

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHALLAHABAD.

Dated : This the 23rd day of May 2002

Original Application no. 1352 of 1997.

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

Ambarish Dhar Dubey, S/o Late Sri Ballabha Shran Dhar Dubey,
R/o Vill & Post Sonbarsa Bazar,
Tappa Khas, Pargana Tilpur, Tehsil Nichlaul,
Distt. Mahrajganj, Ex. EDBPM, Sonbarsa in the
Distt. Mahrajganj.

... Applicant

By Adv : Sri JM Sinha & Sri A. Tripathi

Versus

1. Union of India through the Secretary,
Ministry of Communication, Department of Post,
Govt. of India, Dak Bhawan, New Delhi.
2. Post Master General, Gorakhpur Region,
Gorakhpur.
3. D.P.S. S/o PMG, Gorakhpur Region, Gorakhpur.
4. SSPOs Gorakhpur Division, Gorakhpur.
5. Ziladikari, Mahrajganj.
6. Tehsildar, Nichlaul, Mahrajganj.

... Respondents

By Adv : Km Sadhna Srivastava

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O R D E RHon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of the AT Act, 1985, the applicant has challenged punishment order of Sr. Superintendent of Post Offices (in short SSPOS) Gorakhpur dated 27.7.1995 (Ann 13) ^h of respondent no. 4, modified punishment order dated 9.10.1996 passed by Director Postal Services (in short DPS) Gorakhpur (Ann A20) and appellate order dated 29.9.1997 passed by Post Master General (in short PMG) Gorakhpur (Ann A1) and has prayed that these be quashed with all consequential benefits. The applicant has also prayed that Recovery certificate issued by respondent no. 4 to respondent no. 5 and 6 be quashed as no loss to the Department of Posts (herein after Department) has been caused.

2. The facts, in short, giving rise to this OA are that the applicant was working as Extra Departmental Branch Post Master (in short EDBPM) Sonbarsa Branch Post Office in account with Mithaura Bazar Sub Office, Distt. Maharajganj. The applicant was put off duty on 1.8.1990 on account of fraudulent payment of Money Orders (in short MO) for Rs. 1000/- on 16.7.1990 and was dismissed by respondent no. 4 vide order dated 24.1.1992. The applicant preferred an appeal to DPS and the appellate authority modified the punishment of recovery of Rs. 500/- in 5 instalments vide order dated 6.4.1992. As per applicant respondent no. 4 appointed another man as EDBPM Sonbarsa Branch Post Office on recommendation of Sub Divisional Inspector (in short SDI). On receipt of orders of reinstatement of DPS SDI connived with the substitute EDBPM (appointed in place of applicant) and got several fraudulent deposits and withdrawal entered in 15 Savings Bank and 22 RD Pass Books and certain entries were made even on dates after

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1.8.1990, while the applicant was put off duty and was not holding the office of EDBPO. Disciplinary proceedings were initiated by respondent no. 4. Charge Sheet was issued on 3.6.1992/10.8.1992. Inquiry Officer was appointed who held the charges proved and respondent no. 4 dismissed the applicant from service vide order dated 16.8.1993. The appellate authority quashed the punishment order and ordered for denovo proceedings. Denovo proceedings were started, Inquiry was held and Inquiry Officer submitted his report and the SSPOs i.e. respondent no. 4 passed the punishment order vide order dated 27.7.1995 imposing the punishment of recovery of Rs. 5220/- in 36 instalments of Rs. 145/- permonth. DPS, ^{in per application} out of malafide, issued a notice that he found punishment inadequate and proposed the punishment of dismissal. The applicant sent his representation in reply to show cause but respondent no. 3 passed the punishment order dated 9.10.1996 dismissing the applicant. Applicant preferred appeal against the order on 6.11.1996. The respondent no. 2 rejected the appeal by impugned order dated 29.9.1997. Hence this OA which has been contested by the respondents.

3. Sri A. Tripathi, learned counsel for the applicant submitted that the applicant is victim of malafide and conspiracy. The applicant was put off duty on 1.8.1990; was ordered by DPS on 6.4.1992 to be reinstated. Respondent no. 4 put the applicant again off duty on 12.5.1992 without reinstating the applicant. Second charge sheet was issued on 3.6.1992, charges were not proved yet applicant was dismissed on 16.8.1993. Punishment was quashed on 14.12.1993. ^{In stand in} Charge sheet disproved in the Departmental Enquiry yet punishment of recovery was imposed on 27.7.1995.

