disproportionate to gravity of offence.

ii. Mahesh Kumar Mishra's case : The conductor of Transport Corporation was dismissed for having issued tickets of Rs 1.50 instead of Rs. 1.80. The Hon'ble Supreme Court held that the punishment was shockingly disproportionate.

iii. Gulzar Singh's case : The Hon'ble Supreme Court held the punishment of dismissal for failure to issue a ticket for Rs. 5/- for a 2 1/2 year old child, as disproportionate to the nature of charge proved.

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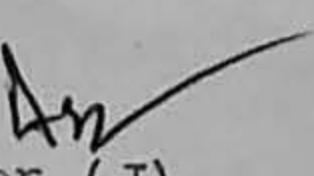
iv. A S Alaspurkar's case : The machine operators and Mazdoors slept in wee hours. Machine was found running without raw material Operators were dismissed after enquiry. The Hon'ble Supreme Court held that there has been no major misconduct in past. Thus punishment of dismissal, being grossly disproportionate amounted to legal victimization.

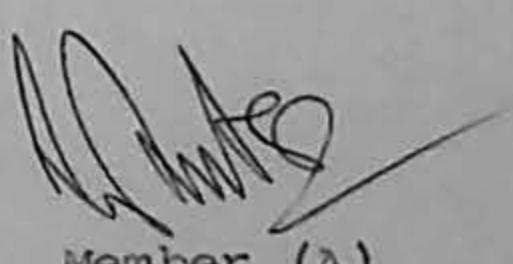
v. Sheo Prakash Rai's case : The only charge against the petitioner was that he did not perform ^{✓ Santan ✓} sanatri duty given to him. He could not give satisfactory reply. Hon'ble Allahabad High Court held that punishment of dismissal ^{✓ ✓} was shockingly disproportionate to the charge levelled against him.

17. Perusal of the above cases leaves no doubt that the above cases are easily distinguishable and the judgments of the superior courts in the above cases will not be helpful to the applicant. In the present case the applicants' integrity is involved and in Post Office, where public money is being dealt with, a person of doubtful integrity has no place. We do not find that the impugned orders suffer from any errors of law. Action of the respondents is justified and the OA lacks merit.

18. In the facts and circumstances and our aforesaid discussion the OA is liable to be dismissed. The OA is accordingly dismissed.

19. There shall be no order as to costs.


Member (J)


Member (A)

Dated : 08/08/2002

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