

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 14th day of Aug 1996

CORAM : Hon'ble Dr.R.K.Saxena, J.M.
Hon'ble Mr. S.Dayal, A.M.

Ved Vyas D.A.No. 147/88 & 655/90Applicant

C/A : Sri R.K.Tiwari

Versus

Union of India & othersRespondents

C/R: Sri N.B.Singh.

ORDER

(Hon'ble Dr.R.K.Saxena, J.M.)

The applicant has filed these two D.As. No.147/88 and 655/90 challenging the orders of punishment and suspension period being not included as duty period. Since both the cases are connected to the applicant and also related to one and same incident. ^l They are, therefore, taken up together and are being disposed of by common order.

The facts of the case are that the applicant was posted as Postal Assistant, Laxmipur Sub-post office on 8-6-84. One Kubernath was Sub-Post Master of the said post office. It is said that two National Savings Certificates of 7 years duration valued Rs. 5000/- each were purchased from Ghughuli R.S.Post office on 17th May, 1976 in the name of "Employees Provident Fund, Punjab Suger Mill, Ghughuli". These certificate on maturity were produced at Ghughuli R.S.Post office and an amount of Rs. 15,000/- was paid to the holder of the certificates by cheque. The discharged vouchers were

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sent to Runraghat Head Post office. It is alleged that some discharged vouchers including these two of Ghughuli R.S. Post office, were found missing from Runraghat Head Post office. Any way, these two National Savings certificates which were issued in the name of employees Provident Fund, Punjab Sugar Mills, Ghughuli, were obtained by Sri Kuber Nath, Sub-Post Master and the present ~~employee~~ applicant. The impression of discharge is said to have been removed and the name of one Jai Singh was inserted as holder of the certificates. The applicant in collusion with Kuber Nath made payment of an amount of Rs. 15000/- (Rs 10,000/- as value of the certificates and Rs. 5,000/- as interest) on 8-6-84. Thus the certificates over which the payment was made once on 8-9-83, was again made fraudulently by the applicant on 8-6-84. When this matter came to the notice of the authorities, a criminal case U/s 409 Indian Penal Code was registered at Puranderpur Police Station and matter was entrusted to C.B.I. However, the applicant as well as Kuber Nath were placed under suspension on 16-6-84.

Both the applicant as well as Kuber Nath were chargedsheeted and a common inquiry was started. It appears that the charge-sheet was served by the Senior Superintendent of Post Office, Gorakhpur Division on the applicant as well as on Kuber Nath but the Director of Post Offices who was superior to the Senior Superintendent ^{Superintendent} ~~Superintendent~~ Supting. Post office was made disciplinary authority in the matter. The inquiry was conducted by one Prabhu Nath Pandey and he submitted his report dated 3-1-86 holding the applicant as well as Kuber Nath guilty of the charges. On the receipt of the report, Sri Surendra Kumar Sharma, Director Postal Services passed an order dated 19-12-86 whereby the applicant was dismissed

from service. He preferred an appeal against the order of dismissal which was disposed of by Post Master General on 5-8-88. The order of dismissal was modified by reducing the applicant by three stages in the time scale of Rs. 260 - 400 from Rs. 350 to Rs. 324 for a period of three years with cumulative effect. Feeling aggrieved by this order of punishment, O.A. No. 147/88 has been filed to challenge the same and seek the quashment ^{of} _^ the same.

After the appeal was decided and the punishment of dismissal was modified, the applicant joined the service on 22-11-88. The post Master General also passed the order on 9-1-89 as regards ~~of~~ the period of suspension. By this order, the intervening period from the date of his dismissal from service to the date of his joining duty i.e. from 30-12-86 to 22-11-88, it was made as ~~dis~~-non, and the period of suspension from 16-6-84 to 29-12-86 it was deemed as period of duty but with the salary which was paid by way of subsistence allowance. The applicant felt aggrieved and filed O.A. No. 655/90 for its being quashed.

The respondents contested the cases by filing counter affidavit. As regards O.A. No. 147/88, it is contended that the charges against applicant was established and for that reason the Director Postal Services, Allahabad had passed the order of dismissal from service but in appeal it was modified by reducing the applicant by three stages with cumulative effect. It is also contended that the applicant as well as Kuber Nath did not observe the statutory rules of 548 and 553 of the Manual while making the payment of the amount of National Savings certificates. It is also averred that the common proceedings can be instituted against two employees together and such procedure can not be said

to be illegal. The punishment which was awarded in appeal, is also justified.

The respondents had also filed supplementary counter affidavit reiterating the facts which were mentioned in the main counter affidavit. The applicant had filed rejoinder to the supplementary counter affidavit without signing the same and re-affirming the facts of O.A.

