

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O. A. No. 662 of 1990 DATE OF DECISION : 1/11/96
F. A. No.

--Param Hansh Sharma-- --APPLICANT(S)

--S. B. K. Nigam & Sri R. K. Triwari-- ADVOCATE FOR THE
APPLICANT(S)

V E R S U S

--Superintendent of Posts Gonds
and others-- RESPONDENT(S)

--S. N. B. Singh-- --ADVOCATE OF THE
RESPONDENT(S)

C O R A M

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

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy *yes* of the judgment?
4. Whether to be circulated to all other Bench?

VKP/-

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(SIGNATURE)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 1st day of November, 1996.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 662 of 1990

Para ~~B~~ **Hansh** Sharma, son of Sri Ram
Nagina Sharma, aged about 32 years, Ex.
Postal Assistant, Gonda, H.P.O.
R/o. Village Khuteva, P.O. Maina,
Bhagar, via F.C.I. P.O. District Gorakhpur...applicant.
(THROUGH COUNSEL SRI R.K.Nigam & Sri R.K.Tewari)

Versus

1. Superintendent of Posts, Gonda.
2. Director, Postal Services, Gorakhpur.
3. Union of India, through Secretary,
Ministry of Communications, New Delhi-1.

.....Respondents

(THROUGH SRI N.B.Singh)

O R D E R

(By Hon. S. Das Gupta, Member-A)

Through this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed an order dated 7.2.1989 by which the respondent No.1 had imposed on the applicant the penalty of dismissal from service and also the appellate order dated 7.11.1989 by which the penalty imposed was confirmed.

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2. The applicant who was working as Postal Assistant in Gondar H.P.O. was served with a charge-memo dated 29.9.87 in which there were 3 charges levelled. The first article of charge was that he increased the amount of withdrawal of Rs.100/- to that of Rs.200/- in the S.B.account of one Mr. Ram Manohar without the knowledge of the depositor and thereby failed to maintain absolute integrity and devotion to duty. The remaining two articles of charges were subsidiary to the main charge. An enquiry was held and the Enquiry Officer held that all the articles of charge were established. Agreeing with the finding of the Enquiry Officer, the disciplinary authority passed the impugned order dated 7.2.1989 imposing upon the applicant the penalty of dismissal from service. The applicant preferred an appeal dated 28.2.1989 against the aforesaid order of penalty and the same was rejected by the appellate authority by the impugned order dated 7.11.1989.

3. The applicant has assailed the order of disciplinary authority on the following grounds :-

(a) The respondent No.1 had passed the order by relying upon an extraneous fact for which no opportunity for defence was given.

(b) The Enquiry Officer gave his finding without giving the applicant any opportunity to get his defence witnesses examined.

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(c) The balance of Rs. 2303.75 in the pass book of the depositor could never have been arrived at unless there was an actual withdrawal of Rs. 200/-.

4. The respondents have filed a Counter affidavit in which it has been submitted that while the applicant was working as Savings Bank Account Clerk, in Gonda H.P.O. between 15.8.82 and 15.9.82, he received a Pass Book of the Savings Bank Account No. 463412 with an application for withdrawal of Rs. 100/- duly completed by the depositor. The applicant entered the transaction of withdrawal of Rs. 100/- in the Pass Book, completed the warrant of payment side of application for withdrawal, obtained the acknowledgement of payment on payment side from the depositor and made payment of Rs. 100/- to the depositor Shri Ram Manohar without sending the Pass Book and application for withdrawal for ~~correction~~ checking and sanction by the Assistant Post Master through Ledger Clerk. It has been further submitted that the applicant subsequently increased the amount of Rs. 100/- to Rs. 200/- by changing the figure in the entry on both sides of the prescribed form for withdrawal and the Pass Book without sending any information about the change in the figure to the Post Master or the Assistant Post Master of the Savings Bank Branch. ~~Later~~ ^{Later} he received the said Pass Book for withdrawal of Rs. 300/- on 3.9.1987. He allowed the withdrawal and made payment to the depositor but he had

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reduced the balance of the Pass Book on 21.8.87 by Rs. 100/- and raised the withdrawal of Rs.100/- into that of Rs. 200/- by changing the figure in the digits of entry dated 21.8.1987. He credited Rs. 100/- into unclassified receipt on 21.9.1987 at Gonda H.P.O. In this manner, the applicant, it is alleged, committed mis-appropriation of Government money from 21.8.1987 to 20.9.1987. The applicant was therefore, served with a charge memo and an Enquiry was held in accordance with the rules contained in the C.C.S.(C.C.A.) Rules, 1965 and following the principles of natural justice. The applicant was afforded all opportunities to defend himself. The Enquiry Officer held the charges to have been proved. The disciplinary authority after scrutinizing the relevant papers and the Enquiry Report passed the impugned order dated 7.2.1989 imposing the penalty of dismissal from service. Later the appellate authority rejected the applicant's appeal. It has been further ~~xxxx~~ alleged that during the course of enquiry it also revealed that the applicant obtained employment in the Postal Department by submitting a forged mark-sheet and the matter was reported to the police. The applicant was thereafter released on bail.

