

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 19th day of April 2002

Original Application no. 1003 of 1996.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Hari Krishna Updhayay, S/o late Sri J.P. Updhayay,
R/o vill Bhainsahia Post Office Dudhaura,
Distt. Basti.

... Applicant

By Adv : Sri M.K. Upahayay
Sri G.D. Mukherji

Versus

1. Union of India through its Secretary Post and Telegraph Department, of New Delhi.
2. Member (P) Postal Services Board, Dak Bhawan, New Delhi.
3. Director Postal Services, Gorakhpur Region, Gorakhpur.
4. Superintendent of Post Offices, Basti Division, Basti.
5. Collector, Basti.
6. Tehsildar Tehsil Basti.

... Respondents

By Adv : Sri S.C. Tripathi

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member A.

In this OA, filed under section 19 of A.T. Act, 1985, the applicant has challenged punishment order dated 23.7.1993 (Ann 6) dismissing the applicant, appellate order dated 4.12.1993 (Ann AIX) rejecting the appeal, order dated

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17.2.1994 of Tehsildar Basti Sadar in connection with recovery of Rs. 63868.00 as land revenue ^{or arrears} (Ann A 13) and order dated 14.2.1996 (Ann A-11) of the Revisionary Authority rejecting the petition and has prayed that the same be quashed and direction be issued to the respondents to treat the applicant in service and pay him salary through-out. He has further prayed that the respondents be also directed not to recover the amount of Rs. 63868.00.

2. The facts giving rise to this OA, in short, as per applicant are that the applicant joined the respondents establishment on 7.3.1977 as Postal Assistant (in short PA). On 21.4.1989 he was posted as PA at Saltauwas Post Office (in short SO). In absence of regular incumbent the applicant functioned as Sub Post Master (in short SPM) Saltauwa Post Office from 2.6.1989 to 17.3.1992. The applicant was transferred from Saltawa SO to Basti Head Post Office by order dated 17.3.1992 but he proceeded on medical leave. The applicant was placed under suspension by order dated 22.5.1992, an FIR was lodged on 29.5.1992. Chargesheet dated 30.6.1992 was issued. Inquiry Officer (in short IO) was appointed on 13.7.1992. IO fixed 7.8.1992 but the applicant in absence of information could not appear before the IO on 7.8.1992. Subsequently by order dated 27.8.1992 IO was changed. The applicant filed OA 876 of 1992 challenging the transfer order dated 17.3.1992 and suspension order dated 22.5.1992. The transfer order was quashed on 20.11.1992 with condition that the applicant will not enter the village Saltauwa till the prosecution evidences were recorded. IO submitted the report on 3/5-7-1993. Respondent no. 4 Supdt. Post Offices (in short SPOs) Basti dismissed the applicant vide impugned order dated 23.7.1993. The appellate

authority rejected the appeal by order dated 4.12.1993 and the Revisionary authority also rejected the petition by order dated 14.2.1996. Hence this OA which has been contested by the respondents by filing counter affidavit.

3. Heard Sri G.D. Mishra, learned counsel for the applicant and Sri S.C. Tripathi, learned counsel for the respondents and perused records.

4. Sri G.D. Mishra, learned counsel for the applicant submitted that the applicant has not been given full opportunity to defend himself. The applicant vide his application dated 10.7.1992 pointed out that statements of witnesses were not attached alongwith the chargesheet. but instead of supplying the same first IO was appointed vide order dated 13.7.1992 who fixed 7.8.1992 for enquiry. The applicant in absence of information could not attend the enquiry on that date. The IO and presenting officer (in short PO) were changed. During enquiry on 30.10.1992 the applicant demanded 8 additional documents but these documents were neither given nor shown to the applicant. Documents at Sl no. 3, 5, 6 & 7 were relevant as these related to the charge of alleged embezzlement of Rs. 8000/- and 26000/- and though these were demanded by applicant on 30.10.1992 but these were not supplied. The IO did not mention a word denying the relevance of the documents and thereby the applicant was denied the opportunity of defence. The respondents have violated principles of natural justice. The learned counsel has placed reliance on the law laid down by Hon'ble Supreme Court in case of Committee of Management Kisan Degree College Vs. Shambhu Saran Pandey & Ors Supreme Court Ruling Vol 9 page 495.

