

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 19th day of April 2002.

Original Application no. 125 of 1998.

Hon'ble Mr. Justice R.R.K. Trivedi, VC
Hon'ble Maj Gen K.K. Srivastava, AM

N.C. Chauhan, S/o late R.K. Chauhan,
R/o vill and Post Kohara Sultanpur,
via Fatehganj, Distt. Jaunpur.

... Applicant

By Adv : Sri O.P. Gupta

Versus

1. Superintendent of Post Offices,
Jaunpur Division, Jaunpur.
2. Director Postal Services, Allahabad.
3. Post Master General, Allahabad.
4. Union of India through Secretary Ministry of Communication,
Govt. of India, New Delhi.

... Respondents

By Adv : Sri Amit Sthalekar.

O R D E R

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

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged the punishment order dated 31.8.1993 ^(Ann A3) imposing the punishment of recovery and reduction of pay scale, appellate order dated 6.11.1995 (Ann A5) imposing the punishment of removal from service and order of the Revisional authority dated 29.9.1997 (Ann A6) up-holding the appellate order and has prayed that the above orders be quashed

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and respondents be directed to reinstate the applicant in service with all consequential benefits.

2. The facts, in short, giving rise to this O.A. are that the applicant at relevant time was posted as MO paid Postal Assistant at Jaunpur Head Post Office. He was served with a charge sheet dated 24.3.1992 for major penalty, enquiry was held and the Enquiry Officer (in short EO) held charges proved. The disciplinary authority i.e. Supdt. of Post Offices (in short SPOs) imposed penalty of recovery of Rs. 1240/-. The applicant preferred an appeal to appellate authority i.e. Director Postal Services (in short DPS). The appellate authority served a show cause notice on 4.4.1995 and imposed the penalty of removal vide order dated 6.11.1995. The applicant filed revision petition on 8.12.1995 which was rejected by Post Master General Allahabad (respdt no. 3) vide order dated 29.9.1997. Hence this OA which has been contested by the respondents and respondents have filed counter affidavit.

3. Heard Sri O.P. Gupta, learned counsel for the applicant and Sri A. Sthalekar, learned counsel for the respondents and perused records.

4. Sri O.P. Gupta, learned counsel for the applicant submitted that the charges levelled ~~were that~~ the applicant violated provisions of Rules 23, 26 and 33 of Postal Manual Vol. VI Part II which is not correct. High Value money orders (in short MOs) were received in the Post Office during January 1991 and March 1991 in the name of applicant, his wife and son. These MOs were checked thoroughly by the Post Master and then handed

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over to the applicant for effecting payment through Post Man. The payment of these MOs were made as per rules. Even then the charge sheet dated 24.3.1992 was served on the applicant with malafide intention. No complaint regarding irregular payment was received from any remitter, nor was any FIR lodged against those who were involved in the alleged conspiracy including his son who might have committed some mistake or prepared false forms of MO. However, Sri N.K. Gupta, the then SPOs prepared a false case and initiated disciplinary proceedings. . He himself appeared as a State witness against the applicant.

5. The learned counsel for the applicant submitted that the proper procedure in conducting the departmental proceedings was not followed. Statements of 12 prosecution witnesses were recorded prior to regular enquiry. During the regular enquiry most of the witnesses did not appear and those who appeared they clearly stated that MOs were genuine and there was no reason for any suspicion. No complaint was received which was corroborated by number of witnesses. Applicant did not violate any rule as referred to in the charge sheet at any stage.

6. Sri O.P. Gupta, learned counsel for the applicant submitted that the TO had held that charge no. 1 and 2 are not proved. He has held only charge no. 3 as proved. The disciplinary authority did not issue any disagreement memo and passed the punishment order. The appellate authority has mentioned in his order that the charges are proved. It is not understood as to how did the appellate authority arrive at that conclusion. The appellate authority did not give any reason for enhancement of punishment in the show cause notice dated 4.4.1995. Besides the applicant and his wife were receiving the MOs from Brick Kiln owner who owed money to the applicant for non supply of material. In case the respondents took it to be a case of fraud they should

have lodged FIR.

7. ^{Summing} up the arguments learned counsel for the applicant submitted that charges against the applicant are false, the applicant has not violated any rule, the disciplinary authority could not be a state witness during enquiry, reasons for enhancement of punishment were not given in the show cause notice of appellate authority and the revision petition addressed to Member Postal Services was irregularly decided by PMG Allahabad. There has been no complaint either from the payees or remitter Harijan & Social welfare officer Janupur who could not establish his own case. In fact it is a case of no evidence and the punishment imposed is too harsh. The learned counsel placed reliance on the decision of this Tribunal in N Rama Rao Vs. President, Council of Scientific and Industrial Research, New Delhi & other (1987) 5 ATC 575 in which it has been held that it is the duty of the Reviewing authority to give reasons if he is differing with penalty imposed by the disciplinary authority and issuing show cause notice for dismissal. Learned counsel for the applicant has also placed reliance on the judgment of Hon'ble Supreme Court in Yoginath D Bagde vs State of Maharashtra & others 1999 SCC (L&S) 1385 in which it has been held that disciplinary authority before forming its final opinion has to convey to charged employee its tentative reasons for disagreeing with the findings of the EO. Another case cited by the learned counsel is UP State Road Transport Corporation and others Vs. Mahesh Kumar Mishra & others 2000 SCC (L&S) 356 wherein it has been held by Hon'ble Supreme Court that High Court was justified in interfering with the quantum of punishment as the punishment was shockingly disproportionate.

