

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad: Dated this the ^{25th} ^{Aug 97} day of June 1996

ORIGINAL APPLICATION NO.136 of 1988

Hon'ble Mr. S. Das Gupta. A.M.

CORAM:

Hon'ble Mr. T. L. Verma. J.M.

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Ashok Kumar Chaturvedi

s/o R.S. Chaturvedi, Mail Peon,

Mangalpur (KNP) office of

Supdt of Post Offices (M) Kanpur.

-----Applicant

C/A. Sri Anil Kumar

VERSUS

1. Director Postal Services

Office of Addl.P.M.G.U.P., Circle

Kanpur.

2. Superintendent of Post Offices,

Kanpur (East)

----- Respondents

C/R Sri N.B. Singh

ORDER

By Hon'ble Mr. T. L. Verma J.M.

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the order dated 9.4.1986, awarding punishment of reduction ^{of Group D} to the lower post for a period of two years and order dated 10.6.87 upholding the punishment imposed with all consequential benefits including arrears of pay

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2. The applicant while working in the post office JHINJHAK, Kanpur was issued charge sheet dated 14.3.1984 on the allegation that he had, while working as village postman Derapur (Kanpur) received five money orders for being paid to the addresses and the same were shown as paid to the addresses without actually making payment. On the above allegation, following charges were framed against him.

" ARTICLE I

That the said Sri Ashok Kumar Chaturvedi, while working as village postman Derapur (Kanpur) on 31.7.1981, received Hamdard Dawakhana M.O. no.5960 dated 23.7.1981 for Rs.300/- P/T Sri Kabir Ahmad Imam Chowk, Derapur, Kanpur for effecting payment to its payee. The said M.O. was shown as paid on 31.7.1981 by said Sri Ashok Kumar Chaturvedi, V.P.M. Derapur. Thus the said Ashok Kumar Chaturvedi is alleged to have misappropriated the amount of the said M.O.

ARTICLE II

That the said Sri Ashok Kumar Chaturvedi while working as V.P.M. Derapur, Kanpur on 23.9.1981, received Kanpur M.O.NO.1468 dated 21.9.1981 for Rs.180/- P/T Smt. Mustari D/O Smt. Chisti Mohalla Mirdhan, Derapur, Kanpur for effecting payment to its payee, the said M.O. was shown as paid to Smt. Mustari Devi on 23.9.1981. Whereas the said payee stood expired on back date. Thus the said Ashok

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Kumar Chaturvedi, is alleged to have misappropriated the amount of the said M.O.

ARTICLE III

That Sri Ashok Kumar Chaturvedi while working as V.P.M. Derapur, Kanpur on 29.9.81 received FPO 737 M.O. No. 2754 dated 23.9.1981 for Rs.150/- P/T Smt. Ravati w/o Sri Shiv Ram Derapur, Kanpur for effecting payment to its payee. The said M.O. was shown as paid to its payee on 29.9.1981 whereas the said payee Smt. Ramavati has denied to have received the amount of the M.O. and also denied to have signed the M.O. form. Thus the said Sri Ashok Kumar Chaturvedi is alleged to have misappropriated the amount of the said M.O.

ARTICLE IV

That the said Sri Ashok Kumar Chaturvedi while working as VPM, Derapur, Kanpur on 19.8.1981 received Shri Aurvindo Ashram, Parliament Street M.O. no. 6964 dated 12.8.1981 for Rs.200/- P/T Shri Mohd. Saeed Gulden Tailor Derapur, Kanpur for effecting payment to its payee. The said M.O. was shown as paid on 19.8.1981 by the said Sri Chaturvedi to the said payee, whereas the said payee has denied to have signed the M.O. form and also denied to have received the payment. Thus Sri Ashok Kumar Chaturvedi is alleged to have misappropriated the amount of the said M.O.

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ARTICLE V

That the said Sri Ashok Kumar Chaturvedi, while working as VPM, Derapur, Kanpur on 19.8.1981, received South Extension Part II Parliament Street M.O.No.7958 dated 14.8.1981 for Rs.100/-P/T Sri Mohd. Suleman, Kerana Merchant, Derapur, Kanpur for effecting payment to its payee. The said M.O. was shown as paid on 19.8.1981 to the said payee by the said Sri Ashok Kumar Chaturvedi, whereas the payee has denied to have received the payment of the said M.O. Thus Sri A.K. Chaturvedi is alleged to have "misappropriated the amount of the said M.O.

