

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No.203 of 1992

Allahabad, this the 26th day of August, 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.  
Hon'ble Mr. D.R. Tiwari, A.M.

Prakash Chandra Srivastava,  
Son of Late Sri Prithvi Nath,  
resident of 982 Malviya Nagar,  
Allahabad.

....Applicant.

(By Advocate : Shri S.K. Pandey  
Shri R.M. Saggi

Versus

1. Union of India,  
through Post Master General,  
U.P. Allahabad.
2. Director Postal Services,  
Allahabad.
3. Sr. Superintendent of Post Offices,  
Allahabad.

..... Respondents.

(By Advocate : Km. S. Srivastava)

ORDER

By Hon'ble Mr. D.R. Tiwari, A.M. :

By this OA filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for quashing of orders dated 15.12.1989 and 27.8.1990 by which the applicant has been awarded the punishment of dismissal from service which was confirmed by the Appellate Authority (Annexure-A-1&2). He has further prayed for issuance of directions to the respondents to treat him in service with all consequential benefits including arrears of pay.

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2. Filtering out the unnecessary details, the relevant facts necessary to adjudicate the dispute are that the applicant, a Postal Assistant, while working as Saving Bank Counter Clerk, Manauri Post Office, Allahabad, from September 1981 to 20.7.1983, was allegedly involved in embezzlement of Rs.30,000/- in connection with the transaction in various Saving Bank Accounts of that Post Office.

3. The disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, 1965 was initiated against the applicant and he was served with charge sheet dated 31.8.1987 (Annexure-A-2). He sent a reply to the charge sheet and denied all allegation (Annexure-A-3, page 107) on denial of charges, the Disciplinary Authority appointed the Enquiry Officer and Presenting Officer. The applicant also appointed the Defence Asstt. The enquiry proceedings commenced on 25.7.1987 and continued upto <sup>JUNE 89 and 47 witnesses</sup> examined and 60 documents were produced/ examined during the course enquiry. The Enquiry Officer held all the charges against the applicant fully proved and submitted the report on 8.11.1989. The applicant made representation against the report vide his letter dated 23.11.1989 (Annexure-A-6). The disciplinary authority passed the impugned punishment order of dismissal from service. The applicant preferred an appeal vide his memo of appeal dated 11-2-1990 (Annexure-A-8). The appellate authority rejected the appeal and confirmed the order passed by the disciplinary authority.

4. Aggrieved by the orders, the applicant filed the instant OA and has assailed the impugned orders on the following grounds :-

- (1) Inordinate delay between the alleged embezzlement and the issue of charge sheet,

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- (ii) Despite his request for stay of disciplinary proceeding in view of the criminal proceeding against the applicant, the disciplinary proceeding was continued which is bad in law,
- (iii) The charge memo did not contain the relied upon documents,
- (iv) Non-consideration of statement of Ganesh Prasad and S.M. Sharma which were in favour of the applicant (Annexure-A-4 & A-5)
- (v) Charge sheet issued without verification as one of the charges relate to the transaction on 1.8.1982 which is a closed holiday (SUNDAY) when the post office is closed.
- (vi) Non-supply of statement of Anrit Lal taken during preliminary enquiry which was used against him in the enquiry.
- (vii) Non summoning of Sant Ram who was a vital witness.
- (viii) Failure on the part of Disciplinary Authority and Enquiry Officer to await the opinion of handwriting expert as the applicant has denied his signature on various documents.
- (ix) Detailed reply to the chargesheet dated 17.7.1989 was not taken account by the enquiry officer (Annexure-A-7).
- (x) Entry in pass-book is not conclusive proof.
- (xi) He was permitted to come to office at 9.00 a.m. instead of 7 a.m. hence not responsible for alleged embezzlement as that might have been indulged in by those who attended office during that period.
- (xii) The failure on the part of respondents to hold the common proceedings under Rule 18 of the CCS (CCA) Rules, 1965, and
- (xii) The Appellate Authority failed to advert to the points raised in memo of appeal and no personal hearing.

