

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 23rd day of May 2002.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman  
Hon'ble Maj Gen K.K. Srivastava, Member (A).

Original Application no. 1425 of 1993.

Bechan Ram, S/o Bandhu Ram,  
R/o Vill Ardauna, P.O. Aradauna,  
Distt. Mau.

... Applicant

By Adv : Sri S.P. Pandey & Sri A.K. Singh

Versus

1. Union of India through its Secretary Post and Telegraph Department, New Delhi. the Collector Mau.
2. The Collector, Mau.
3. Tehsildar, Mau Nath Bhanjan.
4. Superintendent of Post Offices, Azamgarh.

... Respondents.

By Adv : Km Sadhna Srivastava

Alongwith

Original Application no. 217 of 1993.

Bachan Ram, S/o Late Sri B. Ram,  
R/o Vill Ardruna, Post Office, Ardauna,  
Distt. Mau.

... Applicant

By Adv : Sri O.P. Pandey & Sri E.K. Singh

Versus

1. Union of India through its Secretary Post and Telegraph Department, New Delhi.
2. Director of Postal Services, Allahabad.
3. Superintendent of Post Officer Azamgarh.

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4. Post Master General Gorakhpur Region,  
Gorakhpur.

... Respondents

By Adv : Km. Sadhna Srivastava.

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

OA no. 1425/93

In this OA filed under section 19 of the A.T. Act, 1985, the applicant Sri Bechan Ram has prayed for quashing the recovery certificate dated 29.7.1993 for Rs. 69551.55p. issued by Sr. Supdt. Post Offices (in short SSPOs) Azamgarh respondent no. 4.

OA 217/93

In this OA filed under section 19 of the A.T. Act, 1985, the applicant Sri Bachan Ram has challenged orders dated 31.12.1990 and order dated 22.5.1992 dismissing the applicant from service and has prayed that the same be quashed and direction be issued to the respondents to reinstate the applicant and pay back wages.

2. Since both the OAs have been filed by the same applicant and both the OAs are interlinked, these are being disposed of by a common order in OA 1425/93.

3. The facts, in brief, giving rise to this OA are that the applicant was working in the respondents' establishment since April 1965. He was posted as Postal Assistant (in short PA) Savings Bank (in short SB) at Dohrighat Post Office at the relevant time. He was suspended. A major penalty charge sheet was served on the applicant on 7.12.1987. for committing fraud of Rs. 3700/- in respect of SB account no. 625535. Enquiry was conducted. Inquiry Officer (in short .....3/-



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IO) submitted the enquiry report on 29.5.1989. The applicant was awarded penalty of dismissal from service by disciplinary authority <sup>by</sup> order dated 30.6.1989. He preferred an appeal to the Director Postal Services (in short DPS), Allahabad who vide order dated 27.12.1989 set aside the order of dismissal and remanded the case back to Disciplinary authority for denovo disciplinary proceedings from the stage of charge sheet. On 19.4.1990 major penalty charge sheet was served, enquiry was conducted and the disciplinary authority again awarded the penalty of dismissal by order dated 31.12.1990. The applicant preferred on appeal against the order dated 31.12.1990 which was rejected by DPS Gorakhpur (By this time another Postal region was formed with Headquarters <sup>at</sup> Gorakhpur and Azamgarh Postal Division was placed under Gorakhpur Region) vide order dated 16.7.1991. The applicant filed petition before Member Postal Services Board who rejected the same by order dated 22.5.1992. <sup>These orders</sup> ~~Hence~~ <sup>by</sup> ~~this OA~~ have been challenged in OA 217 of 1993. But meanwhile the respondent no. 4 issued recovery certificate for realisation of Rs. 69551.55p. from the applicant. The applicant filed OA no. 1425/93 challenging the action of respondent no. 4. The respondents have contested both the OAs ie 217 of 1993 and 1425 of 1993 and have filed counter replies.

4. Heard Sri O.P. Pandey learned counsel for the applicant and Km. Sadhna Srivastava, learned counsel for the respondents and perused records.

5. Sri O.P. Pandey, learned counsel for the applicant submitted that the charge against the applicant is regarding misappropriation of Rs. 3700/- by the applicant by accepting the same from account holder of Dohrighat SB account

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no. 625535 Sri Shesh Nath Ram on 17.2.1987 for deposit in his account. The applicant made entries of the transaction of the deposit in Pass Book but did not show the transaction in the Post Office account. Thus committed fraud of Rs. 3700/- and caused loss of Rs. 3700/- to the department on 17.2.1987. The applicant denied the charges and stated in clear terms before the IO that he never accepted any money from Sri Shesh Nath. He also denied that he prepared the pay-in-slip, ledger Book etc. It has been manipulated by some other person ~~to~~ with a view to implicate the applicant falsely. The applicant requested the disciplinary authority to obtain expert opinion with regard to hand writing of the applicant but the same was refused on the ground that sub Post Master is well aware about the ~~signature~~ of the applicant. The learned counsel for the applicant submitted that denial of the expert opinion about the disputed signature is in violation of principle of natural justice. The Sub Post Master and other witnesses cannot be expert in view of section 45 of Evidence Act.

6. Sri O.P. Pandey, further submitted that only a person who is skilled in handwriting or finger impression can be said as expert. This point was raised before the disciplinary authority, appellate authority and revisionary authority but no one considered the plea. Therefore, the orders passed in violation of principles of natural justice are illegal and liable to be quashed. The learned counsel further submitted that the applicant admitted that he misappropriated the amount of Rs. 3700/- but this confession was under threat and duress. In fact the onus to prove the charge lies on prosecution and the respondents have failed to do so. By not giving the proper opportunity 5/-



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of hearing and denying his prayer for expert opinion, the charges cannot be held proved and therefore order of dismissal is liable to be set aside.

