

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.578 OF 1996

ALLAHABAD THIS THE 27<sup>th</sup> DAY OF August, 2003

HON'BLE MAJ GEN K. K. SRIVASTAVA, MEMBER-A  
HON'BLE MR. A. K. BHATNAGAR, MEMBER -J

Kuber Nath,  
aged about 52 years,  
son of Shri Jagroop Prasad,  
working as P.A. (L.S.G.) Gorakhpur,  
Head Post Office,  
R/o Village-Post- Nautanwa,  
District-Gorakhpur (Now Maharajganj).

.....Applicant

(By Advocate Shri Swarajya Prakash)

Versus

1. Union of India,  
through the Ministry of Commns.  
(Deptt of Posts) Ashok Marg,  
New Delhi.

2. P.M.G. (Regional),  
U.P. Circle, Gorakhpur.

3. Sr. Supdt. Post,  
Gorakhpur Division,  
Gorakhpur.

.....Respondents

(By Advocate Shri S. Chaturvedi)

O R D E R

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

By this O.A. filed under section 19 of Administrative  
*hu*

Tribunals Act 1985, the applicant has challenged the order of Appellate Authority dated 03.12.1995 (Annexure A-1), order of Disciplinary Authority dated 11.07.1995 (Annexure A-2) in regard to treating the entire period of suspension as the one spent on suspension and the Appellate order of Post Master General, Gorakhpur dated 30.03.1994 (Annexure A-3) modifying the penalty imposed by Disciplinary authority dated 29.6.1992 (Annexure A-2) and has prayed that the above orders be quashed with all consequential benefits.

2. The facts, in short, are that the applicant during 1984 was working as Sub Post Master, Laxmipur Post Office under Kunre Ghat, Head Post Office, Gorakhpur. As per applicant, the post office was a double handed post office and one Shri Ved Vyas was posted as Postal Assistant.

3. The grievance of the applicant is that Shri Ved Vyas the Postal Assistant committed the fraud and the applicant has been unnecessarily implicated. The applicant was given a Major Penalty chargesheet dated 09.11.1984, common enquiry was conducted and after the conclusion of the enquiry punishment order dated 19.12.1986 was passed. He filed an appeal which was rejected by order dated 07.09.1987. Aggrieved by the same the applicant preferred a Review Petition dated 01.05.1990 addressed to Member (P) POSTAL SERVICES BOARD, New Delhi. The applicant filed O.A. No.54/88 challenging the orders dated 19.12.1986 and 07.09.1987 on the ground that the Principles of natural justice had been violated. The O.A. was allowed by this Tribunal. The Punishment order dated 19.12.86 and Appellate order dated 07.09.1987 were quashed being cryptic in nature with direction to the respondents to re-consider and decide the case from the stage of enquiry report. In pursuance to the direction of the Tribunal the Enquiry report dated 03.12.1985/03.01.1986 was supplied to the applicant and on

receipt of his reply the DPS, Gorakhpur passed the impugned Punishment order dated 29.06.1992 awarding the punishment of reduction <sup>h h</sup> in pay of the applicant by three stages for a period of two years with effect from 01.07.1992 and also that the applicant will not earn increment of pay during the period of reduction and after expiry of the period of reduction, the punishment will have the effect of postponing his future increments. Besides this, ~~the~~ order of recovery of an amount of Rs.5000/- in twenty equal installment was also awarded. The applicant filed an appeal dated 29.09.1992 addressed to Post Master General, Gorakhpur. Since the appeal was pending the applicant filed another O.A. No.494/94 which was disposed off at the admission stage on 31.03.1994 with direction to the Appellate Authority to decide the appeal within three months. The applicant in para 4.8 of the O.A. <sup>h h</sup> has stated that the impugned Appellate order dated 30.03.1994 was passed by ante-<sup>h</sup> dating it. Thereafter the Disciplinary authority passed the order dated 11.07.1995 (Annexure A-2) treating the suspension period as one spent. On suspension for all purposes limiting the pay and allowances to the extent of what had already been paid to the applicant as subsistence allowance. The applicant filed appeal before Director Postal Services, Gorakhpur which was rejected by the impugned order dated 08.12.1995. Aggrieved by the same the applicant has filed this O.A. which has been contested by the respondents by filing counter affidavit.

4. The learned counsel for the applicant Shri S. Prakash submitted on 09.07.2003 that the O.A. be decided on the basis of written arguments filed by him. He has further submitted that he has informed the counsel for the respondents who has no objection in filing the written arguments. Therefore, in pursuance to the order of this Tribunal dated 09.07.2003



the learned counsel for the parties have filed written arguments.