5. In support of the contention/submissions of the applicant in para 4 herein before, the counsel for the applicant has placed reliance on the following judgments/orders :-

- (i) State of UP Vs. Mohd. Sharif (dead)  
AIR 1982 SC 937
- (ii) R.P. Bhatt Vs. U.O.I.  
(1986) 2 SCC 651.

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- (iii) C. Rama Rao Vs. SE Railway  
(1990) 12 ATC 99 - CAT Hyderabad
- (iv) Bhupinder Pal Singh Vs. D.G. Civil Aviation  
(2003) 3 SCC 633
- (v) Rajendra Prasad Vs. U.O.I.  
(1994) 26 ATC 698 - P.B., New Delhi
- (vi) State of UP Vs. Shatrughal Lal  
(1996) 6 SCC 651
- (vii) Capt. M. Paul Anthony Vs. Bharat Gold  
Mines Ltd. - 1999 (2) E.S.C. 1009 (S.C.)
- (viii) The State of Punjab Vs. Bhagat Ram  
AIR 1974 SCC 2335

6. The respondents have hotly contested the contentions/submissions of the applicant in their counter affidavit. They have submitted that the filing of an FIR or chargesheet in a criminal court of law is no bar to initiation of disciplinary proceedings against the petitioner on the same allegation and it is incorrect to say that the chargesheet was issued by the respondents out of malice. They have further submitted that Sri Ganesh Prasad worked as sub post master from February 1979 to 12.3.1983 and Sri S.M. Sharma worked as Sub Post Master from 15.3.1983 to 10.8.1983 and defalcation of amounts in the various Savings Bank accounts came to light on 11.8.1983. In any view of the matter, the charges against the applicant have been proved in a full fledged enquiry. Regarding the transaction on 1.8.1982 (SUNDAY), the respondents have rebutted and have submitted that the date impression on the said Pass Book was not clear and this date of 1.8.1982 (SUNDAY) was written by the applicant in his own handwriting. They have contested the submission of applicant that the statement of Amrit Lal taken during the preliminary was not supplied to him is absolutely false and he was given the statements of all the witnesses and was given full opportunity to

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to defend himself in the enquiry. The applicant never, during the course of enquiry, complained that he had not been provided statement of witnesses. The allegation of the applicant about non-summoning of Sant Ram has been strongly rebutted by the respondents and had ~~been~~ submitted that the Enquiry Officer summoned but he did not turn up as his services had already been terminated. The contention of the applicant that the disciplinary proceedings should have stayed till the receipt of the handwriting expert has been contested and the respondents have submitted that the similarity of handwriting has been proved from other documents. It has been further submitted that there is no such presumption in law that entries in Pass Book are not conclusive proof. The respondents have stated that no prayer was ever made for personal hearing ~~was~~ made by the applicant.

7. We have carefully heard and considered the rival contentions of both the parties and perused the pleadings. We have very minutely examined the original record regarding the disciplinary proceedings.

8. The perusal of para 6 of this order would show that almost all the contentions asserted by the applicant had been rebutted. However, some issues have been raised by the counsel for the applicant during the arguments and some contentions raised in the pleadings merit a detailed consideration and adjudication which we would take up in the succeeding paragraphs.

9. The first issue raised by the counsel for applicant, Shri S.K.Pandey is that there has been inordinate delay between the incident of embezzlement which took place in 1981.1983 and the chargesheet was issued in 1987. There

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is nothing un-usual about it and it well known that the cases of embezzlement and defalcation take a long time for detection. Every enquiry is made in secrecy. The investigating agency cannot complete such enquiry quickly. We get support for our views from the judgment of the Apex Court in the case of Secretary to the Government Vs. L. Srinivasan - 1996 (1) ATJ 617 (S.C.).