7. The learned counsel also argued that the applicant has not been provided the second layer of hearing. In view of decision of Hon'ble Supreme Court in Managing Director ECIL Vs. B Karinakar AIR 1994 SC 1074 and Punjab National Bank & others Vs. Kunj Behari Mishra 1998 (b)(iii) UPLBEC 2320, the applicant ought to have been given reasonable opportunity including the opportunity of hearing which has been denied and therefore the action of the respondents is illegal.

8. Sri Pandey finally submitted that the punishment is disproportionate to the charges levelled in view of the judgment of Hon'ble Allahabad High Court Lucknow Bench in Harpal Singh Vs. State Public Services Tribunal (2000) 1 UPLBEC 704 and judgment of Apex Court in Union of India Vs. Giriraj Sharma AIR 1994 SC 215.

9. Resisting the claim of the applicant Miss Sadhna Srivastava, learned counsel for the respondents submitted that the applicant committed many acts of misappropriation during July 1983 to July 1987 while working as SB PA Dohrighat. On 13.5.1986 and 15.7.1986 he misappropriated a sum of Rs. 15427.05p and Rs. 6453.55p in similar fashion in 33 SB accounts of Buxy Town area Committee Dohrighat bearing no. 632339 to 632371. In similar fashion he misappropriated an amount of Rs. 24070.40p. on different dates between 6.11.1985 to 24.3.1987 from 40 Recurring Deposit Accounts opened under Pay Roll Savings Scheme by

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employees of Doharighat Block. The applicant also misappropriated the amounts of deposits in certain other SB accounts.

10. The learned counsel for the respondents submitted that during course of enquiry the applicant has admitted through written statement that he misappropriated the amount tendered for deposit by making entries in the Pass Book but ~~not~~ <sup>by</sup> crediting the same to Post Office Account. There was no threat or duress and the applicant, on being cornered during the enquiry, admitted his misconduct. In the present case also the applicant has admitted through his written statement dated 27.10.1987 that he received Rs. 3700/- from Sri Shesh Nath Rai account holder of SB Account no. 625535 on 17.2.1987 for deposit but he only made the entry in the Pass Book affixing date Stamp in the pass book but did not account for the same in Post Office account.

11. The learned counsel for the respondents further submitted that the applicant was afforded full opportunity during enquiry. The charges stood proved and the disciplinary authority correctly and legally imposed the penalty of dismissal from service which has been upheld by appellate as well as the revisionary authorities. The plea of the applicant that expert opinion with regard to handwriting of the applicant ought to have been called for to establish the charge has no basis. The Sub Post Master fully recognised the handwriting of the applicant and there was no iota of doubt in this regard. In the first round the appellate authority DPS Allahabad vide order dated

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27.12.1989 remanded the case to disciplinary authority for denovo proceedings because the disciplinary authority in punishment order dated 30.6.1989 had failed to discuss the evidence on record.

12. We have given careful consideration to the submissions made by the counsel for parties. From the perusal of material on record we have no doubt that the applicant was used to committing defalcation during his tenure as SB PA Dohrighat from July 1983 to July 1987. It has been averred by the respondents in Para 9 of the counter reply that out of 84 claim cases 71 claim cases of depositors stand settled, 3 cases were under decision and remaining 10 were disputed. The total loss to the department ~~in this case~~ is to the tune of Rs. 79551.55p.

13. The only ground in defence taken by the learned counsel for the applicant is that the applicant denied that he made entries in Pass Book and Pay-in-slip and requested for a handwriting expert opinion which was not accepted ~~to~~ by the respondents. Therefore, the entire proceedings are violative of principles of natural justice. We do not find any substance in the claim of the applicant. Here we would like to observe that expert opinion is for assistance when there is any doubt. In this case the applicant has admitted having committed misappropriation. Besides the applicant during course of enquiry could have offered that he could produce an expert in his defence. But he took no such action. He has only been talking about it which has been considered at all levels. We are convinced that reasonable opportunity was afforded to the applicant by

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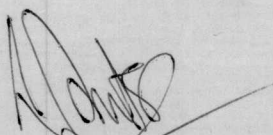
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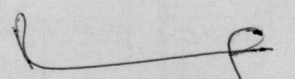
respondents and at no stage there has been violation of principles of natural justice. The case law cited by the applicant is not helpful to the applicant. We would like to observed that such an employee like applicant lacking integrity is not fit to be retained in public service. The action of the respondents in dismissing the applicant from service is <sup>only</sup> ~~no~~ valid grounds and justified. There is ~~no~~ absolutely no scope of interference as regards quantum of punishment.

14. In OA no. 1425/93 the applicant has prayed for quashing the recovery certificate dated 29.7.1993 for Rs. 69551.55p. The department of Posts has suffered the loss on account of misconduct on the part of the applicant. The applicant's appointment was that of trust and since the applicant defalcated the public money, he is responsible for making good the loss. We do not find any error of law in the action of respondent no. 4 in issuing recovery certificate. We are in respectful agreement with the decision of this Tribunal Lucknow Bench dated 25.11.1997 in O.A. no. 335 of 1990 wherein it has been held that recovery is not a service matter and Central Administrative Tribunal has no jurisdiction over recovery proceedings made under PAD Act,

15. In view of our aforesaid discussions, we do not find any merit in both the OAs no. 217 of 1993 and 1425 of 1993. Both the OAs are accordingly dismissed.

16. There shall be no order as to costs.

  
Member (A)

  
Vice-Chairman