5. The learned counsel for the applicant in the written arguments<sup>h</sup> has stated that this Tribunal's order dated 31.03.1994, became no order to appellate authority. The Appellate authority passed back-dated order on 30.03.1994 i.e., one day earlier. The Disciplinary authority Senior Superintendent of Post Offices issued show cause notice to the applicant on 10.04.1995 as to why the period of suspension may not be treated as suspension with effect from 16.06.1984 to 19.12.1986 and thereafter dismissal period from 20.12.1986 to 12.08.1992<sup>h</sup> deemed<sup>h</sup> as<sup>h</sup> suspension for all purposes. The applicant sent his representation on 19.04.1995. However, without applying his mind the Disciplinary Authority<sup>h</sup> passed<sup>h</sup> the order dated 11.07.1995. Even the Appellate Authority i.e., Director Postal Services by the impugned order dated 08.12.1995 rejected<sup>h</sup> the appeal<sup>h</sup> / <sup>h</sup> filed against<sup>h</sup> treating the entire period as period spent on suspension. The applicant has challenged the Joint enquiry not being according to law i.e., Rule 17 (2). The learned counsel has placed reliance on the judgment of Hon'ble High Court of State of Punjab and Haryana in writ petition no.2150/63 in the case<sup>h</sup> / <sup>h</sup> of<sup>h</sup> Kabul Singh Versus Union of India wherein it has been held that the direction contained in sub Rule (2) of Rule-17 is mandatory. The other delinquent employee Shri Ved Vyas was also involved in this case and he was let off, which is not permissible and is in violation of Rule 17(2) of CGS (CCA) Rules.

6. The second ground taken by the applicant is that the applicant was not supplied the copy of the Preliminary enquiry report and also the statement of witnesses recorded on behalf of the applicant and on behalf of the respondents recorded



on 09.11.1984. The Hon'ble Supreme Court has taken a view that effective opportunity of hearing has been violated in absence of the statement of the witnesses examined during the period and not supplied to the applicant when they are asked for. The above view has been laid down by the Apex Court in State of U.P. Versus Shatrughan Lal and Another AIR 1998 SC 3038, same is the position in this case.

7. Another ground which has been taken by the applicant is that the loss incurred to the Government was to the tune of Rs.15000/- and, therefore, the case should have been reported to CBI immediately for full investigation. Nothing happened in this case. This is not permissible being against rule.

8. Resisting the claim of the applicant the learned counsel for the respondents in his written arguments has submitted that the Director Postal Services, Gorakhpur, the Disciplinary Authority after going through the entire record and considering the matter carefully and going through each and every aspect correctly, imposed the penalty of reduction in pay by three stages for a period of two years with cumulative effect from 01.07.1992. The Disciplinary Authority also directed that the applicant would not earn increments during the period of three years. However, the Appellate Authority i.e., Post Master General, Gorakhpur/<sup>taking a lieant view</sup> vide order dated 30.03.1994 modified the punishment to the effect that penalty already imposed will have no cumulative effect. The applicant applied for regularisation of suspension period vide application dated 08.09.1994 and the Senior Superintendent of Post Offices, Gorakhpur i.e., respondent no.3 after considering the case of the applicant on each and every aspect passed a reasoned order on 13.07.1995. The learned counsel for the respondents has placed reliance on number of cases and submitted that no



interference is warranted in this case as the authorities have considered each and every aspect of the case before passing the impugned orders.

9. We have carefully gone through the written arguments filed by the learned counsel for the parties as well as the pleadings in the O.A. We have also perused records.

10. The applicant in this O.A. has challenged the order of the Appellate Authority dated 30.03.1994. In case the applicant had any grievance he should have approached this Tribunal challenging the said order within a period of limitation as provided in Section 21 of Administrative Tribunals Act 1985. We agree with the submissions of the respondents that the Appellate order dated 10.03.1994 (Annexure A-3) became final and challenging the same by means of this O.A. filed on 06.05.1996 i.e., after more than two years is barred by limitation and, therefore, the Punishment order dated 29.06.1992 (Annexure A-4) assumed finality.

11. While going through the written arguments and also the pleadings in the O.A. we find that the arguments have been advanced <sup>by the applicant</sup> that the Punishment orders dated 29.06.1992 (Annexure A-4) and Appellate order dated 30.03.1994 (Annexure A-3) are against law as there has been violation of Principles of natural justice. Number of points have been raised by the applicant that the enquiry was vitiated because of non supply of various documents and, therefore, the applicant <sup>has</sup> not been afforded full opportunity. The applicant in para 6 of the O.A. has admitted that this Tribunal allowed the applicant's O.A. No.54/88 with direction to re-consider and decide the case from the stage of enquiry report, <sup>h</sup> meaning thereby that no illegality has been found by this Tribunal upto completion

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of the enquiry. In para 7 of the O.A. the applicant has submitted that in compliance of the order of this Tribunal, copy of the Enquiry Report dated 23.12.1985/3.01.1986 was supplied to the applicant. Therefore, the sole ground on which this Tribunal quashed the Punishment order dated 19.12.1986 and Appellate Order dated 7.9.1987 was on account of the failure on the part of the respondents to supply the Enquiry Report to the applicant before passing the said orders. In view of the above, we do not find much of <sup>h</sup> ~~any~~ <sup>h</sup> substance in ~~the~~ <sup>h</sup> ~~the~~ <sup>h</sup> arguments advanced by the applicant. These were the points including the validity of holding of joint enquiry which should have been raised during the course of the enquiry in which the applicant participated. Raising these issues now is an after-thought which cannot be given any weightage.