10. The contention of applicant's counsel about the fact that the chargesheet did not contain the relied upon documents cannot be accepted at this stage. Km. Sadhna Srivastava, the counsel for the respondents have submitted that this issue has been raised during the hearing of the case. We have gone through the original records and find that Annexure III has mentioned the particulars of documents which were to prove the charge. The applicant did not complain about it in his written statement of defence. He did not raise this issue even during the enquiry proceeding. The original records show that on 14.4.1988 the <sup>by</sup> ~~delinquent~~ <sup>employee</sup> delinquent/employee alongwith his defence assistant had completed the inspection of all documents of Annexure III of chargesheet and had stated that the documents have been inspected. The applicant cannot be allowed to complain about this issue at this juncture <sup>and</sup> is not acceptable and his plea fails on this score also.

11. He has further pleaded that the statement of Amrit Lal was not supplied to him. The counsel for

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the applicant has placed reliance on the judgment/ orders in the case of Mohd. Sherif. Rajendra Prasad, Bhagat Ram and Shatrughal Lal (supra). In this connection it may be stated that the facts in these cases were different and the statements of witnesses in these case were used to prove the charges against the delinquent employees and failure to supply those statements were held to result in illegality in enquiring proceedings and the enquiry proceedings were vitiated. In respect of the present case, the original records show that he was allowed to inspect the documents which he has done and stated that he had inspected all documents. Secondly, he has not complained about this aspect during enquiry proceeding and he has raised this issue, for the first time, in the OA and for this even if it is held that he was not supplied the statement of Amrit Lal, he has not been able to show that some prejudice has been caused to him. We get support for our views from the judgment of the Apex Court in the case of Syed Rahimuddin Vs. D.C.S.I.R. - AIR 2001 SC 2418 wherein it has been held that demand of document after completion of evidence does not violate the principles of natural justice. In view of this legal position, the plea of the applicant has no substance and is not acceptable.

12. The contention of the applicant, raised during the course of argument that the respondents should have initiated the action under Rule 18 of the CCS(CCA) Rules, 1965, the Rule provides that "where two or more Government servants are concerned in any case, the Competent Authority may make an order directing that disciplinary action against all of them may be taken in a common proceedings."

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The plea that the applicant, Sant Ram, E.D. Messenger and Sub-Post Master were all involved in the present case of embezzlement and defalcation and it would have been proper to institute a disciplinary action against all of them in a common proceedings, it may be pointed out that E.D. Agent was governed by the different disciplinary rules and the Sub-Post Master, ofcourse, <sup>is</sup> governed by this this Rule and it is for the competent authority to decide whether common proceeding should be initiated or not. In this case it may be observed that the applicant is accusing Shri Sant Ram as the main culprit for withdrawals of money and Govt. of India's instruction below Rule 18 provides that a joint proceeding against Government servants working in the same office, who made complaint against each other, should be avoided. It is precisely for this reason that the competent authority did not think it proper to go in for a common proceeding. After the conclusion of the disciplinary action, the penalties imposed were different in respect of each delinquent employee i.e. Shri Sant Ram was terminated from service and Sub-Post Master was awarded the punishment of recovery and the applicant has been dismissed from service. It may also be stated that it is for the Competent Authority to take a view about the manner of action to be taken and it is surprising that the applicant is making suggestions for initiation of a common proceeding under Rule 18. This plea cannot be accepted.

13. The most crucial argument raised by the counsel for applicant is about stay of departmental proceedings in view of criminal proceeding launched against the applicant. The respondents, in the counter reply, have stated that it is not necessary that the disciplinary proceedings should be stayed in case the criminal proceeding is in progress. Counsel for applicant has relied on the case of Capt. M. Paul Anthony Vs. Bharat Coal Mines Ltd., 1999(2) E.S.C. 1009(SC). In this case the Hon'ble Supreme Court, after

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reviewing numerous decisions has concluded in para 21 as under :-

"21. The conclusion which are deducible from various decisions of this Court referred to above are -

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found guilty, administration may get rid of him at the earliest."

