

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11th DAY OF APRIL, 2011)

HON'BLE DR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 51 OF 2001(U)
(U/s, 19 Administrative Tribunal Act.1985)

Surendra Singh Rawat, Son of Late Sri Sher Singh, R/o Village Sem
Dungra. P.O. Palethi, District-Chamoli.

.....Applicant.

By Advocate : Sri R.C. Srivastava

VE R S U S

1. Union of India through Secretary, Ministry of Communication (Post & Telegraph) Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Chamoli, at Gopeshwar.
3. Sub Divisional Inspector of Post Offices, Gopeshwar, District-Chamoli.

.....Respondents

By Advocate : Sri R.K. Srivastava

O R D E R

(DELIVERED BY: HON'BLE DR. K.B.S. RAJAN, MEMBER-J)

The applicant was functioning as Extra Departmental Delivery Agent in village Post Office, Palethi, District Chamoli on 30.03.1989. On a contemplated Disciplinary proceeding he was put of duty under Rule 9 of the Post and Telegraph EDDA (Conduct and Service) Rules 1964, on 17.04.1995. This was followed by a charge sheet dated 13.06.1995. The charges mainly related to non payment of certain money orders about which a complaint was made by the payee. After conducting the enquiry

the Enquiry Officer rendered his report with a finding that the charges were proved. After completing the requisite formalities, the applicant was awarded punishment of removal from service. Appeal preferred by the applicant was also not successful. Hence, this application seeking the following reliefs:-

*“(i)To call for the record and quash the impugned order passed by the respondent No.3 and 2 dated 29.7.99 (Annexure-5) and order dated 2.11.99/ 19.11.99 (Annexure-6).
(ii)Further direct the respondents to reinstate the applicant in service with all back wages and benefits payable to applicant according to the rules applicable.
(iii)Award the cost to the applicant.”*

2. Respondents have contested the OA. According to them the applicant's misconduct was found proved and accordingly, the penalty of dismissal from service was passed and the Appellate Authority upheld the said penalty.

3. Counsel for the applicant has stated that the penalty order cannot be legally sustained since the complainant herself has lateron stated that she has received money. In this regard, the counsel has invited our attention to para 4(7) of the enquiry report which reads as under:-

“ 4(7) आरोप पक्ष की ओर से श्रीमती जसोदा देवी पत्नी श्री बलवीर सिंह कुवर ग्राम सेमडुन्ना को स0 भ0 4 के रूप गवाही हेतु उपस्थित हुई। ये इस प्रकरण से समबन्धित दोनों धनादेशों की प्राप्तकर्ता है। अपने मौखिक बयान में संख्या भ0 4 द्वारा धनादेशों की रकम न मिलने के सम्बन्ध में दिनांक 11.03.1995 को दिये बयान (प्रदर्श क-6) की पुष्टि की। प्रदर्श क-6 में स0भ0 2 द्वारा स्पष्टतः कहा गया कि लैन्सीडाउन मनीआडर संख्या 37387 दि0 31.10.94 की0 700/- (प्रदर्श-7) तथा लैन्सीडाउन मनीआडर संख्या 41400 दि0 31.11.94 की0 700/- मुझे अभी तक (अर्थात 11.03.1994 तक) प्राप्त नहीं हुआ है और न ही मैंने न मनीआडर फार्म में अंगूठा निशानी की है। लेकिन जॉच के दौरान संभ0 4 द्वारा स्वीकार किया गया कि “मुझे उक्त धनादेशों की रकम मिल गयी है।”

4. The counsel for the applicant also relied upon the observations of the Enquiry Officer vide para 4(12) which is as under:-

“श्री सोपन सिंह ग्राम सेमडुन्ना आरोपपक्ष की ओर से मोर्खिक साक्ष्य के लिए सं ८० ६ के रूप में उपस्थित हुये। इनकी भूमिका लैन्सीडाउन धनादेश संख्या ३७३८७ दिनांक ३.१०.९४ कीमत ७०० रुपये के पेडबाउचर (प्रदर्श क.७) में गवाह की है। अपनी मोर्खिक गवाही में संगठन द्वारा प्रदर्श क०७ के संदर्भ में दिनांक ४.१०.९७ को दिये बयान (प्रदर्श क०९) की पुष्टि की जिसमें सं८०६ द्वारा स्पष्ट किया गया है कि “गवाह में मेरे ही हस्ताक्षर है लेकिन मनीआउर (प्रदर्श क०७) का भुगतान प्राप्तकर्ता श्रीमती जसोदा देवी को मेरे सामने नहीं किया गया। गवाही मैं अपने विस्वास में आकर ही किया है।”

5. Counsel for the respondents submitted that the question is not whether the complainant received the money at a later stage. The question is temporary misappropriation of the money order which the counsel for the applicant himself has conceded might have taken place. If the complainant had received the money order on time the question of her making the complaint would not have arisen. Perhaps, if the complainant had not made this complaint, then the applicant would not have paid the money to the complainant.

6. Counsel for the applicant, however, submitted that normally when a Postman delivers the money order, if the individual is not available he could ~~return~~ ^{re-tain} the money to be delivered on the subsequent date. This rule position is accepted but there are formalities to be completed when money order is not delivered. The amount has to be deposited with the Branch office after some time. No such procedure has been followed by the applicant. This is a clear case of temporary misappropriation.

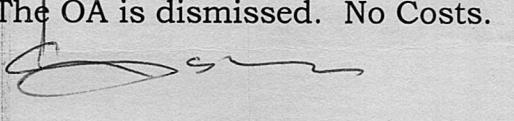
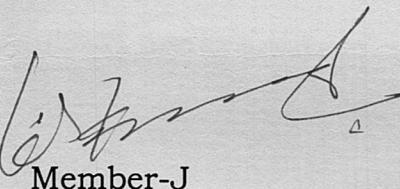
7. The Apex Court in the case of *SBI v. S.N. Goyal*, (2008) 8 SCC 92 has held as under:

“A bank survives on the trust of its clientele and constituents. The position of the Manager of a bank is a matter of great trust. The employees of the bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the bank. Any misappropriation, even temporary, of the funds of the bank or its customers/borrowers

constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected. (emphasis supplied).

8. In view of the above, there is no scope at all for allowing this OA. Consideration could have been given if the applicant has put in substantial number of years of service and in the past he was not involved in any such misconduct, for ~~re~~duction of penalty so that he could enjoy ex-gratia payment admissible to him ~~next~~ on retirement. The applicant has put in hardly 10 years of service and, therefore, we uphold the order of penalty imposed by the disciplinary authority.

9. The OA is dismissed. No Costs.


Member-A
Member-J

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