

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Transfer Application No. 529 of 1987

Allahabad this the 26th day of February 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. S. Dayal, Member (A)

1. Smt. Leelawati W/o Late Abhay Nandan Lal
2. Seetantra Kumar S/o Abhay Nandan Lal
3. Raghuvendra S/o Late Abhay Nandan Lal
4. Baby D/o Nandan Lal
5. Kamini W/o Triveni R/o Vill. and Post Ravideopur, Azamgarh
6. Manorama W/o Rajkumar R/o Preetam Nagar, Allahabad.
7. Mithilesh W/o Bheem Shankar R/o Saray Ghati, Gaya, Bihar.
8. Vinod W/o Prem Lal R/o Vill. and Post Tangarpur, Distt. Azamgarh.
9. Meera W/o Deeki Nandan Lal R/o Vill. Kuswan Post Chitramau, Distt. Azamgarh.
10. Pushpa W/o Vivek, 50, New Ganesh Ganj, Lucknow.

By Advocate Sri A.S. Diwaker

Ver sus

1. Union of India through Senior Superintendent (Post Offices), Azamgarh.
2. Senior Superintendent, Post Office, Azamgarh.
3. Dak Nirikshak, Phoolpur, Azamgarh

Respondents.

By Advocate Sri P. Mathur proxy
to Sri N.B. Singh.

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ORDER

By Hon'ble Dr. R.K. Saxena, J.M.

This case was originally instituted in the Court of Munsif, Azamgarh but because the Administrative Tribunals Act, 1985 under which the Tribunal was constituted, had come into force, this Civil Suit No. 357 of 1984 was transferred to the Tribunal and was allotted T.A.no.529 of 1987.

2. The brief facts of the case are that Late Abhay Nandan Lal Srivastava was Extra Departmental Post Man in Ahrola Post Office. He was appointed on 18.1.1956. It has come in the pleadings that one money order no.3027 of Rs.100/- was sent from Delhi General Post Office for remittance to Sri Budh Ram Harijan. Since the remittance was not made and complaint was lodged with Post Master, Delhi General Post Office, a letter was sent to the authorities here on which inquiry started and it was revealed that the plaintiff/applicant had not remitted the money to the rightful person. He had picked up two persons as witnesses and forged remittance to the rightful persons was shown but actually no payment was made. It had happened in several cases. Therefore, the applicant was served with a charge-sheet. The first charge was that M.O.no.3288 of Rs.100/- which was sent from Shimulgudi on 30/9/77 for remittance to Sugra Khatun (Smt. Tavarun Nisha, w/o Faikun) was not remitted to her by the plaintiff/applicant and he had forged the signature of her. The presence of witnesses Mewa Lal and Bans Raj was wrongly shown. Another charge was that on 08.10.1977, he was given

nine money orders for remittance to the rightful persons. It was alleged that the amount of these money orders too was not given to the persons in whose names these money orders were sent. The charges were denied by the applicant. Consequently the inquiry was held and the charges were found established. The inquiry report was submitted to the disciplinary authority which passed the order of removal (Annexure-4) from service on 5.2.82. The plaintiff/applicant had preferred an appeal which too was rejected on 23.11.1982 vide Annexure-5. The appellate authority had observed that the second charge was not established. Despite this observation, the order of removal was maintained.

3. Feeling aggrieved by these orders, the plaintiff/applicant had approached the Civil Court where the orders were challenged and relief sought was that the orders of the disciplinary authority as well as of appellate authority be quashed and the plaintiff/applicant be re-instated along with consequential benefits.

4. During the pendency of the case the plaintiff/applicant-Abhay Nandan Lal Srivastava died and the wife and children were substituted. Now these substituted persons are prosecuting the case.

5. The case was pending at the stage of filing written statement when it was transferred to Tribunal. The respondents, therefore, filed the counter-affidavit challenging the transferred case on several grounds. It has been contended that the plaintiff/applicant had committed gross misconduct by not remitting the money to the rightful persons. It was also averred that he had forged the signatures of those persons in whose names money orders were sent. The witnesses in whose presence the money was stated to have been given to the rightful persons were also fictitious persons. Hence the T.A. has been opposed.

5. The plaintiff/applicant filed rejoinder in which it is alleged that the charges were not established. The witnesses had not supported the facts of the case and, thus, the punishment awarded was not sustainable.

