

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 30th day of August 2006.

Original Application No. 1637 of 2004.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member-A

Phool Chandra Rajbhar, S/o late R.N. Rajbir,
R/o Village Godhna, Post Kajgaon,
Distt: Jaunpur.

.... Applicant

By Adv. Sri S.K. Pandey

VERSUS

1. Union of India through the Secretary,
Ministry of Communication,
Department of Post,
NEW DELHI.
2. Member (Personnel),
Postal Service Board,
NEW DELHI.
3. Director, Postal Services,
Allahabad Region,
ALLAHABAD.
4. Superintendent of Post Office,
Jaunpur Division,
JAUNPUR.

.... Respondents

By Adv. Sri S. Singh.

ORDER

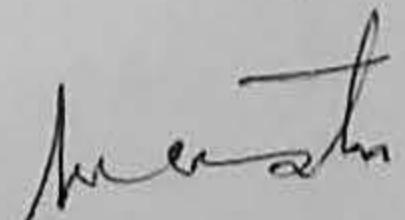
By Hon'ble Mr. P.K. Chatterji, Member-A

The applicant, in this OA No. 1637 of 2004, is a Postal Assistant working in Jaunpur Postal Division. On 09.10.1993 the applicant was posted as Assistant Treasure I (ATR I) in Jaunpur Head Post Office and he was instructed to take over the charge from one Sri P.N. Dubey who was then working as



ATR I on the same day. As per rules the new incumbent taking over the charge of ATR I is required to verify the stock of the stamp and stationery from the predecessor. However, as stated by the applicant he was asked to take over the charge at 1600 hrs and there was hardly any time to verify the huge volume of stamp and stationary stocked at Jaunpur Post Office. As the verification was not possible at the time of joining the applicant, as stated by him, he kept on asking Sri P.N. Dubey, to help him in physically verifying the stock. However, Sri Dubey evaded doing that, and as the applicant had noticed that the stock in hand was less than written balance, he intimated this to his higher authorities in writing in a error book on 16.10.1993. Thereafter, he continued to bring it in the notice of the higher authorities by error book which he wrote on 18.10.1993 and 19.10.2003. In the error book the applicant, is stated, to have recorded that certain bundles/sheets were short in the stock and the counting was still to be completed.

2. The applicant wrote another error book on 20.10.1993 in which he informed that he had started verifying the stock alongwith one Sri Sita Ram Saroj, the Postal Assistant and counting showed that there was shortage of certain items. After this, under the guidance of the Divisional Superintendent of Post Offices a team of officers under took the work of complete verification of the stock, wherein it was noticed that Stamp and Stationary worth about Rs. 58,000/- were short in the Post Office. On 22.10.1993 the respondents suspended the

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applicant without assigning any valid and proper reason. The applicant was kept under suspension until 23.03.1995 when the suspension order was revoked by Superintendent of Post Offices (SPO) Jaunpur. Thereafter, the respondents issued a charge sheet against the applicant on 28.08.1995 containing two charges in respect of the shortage in stock handed over to the applicant. Two articles of charges are reproduced below:

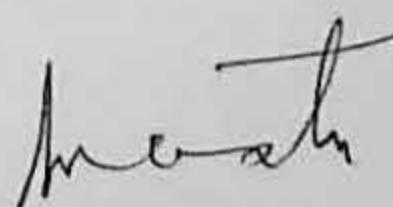
Article I

That the said Shri Phool Chand Rajbhar while taking over the charge of ATR I Jaunpur HO on 9.10.93 from Sri Paras Nath Dubey is alleged to have taken over the charge of stamps/stationery as per balance worked out in the stamp balance register without complete physical verification and thereby violated the provisions of rule 45 of P&T Man-Vol IV read with rule 20 of Appendix 2 of Postal Financial Handbook Vol II and thus failed to maintain absolute integrity and devotion to duty as was required of him vide rule 3 (1) (i) & (ii) of the CCS (Conduct) Rules 1964. The lapses on the part of the said Shri Rajbhar are further alleged to have contributed to the loss of Rs. 58345.75 sustained by the Department.