4. Learned counsel submitted that during enquiry out of

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34 witnesses only 18 turned up. Inquiry Officer (in short IO) held that the charges were not proved. No disagreement memo was issued by Disciplinary Authority and the punishment was passed vide impugned order dated 27.7.1995 for recovery of Rs. 5220/- in 36 instalments of Rs. 145/-. Appellate authority suo moto reviewed, ^{an} ~~order~~ for enquiry and enhanced the punishment from recovery to that of Dismissal from Service by order dated 9.10.1996.

5. Sri A. Tripathi submitted that the applicant was put off duty on 7.8.1990 yet he is charged for defalcation of amounts between 7.8.1990 to 31.8.1990 when he was not working as Branch Post Master (in short BPM). During enquiry Sri A.K. Singh SDI deposed that the documents produced before him were forged. The applicant was not supplied the relied upon documents. Disciplinary authority did not give any disagreement memo when the charges were held as not proved by the IO. ^{The show cause notice regarding enhancement of punishment given by DPS cannot be construed as disagreement notice.} There is difference of opinion between Disciplinary authority ie respondent no. 4 and appellate authority respondent no. 3. Respondent no. 4 in his punishment order has used the phrase expected loss (अन्तिम घाटी) whereas the respondent no. 3 has held that the loss has been caused (होने वाली घाटी). There has been conspiracy against the applicant as would be clear that inspite of order of appellate authority dated 6.4.1992 to reinstate the applicant, the applicant was never reinstated. The entire action of the respondents is malafide and illegal.

6. The learned counsel for the applicant further submitted

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that the respondents filed FIR with Police Station Chowk, Maharajganj, registered as Crime no. 22 of 1991 and it ended in final report.

7. Sri A. Tripathi, finally submitted that it is a case of no evidence because IO recorded the finding that the charges were held proved subject to production of Branch Office Account. Branch Office Account and Branch Office Journals were not produced. Instead fake journals and fake Branch Office account were produced. In these documents the signatures of inspecting officer were either forged or missing which has been deposed by the then SDI who was a prosecution witness. Respondents no. 2 and 3 did not apply their mind while passing the orders. The order of respondent no. 2 is not a speaking order. There was no loss to the department and the action of respondent no. 4 to send recovery certificate (in short RC) to respondent no. 5 is arbitrary and illegal. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in SC Girotra Vs. United Commercial Bank (UCO Bank) and others, 1995 SCC (L&S) 1140 wherein it has been held that natural justice demands that reasonable opportunity is given to the delinquent to defend himself. Another judgment of apex court cited is State of UP Vs. Shatrughan Lal and others 1998 SCC (L&S) 1635 in which Hon'ble Supreme Court has held that in case documents relied upon are not supplied, the charged employee has to be expressly informed that he has no alternative course of inspecting the documents. Enquiry is vitiated if without informing him it is left to him to inspect documents if he so wanted. The Hon'ble Supreme Court has further held that if charged employee is required to submit reply to charge sheet without having copies of the statements recorded during preliminary enquiry he is deprived of opportunity of effective hearing. Besides

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supply of copies is also necessary where witnesses making the statements are intended to be examined against him in regular enquiry. The learned counsel for the applicant also cited the judgment of apex court in Yogenath D Bagde Vs. State of Maharashtra and others 1999 SCC (L&S) 1385 in which the law laid down by the Hon'ble Supreme Court is that in case findings in the enquiry report are favorable to charged employee he has to be given opportunity of hearing before reversing findings of the enquiry officer as has already been held in Punjab National Bank Vs. Kunj Behari Mishra (1998) SCC 84.

8. Contesting the case Miss Sadhna Srivastava, learned counsel for the respondents submitted that the applicant misappropriated Govt. money, amount of money orders and amount of savings bank/RD deposit and withdrawals for which the punishment of dismissal has been correctly awarded. The applicant is not fit to be retained in service. However, in *denovo* proceedings all the aspects were re-examined and the petitioner was taken back on duty with the punishment of recovery of Rs. 5220/- with proviso that if any claim arises exceeding the amount ordered to be recovered the applicant will be held responsible.

