

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 13th DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.1166 of 2005

(U/s 19, Administrative Tribunal Act, 1985)

Suresh Prasad Sharma,

S/o Late Shri Ram Sajivan Sharma,

Resident of Villagle and Post Pauli,

District Fatehpur.

..... ***Applicant***

Present for Applicant :Shri R. K. Srivastava, Advocate

Shri R. Verma, Advocate.

Versus

1. Union of India, through Secretary, M/o Communication Deptt of Post, New Delhi.
2. The Post Master General,
Kanpur Region, Kanpur.
3. The Director Postal Services, Kanpur
4. Superintendent of Post Offices,
Fatehpur Division, Fatehpur.
5. Inquiry Officer (Shri Gauri Shanker Singh),
Through it's Sub-Divisional Inspector, Bindki - Fatehpur,
At present posted at Varanasi.

..... ***Respondents***

Present for Respondents : Shri R. K. Tiwari, Advocate

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The brief history of the facts of the case as succinctly brought out in the counter would give a full view of the facts and the same is as under:-

The petitioner while working under the Superintendent of Post Offices, Fatehpur received Rs.17,000/- from Shri Ansar Ali and Ms. Nasreen Ban on 16.4.1998 and entered in the joint account Pass Book three years T.D. account No.3128975 which has been closed on 16.4.1998 but the petitioner did not credit the said amount in the Government account thus violated Rule 145 (2) read with rule 131 (3) of B.O. Rules. The petitioner also failed to maintain absolute integrity and devotion to duty violating rule 17 of EDAs (Conduct and Service) Rules, 1964.

On the basis of aforesaid illegal act the petitioner was proceeded under Rule 8 of EDAs (Conduct & Service) Rules, 1964 vide memo dated 28.9.1999, and he was served with the chargesheet.

The petitioner denied the charges leveled against him therefore a detailed enquiry was conducted by appointing the Inquiry Officer and Presenting Officer.

The charges were fully proved in the enquiry and the Inquiry Officer submitted the enquiry report dated 12.7.2002 proving the charge against the petitioner to the Disciplinary Authority.

The Disciplinary Authority sent the enquiry report to the petitioner on 22.7.2004 for submitting his representation/reply and the petitioner submitted his representation on 6.8.2002.

The Disciplinary Authority after considering the representation submitted by the petitioner, the enquiry report and all other material available on the record and

passed the punishment order dated 17.12.2002 and dismissed the petitioner from service.

That against the aforesaid punishment order the petitioner preferred an appeal to the Director Postal Services, Kanpur who rejected the appeal vide appellate order dated 30.12.2003/9.1.2004.

The petitioner thereafter submitted a Review Petition against the order passed by the Disciplinary Authority as well as by the Appellate Authority to the Postmaster General Kanpur on 19.2.2004, and after careful consideration of the entire matter on the record and the review petition of the petitioner rejected the review petition of the petitioner vide order dated 12.7.2005.

2. The challenge in this OA is the order of the disciplinary, appellate and the revisional authorities as stated above and the main grounds of attack are as under:-

(a) Penalty is shockingly disproportionate.

(b) Inquiry is vitiated due to non supply of necessary documents relied upon by the prosecution and for non consideration of defence witnesses.

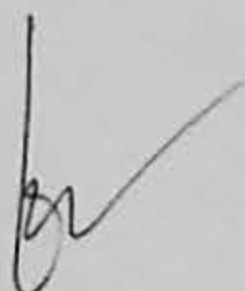
(c) Non application of mind by the authorities.

(d) The depositors have already admitted the receipt of the entire amount in question.

(e) Cryptic and non-speaking orders by the authorities.

3. The applicant has prayed for the following relief :-

- a. To issue necessary order or direction, setting aside the impugned dismissal orders dated 17.12.2002 (Annexure -6) passed by opposite party No. 4, order dated 19.1.2004 dismissal of appeal by opposite party No. 3 and order dated 12.7.2005 dismissing



review petition by opposite Party No. 2 (Annexures - 6, 10 & 11)

- b. To issue necessary order or direction directing the Opposite party No. 4 to re-instate the petitioner on his post of Branch Post Master, Branch Post Office, Pauli, District Fatehpur with all consequential benefits, as admissible under law.
- c. To issue any other suitable order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case to meet the ends of justice.

4. Respondents have contested the O.A. They had stated that the applicant had been proceeded against on account of his lack of integrity. His is not a case merely one of negligence. Non entry in the respective ledger and other documents and non credit of the amount received from the depositors did amount to misappropriation of government money. Thus, the imposition of penalty is fully justified.

5. The applicant has filed his rejoinder in which he had reiterated his contentions as contained in the O.A.

6. We have heard Mr. Rakesh Verma, learned counsel for the applicant and Shri R. K. Tiwari, learned counsel for the respondents. Counsel for the applicant has also filed his Written Arguments, in which he had submitted, inter alia as under:-


- 1. ***That the charges, as referred to, in the charge sheet (Annexure A-1 at page No.35 of the OA) do not visit the allegation of embezzlement of Government money and it is only that the***

petitioner failed to observe the Departmental Rules, referred to, in the articles of charges. Further, the enquiry report also does not hold the petitioner guilty of any misappropriation of Government exchequer and that the Inquiry Officer has held that the petitioner has acted in the violation of Rule-5 of Time Deposit Rules as well as Rules-17 of Extra Departmental Agent (Conduct & Employment) Rules, 1964. The Enquiry Officer has also held that the petitioner has acted in violation of Rule 145(2) and Rule-131 (3) of Branch Post Office Rules. In support of the aforesaid finding, the Inquiry Officer has opined that the petitioner knowingly did not account for Rs.17,000/- on 16.4.1998 in three years Time deposit account in Government (Post Office) Records and further that he on 16.4.1998 in the above Time Deposit Account, which was already closed, made entry of Rs.17,000/-.