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The Inquiry Officer, after holding the enquiry submitted his report, holding the applicant guilty of charges nos. 2 and 4. The applicant was ~~not~~ found ^{not} guilty in respect of the other charges. The appeal filed against the punishment was dismissed. Hence this application for the reliefs mentioned above.

H 3. The impugned order of punishment has been assailed on the ground that the disciplinary authority as well as the appellate authority have failed to appreciate that Mustari Devi was a pardanashin lady, so it was difficult for the applicant to confirm whether the thumb impression obtained was of Mustari Devi or not. The other ground on which the impugned punishment has been challenged is that neither the Inquiry Officer nor the Disciplinary authority had recorded the findings

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to the effect that payment to wrong person was made with malafide intention and with a view ~~of~~ ^{to} gaining illegal benefit. That being so, mistake in payment, if any, was bonafide and does not fall within the definition of misconduct. The third ground on which the impugned punishment has been assailed is that in respect of two charges levelled against him, criminal case was also registered at Derapur police station. The police after investigating the case submitted final report in the matter. The applicant contends that he cannot be prosecuted for the ~~self~~ ^{same} ~~saying~~ allegations in a departmental proceeding. The applicant has also contended that reasonable opportunity was not given to him to defend himself inasmuch as the documents demanded were not supplied which adversely affected the defence of the applicant.

4. The respondents have appeared and contested the case. In the counter affidavit filed on behalf of the respondents, it has been stated that the applicant has, already, been restored to his original ~~position~~ ^{post} by order dated 12.7.1988. It has further been contended that the allegation of the applicant that relevant documents were not supplied to him is not correct and that relevant documents were shown to the applicant during the course of inquiry and full opportunity was given to him to plead his case. In regard with the contention of double jeopardy, it has been stated that the disciplinary proceedings and the criminal prosecution are two separate matters and as such initiating departmental proceeding against the applicant for the alleged omission and commission is not barred under rules.

5. The applicant has filed rejoinder affidavit, reiterating the averments made in the O.A.

6. We have heard the learned counsels for the parties and perused the records carefully.

7. We will first examine the question whether there is evidence to support the charges levelled and held to have been proved by the Inquiry Officer and the Disciplinary authority. The charge No.2, which has been held to be established is that the applicant received Kanpur Money Order No. 1468 dated 21-9-81 for Rs. 180-00 to be delivered to Smt. Mustari Devi r/o Mohalla Mirdhan, Derapur, Kanpur. The said money order, though shown as paid to her on 23-9-1981 was, however, misappropriated by the applicant. From the inquiry report, it appears that the person who had identified the payee did not appear for giving evidence in the inquiry. The department, however, brought death certificate on record of enquiry proceeding indicating that Smt. Mustari had died in 1981. Money order is purported to have been paid on 23-9-1981, the date on which she was not alive. This fact has not been challenged by the applicant. All that has been stated by him is that he came to know of the death of Smt. Mustari only after report of village Pardhan was filed in course of the inquiry. The fact that the payee of M.O.No. 1468 dated 21-9-1981 was dead on the date the same was shown to have been paid, stands proved. The payment, shown to have been made to her, on the face of it, is incorrect. In the circumstances, mentioned above, the burden of proving that the payment of Money order was made to an imposter under the bonafide belief that she was Smt. Mustari Devi was on the applicant ^{who} does not seem to have examined any one, to state that payment was made to a third person under a bonafide belief that the same was being made to a genuine person. We, therefore, find that there is evidence to support this findings of the Inquiry Officer and the Disciplinary authority.

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8. The other charge held to have been established against the applicant is that the amount of money order No.6964 dated 12-8-1981 shown to have been paid to Sri Mohd. Saeed, Golden Tailors, Derapur, Kanpur, in presence of one Narain Gupta was misappropriated by the applicant. The payee Mohd. Saeed has appeared and deposed before the Inquiry Officer that he neither signed the money order coupon nor received Rs. 200-00 on 19-8-1981. Sri Narain Gupta in whose presence, money order has been shown to have been paid has also appeared before the Inquiry Officer and given evidence to the effect that no payment to Mohd. Saeed was witnessed by him. In view of the statement of best witness to prove the charges, no fault can be found with the conclusion of the Inquiry Officer and the disciplinary authority.

9. In view of the discussions of the evidence made above, we are satisfied that the findings of the Inquiry Officer as well as the disciplinary authority in respect of the charges 2 & 4 levelled against the applicant ~~are~~ ^{are} supported by evidence.