9. Miss Sadhna Srivastava, submitted that the impugned order of respondent no. 3 dated 9.10.1996 and respondent no. 2 dated 29.9.1997 are detailed and reasoned orders with full application of mind. The learned counsel for the respondents argued that appellate authority, if he so decides to enhance the punishment, is required to issue show cause notice and the same has been issued which is placed as Ann 12 to the O.A. Though the applicant was put off duty on 1.8.1990, the records

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office seals and stamps practically remained in the custody of the applicant and he misused it.

10. We have heard learned counsel for the parties and have closely examined records. We have given due consideration to the submissions advanced.

11. We do not agree with the submission of the learned counsel for the applicant that there was a conspiracy hatched by respondent no. 3 and 4 in connivance with the substitute to the applicant engaged after the applicant was put off duty and SDI Maharajganj and also the action of the respondents is malafide. In fact the applicant has failed to establish malafide on the part of respondents as there are no specific allegation nor have the respondents been impleaded in their personal capacity. Hence this plea of the applicant is rejected. However, we would like to observe that the respondents have erred on number of counts. We find substance in the allegation by the applicant that he was not supplied the complete documents; the then SDI Maharajganj A.K. Singh, deposed during the enquiry that the documents produced were not original; he has been charged for the entries in the various Pass books pertaining to period after he was put off duty and was not working as BPM and the prosecution failed to produce ~~the~~ all the prosecution witnesses (ie produced only 18 out of 34). In our view the enquiry at various stages has not ~~be~~ conducted properly. Lot many doubts remain unanswered. We fail to understand as to how could the applicant be held responsible for the entries/transactions made after 1.8.1990 ie the date the applicant was put off duty. The plea advanced by the respondents in para 13 of the counter affidavit that though the applicant was put off duty, the records, office seals and stamps remained

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seals and stamps practically remained in the custody of the applicant and the applicant misused them cannot be accepted.

However could the respondents allow such a thing ? Why have the senior authorities failed to take action against SDI or SSPOs to have allowed such a thing to happen ? These are the questions which would come naturally in anybodys mind.

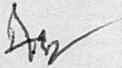
12. We would like to examine specially the order of respondent no. 4 ie SSPOs Gorakhpur dated 27.7.1995 and order dated 9.10.1996 of respondent no. 3 ie DPS Gorakhpur. By order dated 27.7.1995 the respondent no. 4 ie disciplinary authority has imposed the penalty of recovery of Rs. 5220/- in 36 instalments of Rs. 145/- each permonth. We have perused the enquiry report and we are unable to understand as to wherefrom this figure of Rs. 5220/- has been arrived at. So is the case in respect of order dated 9.10.1996 of respondent no. 3 regarding loss of Rs. 53102.50 to the department. The enquiry officer, in his enquiry report, has failed to establish the exact loss to the department. The applicant in appeal to respondent no. 2 gave 14 grounds for consideration but respondent no. 2 in the impugned order dated 29.9.1997 has discussed only two grounds and rejected the appeal. We are of the view that these orders suffer from error of law and are liable to be quashed.

13. In the light of the aforesaid observations, OA is partly allowed. IO's report dated 30.8.1994 (Ann A-10), Order dated 27.7.1995 (Ann A-13), 9.10.1996 (Ann A-20) and 29.9.1997 (Ann A-1) are quashed. The case is remanded to Disciplinary authority respondent no. 4 ie SSPOs Gorakhpur to institute the disciplinary proceedings from the stage of issue of Charge sheet dated 30.6.1992/10.8.1992 (Ann A-5) and pass order in accordance with law on conclusion of disciplinary

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proceedings within six months. The respondents are further directed to withdraw the recovery certificate issued to respondent no. 5 and ensure that no recovery is made till the finalisation of disciplinary proceedings. The applicant will be treated as official put off duty till a fresh order is passed and the applicant will not be entitled for any back wages.

14. There shall be no order as to costs.


Member (J)
Member (A)

Dated : 25/05/2002
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