

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD-**

(THIS THE 7th DAY OF 8 2009)

PRESENT :

HON'BLE MR. A. K. GAUR, MEMBER-J
HON'BLE MR. D.C. LAKHA, MEMBER-A

ORIGINAL APPLICATION NO. 698 OF 2005
(U/s, 19 Administrative Tribunal Act.1985)

Ved Prakash Tiwari, S/o Sri Ram Surat Tiwari, R/o Village and
Post-Sawai Atmadpur, District-Agra.

.....Applicant

By Advocate : Shri Avnish Tripathi

Versus

1. Union of India, through its Secretary, Department of (Posts),
Ministry of Communication, Dak Bhawan, Sansad Marg,
New Delhi.
2. Director Postal Services, Agra Region, Agra.
3. Senior Superintendent of Post Offices, Agra Division, Agra.

..... Respondents

By Advocate : Shri S.C. Mishra

ORDER

(DELIVERED BY: A. K. GAUR- MEMBER-JUDICIAL)

By means of this original application the applicant has
prayed for quashing the orders dated 19.7.1999 and 22.3.2004
passed by respondent nos.2 and 3 dismissing the applicant from
service, and rejecting his appeal. The material facts as may be
succinctly put in that the applicant was appointed as E.D.B.P.M.
Sawai Atmadpur, Agra by respondent no.3 on regular basis after
adopting due process of selection. The applicant is alleged to have

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committed serious bungling and mis-appropriation of the Government money by committing forgery in different R.D. account. He was put-off duty by the then SDI on the ground of mis-appropriation of the Government money. On 30.12.1997 the SDI made a preliminary enquiry and recorded the statement of several account holders behind the back of the applicant. Charge Sheet dated 31.12.1997 was issued to the applicant under Rule 8 of E.D.As (Conduct and Service) Rules 1965. The applicant denied charges on 19.1.1998, enquiry officer and presenting officer were appointed. Photocopy of the charge sheet dated 31.12.1997 has been filed as Annexure-5 to the OA. It would be apposite to mention following dates of the Enquiry:-

- "28.07.1998 *The enquiry officer directed the P.O. to insure the presence of the prosecution witness as they were examined and cross examined on the date fixed i.e. 3.8.98 and 4.8.98*
- 3.8.1998 *P.O. failed to produce the state witnesses namely B.B.L. Srivastava, Her Shanker Sharma, Smt. Sarla Sharma and Km. Richa, Sri Balbir Singh Mail overseer were examined and cross examined and his statement dated 18.9.1995 was exhibit as Ka-42.*
- 4.8.1998 *P.O. again failed to produce the material prosecution witnesses namely Km. Richa, Smt. Sarla Sharma, Km. Preeti, Km. Luxmi Amouria, Sri Raghubir Singh were examined and cross examined.*
- 27.8.1998 *Prosecution witnesses again absented, B.B.L. Srivastava (P.W.4) was examined but not cross examined due to none availability of the defence helper and exhibited as Ka-43.*
- 21.9.1998 *Applicant wrote a letter to the E.O. for giving time to appoint another defence helper.*
- 5.10.1998 *Umeshwar Agnihotri appointed as defence helper, again P.O. failed to produce the prosecution witnesses, the E.O. allowed last time to produce the material prosecution witnesses on the next date otherwise they were dropped as they were called by registered letter dated 3.4.98, 4.8.98, 10.7.98, 11.7.99, 27.8.98 send to them but they did not appear before enquiry officer.*
- 13.10.1998 *Witnesses absented again time allowed to P.O. to produce them on the next date.*

- 23.10.1998 *Prosecution failed to produce the material prosecution witnesses in the enquiry E.O. dropped witnesses.*
- 24.10.1998 *C.O. submitted his defence statement was examined as such enquiry was completed general examination of P.O. and case closed written brief called for.*
- 21.11.1998 *P.O. submitted his written brief."*

2. According to the applicant the proceeding were held by the respondents on several dates but the respondents have utterly failed to produce any material/relied upon witnesses during the enquiry. The additional document remanded by the applicant was also denied by the respondents. It is also alleged that the statement of the prosecution witnesses (holder of RD Account) who did not appear before the Enquiry Officer were ultimately dropped by the Enquiry Officer but their alleged statement recorded during preliminary enquiry were taken into consideration by the Enquiry Officer for proving the charges leveled against the applicant. The copy of the Enquiry report was supplied to the applicant, who submitted representation, after considering the representation of the applicant the respondent no.3 dismissed the applicant from service. Against the order of dismissal the applicant had filed appeal dated 27.9.1999 and respondent no.2 without considering the grounds taken in appeal and without applying his own mind rejected the appeal of the applicant by a non speaking order (Annexure A-23). The sole grievance of the applicant is that none of the witnesses appeared before the Enquiry Officer and all of them were ultimately dropped by him. The statement recorded behind the back of the applicant during the preliminary enquiry were made the basis of punishment. The enquiry officer committed serious illegality in placing reliance on the statement of

the witnesses given during the preliminary enquiry and held the charges proved.

