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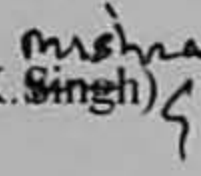
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 14th DAY OF JANUARY, 2007
Original Application No. 1679 of 2004

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.
HON.MR.M.JAYARAMAN, MEMBER(A)

Kashi prasad Mishra, son of Late
Prem nath Mishra, Ex. Post Master,
Banwasi Sewashram, Govindpur(Turra)
Sonebhadra, resident of village Ras Pahari,
P.O. Banwasi Sewasharam, police station
Duddhi, district Sonebhadra.

.. Applicant

(By Adv: Shri A.K. ^{mishra} Singh) 

Versus

1. Union of India, through the
Secretary, Ministry of Communication,
(Post & Telegraph),
New Delhi- 110 001
2. Director Postal Services,
Post Master General Office,
U.P.Sub Division at Allahabad.
3. Superintendent, Post Offices,
Mirzapur Region, Mirzapur.
4. Assistant Supdt. (Post Offices),
East Sub-Region, Mirzapur.
5. Assistant Sub Divisional Inspector
(Post Office), Sonebhadra.


.. Respondents

(By Adv: Shri M.B. Singh)

ORDER

JUSTICE KHEM KARAN, V.C.

The applicant is challenging order dated 9.2.04 (Annexure-A) by which Superintendent Post Offices Mirzapur Division removed him from service and also order dated 30.9.04 (Annexure-B) by which Director Postal Services, Allahabad Region dismissed his appeal against the said punishment order.



2. It transpires from perusal of pleadings, order dated 4.12.2000 (A-1) of Supdt. Post Offices Mirzapur Division, and order dated 28.3.01 (A-3) passed by Supdt. Post Offices Mirzapur, that the applicant, the then Dakpal Banwasi Sewa Ashram (Turra) Sonebhadra was put off duty vide order dated 30.11.2000 by Inspector of Post Offices and subsequently that order was withdrawn. Vide order dated 28.3.01. The applicant was served with a memo of charges dated 2.1.2001 (A-2). There were four charges. One of the charges (Art.3) was to the effect that he temporarily misappropriated amount of Rs.3987.50, on 30.11.2000 which he subsequently deposited on 4.12.2000. An enquiry into the matter was held, and the enquiry officer submitted his report, saying that all the charges were proved. In turn Supdt. Of Post Offices Mirzapur, passed the impugned order dated 9.2.04, of removal from service. Appeal preferred to Director Postal Services, was dismissed vide order dated 30.9.1994.

3. The main grounds taken in O.A. are that the enquiry officer submitted his report without recording any evidence, that once the departmental proceedings were withdrawn (perhaps reference is to order dated 28.3.01 A-3), no fresh proceedings could have been initiated, that the charges were not so serious as to warrant removal from service, that while awarding punishment post unblemished service record of the applicant was not taken into consideration and that the appellate order is totally mechanical and without application of mind.

4. The respondents have contested the claim, by filing a written reply. According to them, it is not correct to say that proceedings were dropped vide order dated 28.3.01. They say that this order was under Rule 9 of EDA Conduct Rules 1964, as is clearly mentioned therein and the same cannot be construed as an order dropping the formal Disciplinary proceedings initiated with issuance of charge sheet dated 2.1.2001, they say in par -17, that the Enquiry Officer recorded his finding, on the basis of oral as well as documentary evidence, adduced during the course of enquiry. According to them, the punishment of removal is fully justified.

5. We have heard Shri A.K. Mishra for the applicant and Shri M.B. Singh for the respondents.



6. Shri A.K. Mishra, the learned counsel for the applicant has contended that the punishment order dated 9.2.04 passed on the basis of subsequent disciplinary proceedings is bad in law and deserves to be set aside. According to him applicant was earlier removed from service vide order dated 30.11.00 and the same was subsequently withdrawn vide order dated 28.3.01 (Annexure-3). According to him after the charges were dropped and the removal dated 30.11.00 recalled, there was no justification in law to subject the applicant to formal disciplinary proceedings again and to punish him on the same charges. We are of the view that the above argument of Shri Mishra is totally misconceived. Rule 9 of EDA (Conduct & Service) Rules, 1964 provides that the appointing authority or any authority to which the appointing authority is subordinate or any authority empowered in that behalf by the Central Government by general or special order may put an employee off duty:

- (a) where a disciplinary proceedings against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation, enquiry or trial


Sub-rule (2) of Rule 9 contemplates cancellation of such an order made under sub-rule 1. The respondents have come with a case that it was in exercise of these powers under rule 9 that the applicant was put off duty vide order dated 30.11.00 and that order was recalled vide order dated 28.3.01. There is nothing on record to reveal that order dated 30.11.2000 was passed as a result of any formal disciplinary proceedings or as a measure of punishment. Putting an employee off duty under rule 9, is quite different to the removal from service. So we find it difficult to accept the argument of Shri Mishra that applicant was subjected to any former disciplinary proceedings prior to 30.11.00 or was removed from service by that order. So the contention is rejected.

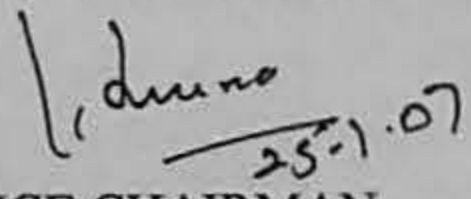
7. The second submission is that the punishment of removal from service is shockingly disproportionate to the misconduct, found proved in inquiry. We may state in the very outset that it is exclusively in domain of the punishing authority and the appellate authority, as the case may be to decide the quantum of punishment which may be awarded to the delinquent official in a

particular case. The court or the Tribunal will normally not interfere with the quantum of punishment unless of course the same is so shocking as to prick the conscience of the court or Tribunal. A perusal of the punishment order dated 9.2.04 would reveal that there were as many as four charges out of which charge no.3 was to the effect that while working as Branch Postmaster Banwasi Sewashram on 30.11.00 the applicant misappropriated though temporarily an amount of Rs.3987.50 which he deposited back on 4.12.00. This charge was found proved. Charge No.4 was that he while working as Branch postmaster in the said post office kept with him cash exceeding the permissible limits. This charge was also found proved. If on these charges the authority concerned decided to impose a punishment of removal from service, it is difficult to say that the same is shockingly disproportionate. The mere fact that the applicant deposited the embezzled amount on 4.12.00 is not such a mitigating circumstance as to bring the order of removal in the category of shockingly disproportionate. The learned counsel for the applicant has placed before us a decision dated 14.11.06 of Allahabad High Court in Writ petition No.3422/04 Narendra Kumar Singh Vs. Adhyaksha Basi Gramin Bank, Basti & Ors so as to say that where there is no pecuniary loss to anybody, owing to the misconduct of the employee, major penalty of compulsory retirement or removal from service would be grossly disproportionate. We have gone through it and we are of the view that the facts of the case in hand are quite different to the case before the Hon'ble High court. In that case, there was no allegation of misproportion or embezzlement and the only allegation was that the employee had not made entries in one or the other document, though the same were made in the remaining documents. We think, the above cited case, does not keep Shri Mishra, in saying that punishment in question, is shockingly disproportionate. in respect of same transactions

8. No other point has been argued from the side of the applican

9. In view of our conclusions reached above, the OA is dismissed but with no order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated: January , 2007

Uv/