2. *That the Hon'ble Tribunal may kindly appreciate that the Inquiry Officer has failed to consider properly by visualizing the ground level situation that it was only due to omission and oversight, the petitioner accepted and allowed to deposit account holders in the aforesaid Time Deposit Account Rs.17,000/- on 16.4.1998 and made entry thereof in the concerned pass book and on the same day in the evening at the residence situated in the same village and because after the money business hours i.e. first half of the working hours was over and then the petitioner intended to do in the second half of the working hours, the work of making entries in the respective ledgers of the money transactions held and on visualizing the above mistake, the petitioner did not rightly account for the aforesaid Rs.17,000/- in the Government(Post Office) records.*

7. The submission of the applicant is far from being credible.

When a deposit is made by a subscriber to a T.D. Account, and the amount is received, the immediate action to be taken by the Post office is as hereunder:-



(a) Entry in the Pass Book with date stamp. This is in lieu of separate receipt in token of the amount having been received from the depositor.

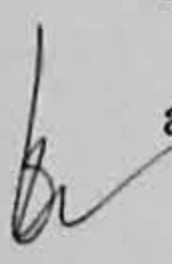
(b) Entry in the Daily Accounts to be submitted to Accounts Officer.

(c) Entry in the B.O. Accounts to be retained in the office.

(d) Remittance of the amount received from the depositor with the Main Post Office.

8. If the version of the applicant that he had returned the money be true, this means that neither he had remitted the amount which he ought to have done nor had he made entries in the Daily Accounts as well as the B.O. Accounts. In case he had to return the amount to the depositor, then the entry in the Pass Book would remain intact which would have given the depositor a chance to claim the same through the post Office and the Post Office is under obligation to settle that payment first as it holds the vicarious responsibility for the mistake committed by the post office officials.

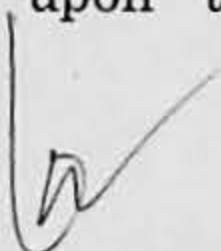
9. It may be certainly true that the depositors would have given a statement in the year 2000 or later that they have received the entire money deposited by them. Equally it may be true that the department would not have sustained any loss in the transaction. Yet it is not a mere case of minor negligence on the part of the applicant but a designed act of retention of depositors money without accounting for in necessary account books. The finding arrived at by the enquiry authority cannot be dismissed on account of the so called non consideration of the defence witnesses.



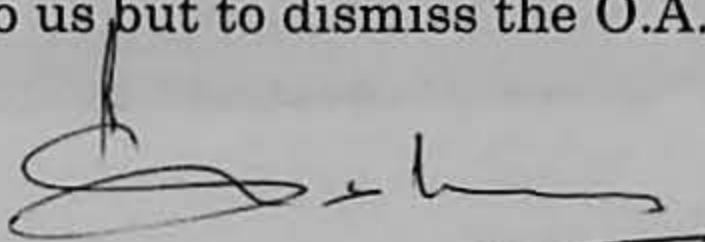
Vide paragraph 9 of the impugned order dated 17.12.2002 the Disciplinary Authority has endorsed as under:-

9- आरोपित कर्मचारी के कथन में कोई दम नहीं है क्योंकि यदि जमाकर्ता को 16-4-98 को ही रू0 17000/- मिल गया होता तो वह दिनांक 30-3-99 को 3 वर्षीय टी0डी0 खाता संख्या 3128975 में दिनांक 16-4-98 को जमा रकम रू0 17000/- के पुष्टीकरण का प्रश्न ही नहीं उठता था साथ ही साथ रू0 17000/- को सरकारी हिसाब में न लेना आरोपित कर्मचारी पर लगाये गये सभी आरोपो को पूर्णतया सिद्ध करता है और इस प्रकार से जांच अधिकारी का निष्कर्ष निष्पक्ष निर्विवाद एवं नियमानुसार है।

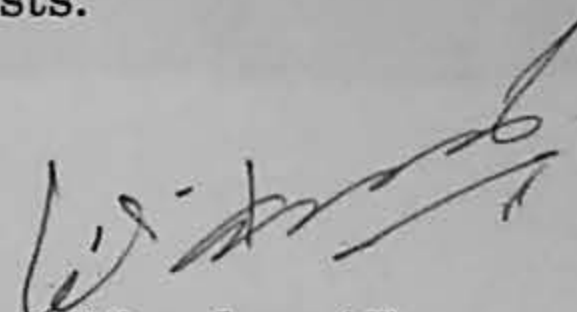
10. General public especially the villagers have immense faith in government department and in particular with the postal department. It is a sense of full confidence that their little investments are safe in the hands of the postal department that they make deposits. The public are fully aware that the return by way of interest in the postal department savings account are not that lucrative compare to private financial institutions. Yet the deposit of the villagers is found more with the postal department than any other private financial institution. The reason for the same is unassailable confidence by the general public that their money is fully safe in the hands of the government. If this confidence is shattered by misappropriation of funds either temporary or permanent and if the depositors have to get the money back only after making complaints, then the individual responsible for the same cannot be unpunished. Integrity is the spine of government employees. It is on the foundation of their rectitude that the entire edifice of confidence of the general public upon the government institution is erected. Under such



circumstances the decision by the Disciplinary Authority in the instant case cannot be faulted with. Preponderance of probability itself in the instant case is sufficient to arrive at the conclusion that the applicant with a deliberate design misappropriated the depositors funds. Under such circumstances a minor deviation from the disciplinary procedure cannot vitiate the entire enquiry which stands on a stronger foundation. In view of the above there is no option left to us but to dismiss the O.A. No costs.



Member (A)



Member (J)

Shashi