

Reserved on 02.04.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1639 of 2001

Allahabad this the, 17th day of April, 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member (A)**

Balram Yadav (since deceased)

Manglesh Pratap Singh S/o Late Balram Yadav Ex-Extra Departmental Branch Post Master, P.O. Mugarsan (Hanumanganj), District Allahabad.

Applicant

By Advocate: Sri Chandrika Prasad

Versus

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

Respondents

By Advocate: Sri R.K. Srivastava

ORDER

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

The applicant has prayed for the following relief(s): -

" (i) The Hon'ble Tribunal may graciously be pleased to quash the impugned orders dated 13.12.1999 and 4.8.2000 passed by respondent no. 4 and 3 respectively.

(ii) The Hon'ble Tribunal may be pleased to direct the respondents to reinstate the petitioner/applicant in services forthwith.



(iii) Issue any other suitable relief in favour of the applicant which this Hon'ble Tribunal may deem fit and proper.

(iv) award cost of this application to the applicant."

2. The facts of the case, in brief, are as follows: -

That the applicant was initially appointed as Extra Departmental Branch Post Master (for short EDBPM) vide order dated 30.08.1982 and was posted at Branch Post Office, Mugarsan (Hanumanganj), Allahabad. There was no complaint against him regarding his work. On 22.08.1996, the then Inspector namely Late Sri P.R. Rao came at Branch Post Office, Mugarsan (Hanumanganj), Allahabad along with Overseer Shri Ram Dulare Prajapati, and demanded some illegal consideration from the applicant and also threatened the applicant to send him to Police custody. The Inspector informed the applicant that the Money Order No. 1893 dated 05.08.1996 amounting to ₹1000/- in favour of Shri Ram Swaroop Bhartiya R/o Village Purshottampur, Pali and other Money Order No. 1675 dated 09.08.1996 amounting to ₹1000/- in favour of Shri Ram Adhar Saroj, Village Purshottampur have not been served upon the respective persons and after making forged signatures of the recipients the applicant has misappropriated the amount of ₹2000/-. On the advise/pressure of the above Inspector, the applicant wrote the contents on the dictation of the Inspector, admitting the

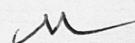
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factum of misappropriation. On 22.08.1996, after receiving the above application of applicant, his services were terminated with immediate effect on the same day without making any preliminary inquiry and without giving any notice or opportunity of hearing to the applicant, and in his place one Shri Ram Dhan Saroj has taken over charge of the post. The persons in whose favour Money Order was sent admitted in their statement that they have received the amount of Money Order. The applicant under pressure deposited ₹2000/- on 27.08.1996.

3. The respondents appointed one Shri Ashok Kumar Shukla as an Inquiry Officer in the case who after conducting the inquiry, submitted his inquiry report exonerating the applicant from the alleged charges, but respondent No. 4 did not agree with the above inquiry report, and sent letter to the applicant on 16.11.1999 for his reply, if any. The applicant has submitted a reply denying the allegations made in the above letter on 06.12.1999. The above amount of money order was paid to the actual recipients in presence of one Kamla Shankar who has verified the persons and receipt of the amount of money orders. The respondent No. 4 without considering the objection/defence raised by the applicant, held him

guilty and passed an order for dismissal of the applicant from service.

4. The applicant preferred an Appeal against the impugned order before respondent No. 3 on 25.03.2000, who has also arbitrarily and without considering the merits of the case dismissed the appeal. Thereafter, the applicant moved a representation/revision before the respondent No. 2 on 31.12.2000 on which no order was passed. Hence, this O.A. has been filed for the aforesaid relief(s) mainly on the grounds that the applicant has got no other means of livelihood for himself and his family members except the aforesaid service from which he has wrongly been dismissed. The Inquiry Officer, after conducting the inquiry, has already exonerated him. The grounds taken by the respondent No. 4 for passing the impugned order are not justified, no further inquiry was conducted, false case has been manufactured against the applicant under the pressure of the then Inspector P.R. Rao and Overseer Shri Ram Dulare Prajapati only to appoint a person of their choice on the said post. The charges levelled against the applicant are false and frivolous.



5. The respondents filed the Counter Affidavit, denying the allegations made in the O.A. by the applicant mainly contending that the applicant had embezzled the public money and caused loss to the department hence, he is not entitled to be retained in the service and accordingly he has rightly been dismissed from service by passing the impugned order after holding proper inquiry and providing sufficient opportunity to the applicant. No illegality has been committed in passing the impugned order. The applicant while acting as an EDBPM, Accounts Office, Hanumanganj, Allahabad did not pay the amount of M.O. to the actual recipients rather he has taken their payments by forging the signatures of payees. The payees of the aforesaid money orders denied to have received the payment of the money, mentioned in the money orders. The applicant also did not prepare the Branch Post Office account which he was legally expected to maintain. He also refused to receive the charge sheet which was sent to the applicant by registered letter dated 24.10.1997. The Disciplinary Authority did not agree with the findings of the Inquiry Officer and accordingly a letter/notice was sent to the applicant to reply the points raised by the Disciplinary Authority. It is incorrect to say that the applicant admitted his guilt under pressure of the Inspector or any higher departmental authority. He never

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made any complaint to any higher authority regarding any kind of pressure by his immediate superiors. The contention of applicant is also incorrect to the extent that he was terminated from service on 22.08.1996. He was only put off duty pending inquiry against him. He was not terminated on that date rather termination order was passed after holding due inquiry and after giving proper and sufficient opportunity to the applicant. Shri Kamla Shankar-the witness of the Money Order was never produced by the applicant before the respondents to prove that there was any person in existence in the name of Kamla Shankar in the village Purshottampur. Aggrieved persons have specifically stated that there is no person in the name of Kamla Shankar in village Purshottampur. The applicant has no case, and the O.A. deserves to be dismissed.

