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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.571 of 1988

Surya Mani Pandey ..... Applicant

Versus

Union of India & Others ..... Opposite Parties.

Hon.Justice Kamleshwar Nath, V.C.
Hon. K.J. Raman, Member (A)

(By Hon.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing an order dated 21.7.87, Annexure-6 whereby the applicant was removed from service as Extra Departmental Branch Postmaster and Annexure-7 dated 3.3.88 whereby his appeal against Annexure-6 was dismissed.

2. The applicant was working as E.D.B.P.M. at Mahauri Kalan, District Mirzapur and in course of his duty used to deal with Recurring Deposit Accounts. By chargesheet dated 23.2.87 he was charged for two counts (1) on 17.5.85 he received a sum of Rs. 40-20 for deposit in the Recurring Deposit Account of one Ram Lakhan of which he made an entry in the concerned Pass Book but he deposited the amount in the Govt. Account on 29.5.85 and thereby committed wrongful detention of Govt. money, and (2) on 2.7.85 Achaibar Nath, the son of Shri Ram Shukla tendered a sum of Rs.102/- for depositing in the Recurring Deposit Account of Shri Ram Shukla of which the applicant made an entry in the Recurring Deposit Account Pass Book but he

never deposited the amount in the Govt. Account causing misappropriation thereof.

3. The Enquiry Officer held vide Annexure-5, that the charge of count No.1 was proved but the charge of Count No.2 was not proved so much so that even the Account holder (Shri Ram Shukla) had said that he had not given any money to his son Achaibar Nath for being deposited in his Recurring Deposit Account. The disciplinary authority however not only confirmed the finding of the Enquiry Officer on Charge No.1 but also held that Charge No.2 was proved and therefore by the impugned punishment order, Annexure-6, he directed the removal of the applicant from service. In the appellate order, Annexure-7 the view taken by the disciplinary authority was upheld and it was stated that in respect of Charge No.2, the statement of Achaibar Nath proved the payment of the money to the applicant and that the applicant's objection that the entry in the Pass Book was not in his handwriting was not acceptable because the writing tallies with earlier entries of 30.10.84, 30.11.84 etc. in the Pass Book made by the applicant.

4. The learned counsel for the applicant has strenuously urged that the finding of the authorities on Charge No.2 is based on no evidence. Shri K.C. Sinha, the learned counsel for the opposite parties says that this Tribunal does not sit in appeal over the finding of fact recorded by the disciplinary authority or the appellate authority, and therefore the finding on Charge No.2 even if erroneous, may not be interfered with.

5. In our opinion the contention of the learned counsel for the applicant is correct. The basis of the finding that on 2.7.85 a sum of Rs.102/- was tendered by Achaibar Nath to the applicant, is the statement of Achaibar Nath made during preliminary enquiry. Achaibar Nath had not been examined in the course of the regular disciplinary enquiry. It may be mentioned that Annexure-8 is the statement dated 25.5.87 of Shri Ram Shukla, the depositor in the course of the disciplinary enquiry. In that statement Shri Ram Shukla had clearly stated that on 2.7.85 he had not given any money to his son Achaibar Nath for being deposited in his Recurring Deposit Account Pass Book and that from March, 1985 to July, 1985 he had never sent his son Achaibar Nath to make any such deposit. In the absence of the statement of Achaibar Nath Shukla, during the course of the enquiry the only legal direct evidence consisted of the statement of Shri Ram Shukla, according to which the money in question was never delivered to the applicant. The Enquiry Officer accepted that statement and held that Charge No.2 was not proved. The disciplinary authority placed reliance merely on a comparison of the handwritings in the Pass Book relating to the entries for the period from 31.10.84 to 28.2.85 with those of the disputed entry dt. 2.7.85 and observed that the writings are similar. The learned counsel for the applicant has urged that the function of comparing handwritings is of a handwriting expert, and the disciplinary authority was not competent to make a

comparis=on. That is incorrect, ~~Although incorrect~~ because although an expert's opinion would carry considerable weight, the authority holding a disciplinary enquiry is not precluded by any law from examining and comparing the writings for himself. Indeed, an authority exercising a judicial or quasi judicial function is not bound by the opinion of an expert and may, for good reasons, disagree with the same. But what is more important in the eyes of law is that the entries in the Pass Book with which the disputed entry was compared were never put to the applicant in the course of the enquiry. It is only a presumption of the disciplinary authority that the entries for the period from 31.10.84 to 28.2.85 were in the handwritings of the applicant. This is not legally permissible.

6. The appellate authority observed in the appellate order, Annexure-7 that the applicant himself had admitted during the course of enquiry that he had made entry dt. 2.7.85 in the Pass Book. This is denied by the learned counsel for the applicant; there is no material on the record to show that the applicant had made any such admission. He also observed that the handwritings of the disputed entry tallied with those between October, 1984 and February, 1985. He lastly mentioned that Achaibar Nath had stated giving the money to the applicant on 2.7.85. We have already pointed out that that statement was only in the course

of preliminary enquiry; Achaibar Nath was not examined during disciplinary enquiry.

7. The result is that the finding of the disciplinary authority as well as the appellate authority that the applicant had received Rs.102/- or had made entry in the Pass Book is based on "no material" and therefore cannot be upheld. In doing so, we are not weighing the evidence which had been adduced before the Enquiry Officer as could be done in the course of an appeal. That is why we say that we are not sitting in appeal but we are unable to uphold the finding because it is based on "no material".

8. The learned counsel for the applicant however has not been able to point to any illegality in respect of the finding as upheld by the disciplinary and appellate authority in respect of Charge No.1. The learned counsel for the applicant said that, of the sum of Rs.40.20 which the applicant had received the currency note of Rs.20/- was soiled and therefore the applicant had returned that currency note to Ram Lakhan, the depositor, and when after a few days Ram Lakhan furnished another currency note, the applicant deposited the entire amount in Govt. Account on 29.5.85. This statement was examined by the departmental authorities and for reasons recorded was properly rejected. It is not permissible for us to disagree

with the finding because that will contitute an exercise of appellate jurisdiction which, as already said, is not exercised by the Tribunal.

9. The learned counsel for the applicant lastly urged that at worst it was a case of wrongful temporary detention, that no ultimate loss was caused to the Govt. and therefore the punishment of removal was excessive. Shri K.C. Sinha for the opposite parties has placed reliance upon the decision of the Supreme Court in the case of Union of India Vs. Parmananda (1989) 2 SCC 177 to show that this Tribunal cannot interfere on the question of quantum of punishment except in limited circumstances specified by the Hon'ble Supreme Court in that judgement. The contention of the learned counsel for the opposite parties in this regard seems to be sound. It is of course not disputed that if one of the several charges is established, the entire punishment order cannot be quashed. The case of State of Orissa and others Vs. Vidya Bhushan Mahapatra 1963 SC 779 may be seen in this connection. The upshot is that the punish-ment of removal from service awarded by the departmental authorities is not capable of being interfered with by this Tribunal. The petition must fail.

10. The petition is dismissed. Parties shall bear their costs.

Member (A) Vice Chairman

Dated the 23rd May, 1990.

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