

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 13th DAY OF Jan 2011)

PRESENT:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 1551 OF 2005

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

Manager Sharma (expired on 10.4.2007) S/o Shri Thakur Sharma,
R/o Village Palia, P.O. Sidhuwa Bagar, Via Padrauna, District Kushi
Nagar.

1/2 Smt. Bachchi Devi
1/3 Sri Bhanu Pratap
1/4 Sri Ram Pratap
1/5 Sri Shyam Pratap
1/6 Km. Sudha
1/7 Shri Chandra Pratap
1/8 Shri Navin
1/9 Puneet
1/10 Km. Rohini

..... Applicants

By Advocates: Shri B Ram/Shri M.K. Upadhyaya

Versus

1. Union of India through Secretary (Posts), Department of Posts, India, Ministry of Communication & Information Technology, Dak Bhawan, Sansad Marg, New Delhi 100 001
2. Director Postal Services, Gorakhpur Region, Gorakhpur.
3. Senior Supdt. Of Post Offices, Deoria Division Deoria 274001.

..... Respondents

By Advocates: Shri Hinanshu Singh/Shri R.D. Tiwari

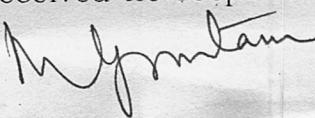
ORDER

Heard Shri M.K. Upadhyaya, learned counsel for the applicant
and Shri Hinanshu Singh, learned counsel for the respondents.

2. The applicant was working as Post Master, Padrauna Chhawani Post Office during 16.6.1997 to 19.8.1997. On the night of

M. Gautam

19/20.8.1997, a theft occurred in the Post office resulting in loss of Rs.30,353.05. The Senior Supdt. Of Post Offices, Deoria is the Disciplinary Authority for the applicant, served a chargesheet to him under Rule 16 of C.C.S. (C.C.A) Rules for minor penalty. The applicant demanded certain documents for preparing his defence and prayed for holding open enquiry under Rule 16 (1) (b) of C.C.S (C.C.A) Rules. Some document was served by the Disciplinary Authority on 11.3.1998 and applicant was asked to submit his defence within 10 days. Applicant made another request on 22.3.1998 asking for other documents and also for allowing inspection of certain documents. Disciplinary Authority finalized the matter imposing the penalty of Rs. 17,961/- from the salary of the applicant vide order dated 30.6.1998. Applicant filed departmental appeal and also filed O.A. NO. 327 of 1999 against the punishment order. During the pendency of the O.A., appeal filed by the applicant was decided and rejected. The applicant moved an amendment application No. 5143 of 1999 but the Tribunal disposed of the O.A. as being infructuous but gave a liberty to the applicant to file fresh O.A. Accordingly, applicant filed O.A. NO. 94 of 2000. Vide judgment dated 18.9.2003, the punishment and Appellate orders were quashed with a direction to the respondents to provide the applicant opportunity of defence by holding open enquiry. Since it was an old matter, there was direction to conclude the proceedings within 6 months. Vide order dated 7.1.2004, Disciplinary Authority converted the earlier proceeding into enquiry under Rule 16 (1) (b) but without reference to the provision of Sub Rule (3) to (23) of Rule 14. The applicant denied the allegations and also filed objection that there was no chargesheet bearing article of charges, statement of imputation of misconduct and relied upon documents but he received no response. On 27.6.2004, new Inquiry

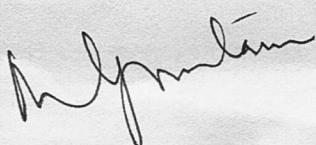


Officer was appointed. After showing some photocopies of documents, the applicant was asked to submit his defence. The applicant also submitted that enquiry was not being held in accordance with Rules and submitted his defence. Inquiry Officer submitted his enquiry report on 16.12.2004 and copy was furnished to the applicant for his response. Applicant submitted his reply on 18.1.2005 and on 28.3.2005, Disciplinary Authority decided to impose the penalty of recovery of Rs. 22,569.05 from the salary of the applicant. Applicant again preferred an appeal dated 9.6.2005 but it was rejected by a cryptic and non speaking order on 05.09.2005. Aggrieved, the applicant has filed present O.A. seeking the following Relief(s):-

- “(i) ***to issue an order rule or direction for quashing and set aside the impugned punishment order dated 28.3.2005 (Annexure A-1) to this original application.***
- “(ii) ***To issue an order, rule or direction for quashing and setting aside the impugned appellate order dated 5.9.2005 (Annexure A-7) to this Original Application.***
- “(iii) ***To issue an order rule or direction to the respondent NO. 3 to make the payment of the amount which has been deducted from the monthly salary of the applicant in pursuance of the above said punishment order dated 28.3.2005 with interest @ 18% per annum.***
- “(iv) ***To issue any other, rule or direction which this Hon'ble Tribunal deem fit and proper in the circumstances of the case.***
- “(v) ***To award the cost of the applicants in favour of the applicants”.***

Meanwhile during the pendency of the O.A. applicant expired on 19.4.2007. Substitution Application was moved by his son Bhanu Pratap and was allowed on 6.2.2008.