6. Rejoinder Affidavit has also been filed by the applicant mainly reiterating the stands taken by the applicant in the O.A.

7. Supplementary Counter Affidavit has been filed on behalf of the respondents mainly contending that no representation/replication dated 31.12.2000, as alleged by the applicant, was received in the office of respondent No.

2. There is nothing on record to prove that any Revision

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was made before the Post Master General, Allahabad against the Appellate Order passed by the Appellate Authority.

8. The applicant has placed reliance on documentary evidence also which is annexure No. 1 to annexure No. 8 on record which will be discussed according to relevancy at appropriate stage.

9. The respondents have not filed any documentary evidence.

10. The applicant died during the pendency of this O.A. and one Manglesh Pratap Singh S/o Balram Yadav- applicant has been substituted in his place to pursue this O.A.

11. We have heard the learned counsel for the parties and perused the papers on record.

12. The main allegation against the applicant is that while working as EDBPM, Mugarsan, (Hanumanganj), Allahabad, he misappropriated the amount of two money orders of ₹1000/- each, one relating to Pandesara Industrial Estate Surat Money Order No. 1893 dated 05.08.1996 for ₹1000/- in the name of Shri Ram Swarup Bhartiya, village Purshottampur, Pali, Mugarsan, District

Allahabad, and another money order relating to M.I.D.O. Padali Money Order No. 1675, dated 09.08.1996 for ₹1000/- in the name of Ram Adhar Saroj, village Purshottampur P.O. Mugarshan, District Allahabad. Admittedly, the witness on both these money orders is one Kamla Shankar of village Purshottampur. According to the respondents' case there is no such person in the name of Kamla Shankar in village Purshottampur and the actual recipients of both the money order have not been paid the amount, mentioned in the money order rather making their forged signatures the amount of both the money order has been misappropriated by the applicant himself. Name and signature of alleged witness-Kamla Shankar is also forged. It is further stated by the respondents' counsel that both the recipients in their statement have denied to have received the amount mentioned in the money order. According to the applicant, the amount was not received by the actual recipients and Kamla Shankar had signed and verified the persons and signatures of both the recipients. Any documentary evidence regarding existence of aforesaid Kamla Shankar in Village Purshottampur has not been filed by the applicant. It is also worth to mention that the aforesaid Kamla Shankar could have been produced before the Disciplinary Authority, who had given specific notice on this point to

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the applicant, demanding his explanation but, Kamla Shankar was never produced. The letter, alleged to have been written by the aforesaid Kamla Shankar, and verified by the Village Pradhan has been filed as annexure No. 7 by the applicant but the genuineness of this paper could not be proved mainly because the best possible evidence would have been Kamla Shankar himself who could have appeared before the respondent No. 4 or any other higher authority of the respondents to prove his presence. Had there been any person in the name of Kamla Shankar in village Purshottampur, his identity card issued by the Election Commission or his name in his Kutumb Register of the village could have produced to prove that Shri Kamla Shankar resides in that village and he is alive. In the face of specific denial of his presence in the village Purshottampur by the recipients of the money order, this fact becomes important and mere saying of the applicant that Kamla Shankar is resident of Village Purshottampur and he has signed and verified the presence of recipients or the letter has been verified by the village Pradhan is of no use. The papers regarding the inquiry proceedings and proceedings conducted before the other higher authority of the department are on record and it shows that sufficient and proper opportunity has already been given to the applicant to put up his case and to defend himself. He

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had also taken the services of a representative to defend himself. Considering the material available on record, it cannot be said that no proper and sufficient opportunity has been given to the applicant to defend himself.

13. As regards the punishment awarded to him by the respondents, considering the gravity of charges levelled against him, *prima facie* it does not appear to be unreasonable or unjustified. Moreover, it is settled position of law that if awarded punishment is based on sufficient evidence and proper inquiry and sufficient and proper opportunity has been given to a delinquent employee to defend himself and thereafter the competent authority has passed the punishment order then the Tribunal has got no much scope to interfere with it.

14. The Hon'ble Apex Court in the case of "*Union of India vs. Parma Nanda* [Civil Appeal No. 1709 of 1988] with *Parma Nanda Vs. State of Haryana and others* {Special Leave Petition [Civil] No. 6998 of 1988} (1989) 10 *Administrative Tribunals Cases 30*", placing reliance on its observation in the case of "*S.P. Sampath Kumar v. Union of India* (1987) 1 SCC 124" has observed as follows: -

"The jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer

is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is *mala fide* is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In the light of above observations made by the Hon'ble Apex Court, when we examine the present case before us we find that the award of punishment to the delinquent employee is based on the findings on the basis of material calculated during the inquiry. Apparently, the punishment awarded to the delinquent employee does not appear to be incommensurate with the act of misappropriation done by him. We find no reason to interfere with the punishment awarded to the delinquent employee.

In view of the above facts and circumstances, the O.A. deserves to be dismissed. O.A. is dismissed accordingly.

No order as to costs.

J Chandra
(Ms. Jayati Chandra)
 Member - A

J.S.T.
{ Justice S.S. Tiwari }
 Sr. Member-J/H.O.D.