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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1047 of 1986
(Regular Civil Suit No.1690 of 1985 of the
Court of Munsif I Gorakhpur.

Radhey Shyam Pandey Plaintiff/Applicant

Versus

Senior Supdt. of Post Offices Gorakhpur
and Others. Defendants/Respondents

Hon.Mr.Justice Kamleshwar Nath,V.C.
Hon.Mr.K.J.Raman, Member (A)

(By Hon.Mr.K.Nath, V.C.)

The Regular Civil Suit described above is before us under Section 29 of the Administrative Tribunals Act, 1985 for a declaration that despite order dated 13.9.84 (11 GA) dismissing him from service, ^{applicant} the ^u has continued to be in service as Extra Departmental Branch Postmaster (for short EDBPM) of Sub Post Office Chaumukha, Tehsil Mahrajganj, District Gorakhpur.

2. The plaintiff-applicant Radhey Shyam Pandey was appointed as EDBPM by order dated 5.12.78 (9 GA) and started working from 22.12.78. On 21.9.83 he was served with a chargesheet (10 GA) for departmental disciplinary enquiry. Five charges were levelled against him. He filed a reply. Keshav Prasad Upadhyay Inspector of Post Offices was appointed as Inquiry Officer. After concluding the enquiry in which witness

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were examined, the Inquiry Officer held in his report dated 10.4.84 that charges 2, 4 and 5 were not proved but charges 1 & 3 stood proved.

3. The substance of charge No.1 is that the plaintiff-applicant had removed stamps of Rs.2/- each from three registered letters. Charge No.3 related to the alleged commission of delay by the plaintiff-applicant in making payment of a money order No.3304 from Pithoragarh for Rs.260/- inasmuch as it had been received in the Post Office on 20.8.79 but was delivered to the payee by the plaintiff-applicant on 30.8.79.

4. The disciplinary authority agreed with the findings of Inquiry Officer and passed the impugned punishment order (11 GA) and observed that the charges were so grave that the plaintiff-applicant was not fit to be retained in the Postal Department. He therefore passed the order of dismissal of the plaintiff-applicant forthwith.

5. The plaintiff-applicant preferred an appeal which was dismissed by order dated 23.3.85 (12 GA) of the Director of Postal Services.

6. We have heard the plaintiff-applicant's counsel Shri D.P.Gupta and the respondents' counsel Km.Sadhna Srivastava who has also produced the disciplinary enquiry record. We have perused the record and the material on the file.

7. In respect of charge No.1, the contention of the learned counsel for the plaintiff-applicant is that there was no evidence that the stamps were ever detached from the registered letters. It must be

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mentioned that the registered letters had arrived from Post Office Ghughli to be delivered to the addressees by Post Office Chaumukha. The addressees were not found hence the three registered letters were to be returned to Post Office Ghughli. The registered letters were never produced in the course of enquiry which is quite understandable because all the letters would naturally have been sent back undelivered to the senders and therefore must not have been in the possession of the Postal Department during the period of enquiry.

8. The question is whether it is a 'no evidence' case in so far as charge of removal of stamps of Rs.2/- each from each of the three envelopes is concerned. The learned counsel for the plaintiff-applicant refers to para 4 of the plaint and says that the alleged eye witness account of Kailash, the Extra Departmental Mail Peon who had deposed that the plaintiff-applicant had removed the stamps in his presence, was wrong which could be shown by the Error Book dated 27.3.80 in which Kailash himself had recorded that the three registered letters received for delivery from the Accounts Office did not have Rs.2/- stamps each, but that Error Book was not produced in the course of the enquiry. The learned counsel says that the bare denial in paras 4 & 8 of the written statement in this regard is no denial and therefore it may be held that the Error Book if produced would have negatived the charge. The learned counsel for the defendants-respondents however points out that there is no mention whatsoever in the enquiry proceedings

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that the plaintiff-applicant had ever required the Error Book to be produced during the proceedings. The learned counsel for the plaintiff-applicant is unable to show that the plaintiff had ever — called upon the Department or the Inquiry Officer to produce the Error Book. We have gone through the enquiry report contained in the disciplinary enquiry proceedings and we find that in the record before the Inquiry Officer there was evidence to show that stamps of Rs.2/- had been removed from the three registered letters and that the Extra Departmental Mail Peon, Kailash had given direct evidence as eye witness of their removal by the plaintiff-applicant. It is not for this Tribunal to weigh the evidence. It is enough that the evidence is there and the Inquiry Officer has considered it fit to accept it.

9. In respect of charge No.3, the plaintiff-applicant has accepted the fact that the money order was received on 20.8.79 and was delivered on 30.8.79. His case is that there were some earlier money orders as also a telegraphic money order dated 24.8.79 which had to be delivered first and therefore the money order in question was delivered on 30.8.79. The learned counsel for the plaintiff-applicant refers ^{to} para 11 of the plaint and says that B.O. journal for the period from 21.8.79 to 30.8.79 was not produced during the enquiry which would have shown that there was no sufficient money in the hands of the plaintiff. There is a bare denial of this statement in para 11 of the

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written statement. The Inquiry Officer has referred to Exb. P 13 and 16, being the B.O. accounts for the period from 20.8.79 to 1.4.80, January, 1979 to February, 1980 and written statement dated 28.9.79 of the applicant, and has mentioned that Rs.1194-40, 586-60, 339-20 and 339-80 were available in cash at the Post Office respectively on 21, 22, 23 and 24.8.79 out of which the money order in question of Rs.260/- could have been paid. The learned counsel for the plaintiff-applicant has not been able to show that this finding is without evidence.

10. The next point urged by the learned counsel for the plaintiff-applicant is that the disciplinary authority has not recorded his own reasons for holding the charges to be proved. The disciplinary authority has recorded that he agreed with the findings of the Inquiry Officer. We do not think that, having found so, it was necessary for him to repeat the reasoning which the Inquiry Officer might have recorded. It is significant that in the appellate order details of the various materials relevant for the charges have been considered. So the appellate order is undoubtedly a speaking order. No other infirmity in the enquiry proceedings is made out by the learned counsel for the plaintiff-applicant.

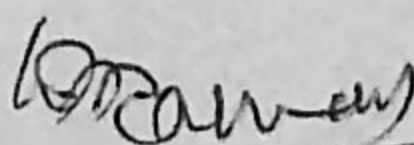
11. The last point ^{urged} by the learned counsel for the plaintiff-applicant is that the punishment of dismissal from service is excessive. We may mention that while in the punishment order it is said that both the charges were so grave that it was not proper to retain the plaintiff-applicant in the service of the


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Department, in the appellate order there is absolutely no mention of the propriety of the punishment of dismissal. It will be appreciated that the removal of the postage stamps, which must have taken place after the stamps had already been defaced because delivery thereof had already been attempted, took place in March, 1980 while the delay in distributing the money order, perhaps of about one week, had taken place in 1979. The chargesheet for these offences came almost three years after the event and the punishment was awarded between 4 and 5 years of the event. We do not think that having regard to the nature of the charges and the time factor, the punishment imposed is adequately balanced with the facts of the case. Since the appellate authority has not applied its mind to the quantum of punishment, this Tribunal might as well have considered to reduce the punishment; but in view of the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Parmenanda (1989) 2 SCC 177 at paras 26 and 27, this Tribunal is not expected to substitute an order of punishment for the order passed by the departmental authorities. The Suit, therefore, should fail.

12. For reasons indicated above, the Suit is dismissed. Parties shall bear their costs of the Suit.


Member (A)

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Vice Chairman

Dated the 9th Aug., 1990.

RKM