10. In view of the foregoing conclusions, the next question that falls for our consideration is whether the respondents failed to supply copies of necessary documents and if so whether the same has resulted in prejudice to the applicant in his defence. The Inquiry Officer, in his report at page 57 internal page 5, has stated that the complaint of Anwarul Haq and Smt. Ram Vati mentioned in the article of charges could not be supplied to the applicant nor could be produced for his inspection during the inquiry. It has further been mentioned that the documents demanded by the applicant in his petition dated 26.9.1984 were also not made available for inspection on the ground that the same were not relevant.

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So far as the additional documents are concerned, learned counsel for the applicant failed to satisfy us that supply of the copies of those documents was necessary to enable the applicant to effectively defend himself. We, therefore, find no substance in the argument of the applicant that non supply of additional documents demanded in the petition dated 26.9.1984 has adversely affected his defence.

11. So far as the documents mentioned in the articles of charge~~s~~ are concerned, the disciplinary authority is under an obligation to deliver or cause to be delivered the same to the delinquent employee alongwith the charge sheet so that he may file his written statement of defence to meet the charges levelled against him with reference to the documents and the statement of witnesses proposed to be relied upon for proving the charges. We would have taken a view that non supply of the complaint of Anwarul Haq and Smt. Ramvati has caused material prejudice to the applicant, had the charges, connected with the complaint of the aforesaid two persons been held to have been proved. We have examined the inquiry report and other materials on record and find that neither the complaint of Anwarul Haq ~~nor of~~ Ramvati had anything to do with the charges held to have been brought home against the applicant. Therefore, in the circumstances of the case, non supply of the aforesaid documents has not in any way prejudiced the applicant in his defence. The applicant has cited the decision in (1987) ATC 205, (1988) ATC 8 and AIR 1957 (SC) page 882 in support of his arguments that non furnishing

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of documents will vitiate the entire disciplinary proceedings. So far as the principle of law laid down in the aforesaid cases is concerned there is no dispute but as we have already mentioned in the circumstances of the case, non supply of two documents mentioned above has not caused any prejudice to the applicant. Therefore, non supply of the same ~~stands acknowledged~~ will not vitiate the proceeding. The learned counsel for the applicant further submitted that all the witnesses cited in the articles of charges could not be examined as they did not appear despite issuing notices thrice. We have already mentioned above that the evidence as has been brought on record for proving the charges contained in the Article 2 and 4 is sufficient to support the findings of the disciplinary authority and the Inquiry Officer. The learned counsel for the applicant could not show as to how ~~far~~ non examination of some of the witnesses has prejudiced his defence and how their statement would have helped him in proving his innocence. Non examination of some of the witnesses mentioned in the article of charges also in our opinion is of no consequence. The decision in 1980 (12) ATC 66, 1980 (SCC) (L&S) 453 and 1990(12)ATC 353 cited by the applicant in support of his argument thus have no relevance in the facts and circumstances of the case.

12. The learned counsel for the applicant further argued that the disciplinary authority has passed the impugned order of punishment without applying his mind in as much as he has mechanically reproduced the observations made by the Inquiry Officer without applying his mind to the facts and evidence on record. Hence the same is vitiated. We find no merit in this argument. The Hon'ble Supreme court in the case of Ram Kumar Versus

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State of Haryana 1988 SCC(L&S) 246 in which the order of termination was challenged on the ground that no reason was given in the impugned order. The Hon'ble SUPREME COURT has held :

" In our opinion, when the punishing authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Inquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Inquiry Officer and the reasons given by him, the question of non compliance with the principles of natural justice does not arise."

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From the perusal of the order of the disciplinary authority it is quite clear that he has agreed with the findings recorded by the Inquiry officer. In that view of the matter and having regard to the decision of the Hon'ble Supreme court in Ram Kumar's case, we are satisfied that it was not necessary for the punishing authority to again discuss the evidence and come to the conclusion of the same findings as that of the Inquiry Officer.

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13. In the facts and circumstances of the case discussed above, we have come to the conclusion that the impugned order of the disciplinary authority imposing punishment on the applicant cannot be challenged on the ground that detailed reasons have not been recorded therefor. We further find and hold that no illegal/ity has been committed by non supply of documents to the applicant as alleged by the applicant. Findings recorded by the disciplinary authority is based on evidence and does not warrant intereference by this Tribunal on any account.

14. We have also carefully perused the impugned appellate order dated 10.6.1987. We are satisfied that this order is speaking and well reasoned. We see no reason for interference.

15. In the result, the application fails and the same is dismissed. No order as to cost.

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