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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Registration O.A. No.146 of 1988

Mohd. Arshad Applicant

Versus

Union of India & Another Respondents.

Hon.D.S.Misra, A.M.

Hon.G.S.Sharma,J.M.

(By Hon. D.S.Misra, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 praying for quashing the punishment order dated 5.1.87 dismissing the applicant from service as Branch Postmaster passed by the Senior Supdt. of Post Offices, Azamgarh and the appellate order dated 16.10.87 passed by the Director of Postal Services, Allahabad rejecting the appeal against the punishment order.

2. The case of the applicant is that, while working as Branch Postmaster Niaz Post Office, District Azamgarh, he was put off duty on 10.1.80 by Inspector Post Offices (copy Annexure-2); that he was taken back on duty on 5.3.81; that he was again suspended by the Inspector of Post Offices on 6.11.1981 and this order was confirmed by Senior Supdt. of Post Offices, Azamgarh vide his order dated 7.1.82; that aggrieved by the order of his suspension the applicant filed a Civil Suit and by an order dated 9.3.84 of 5th

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Additional Munsif, Azamgarh the order of suspension was quashed; that the appeal against the order dated 9.3.84 was also dismissed by the District Judge on 21.5.84 (copy Annexure-4); that the Second Appeal against the order dated 9.3.84 was also rejected by the Hon'ble High Court; that a chargesheet was served on the applicant on 17.10.85 (copy Annexure-17) and he submitted his reply on 31.10.85 (copy Annexure-18) that an enquiry was held into the matter and the Inquiry Officer submitted his report on 19.12.86 (copy Annexure-7); that the Senior Supdt. of Post Offices, Azamgarh, who was biased against the applicant passed an order of dismissal of the applicant on 5.1.87; that the appeal against the punishment order was rejected by the Director of Postal Services, Allahabad (copy Annexure-9). The applicant has alleged that the impugned order of dismissal and the rejection of his appeal are wholly mala fide and based on extraneous considerations.

3. In the reply filed on behalf of the respondents it is stated that on receipt of a complaint regarding non delivery of an insured letter No.502 dated 15.7.81 for Rs.1,500/- an enquiry was made by the Sub Divisional Inspector(Post) Phulpur, Azamgarh and on establishing a prima facie case of misappropriation of the value of the aforesaid insured letter by forging the signature of the addressee the applicant was put off duty vide order dated 6.11.81; that the applicant refused to take delivery of the ^{suspension} orders and ^{refused} to transfer the charge of the office of Niaz Branch Post Office

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and he kept cash, valuables and the records with him unauthorisedly; that consequently a parallel Post Office was opened to manage the work of the Branch Post Office on 12.11.81; that the applicant went to the Civil Court against the put off orders; that since the Court had held that the insured letter under reference was correctly delivered to the addressee on the basis of an affidavit dated 25.11.81 in the name Shri Alauddin, the addressee of the aforementioned insured letter, no proceedings could be initiated in this case against the applicant that the applicant was also found responsible for misappropriating the value of Bow Bazar Insured letter No.38 dated 4.11.1981 for Rs.300/-; that as a result of Disciplinary action under Rule 8 of Extra Departmental Agent (Conduct & Service) Rules, 1964 the applicant was ordered to be dismissed from service vide order dated 5.1.87; that the past record of the applicant reveals the fact that his performance was not satisfactory; that on 10.1.1980 he was suspended for his lapses and after conclusion of disciplinary proceedings a severe warning was given and he was again put back on duty; that it is absolutely wrong to allege that due to the filing of a case in the Civil Court and execution proceedings, the Department became angry and the dismissal order has been passed against the applicant; that the disciplinary proceeding was initiated against the applicant on a well established case of misappropriation and a memo dated 17.10.85 containing definite articles of charges was served on the applicant who was required to submit his defence within ten days; that on receipt of his reply an Inquiry Officer was

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appointed to enquire into the charges framed against the applicant and ^{the} Inquiry Officer submitted his report on 19.12.86. The Senior Supdt, of Post Offices, Azamgarh in his capacity as the disciplinary authority examined the enquiry report; the relevant documents as well as the whole proceedings and came to the conclusion that the finding of the Inquiry Officer was not correct and after considering all the circumstances ^{of the case} passed the impugned order dated 5.1.87; that it is absolutely wrong to allege that the order passed by the disciplinary authority and the appellate authority are mala fide and based on extraneous considerations.

4. The applicant filed a rejoinder reiterating the allegations made in the original application and alleging that the disciplinary authority has no inherent power to reject the findings of the Inquiry Officer and to pass the impugned order due to mala fide intentions.

5. The respondents filed a Supplementary Counter Affidavit in which it is stated that the Second Appeal against the judgement dated 9.3.84 of the 5th Additional Munsif, Azamgarh has been given by the Hon'ble High Court of Judicature at Allahabad on 22.4.88 (copy Annexure - SCA.1). It is also stated that the Second Appeal related to the case of put off duty and the impugned order has been passed in respect of another case of misappropriation by the applicant.

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6. We have heard the arguments of the learned counsel for the parties and have carefully perused the documents on record. The main point for consideration is whether there is any illegality in the impugned order of dismissal and the appellate order rejecting the appeal of the applicant. The applicant challenged the punishment order as well as the appellate order. The respondents have stated that the enquiry was conducted in accordance with the provisions of Rule 14 of the C.C.S. (CC&A) Rules as provided under Rule 8 of the Extra Departmental Agent (Conduct and Service) Rules, 1964. The contention of the applicant is that the Senior Supdt. of Post Offices was not competent to ignore the report of the Inquiry Officer holding the applicant not guilty of the charge levelled against him. Sub Clause (2) of Rule 15 of the C.C.S. (CC&A) Rules, 1965 reads as follows :-

" The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose."

In the instant case the impugned order has been passed by the disciplinary authority in accordance with Sub Clause(2) of Rule 15 of CCS(CC&A) Rules, 1965. On going through the impugned order dated 5.1.87 (copy Annexure-6A) it is noticed that the Senior Supdt. of Post Offices, in his capacity as disciplinary authority, has discussed the evidence produced in the enquiry

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and has given reasons for not accepting the findings of the Inquiry Officer and passing a detailed order. We have considered the matter and we are of the opinion that there is no illegality in the impugned order passed by the disciplinary authority. Similarly, the appellate order dated 20.9.87 is also a detailed speaking order and we find no illegality in this order. We have also considered the allegation of the applicant that the disciplinary authority as well as the appellate authority were biased against the applicant due to the Civil Suit followed by the execution proceedings taken by the applicant against the respondents. The respondents have stated that the case regarding fraudulent delivery and misappropriation of the insured letter for Rs.1,500/- was dropped by the Department on receipt of the findings of the Civil Court holding that the order of put off duty was invalid and inoperative. A copy of the judgement dated 22.4.1988 of the Allahabad High Court in the Second Appeal in the Civil Suit filed by the applicant has been filed by the respondents as Annexure-SCA.I. The High Court had taken note of the fact that the applicant has been dismissed from service in the meantime and the appeal had become infructuous. It also observed that on the facts of the case the decrees passed by the Courts below do not survive. The contention of the applicant regarding the mala-fide alleged by him is thus not correct.

7. On the facts and circumstances of the case, we are of the opinion that there is no merit in the application and the same is dismissed without any order as to cost.

[Signature]
Member (J)

[Signature]
30.1.89
Member (A)

Dated the 30th Jan., 1989.

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