3. In the counter reply filed by the respondents it is submitted that the SDI(P) Sub Division Agra visited Sawain B.O. on 23.09.1994 and 24.09.1994 but the ED, BO was found closed and EDBPM was also found absent from duty. The applicant was placed under put off duty on 27.09.1994. As a result of enquiry/verification of the past work an amount of Rs.16,237-25/- was found misappropriated by the applicant. The modus-operendi resorted to by the applicant was as under:-

"(i). He kept PO cash worth Rs. 3395.35/- in his custody;

(ii). He received the amount of Rs. 9420+551.90=Rs.9971.90/- of RD installments with default from depositors of various RD accounts and made entries of deposit in RD pass books in his own hand writing and affixed date stamp in the RD pass books but he did not account for the amount in P.O. account.;

(iii). He had part withdrawal of Rs. 2450/- from RD Account by making forged signature of depositor of RD account No. 164679 on 11.04.1994;

(iv). He received the amount of Rs. 400/- of MO issue with commission of Rs. 20/- from the remitter of MO and issued BO receipt No. 87 dated 22.09.1994 but amount was not accounted for in PO accounts;

The details of defrauded amount by the applicant is as under:-

<i>(a). Cash found short with EDBPM</i>	<i>Rs. 3395.35/-</i>
<i>(b). R.D. Accounts</i>	<i>Rs.12421.90/-</i>
<i>(c). M.O. issue</i>	<i>Rs. 420.00/-</i>
	<i><u>Total Rs. 16237.00/-</u></i>

C. The entries defrauded amount was credited by the EDBPM, the applicant as detailed below:-

Etmadpur SO ACG-67	RN 57 dt. 1.11.94	Rs. 3230.00
-do-	-do- RN 58 dt. 1.11.94	Rs. 1201.00
-do-	-do- RN 60 dt.25.11.94	Rs. 6790.00
-do-	-do- RN 90 dt. 25.08.95	Rs. 16.25
Civil Lines PO	-do- RN 26dt. 21.11.94	<u>Rs. 5000.00</u>
		<u>Total Rs.16237.00/-"</u>

4. The enquiry officer after holding enquiry vide order dated 15.1.1999, found that the charges leveled against the applicant to be proved. After receiving representation of the applicant dated 7.4.1999 the enquiry report was submitted to the SSPOs, Agra vide order dated 19.7.1999 dismissing the applicant from service. According to the respondents the applicant did not comply the instruction regarding payment on proper identification noted by Sub Post Master, Etmadpur on withdrawal form SB-7 knowingly so that his fraudulent act of making forged withdrawal may not come into light. In para 11 of the counter reply respondents have admitted that though Km. Richa and Km. Laxmi Amauliya did not appear before the Enquiry Officer for affirming their earlier statement recorded during preliminary fact finding enquiry but in view of the discussions made in various paragraphs of the enquiry, the entries are conclusively proved that transaction took place in Post Office and as such there is no need of secondary evidence i.e. counter foils of paying slips in order to prove the misconduct of the applicant.

5. In the Rejoinder Affidavit filed by the applicant the facts enumerated in the counter reply has been denied. It is submitted

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by the applicant that none of the Account Holder of the aforesaid account moved any complaint, but in fact the Postal Authority i.e. the respondents forced them for giving false statement and information regarding the alleged mis-appropriation and this fact is confirmed by the affidavit filed by Shri Hari Shanker Sharma that he has received the information regarding the alleged mis-appropriation of public money by the applicant from Postal Authority. The applicant was also called in the office of Senior Superintendent of Post Offices, Agra and was threatened by the Postal Authority to handover to the Police Authority, otherwise he should admit regarding mis-appropriation of the aforesaid amount in different R.D. Accounts and deposit the amount in the Post Office. The applicant under duress deposited the amount on 21.11.1994 in the Post Office, Civil Lines, Agra. During the course of preliminary enquiry the Investigating Officer has admitted that he obtained the Pass Book of respective Account Holders from the office of Senior Superintendent of Post Offices, Agra. This clearly indicates that before making preliminary enquiry and putting off the applicant from duty, the respondents had obtained all Pass books of these Account Holders who were ready to give the false statement and support the allegations made against the applicant. All these witnesses did not choose to appear before the regular enquiry and face cross examination and ultimately the enquiry officer dropped other persons from appearing before him. There is no allegation in the charge sheet and no averment made in the enquiry report that they were won over by the applicant, but in the counter affidavit contrary allegations have been made which is not permissible under law. It is settled principle of law that if certain

