

Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 549 of 1996

this the 17th day of January 2002.

HON'BLE MR. S. DAYAL, MEMBER (A)

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Bhagwati Prasad, S/o Sri Kodai, R/o Village & post Belhar Kalan,
Via Santha, District Basti.

Applicant.

By Advocate : Sri M.R. Gupta.

Versus.

1. Union of India through Director General, Department of
posts, Dak Bhawan, Parliament Street, New Delhi.
2. Director, postal Services, Gorakhpur Region, Gorakhpur.
3. Supdt. of post Offices, Basti Mandal, Basti.

Respondents.

By Advocate : Sri S.S. Tripathi.

O R D E R (ORAL)

BY HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

under challenge is the validity of the punishment order dated 15.10.93 and the appellate order dated 8.5.95. By the punishment order dated 15.10.93, the applicant, who at the relevant time, was working as EDBPM, Belhar Kalan (Santha), District Basti, was dismissed from service and ^{by Rn} the order dated 8.5.95 passed by the appellate authority dismissed the appeal preferred by the applicant against the said punishment order.

2. The facts of the case as disclosed in the O.A. are that one Shri Bhagwat Das made a complaint on 26.9.89 against the applicant, who was at the relevant time was posted as EDBPM, Belhar Kalan (Santha), District Basti stating that on 2.7.1983 a sum of Rs. 19,200/- was given to him for purchasing six yearly National Saving Certificate in his name (NSC in short). The applicant neither purchased the NSC nor he issued any receipt of the aforesaid amount. It was also stated

in the aforesaid complaint that the applicant had already encashed the NSC by adding the name of his wife namely Smt. Kumari Devi. A preliminary enquiry was conducted by the SSPO, Basti, who vide his report dated 30.1.92 pointed-out that the applicant had committed serious financial irregularities. On the basis of this report, the applicant was put-off from duty vide order dated 9.1.92 and vide another letter dated 11.6.3.92 the applicant was served with a chargesheet under Section 8 of Extra Departmental Agents (Conduct & Service) Rules 1964 (in short Rules of 1964). It is stated that one ^{Ram} Sri/Kulahal, Asstt. Supdt. of post offices, Basti, was appointed as Enquiry Officer (E.O. in short), who after completing the inquiry submitted his enquiry report dated 10.10.92 and found that the charges levelled against the applicant was ^{not} proved. The disciplinary authority, however found that during the enquiry proceedings, the statement of the complainant namely Sri Bhagwat Das was not recorded by the E.O. Hence, the proceedings were sent back to the E.O. for recording the statement of the complainant. However, the statement of complainant namely Bhagwat Das could not be recorded because he did not turn-up on the date fixed i.e. 14.4.93.

3. It appears that the disciplinary authority not being satisfied by the report submitted by the E.O., a second show-cause notice was given to the applicant and appointed one Shri Chunni Lal Soni, as E.O. to record the statement of the complainant, which was recorded on 30.4.93. The E.O. after recording the statment of the complainant, submitted his report on 14/15.9.93. The applicant was duly handed-over a copy of the enquiry report alongwith the letter dated 23.9.93, who vide his representation dated 7.10.93 submitted his reply. The disciplinary authority after considering the reply of the applicant as well as the report of the E.O., passed the impugned punishment order dated 15.10.93. The applicant aggrieved by the aforesaid punishment order, preferred an appeal, which was duly considered by the appellate

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authority and rejected by the second impugned order dated 8.5.95.

4. The applicant has challenged the validity of the aforesaid orders mainly on the ground that the action of the disciplinary authority in remitting the case back to the E.O. was not legal. The second show-cause notice issued to the applicant without enclosing any tentative opinion or showing any dis-agreement with the E.O., therefore, the subsequent proceedings are not maintainable. It is further stated that one Shri R.S. Jaiswal was not produced for cross examination and also did not accept the application for adjournment on medical ground on 30.4.93, hence the enquiry is vitiated. The applicant also claims that the civil suit filed by him before the Civil Court was dismissed, hence the claim of the ~~xxx~~ complainant was not legal and the action taken against the applicant is malafide because there was no loss to public exchequer.

5. We have heard the learned counsel for the parties and perused the pleadings on record.

6. The learned counsel for the applicant has stressed before us that the complainant had filed a criminal case before the Criminal Court namely in the Court of Judicial Magistrate, Basti, which was dismissed and the matter having been compromised between the parties. Similarly, the civil suit for recovery of the amount, in question, was also dismissed in default, hence the allegations against the applicant are not proved. We are, however, not ^{impressed} ~~expressed~~ ^{by} ~~any opinion on~~ the arguments of the learned counsel for the applicant because admittedly the criminal case was decided on the basis of compromise after the payment was made by the applicant in respect of encashment of NSC, in question, In other words the matter was not decided by the Criminal Court on merit. On the other hand, it shows that the applicant himself admits the case of the complainant of having ~~been~~ ^{been}

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encashed and received the amount of NSC, in question. Similarly, the Civil Suit was dismissed in default and not on merit. Therefore, the applicant cannot seek any benefit from the order passed by the Criminal Court, as far as the controversy involved in the case in hand is concerned. The learned counsel for the applicant has also alleged that the applicant was prevented from cross examining the complainant namely Bhagwat Das, hence the findings of the E.O. is vitiated. The learned counsel for the respondents has, however, pointed-out that the complainant who was 90 years old, was examined on 30.4.93 and on that date the representative of the applicant was also present alongwith the applicant who deliberately did not participate in the enquiry and ran-away, therefore, the plea of the applicant being ill on the date fixed is not made-out. The act of applicant was obviously not bonafide and he himself avoided the cross examination.

7. It may be stated that the applicant was duly issued a show-cause notice by the disciplinary authority and the applicant had submitted his reply. The learned counsel for the applicant has not been able to point-out any other defect or irregularity in conducting the enquiry against the applicant. We also find that the enquiry was properly conducted by the E.O. and the conclusions made by the disciplinary authority are based on evidence. Therefore, there is no scope of any interference by this Tribunal.

8. We also find that the order dated 8.5.95 passed by the appellate authority is well reasoned and speaking order. The appellate authority has considered all the points raised by the applicant in his appeal. Therefore, the appellate order does not require any interference by this Tribunal.

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9. For the reasons stated above, we do not find any merit in the O.A. and the same is dismissed. parties shall bear their own costs.

D. J. Madan

MEMBER (J)

[Signature]

MEMBER (A)

GIRISH/-