6. We have heard the learned counsel for the parties and have perused the record.

7. The main question for consideration in the case is whether the punishment which was awarded to Late Abhay Nandan Lal Srivastava was legal and sustainable in law. Learned counsel for the plaintiff/applicant has urged that there had been gross violation of the principle of natural justice. He attacked the orders of punishment on the ground that the statements of witnesses were recorded during preliminary inquiry but the copies were not given to him. He has brought on record the statements given by Smt. Tavarun Nisha, Mewa Lal and Bans Raj. All these witnesses had appeared in support of first charge. Of them, Smt. Tavarun Nisha and Mewa Lal disclosed that their statements were recorded prior to their deposition being reduced into writing by the Inquiry Officer. The learned counsel for the ^{plaintiff/}applicant has also brought on record the copies of these earlier statements of those three witnesses. It is not understandable that if the copies of statements recorded during the preliminary inquiry were not furnished to the applicant, how he could bring those copies on record. In view of this fact, the contention of the learned counsel for the applicant that the copies of the statements of the witnesses recorded during preliminary

inquiry were not made available, is contradicted. The second ground is that the applicant had made an application to the Inquiry Officer in which demand of copies of the statement of as many as 13 persons was made, but in the said list the names of these three persons namely Smt. Tavarun Nisha, Mewa Lal and Bans Raj are not included. In case the copies of the statements of these three witnesses recorded during preliminary inquiry had not been made available, the plaintiff/applicant would have certainly raised this point ^{either} ~~also~~ through the said application of demand of copy or by a separate application. No separate application has been brought on record. Thus, the argument advanced by the learned counsel for the plaintiff/applicant that the prejudice was caused to the applicant by the copies of the statements recorded during preliminary inquiry having not been furnished to him, *does not stand?*

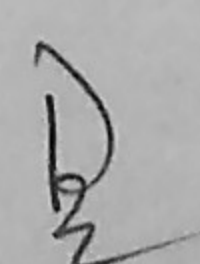
9. The learned counsel for the applicant also argued that the witnesses had not supported the case against the ^{plaintiff/} applicant and the affidavits of those witnesses have been brought on record. It may be made clear that these affidavits which were got prepared subsequently and produced before the Tribunal, are not admissible. The possibility of influence being exercised over them, cannot be ruled out. If they did not want to support the case of the department, they should have deposed as such before the Inquiry Officer. Anyway, the scope of judicial review cannot be extended to receive any evidence in the manner as has been done by the learned counsel for the plaintiff/applicant. Besides, it is well settled law that the appreciation

of the evidence or re-appraisal of the evidence cannot be allowed to be done during judicial review of the matter. We are only concerned^h to find out if any illegality in procedure was committed or if any principle of natural justice was violated. We do not find any such ground in the case. We also failed^c to conclude that there was perversity in the conclusion drawn by the disciplinary and appellate authorities. Thus, there is no ground on which the interference in the orders passed by the authorities may be made.

10. The learned counsel for the applicant drew our attention towards the order of appellate authority in which it is said that the charge no.2 was held not established. It may not be forgotten that the applicant was facing two charges. One was that the amount of Rs.100/- of money order no.3288 was not remitted to the rightful person. Both the parties disciplinary as well as appellate authority came to the conclusion that the charge was established. It is really gross misconduct that the amount of Rs.100/- of money order may be shown to have been remitted when it was not actually remitted. It is a case of criminal charge of embezzlement. In such a situation even if first charge is found established, the punishment of removal given to the applicant was quite justified. We see no justification to interfere with the orders even on that count.

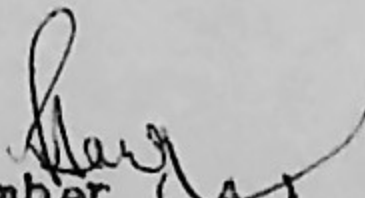
11. On the consideration of the facts and circumstances in its entirety, we come to the conclusion

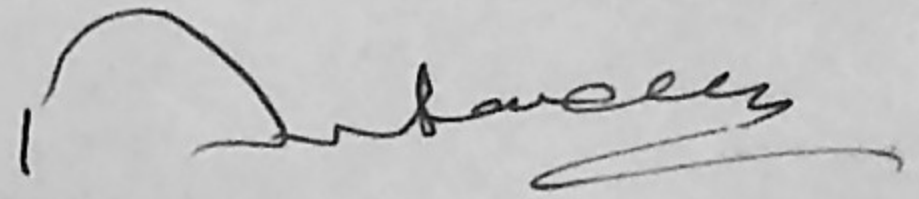
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that there is no merit in the case of the plaintiff/
applicant. The T.A. is, therefore, dismissed. No
order as to costs.


Member (A)


Member (J)

/M.M./