Article II

That the said Shri Phool Chand Rajbhar while working as ATR I Jaunpur HO from 9.10.93 to 21.10.93 is alleged to have noticed doubtful condition of the packets of stamps/stationery kept in the stock while taking over charge, serious discrepancies in the contents of the stamps packets subsequently but failed to bring the matter to the higher authorities immediately delayed in making report and tried to settle the matter privately with outgoing ATR and thereby infringed the provisions of rule 53 & 58 of Swammy's compilation of P&T FHB Vol I (3rd Edition) and thereby failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Govt. servant infringing the provisions of rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules 1964. The lapses on the part of the said Shri Rajbhar are alleged to have frustrated inquiry in the matter of shortage of stamps causing loss of the Govt."

3. An inquiry was conducted on the charges levelled against the applicant. During the inquiry the applicant is stated to have raised several points including the fact that it was physically impossible for one person to verify the stock in a couple of hours and this fact was known to everybody. He also

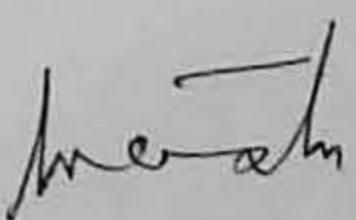


informed the Inquiry Officer (IO) that when the verification was actually taken up by the higher authorities it took over two days with seven officials to complete the verification. He also brought it to the notice of the IO that the mandatory verification by the Assistant Post Master concerned of the stock of stamp and stationary was not being done and taking advantage of this misappropriation of the stock had taken place. The IO also posed the question (page 23 of the report) as to how could the applicant accomplish in two hours what took more than two days for seven officials.

4. On the basis of the inquiry the IO recorded his finding as below:

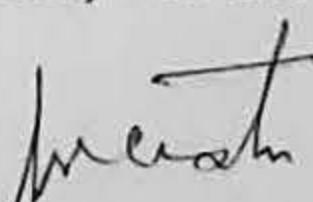
'On the basis of documentary and oral evidence adduced in this case and in view of reasons given above, I hold that the ARTICLE-I in regard to devotion to duty only to the extent that the C.O. has signed the Charge report is proved and ARTICLE-II is "NOT AT ALL PROVED."

5. After completion of the inquiry the SPO Jaunpur passed an order dated 04.09.1998 punishing the applicant with reduction in the higher scale of pay from Rs. 4700/- to Rs. 4600/- for a period of three years and six months w.e.f. 01.09.1998 without any cumulative effect. It was also ordered that a sum of Rs. 4345.75 would be recovered from the pay of the applicant in four monthly installments. Being aggrieved by the orders of the Disciplinary Authority, the applicant submitted an appeal to the Director Postal Services (DPS), Allahabad region, Allahabad. However, his appeal was rejected upon which the applicant submitted a revision petition to



Member (Personnel), Postal Services Board, New Delhi. This petition was also rejected. Hence this OA has been filed by the applicant impugning the orders contained in Memo of chargesheet and the three orders i.e. of the Disciplinary Authority, Appellate Authority and Reversionary Authority. The applicant has submitted in the OA that as a result of punishment of reduction to a lower stage of pay he was also not considered for the time bound promotion on completion of 16 years of service, which he was due to get from the year 1995 and which he ultimately got on 21.10.2004. Therefore, the cumulative effect of the punishment has been harsh and excessive for the applicant (para 4.39 of OA) compared to the mistake committed by him in good faith and without any malafide intention. It has also been stated that his carryout instructions of the Post Master has been attributed as misconduct on his part and he was penalized for that. The applicant has sought direction of this Court to quash the aforesaid orders of the respondents and to grant him the Time Bound Promotion (TBOP) w.e.f. 20.10.1995 as due to him and also a direction to treat the period of suspension from 22.10.1993 to 23.03.1995 as on duty.