5. Sri G.D. Mishra, submitted that the applicant

was not given right to cross examine 6 state witnesses SW 3 to SW 8. State witnesses Prem Prakash Singh, Khedu Bhuj and Sheo Shanker were examined on 11.5.1993 in absence of applicant. On 21.1.1993 other three witnesses viz Ram Bej, Kalpa Nath and Abu Naim were examined in presence of ^{the} applicant but they could not be cross examined as the train carrying defence Assistant was late. Applicant requested for cross examination of the witnesses by letter dated 21.5.1993 and letter dated 5.6.1993 but the opportunity was not given. Hence the enquiry suffers from illegality. The learned counsel in support of his argument has relied upon the ruling of Hon'ble Supreme Court in SC Girotra Vs. United Commercial Bank Supreme Court Service Rulings Vol 16 page 387 and Smt. Indrani Devi Vs. U.O.I. & ors Supreme Court Service Rulings Vol 9 page 586.

6. Sri G.D, Mishra, submitted that the applicant was sick during February, April and May 1993. He was not paid subsistence allowance for the month of April 1993 and he had no money to participate in the enquiry. Inspite of request to post pone the enquiry the same was not done and the applicant due to financial crisis and illness could not attend the enquiry on all dates. Besides the subsistence allowance of the applicant was reduced by order dated 2.9.1992. Thus respondents created all impediment in the way of applicant to defend his case properly which is violative of principles of natural justice in view of the ruling reported in Supreme Court Service Ruling Vol 10 page 129 in case of Ghan Shyam Das Srivastava Vs. State of MP and also in case Capt. M Paul Anthony Vs. Bharat Cold Mines Ltd & Ors reported in FLR 1999 (82) pg 627.

7. The learned counsel for the applicant also submitted

that respondent no. 3 DPS Gorakhpur did not give personal hearing to the applicant and has not recorded his findings and reasons as required under Rule 27 (2) of CCS (CCA) Rules 1965. The applicant has placed reliance on decision dated 12.5.1986 of Hon'ble Supreme Court in Ram Chander Vs. Union of India & Ors in Civil Appeal 1621 of 1986. Supreme Court Rulings Vol 20 pg 667.

8. Sri G.D. Mishra further submitted that respondents have violated the provisions of Rule 18 of CCS (CCA) Rule 1965. Disciplinary proceedings were initiated against other 7 employees who were posted at Saltanwa SO separately. In fact common disciplinary proceedings should have been held including that of the applicant.

9. Sri G.D. Mishra, submitted, that the IO was biased against the applicant. The point that enquiry was held exparte was raised but this has not been considered at all by the disciplinary authority, appellate authority and revisionary authority. Besides the respondents should have waited for out-come of criminal case lodged against the applicant before initiating disciplinary proceedings against the applicant. Thus the impugned orders are illegal, arbitrary, against rules and violative of principles of natural justice and liable to be quashed. The applicant is entitled for all consequential benefits.

10. Sri S.C. Tripathi, learned counsel for the respondents contesting the case submitted that the applicant, while working as SPM, Saltauwa Post Office opened number of SB accounts and made entries of deposits in Pass Books but did not account for the same in Post Office accounts and misappropriated the same. He also made ^ufraudulent withdrawals in several Savings Bank/RD/TD accounts without Pass Books and without knowledge of the Account holders. The applicant misappropriated the public money to the

tune of Rs. 702678.60 including the amount covered in the OA and he does not deserve to be retained in service.

11. The learned counsel submitted that the charge sheet dated 30.6.1992 was delivered to the applicant on 3.7.1992 but he did not submit any reply to the same. The applicant was afforded all reasonable opportunity to defend himself but the applicant did not co-operate and the IO submitted the enquiry report on 3.7.1993 and held the charges as fully proved. The enquiry report was delivered to the applicant on 6.7.1993 and the applicant submitted his representation on 20.7.1993. The disciplinary authority duly considered the points advanced by the applicant and after careful consideration of all connected documents facts and also the enquiry report, imposed the penalty of Dismissal from service vide impugned order dated 23.7.1993. The appellate authority considered all the points raised by the applicant and the appeal was rejected by impugned order dated 4.12.1993. The revisionary authority also rejected the petition vide impugned order dated 14.2.1996. The learned counsel for the respondents submitted that the disciplinary proceedings were conducted as per rules and all the authorities i.e. disciplinary authority, appellate authority and the revisionary authority applied their mind and then passed detailed orders covering all the aspects and points raised by the applicant at various stages.

12. The learned counsel for the respondents submitted that the allegation of bias on the part of IO was never raised by the applicant during enquiry. The plea of the applicant that there should have been common disciplinary proceedings as there were 7 other employees involved is not tenable as others were charged for contributory negligence and had no direct

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involvement in misappropriation of government money. The respondents have initiated disciplinary proceedings as per rules and it has no relation with the criminal case which is being investigated by the police.