From above it is clear that departmental proceedings and proceedings in a criminal case can proceed simultaneously <sup>of both proceedings</sup> as there is no bar being conducted simultaneously, though separately.

14. During the course of argument, counsel for the applicant very emphatically stated that no action has been taken on his letter to the Inquiry Officer dated 17.7.89

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(Annexure A-VII) From the perusal of original records, it is evident that all the points raised by the applicant in the aforesaid letter has been dealt with by the Inquiry Officer. The Inquiry Officer has referred to his letter dated 17.7.89 and has treated this letter as a general one though the applicant has termed this letter as a detailed reply to the chargesheet. The Inquiry Officer has clearly stated that the permission to come late to the office is not supported by any documentary evidence. He has further stated that relaxation of two hours daily cannot be believed. The applicant's contention that during these two hours, the work of Saving Bank used to be done by the Post Master is not believable. During the enquiry, both the Post Masters Sri Ganesh Prasad and Shiv Murti Sharma on 30.1.89 deposed before the Inquiry Officer that the applicant was working as Saving Bank counter clerk and he was responsible for the deposits and withdrawals. They have, ofcourse, have stated that they did not get any written complaint against the applicant. They have further deposed that any irregularity committed must be fasten to the applicant. Other contentions raised by the applicant in his letter dated 17.7.89 has been fully adverted by the Inquiry Officer in his enquiry report dated 25.9.89 and it finds place in the last four pages of the finding of the report. The perusal of original record leaves no doubt about the involvement of the applicant in the embezzlement of money to the tune of Rs.30,000/-. The applicant fails on this count also.

15. The applicant has next argued that the appellate order suffers from procedural irregularities and it does not advert to the points raised by the applicant. He has further stated that he was not granted personal hearing. It may be stated that the applicant never requested for personal hearing. Secondly the memo of appeal dated 11.2.90 has been considered by the Appellate Authority, which is clear from the last para of the appellate order.

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Counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court in R.P. Bhatt and the order of the C.A.T. Hyderabad in the case of C. Ramarao (Supra). We have perused the judgment in case of R.P. Bhatt wherein the Supreme Court found that the appellate authority summarily dismissed the appeal and confirmed the removal order hence it failed to apply its mind and in the case of C. Ramarao, the Tribunal found that the enquiry report suffering from irregularity and illegality and the Appellate Authority had blindly accepted that finding of the Inquiry Officer. Thus, we find that these cases are distinguishable from the case in hand. Hence no exception can be taken to the appellate order as it does not suffer from irregularity/illegality.

16. We would like to make it clear that scope of judicial review in case of disciplinary proceedings is limited to the extent that the disciplinary proceedings are vitiated on account of procedural illegality causing prejudice to the delinquent officials or a case of no evidence and perverse finding applying the test of common reasonable prudent man and lastly on proportionality of punishment. This Tribunal is not supposed to act as an Appellate Authority to reapraise, reappreciate and create the evidence and substitute its findings to arrive at the conclusion that charge has not been proved. This firm legal position flows from various decisions of the Apex Court, namely, B.C. Chaturvedi Vs. Union of India & others (1995) 8 JT(SC), State of Tamil Nadu Vs. T.N. Venugopal (1994) 6 SCC 302, Syed Rahimuddin Vs. D.G.C.S.I.R., 2001 AIR SCW 2388. In the backdrop of law laid down in the aforesaid decisions, we find that since the charge against the applicant stood duly proved in an enquiry which was conducted in conformity with the procedure prescribed in the rules, this Tribunal would not interfere with the

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order of punishment passed against the applicant and the original application is bound to fail.

17. In the result, the O.A. fails being devoid of any merit and is accordingly dismissed.

No order as to costs.

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