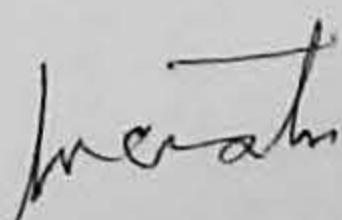
6. The respondents in their counter affidavit, while denying the allegation made by the applicant have stated that the omission on the part of the applicant in not verifying the stock of stamp and stationary was a costly mistake as it resulted in a loss of over Rs. 58,000/- to the department. The relevant rules

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of the Postal Manual make it clear that every new incumbent of the post of ATR I has to verify the stock of Stamp etc while assuming the charge. Not only did the applicant not do it, he also kept the fact of shortage under wraps for several days during which time he tried to privately settle the matter with Sri P.N. Dubey, his predecessor. If he had informed the higher authorities immediately on detection of this shortage the result of this investigation could have been otherwise and a more fruitful action could have been taken.

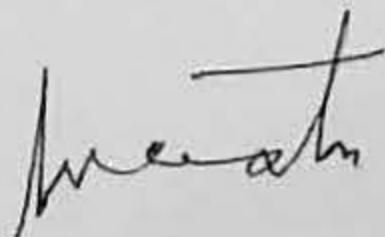
7. During the hearing more or less the same points were reiterated by the learned counsel for the parties. Learned counsel for the applicant repeatedly highlighted the fact that the IO found only one charge i.e. Article I to be substantiated, but he did not find any evidence in support of the charge elaborated in Article 2. Not only that, in the inquiry report the IO also elaborately discussed the compelling situations under which the applicant took over the charge and the difficult task of verifying the stamp and stationary within a short period. It has been alleged by the learned counsel for the applicant that while the Disciplinary Authority should have elaborately discussed the reasons for such a punishment inspite of the findings of the IO, his orders were bereft of a rational and detailed discussion on this point.

8. We went through the pleadings and relevant records in detail. We also heard the learned counsel for the parties and

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applied our mind to this case deeply. Amongst the points we pondered over were the following:

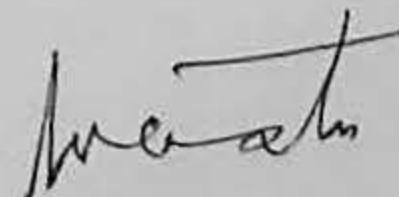
- a. As regards the non supply of the documents as complained in para 4.8 and ground (d) of OA this much sufficient to say that in reply it has specifically been denied and the applicant has not produced any documentary evidence to substantiate the allegation of non supply of the documents mentioned in the charge sheet. It is clearly stated in the inquiry report (Annexure A-11) that the applicant admitted to have received relevant papers including the documents mentioned in the memo of charge sheet. The applicant has nowhere alleged either in OA or in reply to show cause notice or in grounds of appeal or revision that statement in inquiry report regarding acceptance of the copies of the documents was factually incorrect. So we find that the allegation of non-supply of document mentioned in the charge sheet is not sustainable. Even if it is assumed for the sake of argument that documents were not supplied, punishment order is not be interfered with unless it is shown that prejudice was caused to the applicant by non supply of the documents (as decided by a Constitution Bench decision in Managing Director E.C.I.L Vs. B. Karunakar (1993) 4 SCC pg 727 and a Division Bench decision dated 06.07.2006 of this Bench in OA No. 109 of 1998). In fact this was the case where the applicant had admitted to have signed the charge report dated 09.10.1993 without physically verifying the materials to understand as to how the non supply of the documents was going to make any difference in defending the charge. So the decision of causing any prejudice to the applicant owing to alleged non supply of the documents did not arise.