facts are not mentioned in the impugned orders, the same can not be substituted and supplemented in the shape of filing the counter affidavit or affidavit. In the statement of Shri Anand Yadav, the preliminary investigating officer, it is categorically admitted that he has not tallied the signature of Account Holders from the official record of the post office and have also not got any opinion from hand writing expert. The respondents have also filed supplementary counter affidavit. In the supplementary counter reply it is submitted that witnesses were won over by the applicant as they belong to the same village.

6. We have heard Shri A. Tripathi, learned counsel for the applicant and Shri S.C. Mishra learned counsel for the respondents. Learned counsel for the applicant has vehemently argued that this is a case of no evidence. No opportunity of cross examination was given to the applicant. None of the witnesses have been examined by the Enquiry Office. Learned counsel for the applicant would contend that the evidence recorded during the preliminary enquiry could not be a basis for awarding punishment. Shri A. Tripathi, learned counsel for the applicant would further contended that in view of following decision rendered by Hon'ble Supreme Court: **AIR 1986 SC 1173 : Ram Chand Vs. U.O.I. and Other, 2006 (11) SCC 147 : Director IOC Vs. Santosh Kumar, JT 1994 (1) SC 597 : National Fertilizer Vs. P.K. Khanna and 2006 SCC (L&S) 840 : N.M. Arya Vs. United Insurance Co. and 2008 (1) Supreme today, 617 : DFO Vs. Madhusudan Rao.** the order passed by the Appellate Authority is cryptic and non speaking and the same has been passed without application of

mind. It has also been argued that in view of the decision reported in **1999(2) S.C. Services Law Judgments 360, Hardwari Lal Versus State of U.P. & Ors.** It is clearly held that non examination of complainant in the enquiry violate principles of natural justice and fair play, and 1999 SCC (L&S) 429, Kuldeep Singh Versus Commissioner of Police and Others has been relied upon by learned counsel for the applicant in support of his contention that the findings recorded by the enquiry officer is liable to be interfered with, as the same is based on no evidence on is such as, could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior authority. Learned counsel for the applicant argued that this is a case of no evidence and the findings recorded by the enquiry officer and disciplinary authority are wholly perverse.

7. Shri S.C. Mishra, learned counsel for the applicant submitted that the order passed by the Enquiry Officer and the disciplinary officer is not subject to judicial review, while looking to the enquiry proceedings the Tribunal cannot sit as a court of appeal.

8. Having heard parties counsel and on a close scrutiny of the entire evidence placed on record during enquiry, we find that there is no evidence in support of the findings recorded by the Enquiry officer and Disciplinary authority that the article of charges framed against the applicant has been established. All the above mentioned aspects have not been taken into consideration by the enquiry officer as well as by the disciplinary authority in assessing

the evidence during the course of enquiry. We are not inclined to hold that the conclusion reached by the authorities that the article of charges has been proved is based on any legal acceptable evidence. Further it is found that the statement recorded during the preliminary enquiry has been made the sole basis for awarding punishment to the applicant and without affording the opportunity to the applicant to cross examine the witnesses, the competent authority had committed serious illegality in coming to the conclusion on the basis of previous statement given by the witnesses, though the witnesses have not supported the previous statement given by them.

9. We have also carefully considered the argument advanced by Shri A. Tripathi learned counsel for the applicant that the appellate order is cryptic and non speaking and we are wholly in agreement with the learned counsel for the applicant on this point. No other argument has been advanced by the learned counsel for the respondents in support of his case. Having heard parties counsel for a considerable length, we are fully satisfied that the orders dated 19.7.1999 and 22.3.2004 deserve to be quashed and set aside. We could have remitted the matter back to the appellate authority for re-consideration of the entire case on the ground that the order passed by the appellate authority is non speaking and cryptic but since the order dated 19.7.1999 passed by the Senior Superintendent of Post Offices, Agra and Appellate Authority order dated 22.3.2004 is under challenge. We do not consider it proper and appropriate to remit the case back to the competent authority at such a belated stage.

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10. We accordingly quash and set aside the impugned orders dated 19.7.1999 and 22.3.2004 passed by respondent nos.2 and 3 and reinstate the applicant on the said post without any back wages. Let the competent authority pass the order accordingly within a period of three months from the date of receipt of a certified copy of this order.

11. With the above observations/directions OA is allowed. No Costs.


Member-A


Member-J

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