3. Case of the applicant is that punishment of recovery has been imposed upon him vide order dated 30.6.1998 and his appeal against the same was also rejected on 30.6.1999. In O.A. NO. 94/2000 filed by the applicant, the Tribunal quashed the order of punishment and appellate order and directed the respondent NO. 3 to hold an open enquiry and thereafter pass fresh orders in accordance with law. The

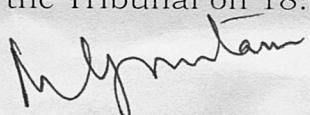


claim of the applicant is that no chargesheet was served upon him as a consequence of the order of the Tribunal and there was no statement of imputation of charges or list of relied upon documents. He was simply shown some documents and on the basis of earlier charges against him punishment was again imposed upon him of recovery.

4. In the counter affidavit filed by the respondents, it has been stated that a theft, which occurred on the night of 19/20.08.1997 in Post Office Padrauna Chhawani resulted in a loss of Rs. 30358.05. Heavy cash balance was retained by the applicant, by showing inflated bogus liabilities of Rs. 54508.65. It was due to negligence of the applicant that the heavy cash was available in the Post Office. According to the respondents, no direction was given by the Tribunal to issue fresh chargesheet and direction was only for open enquiry, therefore, enquiry on the old chargesheet was conducted under Rule 16 (1) (a) on the pattern of Sub Rule 3 (23) of Rule 14 of C.C.S (C.C.A) Rules, 1965. According to the respondents, fresh chargesheet was not necessary in the present case, which was that of recovery.

5. The stand of the respondents is that there was no direction from the Tribunal to issue fresh chargesheet and fresh chargesheet was not necessary as charges leveled against the applicant had not changed.

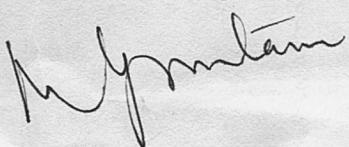
6. I have heard both the counsel and perused the records on file. What is to be seen in the present O.A. is whether the direction given by the Tribunal was complied with by the respondents or not?. The order passed by the Tribunal on 18.09.2003 reads as follows:-



"For the reasons stated above, this O.A. is allowed. The order dated 06.5.1998/30.6.1998 passed by Disciplinary Authority (Annexure I) and order dated 30.6.1999 (Annexure II) passed by the Appellate Authority are quashed. The respondent NO. 3 is directed to hold an open inquiry and thereafter pass the order afresh in accordance with law. As the case is old, the disciplinary proceedings may be concluded inquiry within six months from the date of receipt of a copy of this order".

It is very clear from perusal of the above order that earlier punishment order and appellate order was quashed and set aside by the Tribunal and the Respondents were directed to hold an open inquiry and thereafter pass orders afresh in accordance with law. This makes it very clear that enquiry was to proceed ab-initio i.e. from the beginning.

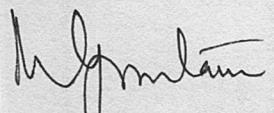
7. The stand of the respondents that fresh enquiry against the applicant was conducted without issuing afresh chargesheet is not maintainable. There was no occasion to use old chargesheet and to just conclude the old proceedings whereas Tribunal had already quashed and set aside the punishment order passed in that enquiry. It is also noted that applicant had expired in the year 2007 and substitution has been allowed. It is clear that procedurally respondents have erred in not conducting fresh inquiry as directed by the Tribunal and have persisted with a procedure, which was not approved by the Tribunal and was consequently set aside. It is also being observed that a theft is an abnormal event and cannot be blamed on an employee of the Post Office. The case of the respondents is that if the applicant had acted diligently, there would not have been heavy cash reserve in the Post Office, but it cannot be said that a theft would not have been committed. Recovery is to be made only when direct responsibility is proved. The applicant could



only be charged with procedural mistake and not for the theft of Government money.

8. In view of the above facts, punishment orders dated 28.3.2005 (Annexure A-1) and 5.9.2005 (Annexure A-7) are quashed and set aside with direction to the respondents to pay back to the substituted applicants whatever money has been recovered from the salary of the applicant within a period of two months from the date of receipt of a certified copy of this order.

9. The O.A. is accordingly allowed. No costs.



Member (A)

Manish/-