13. The learned counsel for the respondents finally submitted that the action of the respondents has all along been in accordance with law and at no stage there has been any violation of principles of natural justice. The respondents have placed reliance on Judgment of Hon'ble Allahabad High Court in case of Suresh Chandra Vs. Presiding Officer Labour Court Agra & Others 2000(1) AWC 71 dismissing the Writ Petition and maintaining the order of appellate authority and Revisional authority confirming the punishment.

14. We have carefully considered the submissions of learned counsel for the parties and have closely examined the records.

15. The applicant was proceeded against ^{under} rule 14, of CCS (CCA) Rules 1965. The charges levelled against him are that

i. He while working as SPM Saltauwa Post Office during the period 2.6.1989 to 17.3.1992 withdrew a sum of Rs. 26000/- on 18.2.1992 fraudulently from SB Account no. 445003 of Jinwa Branch Post Office without the Pass Book and without the knowledge of the depositor.

ii. Further on 6.8.1991 he did not account for a sum of Rs. 8000/- in the Post Office account which was given to him for deposit by the depositor of the Account no. 444888.

In our opinion these charges are of serious nature. The main ~~XXXXXX~~ arguments of learned counsel for the applicant are that the applicant was not given full opportunity to defend himself

by:

- i. not providing statements of witnesses and additional documents.
- ii. changing the IO and presenting officers who were biased.
- iii. not giving opportunity to cross examine the witnesses
- iv. holding enquiry on the dates the applicant was ill
- v. appellate authority not giving personal hearing.
- vi. not holding common proceedings.

^{~ would}
We ~~could~~ like to discuss these points before we arrive at any conclusion. The charge sheet dated 30.6.1992 was delivered to the applicant on 3.7.1992 and when he did not submit any reply by due date (10 days time given) the respondents appointed IO and PO on 13.7.1992. The respondents on review of the Disciplinary proceedings file noticed that IO because of his illness was not able to fix dates regularly and at times did not attend enquiry on the dates fixed by him. Therefore, as per respondents another IO and PO were appointed for expeditious finalisation of the disciplinary proceedings. We do not find any illegality in the action of respondents. Besides we find substance in the submission of the learned counsel for the respondents that the applicant should have raised the point of bias on the part of IO and PO during the enquiry itself which the applicant did not. In our ^h ~~opinion~~ ^h the applicant cannot take this plea subsequently after the enquiry was completed. The applicant could have examined the documents ~~the~~ ^h and statements of witnesses during the course of enquiry.

16. From the perusal of letters dated 21.5.1993, 25.5.1993 & 5.6.1993 placed as annexures A-8.2, A-8.3 and A-8.4 it appears that the applicant was not co-operating by not attending enquiry

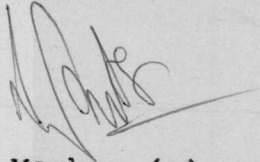
on certain dates to ~~delay~~ the disciplinary proceedings ~~case~~ on one pretext or the other. In our opinion all reasonable opportunity was given to the applicant to defend himself but he himself did not avail those. There is substance in the averment of the respondents in para 22 of counter affidavit that the applicant did not appear before Chief Medical Superintendent when his case was referred for second medical opinion. It has been averred by the respondents in para 24 of the counter affidavit that the ~~IO~~ vide his daily order sheet dated 11.5.1993 directed the applicant to cross examine the state witnesses upto 25.5.1983 but the applicant failed to do so. In view of averments of respondents in para 22 and 24 of the counter affidavit, the arguments of the applicant that enquiry was held on dates when he was ill and the applicant was not afforded opportunity to cross examine the state witnesses has no ground to stand. We have also gone through the appellate order dated 4.12.1993 and we find that it is a reasoned and speaking order as the grounds advanced by the applicant have been considered by the appellate authority. The case of the applicant is in no way prejudiced because he was not given personal hearing by the appellate authority. We have also examined the order dated 14.2.1996 of the revisionary authority and the same is also a reasoned and speaking order. The perusal of orders of disciplinary authority, appellate authority and Revisionary authority leave no doubt in our mind that all the authorities applied their mind while passing the respective orders.

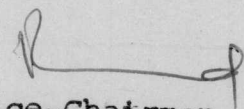
17. Thus it is apparent that the applicant was afforded all possible opportunity under the frame-work of rules to defend himself and at no stage the respondents have violated principles of natural justice. The case law cited by the learned counsel for the applicant in support of his various arguments will,

therefore, be of no help. The action of the respondents in not holding common ^{the} proceedings ^{is} is correct because others were guilty of contributory negligence only.

18. In view of our aforesaid discussions we find no ground to interfere. The O.A. ^{the} ~~is~~ being devoid of any merit is dismissed.

19. There shall be no order as to costs.


Member (A)


Vice-Chairman

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