5. The applicant has filed a rejoinder affidavit reiterating his contentions made in the O.A. and denying the contrary averments in the Counter-affidavit. Subsequently the applicant also filed a Supplementary Affidavit enclosing

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a certified copy of the judgment rendered by C.J.M.Gonda in the Crime Case by which the applicant was acquitted of the charges under Sections 419, 420, 467, 468 and 471, I.P.C.

6. When the case was taken up for hearing on 27.8.1996, none appeared for the applicant. The learned counsel for the applicant had sought adjournment. As the case had been adjourned a number of time in the past, an order was passed on 16.2.1996 that if any further adjournment was sought, the case would be decided on the basis of the pleadings on record. Despite this order, the case was again adjourned on 27.3.1996 and 23.5.96 on the request of the learned counsel for the applicant. In view of this the case was not adjourned on 27.8.1996 and in the absence of learned counsel for the applicant, we heard the learned counsel for the respondents and perused the pleadings on record. The learned counsel for the respondents also made available to us record of the disciplinary proceedings which also was perused by us.

7. We shall first take up the ground listed at para (b) of para 3, Since this relates to denial of opportunity to the applicant. The factual averment in support of this is that when the applicant was called upon to submit his defence on 29.4.1988, after the prosecution had closed

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its case on the earlier date, he submitted an application requesting for some more time for this purpose, as he was seriously ill and undergoing treatment. He also submitted a medical certificate in support of his request. It is stated that the respondent No.1 directed the applicant to appear before the C.M.O.Gorakhpur and to get the medical certificate counter-signed, which the applicant did. The C.M.O., it is alleged, recommended further two months leave but, yet the applicant was not allowed any more time and the proceedings were concluded without examining two defence witnesses namely R.P.Maurya and Ashok Kumar.

8. The respondents in the counter-affidavit have denied the contention of the applicant in this regard. They have stated that the applicant deliberately did not participate in the enquiry proceeding on 22.8.88 . It has been stated that the applicant submitted the names of the defence witnesses on 29.4.1988, but on 29.10.1988 when the defence witnesses appeared the applicant as well as his defence Assistant were absent. It is thus absolutely wrong to allege, the respondents have submitted, that the applicant was not given full opportunity to defend himself.

9. In order to ascertain the correct factual position we went through the enquiry proceedings. This record contains the daily order-sheet of the proceedings maintained by the Enquiry Authority.

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It has been recorded in the order-sheet dated 29.4.1988 that on 28.04.1988 the prosecution case was concluded after examination of a few witnesses who were also cross-examined by the applicant. Thereafter the applicant was asked to produce defence witnesses if any,. The applicant, however, submitted an application on 29.4.1988 that he be allowed time for production of defence witnesses and this request was accepted and the enquiry was adjourned. The order dated 22.8.88 reveals that on that date R.P.Maurya and Ashok Kumar were present as witnesses but, neither the applicant nor his defence Assistant attended the enquiry and therefore, the enquiry was further adjourned. The proceedings were held again on 24.10.1988 and the order sheet of that date reveals that on that date also neither the applicant nor his defence Assistant ~~appeared~~ appeared and therefore, one witness namely Sri Ram Prasad who was present was examined by the Enquiry Officer and cross examined by Presenting Officer. The other defence witnesses namely ~~And~~ Ashok Kumar was not present and therefore could not be examined.

10. From the foregoing it was quite clear that the applicant was given adequate time to appear and examine his defence witnesses. In any case atleast one defence witness was examined by the Enquiry Authority in the absence of the applicant or his defence Assistant. We cannot therefore, ~~accept~~ accept the plea of the applicant that he was denied adequate opportunity to defend

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himself.

11. We next take up the plea at (c) of para 3. This plea relates to the evidence which came on record in the enquiry. This plea is based on an averment that although the depositor had initially presented an application for withdrawal of Rs.100/-, at the time of taking payment he changed his mind and demanded Rs.200/- and thus every entry including the entry in the Pass Book was changed from 1 to 2 and thus Rs.200/- was actually withdrawn and paid to the depositor. It is further stated that on 3.9.1987 the depositor again appeared with his Pass Book alongwith an application for withdrawal of Rs.300/-. The depositor subsequently deposed in the enquiry that it was on this occasion that the applicant had allegedly altered the entry dated 21.8.87. The applicant's case is that the Enquiry Authority had ignored the ^{evidence} ~~defence~~ of Sri Ram Sughar Mishra, ^a ~~and~~ retired Assistant Post Master Gonda who had actually filled the application form ~~for~~the withdrawal of money on both the occasion i.e. on 21.8.87 and 3.9.87. It is stated that Sri Ram Sughar Mishra had filled the application form for withdrawal of Rs.300/- with the help of the Pass Book. Had the pass book not shown the closing balance as Rs.2603.75, the said Ram Sughar Mishra could never have shown the balance as Rs. 2303.75 after withdrawal of Rs.300/- on 3.9.87.

