

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
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Allahabad this the 26th day of April 1996.

Original Application No. 369 of 1988.

Hon'ble Mr. T.L. Verma, JM
Hon'ble Mr. D.S. Baweja, AM

Firoz Ahmed Khan, S/o Late Shri
Assadullah Khan, Ex EDBPM Songar,
District Jaunpur, Village & P.O.
Songar Via Kheta Sarai, Dist. Jaunpur.

..... Applicant.

C/A Sri R.K. Tiwari

Versus

1. Suptd. Posts Jaunpur.
2. D.P.S., Allahabad-I

..... Respondents.

C/R Sri N.B. Singh

O R D E R

Hon'ble Mr. D.S. Baweja, AM

Through this O.A. the applicant has challenged impugned orders dated 7.5.86 of the disciplinary authority and dated 31.3.1987 of appellate authority imposing the penalty of removal from service with a prayer to quash the same.

2. The applicant while working as Extra Departmental Branch Post Master Songar district Jaunpur was served with the chargesheet dated 5.12.84, with the charges that the applicant committed temporary misappropriation of the money by withholding the

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delivery of insured letters for 12 to 25 days as per the details furnished in the statement of charges. The inquiry was conducted and the inquiry report was submitted on 31.1.85. Based on the inquiry report, the disciplinary authority imposed the punishment of removal from service vide order dated 7.5.86 (Annexure -A-3). The applicant preferred an appeal against the same on 25.9.86, and same was rejected upholding the penalty of removal from service vide order dated 31.3.87 (Annexure-A-5).

3. The applicant advanced the following pleas in support of his prayer :

- (i) The charges are not proved. All the witnesses whose statement recorded in the preliminary report did not stand by the statement given earlier.
- (ii) The entire inquiry report has been based on the statement recorded of the applicant during the preliminary inquiry. This statement ~~was~~ got recorded under duress.
- (iii) There was no misappropriation of the money as the insured letters had been delivered to the parties in time. In fact if there was a case of embezzlement, then under Rule 171 of P&T Manual Vol. 5, a report for this case was required to be sent to the Circle Office but no such report was sent. Further no FIR was also lodged for the embezzlement.
- (iv) The whole issue has been stage managed by the Inspector who had come for inspection of the Post Office, as he did not meet with the ~~illegal~~ demands.

Therefore this is a matter of no evidence, and the statement of the applicant recorded during the preliminary inquiry has been made as a basis for the findings that the charges are proved. Since this is a case of no evidence no punishment can be imposed.

4. The respondents in the counter reply have strongly refuted the averments made by the applicant, and have stated that on 7.12.84 Sub Divisional Inspector, Shahganj Jaunpur visited the Branch Office on 28.7.84

(10)

(A2/3)

for the purpose of inspection at about 10:30 hrs. The applicant was found absent from the Branch ^{Post} Office. When the Branch Post Office was got opened, three insured letters were found on the Post Office table. The insured covers had been received on 3.7.1984, 16.7.84 and 16.7.84 and the same had not been delivered to the parties concerned although shown as delivered in the post office record on the same dates. The insured covers were found to be tempered with. The Inspector called the addresses and delivered the letters to them. The preliminary inquiry was conducted and the statements of the concerned parties including applicant were recorded. The applicant in the preliminary inquiry had admitted about delay in delivering of the insured cover and temporary misappropriation of the money. Based on the same chargesheet was issued. The inquiry was conducted, ~~that applicant had~~ ^{Conducted} ~~was~~ ^{by} them. As per the findings of the inquiry officer, the charges were proved. The applicant participated in the departmental inquiry, as per the extant rules. It is admitted that no FIR was lodged but the applicant cannot get any benefit for his misconduct, when he himself had admitted that he had temporarily mis-appropriated the money. The allegations against the Sub Divisional Inspector are baseless and unfounded. In fact he has not been arrayed as a party and no reply can be submitted on behalf of the Department. In view of the above, the application is devoid of merit and liable to be dismissed.

5. We have heard the learned counsel for the applicant and the respondents and also perused the material brought on record through the application, counter and rejoinder affidavits.

(11)

(12/4)

6. The main thrust of the pleadings of the applicant is that it is a case of no evidence, as none of the defence witnesses during the main inquiry have stood by the statement recorded during the preliminary inquiry. The inquiry report findings are based solely on the statement of the applicant recorded during the preliminary inquiry which is beyond the law of natural justice to punish a man ~~which had been recorded under duress.~~ (1)

7. On going through the inquiry report, we find that out of three address^{es}, who had given their statements during preliminary inquiry, one Sh. Sher Ali had expired. The other two witness^{es} became hostile and resiled their statements taking the stand that their written statements were recorded forcibly. The inquiry officer has discussed this aspect while arriving at the findings. The findings are not only based on the statement of these witnesses but also taking into consideration the documentary evidence available on record.

The issue which arises that is whether the statement of the witnesses who resile from their previous statements during the preliminary inquiry, their previous statements could be relied upon. This issue has been examined in the judgement of this Bench Ram Kishan Vs. U.O.I. in O.A. 1390 of 1994 (1995) 29 ATC 735, where in taking the support of Hon'ble Supreme Court's judgement in "K.L. Shinde Vs. State of Mysore" (AIR 1976 SC 1080), it has been held that the previous statements can be relied upon ^{under such circumstances} and this does not vitiate the inquiry or the order of punishment. In the instant case copies of the statements ~~made~~ by the witnesses in the preliminary report were furnished to the applicant in the list of the relied upon documents.

(12) (4/5)

The applicants' own statement was also made available to him. We are in agreement with the view held in the judgement of this Tribunal referred to above. Therefore this contention of the applicant is not tenable.

8. The applicant also made allegations against the Sub Divisional Inspector that relations with him were strained ^{became} ~~that~~ he did not yield to his demands. The allegations are vague and no material to support the same has been brought on record. He has been also not made a party. In view of this we are unable to take note of this contention.

9. The applicant has not brought out any other infirmities in the departmental proceedings which point out the denial of principles of natural justice. We find that the orders of the disciplinary & appellate authorities are reasoned and speaking orders, wherein the ^{version} ~~queries~~ of the applicant has been turned down on appreciation of all facts.

In view of these facts of the matter we find no reasons for any judicial interference.

10. In consideration of the above facts, we find no merit in the application and the same is dismissed. *With no order as to costs*

[Signature]
Member - A

[Signature]
Member - J

Arvind.