8. Sri Amit Sthalekar, learned counsel for the respondents, resisting the claim of the applicant, submitted that

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the orders of the respondents are perfectly legal and valid. The applicant introduced his son Sri Paras Nath to one Sri Raj Kishore Yadav who was posted as SPM at Sha-karmandi Post Office Jaunpur during the relevant period and requested Sri Yadav to help his son saying that his son was an agent of Harjan and Social Welfare Office Jaunpur and he booked MOs in lots to different class of people. Mis-representing on in this way the applicant committed fraud. Applicant's son Paras Nath tendered four cheques collected from District Harjan & Social welfare Officer for Rs. 14300/- each with 400 MO forms alongwith the list of beneficiaries at Sha-karmandi Post Office. Instead of 400 MOs SPM Shakarmandi issued only 123 MOs. Out of these 36 MOs amounting to Rs. 37169/- were made payable to the applicant, his son Paras Nath and his wife Smt Gangajali on different addresses while 3 MOs for Rs. 6000/- were made payable to Sri Raj Kishore Yadav SPM Shakarmandi Post Office and his wife Smt Kamha Devi. Thus applicant committed fraud as ^{on}one hand he introduced his son Sri Paras Nath to SPM Shakarmandi Post Office for extending all possible help and on the other hand he took the payment of MOs payable to him besides making window payment of 3 MOs which were meant for Paras Nath.

9. Smt Amit Sthalekar submitted that as MO paid Assistant the applicant failed to exercise the prescribed check through there were sufficient reasons to suspect the genuineness of MOs received in his office for payment. He failed to notice that these High value MOs were not rounded by red ink. The main reason was that he was fully involved in the fraud as he took the payment himself or got them paid to his son, wife and other relatives

10. Learned counsel for the respondents further submitted that the appellate authority ie DPs Allahabad, respdt no2 issued show cause notice giving the applicant reasonable

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opportunity and only then issued the impugned order dated 6.11.1995 inflicting the punishment of removal from service. PMG & Respd't no. 3 applied mind and rejected the review petition by order dated 29.9.1997.

11. Sri Amit Sthalekar, also submitted that no doubt there was no complaint from the remitter but as a public servant the entire action of the applicant was undesirable and against law. Charge against the petitioner was fully established as has been discussed in the punishment order, appellate order and order of Revisionary authority. There was no question of any conspiracy. The plea of the applicant that he was receiving the MOs from Brick Kiln owner who owed money to the applicant is far from truth. The learned counsel argued that the revision petition was preferred to the Member Postal Services Board but it was correctly decided by PMG the next higher authority to respondent no. 2 as the same was against the punishment of removal awarded by respondent no. 2 and the action of PMG is covered by the provision of Rule 23 of CCS (CCA) Rules 1965.

12. We have carefully considered the submissions of learned counsel for parties and have closely perused records. We have also examined the record of disciplinary proceedings placed before us.

13. It is apparent from the facts that the applicant is not innocent. Three charges were levelled against the applicant in the charge sheet dated 24.3.1992.

1. i. Article -I

The said Sri N C Chauhan while working as PA MO Paid at Jaunpur HO during the period from January 1991 to March 1991 failed to properly examine the Money Orders received for payment at Jaunpur HO on 15.1.91

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6.2.91 18.2.91 and 6.3.91 violating the provisions of Rule 23 of the Postal Man. Vol VI Part II and thereby failed to maintain absolute integrity and devotion to duty as required under Rule 3(1) (i) (ii) of CCS (Conduct) Rules 1964.

ii.

Article II

The said Sri NC Chauhan while functioning as PA MO Paid at Jaunpur HO entrusted the Money Orders for payment to Sri Ram Deo Vishwakarma Town Postman Jaunpur HO on 6.2.1991, 18.2.1991 and 6.3.1991 in excess of the authorised limits violating the provisions of rule 26 of the Postal Man. Vol VI part II read with Govt. of India ministry of communication Deptt of Posts New Delhi circular No. 23-12/89-CI dated 31.10.90. Thus the said Sri NC Chauhan exhibited lack of devotion to duty as required under Rule 3(1) (ii) of the CCS (Conduct) Rules 1964.

iii.