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12. The aforesaid plea squarely comes within the realm of ^{appraisal} ~~appraisal~~ of evidence. It is fairly well settled that the Courts /Tribunals do not have any appellate jurisdiction in disciplinary matters and therefore, can not substitute the findings of the Enquiry Authority/Disciplinary Authority by their own findings on a re-appraisal of evidence. The only exception to the settled principle is that where the Courts/Tribunals consider the findings of the Enquiry Authority as wholly perverse on the face of the evidence on record or where such findings are not based on any evidence, the Courts/Tribunals ^{v. may} ~~may~~ interfere even in their limited jurisdiction of judicial review.

13. We have carefully gone through the Enquiry report. We could not find any perversity in the findings nor ^{were} ~~whether~~ the findings based on no evidence. In view of this we see no reason to re-appraise the evidence nor see ~~whether~~ ^{if} a different finding could have been arrived at. This plea of the applicant is therefore, also rejected.

14. We finally come to the plea at (a) of para 3. The factual averment in this regard is that the respondent No.1 had inter-alia, stated that the applicant had managed to obtain employment in the department by submitting ¹ forged mark-sheet and that case is being dealt with separately.

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The applicant's case is that there was no charge against the applicant on this count and therefore, taking into cognizance ~~of~~ the aforesaid fact while imposing penalty on the applicant, the respondent No.1 had relied upon ~~the~~ extraneous fact for which the applicant did not have any opportunity of defence.

15. The Settled position of law in this regard is that no extraneous factor should be taken into account by the disciplinary authority while deciding upon the penalty to be imposed. If any such fact is to be taken into consideration it should ^{form} ~~be a~~ a part of the charge-sheet, ~~it is~~ so that the applicant gets an opportunity to submit his defence against the said charge. In the present case disciplinary authority had taken into account the fact that the applicant had submitted forged mark-sheet in managing to get employment in the Postal Department. This was not one of the charges based on which the Enquiry was held and therefore, consideration of this fact while imposing penalty on the applicant is not warranted.

16. In the absence of any mandatory provision in this regard, we could not hold that such consideration of an extraneous factor ~~is~~ so-facto vitiate the order of the disciplinary authority. We are of the view that this should be looked into from the ^{view} of prejudice that such

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consideration might have caused to the applicant. In other words we have considered this matter from the point of view as to whether the penalty of dismissal from service would have been considered excessive or disproportionate, had the aforesaid factor not been taken into consideration.

17. The applicant was charged for mis-appropriation of Government money. The allegation was that while he actually paid Rs. 100/- to the depositor, he tampered with the records to show as if Rs.200/- has been withdrawn thereby attempting to misappropriate Rs.100/- . This is a serious charge against a Government employee and it reflects adversely on his integrity. The charge involves moral turpitude. If such a charge is considered to have been established, the penalty of dismissal cannot be considered to be disproportionate. Therefore, even if the extraneous factor of his involvement in submitting forged mark-sheet ~~xxx~~ is not taken into consideration, the penalty of dismissal would not have been considered disproportionate to the gravity of charge. ~~This~~ , no prejudice has been caused to the applicant by taking into consideration ~~this~~ extraneous factor. This point was also considered by the appellate authority who recorded in his order that the decision has been taken by the respondent No.1 on the basis of the merit of the case and the punishment is based on ~~proved~~ misconduct and is not affected by the casual reference of the case of forged mark-sheet in the impugned order. He has further recorded as ~~xxx~~ regards the quantum of penalty as

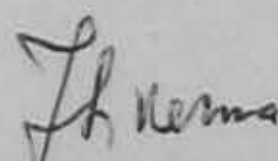
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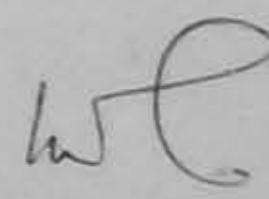
follows :-

"The way the official manipulated entries in various documents/records proved his irregular way of making, establishes unbecoming nature of his conduct and testifies lack of devotion to duty. Inspite of the fact that the amount involved was a meagre sum and for which he did so much, it is the demand of justice that such government servants should not be allowed to continue in government service."

We see no reason to dis-agree with the afore-said observation of the Appellate Authority.

18. No further plea has been advanced. In view of the foregoing we see no reason to interfere in the action taken by the disciplinary authority. The application is ^{dismissed} ~~dismissed~~ leaving the parties to bear their own costs.


MEMBER (J)


MEMBER (A)

(Pandey)