12. Another argument advanced by the applicant is that the Appellate Authority <sup>h</sup> antedated <sup>h</sup> the Appellate order dated 30.3.94 one day before the order of this Tribunal was passed. We do not find any substance in this argument because by <sup>h</sup> ante-dating <sup>h</sup> the order, the Appellate Authority was not going to gain anything. Such arguments are totally mis-conceived.

13. We now come to the impugned orders dated 11.07.1995 passed by the Disciplinary Authority treating the period from 16.6.1984 to 12.08.1992 as period spent on suspension and also the order dated 8.12.1995 of the Appellate Authority upholding the order of the Disciplinary Authority. We agree with the submission of the respondents' counsel that respondent no.3 i.e., Senior Superintendent of Post Offices, Gorakhpur and Post Master General, Gorakhpur are well within <sup>h</sup> <sup>h</sup> their jurisdiction to pass these orders as per rules. These orders are perfectly correct and are legally justified in all manner. The applicant was holding a responsible post of Sub Post Master and he was the overall incharge of the Post Office. The applicant <sup>h</sup> cannot <sup>h</sup> <sup>a</sup> absolve <sup>h</sup> himself from the responsibility with which he was entrusted upon. A fraud case occurring in the Post Office where public money is involved cannot be viewed lightly. However, the Appellate Authority in the given

circumstances considered the case of the applicant and modified the punishment of the applicant by the impugned order dated 30.03.1994. Modification of the order does not absolve the applicant from the severity of the charges levelled against the applicant. and, therefore, there is no good ground for interference by us in this case.

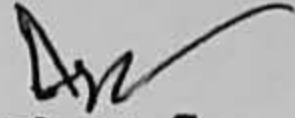
14. The Hon'ble High Court in the case of H.K. Oberoy Versus Union of India and Others reported in ESC 2002 (II) 340 has held that the finding of facts recorded by the Disciplinary Authority or by the Appellate Authority cannot be interfered with by the court. The Hon'ble Supreme Court in the case of State of U.P. Versus N.K. Shukla reported in AIR (1996) page 1561 has held that it is to be decided by the Disciplinary Authority as to what punishment <sup>to</sup> <sup>be</sup> <sup>imposed</sup> on the delinquent. The court will not go as Appellate court. Further in Union of India Versus Mohd Rafiq Ul-Ali reported in 1999 SCC (L&S) 634, <sup>the</sup> <sup>Hon'ble</sup> <sup>Supreme</sup> <sup>Court</sup> <sup>has</sup> <sup>held</sup> <sup>that</sup> <sup>the</sup> <sup>court</sup> <sup>cannot</sup> <sup>substitute</sup> <sup>its</sup> <sup>own</sup> <sup>view</sup> <sup>for</sup> <sup>that</sup> <sup>of</sup> <sup>the</sup> <sup>Disciplinary</sup> <sup>Authority,</sup> <sup>in</sup> <sup>the</sup> <sup>matter</sup> <sup>of</sup> <sup>proof,</sup> <sup>mentioned</sup> <sup>in</sup> <sup>the</sup> <sup>mis-conduct.</sup> In will also be relevant to mention that the Hon'ble Supreme Court in the case of AEPC Versus A.K. Chopra reported in (AIR) 1999 (SC) 625 has held that the court should not interfere normally with either the factual findings regarding guilt or penalty or punishment imposed by the Disciplinary Authority. The Hon'ble Supreme Court in the case reported in Judgement Today 1996 VOL III 96 has held that in case involving corruption or embezzlement there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and <sup>is</sup> <sup>opposed</sup> <sup>to</sup> <sup>the</sup> <sup>public</sup> <sup>interest.</sup> The amount to misappropriation may be small or large it is irrelevant.

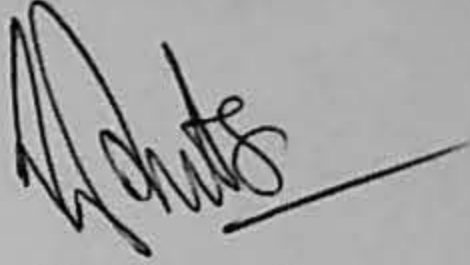


However, the Disciplinary and Appellate authorities have not awarded the extreme punishment of Dismissal/Removal and we do not find any illegality in the impugned orders which are detailed and speaking.

15. In the facts and circumstances, no interference is called for and the O.A. is accordingly dismissed being devoid of any merit.

16. There shall be no order as to costs.

  
Member-J

  
Member-A

/Neelam/