As regards O.A.No. 655/90, the respondents also contested the same by filing the affidavit of R.S.Sinha, Senior Superintendent Post Office, Gorakhpur and justifying the order on the ground that the charges against the applicant were of grave mis-conduct. The applicant filed rejoinder in which the facts were re-stated/reiterated in the O.A..

We have heard the learned counsel for the applicant Sri R.K.Tiwari and the learned ^{proxy} counsel Sri S.K.Anwar on behalf of Sri N.B.Singh for the respondents. We have also perused the records.

First of all we shall take up O.A.No. 147/88 in which the order of punishment is under challenge. The learned counsel for the applicant has argued that the applicant was working under the jurisdiction of Senior Superintendent Post Office, Gorakhpur while the order of punishment was passed by the Director Post Office, Allahabad as disciplinary authority. It is also contended that no evidence was adduced against the applicant and his involvement in the case is not established. It is also argued that the punishment which was awarded to the applicant is ^{not in consonance with} consonant with the alleged mis-conduct of the applicant. We have considered these points and carefully gone through the records. There is no doubt that the

applicant was working under the jurisdiction of Senior Superintendent of Post Office of Gorakhpur while the 1st order of punishment was passed by Director Post Office, Allahabad. It appears from the record that the matter was referred to the Post-Master-General who had directed the Director, Post Office, Allahabad to discharge the functions of disciplinary authority. The Director, post office is holding the higher post than the Senior Superintendent of Post office and thus if the functions of disciplinary authority, are discharged by senior officer, no illegality can be attributed provided the delinquent employee is not denied the remedy of appeal. In this case, the appeal was preferred by the applicant and was disposed of by the Post-Master-General. In this way, the argument advanced by the learned counsel for the applicant that punishment order was passed by a different authority, does not hold good.

The learned counsel is pointing out that no witness was examined in the inquiry. When we go through the report of the Enquiry Officer, we find that several persons namely S/S Banshi Prasad, Bankey Lal Sharma, Jagdish Prasad, Shiv Tirth Pandey, D.P. Shukla and others were mentioned as witnesses in the case. The documentary evidence to the effect that a number of voucher were found missing from the Kunrughat Head Post office and in these vouchers were also included the National Saving certificates of Ghughuli, ^{is there}. It is clear from the facts as are set out in the pleadings that an amount of Rs. 150/- was paid to the holder of these National Saving certificate -s by Ghughuli R.S. post office on 8-9-83 and these vouchers were sent to Kunrughat Head Post Office.

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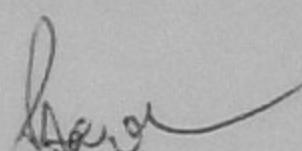
It is also observed that these national savings certificates were again presented at Laxmipur sub-post office where ~~was~~ Sri Kuber Nath, Sub-post master and applicant was Postal Assistant. The rule 548 of the Manual prescribed the procedure as to how the payment on National Savings certificates be made when the same was issued by a different post office. According to this procedure, an inquiry ought to have been made from the post office which had issued the certificates. Besides, the identity of the person who had presented the certificates was also required to be established. It is clear from the facts on record that no inquiry was made from Ghughuli post office. In this way, the applicant who was a Postal Assistant failed to discharge the statutory duties. Even if it is assumed for sake of argument that there is no evidence ~~that is~~ ^{in the} scope of the judicial review, dereliction of the duty for non-compliance of the statutory procedure can not be ignored. In our opinion, the ^{second} ~~2nd~~ argument of the learned counsel for the applicant also does not stand.

It is also pleaded that the applicant was not awarded the punishment in consonance with his alleged complicity. In this connection, it is to be made clear that the departmental authorities are the best judges to award the punishment. There is little role of the Tribunal or of High Court in substituting the punishment. Besides, the appellate authority had already taken very lenient view by substituting punishment of dismissal to that of reduction by three stages with ^{not} cumulative effect. In our opinion, the Tribunal can ~~not~~ interfere with the punishment which has been awarded.

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D.A.No. 655/90 has been filed to challenge the treatment of suspension period and the salary which was fixed therefore. ² Looking to the facts and circumstances of the case as are discussed above, there is no point of treating the period for which the applicant remained out of job as on duty. The suspension period has been no doubt treated as duty period, ^{but} the salary to be paid was determined at the rate of subsistence allowance which ^{was} already paid. In our opinion, again, there is no ground to interfere with the order passed in the matter.

Having gone through the facts and circumstances of the cases, we do not find any merit in either of them. They are, therefore dismissed. No order as to costs.



MEMBER-A



MEMBER-B

T.S./-