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- b. The report of the inquiry discussed in detail the difficulty of physical verification of such a huge volume of stock (worth over Rs. 20 lacs). It would be pertinent to extract the relevant portion of the report of the IO:

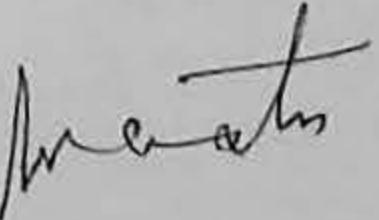
.....He has, thus, misappropriated Govt. cash. In this connection, the submission of the C.O. in his written reply brief, is worth considering and entirely tenable. The P.O's submission on this material point, is silent. As instructions contained in D.G's letter No. 13/6/83-VIG-III dtd. 28.02.84, only cheques should have been accepted by Shri Paras Nath Dubey and not cash. Therefore, it is perspicuous without shadow of any doubt that Shri Paras Nath Dubey was not at all fair and his ill-motive is apparent while functioning as A.T.R. I at Jaunpur H.O. The acceptance of cash in contravention of instructions, itself goes to show that he did so only with a view to misappropriate Govt. money. Such service postage stamps were not deducted by him from the stock register as argued by the C.O. It would be relevant to point out here that the shortage of such stamps persisted for long time and since the stock was not being verified by the A.P.M. Treasury as required under G.I/Rig. dtd. 2.2.83 as admitted by Shri Abdul Salam Ansari in his statement dtd. 22.3.94, Exh. 8-9 recorded in the cause of preliminary inquiry. Had the stock of stamps/stationery been checked daily by the A.P.M. concerned, the shortage would have been detected much earlier and there were no chances of any foul play made by Shri Paras Nath Dubey. Shri Paras Nath Dubey did not at all turn up for evidence. No stamps, stationery and also service postage stamps were ever counted and verified in stock with that of Stamp Balance Register by the A.P.M. (Treasury) and no Stamp Register was ever signed by him. He has accepted his guilt in his statement dtd. 22.3.94 Exh. S-9 recorded in the course of preliminary inquiry. This only facilitated Shri Paras Nath Dubey to commit misappropriation of Govt. money.

- c. It has also been hinted very clearly by the IO that the Assistant Post Master who was supposed to daily check the stock and sign in token of having done that, was not doing his job, and taking advantage of someone misappropriated part of the stock.
- d. It is also noted that in the disciplinary order, appellate decision and revisional decision, the concerned authorities have emphasized the need for verifying the stock before taking further charge. They have also repeated the same point that the applicant should not have tried to privately sort out the matter with Sri Dubey instead of promptly bringing it to the notice of



the higher authority. They have however, not discussed what difference would have happened to the investigation if the stock was verified only a few days before.

- e. No where have the respondents have attributed any malafide intention to the applicant. It has been recognized that the main culprit was his predecessor in the post of ATR I. While taking the decision, it appears to us, the respondents should have considered whether the act of omission on the part of ~~facilitated and舞弊~~ the applicant could in any way have abetted the fraud committed some other person or whether the misappropriation had actually taken place before the applicant took over the charge. The point that if Sri Dubey was himself the person misappropriating the items, he would naturally evade helping the applicant in verifying the stock, should also have gone into their consideration.
- f. The respondents should have also have taken into account the impossibility of physically verifying the stock in couple of hours without any assistance.
- g. In the OA the applicant has sought among other reliefs, a direction to the respondents to treat the period of suspension from 22.10.1993 to 23.03.1995 as on duty. After affording the punishment the respondent decided not to treat the period of suspension as on duty except for the purpose of pension. While arguing on the total fact of the punishment, the learned counsel for the applicant has stated that keeping in view the nature of so called mistake, it was extremely unjustified to treat the period as not on duty and it amounted to double jeopardy. Our attention was drawn to the relevant

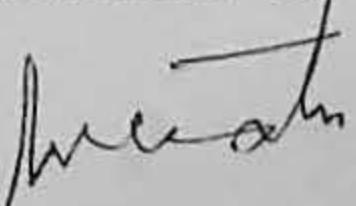


provisions of the fundamental rules. FR 54-B is relevant in this matter and is reproduced below:

"In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject of the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served] as may be specified in the notice."