Article III

The said Sri NC Chauhan while working as PA M^O paid at Jaunpur HO during the month of January 1991 to March 1991 failed to give the CPOA 4185 (Shakarmandi) PO MO Nos 3584/6 and 3584/7 dated 16.2.1991 for Rs. 2000/- each P/T Sri Paras Nath C/o Anis Tailor Master, Urdu Bazar Jaunpur in delivery and fraudulently paid these MOs to his son Sri Paras Nath at the window of the PO on 19.2.1991 in contravention of Rule 33 of Postal Mn. Vol. VI Part II. Not only this, the said Sri NC Chauhan while so functioning during the aforesaid period took the payment of twelve MOs amounting to Rs. 24000/- himself on 6.2.1991 Jaunpur HO. All these MOs were got prepared by his son Sri Paras Nath in his name by replacing the original MOs forms sent by District Harijan and Welfare Officer Jaunpur for booking at Shakarmandi TSO Jaunpur, in collororation with Sri Raj Kishore Yadav, the then SPM of that TSO. He further paid CPOA 4185 MO No. 3587/7 dt. 5.3.1991 for Rs. 1619/- at the window of Jaunpur HO to his son Sri Paras Nath fraudulently although it was payable at Muradganj BO misusing his official powers exhibiting lack of integrity and devotion to duty and acting in a manner quite ~~and of the deviation~~

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unbecoming of a Govt servant as required under Rule 3(1) (i) (ii) (iii) of the CCS (Conduct) Rules 1964"

EO in his enquiry report dated 28.5.1993 has held only charge no. 3 as proved. The disciplinary authority in his punishment order dated 31.8.1993 has discussed charge I in detail and has mentioned the reason as to why the charge was held to be not proved. ^{by IO} The IO has held that it is the responsibility of booking office and not of office of payment to check that the MOs forms ~~tendered~~ for booking are complete. Since the number of MOs were meant for payment to his son, wife or applicant he got the MOs paid as per rules. However, the disciplinary authority has raised a question as to how and in what relation the MOs were remitted to the applicant by the Distt. Harijan and Social Welfare Officer Jaunpur. Similarly he has discussed about the charge no 2 which has also been held as not proved by IO. We would like to point out here that the correct procedure to be followed by the disciplinary authority was to issue the disagreement memo which he did not. Even the appellate authority should have given sufficient reasons in show cause notice for enhancing the punishment. The appellate authority failed to do so. Thus the action of disciplinary authority and appellate authority suffers from error of law. However, charge no. 3 was fully proved. Therefore, the main question which arises before is whether the punishment of removal was commensurate to charge III.

14. The entire issued has to be seen in totality. Admittedly the MOs originated from the office of Distt. Social and Welfare Officer and were booked at Shakarmandi Post Offices. It is also admitted that 36 such MOs for a total amount of Rs. 37169/- were paid to the applicant, his wife and son. This is in contradiction to what has been averred by the applicant in para 4 (ix) that some money was due to be paid to the applicant on account of purchase of bricks and some money was sent for applicant

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through alleged MOs which were paid to him. We would like to observe here that it is natural for any one to check the address of remitter when one receives any MO. In the instant case the applicant, his son and wife kept on ~~merrily~~ receiving high value MO payments. If the applicant was innocent, he would have been the first person to get suspicious about the genuineness of the MO as he was working as MO paid clerk and would have reported the matter to the higher authorities. We would also like to point out that there could not be any reason for the Distt. Social and Welfare Officer Jaunpur to remit MOs of high value payable to applicant, his wife and son. Thus nexus between applicant, his son and Sub Post Master Shakarmandi cannot be ruled out. Though there has been no loss to the department, yet the government funds of another department have been misappropriated through a well planned conspiracy. The integrity of the applicant is certainly questionable.

15. Integrity of a government employee is of utmost consideration in public service. If the conduct of a government servant becomes unbecoming of public interest, he deserves to be removed from service. Continuance of such employee in service is neither in the interest of public nor of department. The action of the respondents in removing the applicant from service is correct and needs no interference by us. The case law cited by the learned counsel for the applicant in support of his arguments are easily distinguishable and will not be helpful.


16. We also do not find any illegality in respondent no. 3 deciding the applicant's petition addressed to Member, Postal Services Board. The order of removal was passed by respondent no. 2 i.e. Director Postal Services, Allahabad and the appeal against such order lay before respondent no. 3 i.e. PMG, Allahabad, who is immediate superior to respondent no. 2. The applicant

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has not been able to substantiate his allegation of malafide on the part of Sri N.K. Gupta the then SPOs Jaunpur who did the preliminary enquiry.^{17.}

17. In view of the facts and circumstances and aforesaid discussion we have no good ground to interfere. The O.A. is devoid of merit and is liable to be dismissed. The O.A. is accordingly dismissed.

18. There shall be no order as to costs.



Member (A)



Vice-Chairman

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