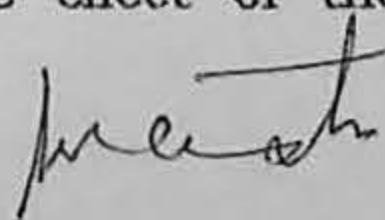
It is clear from the above that before taking a decision on the period under suspension a scope should have been given to the applicant to express his views and then only after taking into account his representation a suitable decision should have been taken. It has not been done in this case and, therefore, there is a definite lacuna as far as this decision goes.

9. Although during the arguments the learned counsel for the applicant did not emphasize on the aspect of disproportionality of punishment, it was mentioned in para 4.36 of the OA and in response thereto the respondents have touched upon this aspect and at the same time denied such an allegation. We are of the view that it would not be so irrelevant as not to take this into consideration while disposing of the OA. The entire allegations against the applicant boils down to only one omission on his part i.e. taking after the charge of ATR I without verifying the stock of stamp and stationary. This is an infringement of the departmental rule which the respondents have interpreted as misconduct on the part of the applicant.



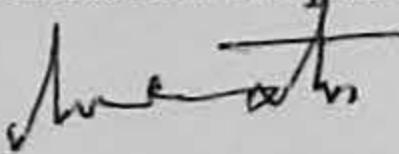
We are not inclined to split hair on this aspect whether it can be construed as misconduct or not. The fact that the charge report of the applicant was countersigned by the supervisor goes to show that it was not seriously objected to at that time, but was made an issue only later when the shortage was detected. This would in effect diminish the seriousness of this lapse. Even if, for argument's sake, we take it as a misconduct the punishment should be only in proportion to the seriousness of this irregularity and the consequence of that. As discussed in the aforementioned paragraphs the misappropriation could not be attributed as a consequence of that. There is a preponderance of probability that the miscreant had misappropriated from the stock of the stamp and stationary taking advantage of lack of watch on the part of the Assistant Post Master concerned. Therefore, this act of omission or mistake on the part of the applicant should not be described as a very costly mistake because the loss whatever had already taken place in all probability.

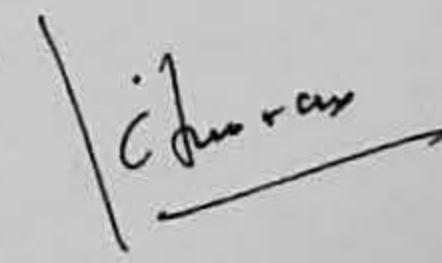
10. For these reasons, we are of the view that the punishment should be just enough to make him more alert, aware, responsible and to prevent repetition of such mistake. However, we find that the punishment in this case has been rather heavy compared to the act of omission on the part of the applicant. We are quite loath otherwise to interfere with the decision of the respondents in choosing the quantum of punishment. But to our mind the cumulative effect of the punishment seems

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disproportionately heavy. Apart from being subjected to recovery of Rs. 4,345/-, and reduction to the lower stage for 3½ years, the applicant has also lost up-gradation to the higher grade through the TBOP by about 4 years. Not only that, his suspension period for about two years has also not been treated as on duty. What could be the cumulative effect of this should have weighed in the minds of the respondents disposing of the Disciplinary case, the appeal and the Revision Petition. The Apex Court in its judgment in *B.C. Chaturvedi Vs. Union of India & Others, JT 1995 (8) SC 65*, had said that if the punishment was so heavy as to shock the conscience of the Court or Tribunal, it may appropriately award the relief. Applying our mind to this case we are of the view that the ratio of the above judgment should be applicable in the case.

11. With these observations we hold that the OA should be partly allowed. The orders of the Disciplinary, appellate and reversionary authorities are ~~set aside and the punishments are~~ modified to that of recovery of Rs. 4345.75 only. It is also directed that the respondents treat the period of suspension as on duty (reasons noted in para 8 g) and consider the case for TBOP from the date it became actually due and take appropriate decision as per rules. No cost.


Member (A)


Vice-Chairman