

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1485 of 1993

Dated: 8th February, 1995. ^{March}

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. J.S. Dhaliwal, Member(J)

Moti Lal Shakya, son of Sri Kamla Prasad Shakya, R/o Kudesa, P.O. Junedpur, Via Aliganj, District Etah. ..APPLICANT.

(By Advocate Sri Vijai Bahadur)

Versus

1. Union of India, through Secretary Communication, Department of Posts New Delhi.
2. Union Public Service Commission, New Delhi through its Secretary.
3. Superintendent of Post Offices, Etah Division, Etah.
4. Assistant Superintendent of Post Offices, Etah (West) Sub Division Etah(Enquiry Officer).
5. Director of Postal Services, Agra Region Agra.
6. Assistant Director General, Govt. of India, Department of Post Dak Bhawan, New Delhi. ... RESPONDENTS.

(By Advocate Km. Sadhna Srivastava)

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

The applicant in this case was initially appointed as Postman on 1.9.1955 and he gradually rose to the rank of Sub Postmaster in the clerical cadre. On 31.7.1990 when he was working as Sub Postmaster Patialigate Post Office, Etah, he was served with a charge-memo for alleged misappropria-

-tion from seven Savings Bank Accounts amounting to Rs. 46,135/-. An inquiry officer was appointed and he conducted an ex-parte inquiry since the applicant did not present himself. During the pendency of the inquiry, the applicant had retired from service on 31.1.1991. The inquiry officer submitted his report on 24.6.1991 stating that the charges against the applicant were established. The applicant was required to submit a representation and he did so. Thereafter, after obtaining the advice of the Union Public Service Commission (U.P.S.C. for short), the impugned order dated 12.3.1993 (Annexure - A) was passed by the order and in the name of the President imposing the penalty of withholding of the full pension of the applicant on permanent basis. However, the gratuity admissible to him was released. This order was passed in exercise of the powers conferred under Rule-9 of the C.C.S.(Pension) Rules, 1972, (hereinafter be referred to as the Rules). The applicant thereafter filed a review petition under Rule-29-A of the C.C.S (CCA) Rule, 1965 and thereafter several reminders were sent by the applicant but to no avail. This has led the applicant to file this petition under Sec. 19 of the Administrative Tribunals Act, 1985 seeking the reliefs of quashing of the impugned order dated 12.3.1993, the inquiry report dated 24.6.1991 and the advice of the UPSC(Annexure- A 5) and to

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issue a direction to the respondents to forthwith pay to the applicant the arrears of pension and to continue to pay him the same month by month as and when the same is due.

2. The case set up by the applicant is that in the month of May, 1989 he had suffered an attack of mental disorderliness and thus became dependent on one Ram Sewak E.D. Packer of the post office of which he was the Sub-Postmaster.

It is stated that the said Ram Sewak took undue advantage of the physical and mental weakness of the applicant and committed misappropriation for which the applicant was charge-sheeted. It is alleged that the said Ram Sewak was a favourite of Sri B.B. Agrawal, the then Assistant Superintendent of Post Offices, Etah Sub Division having the patiala gate post office under him control and as such, Ram Sewak did not come to any harm and the applicant was made responsible for the misappropriation.

3. The applicant has also alleged that the Superintendent of Post Offices appointed his sub-rodinate namely Sri Sobh Nath Assistant Superintendent of Post Offices(West) as inquiry officer who was prejudiced against the applicant. The applicant requested for the change of inquiry officer by his application dated 19.11.1990 (Annexure- A 2) but the inquiry officer was not changed and Sri Sobh Nath continued to conduct the inquiry. It has been further submitted that an F.I.R. was also lodged in connection with the said mis-appropriation but the police filed

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a final report as there was no evidence against the applicant. The competent court issued summons to the authorities concerned to contest the final report of the police but the department chose not to contest the same and that is why the final report was accepted by the court.

4. That impugned order has been challenged on several grounds . It has been argued that the impugned order has been passed on the basis of the report of inquiry conducted by an officer who was biased against the applicant and thus the conclusions of inquiry officer are not fair. It has next been argued that under Rule- 9 of C.C.S. (Pension) Rules, 1972 punishment of withholding / withdrawal of pension permanently or for specified period can be imposed only ^{if} there is a categorical findings of grave misconduct or negligence during the service period ^{delinquent} of the ~~employee~~ official and there was no such finding by the inquiry officer in the applicant's case nor any such finding has been recorded by the U.P.S.C. or the President of India. The impugned order, therefore, the applicant argues, is bad in law. The further ground pleaded is that the UPSC failed to take notice of the fact that Ram Sewak was not examined by the inquiry officer and as such, the presumption made by the U.P.S.C. that the entries of deposits made in the pass book were made by the applicant and the amounts were tendered

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by the depositors to the applicant was incorrect. No opinion of hand writing expert was obtained by the department in respect of the entries made in the pass book, the applicant argues. It has been further argued that the fact that the police had submitted final report on the F.I.R. lodged by the department has not been taken into account while imposing the penalty on the applicant nor was his representation in response to the show cause notice ~~at~~ at all considered.

5. The respondents have sought to repel the contentions of the applicant by filing the counter affidavit. It has been submitted therein that the applicant never gave any information about his mental illness in the month of May, 1989. All the misappropriations were committed during the period from June, 1989 to August, 1989 and when this came to light, ^{and} he was placed under suspension, he started to say that he was mentally ill. On the pretext of mental illness he did not even cooperate in the preliminary inquiry nor did he participate in the inquiry into the charges against him. It has been stated that the applicant is trying to pass on the responsibility of misappropriation ^{order} to Ram Sewak only ~~in~~ to save his skin. As regards the request for change of inquiry officer, it has been submitted that on receipt of the representation, the inquiry officer stop~~ped~~ the inquiry and thereafter

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the representation was considered and rejected by the competent authority whereupon, the inquiry officer completed the inquiry. It has been stated that on receipt of the report of inquiry, the matter was considered and after obtaining the advice of the U.P.S.C., the penalty was imposed. As regards the review petition filed by the applicant, it has been stated that the same was considered and rejected by the competent authority by an order dated 14.10.1993 (Annexure- C.A. 1). As regards F.I.R., it has been denied that the court had ever issued any summons to the respondents and that infact, the respondents had been repeatedly requesting the police authorities for supplying a certified copy of the order of the court accepting the final report but the same has not been supplied so far. As regards the alleged failure to examine Ram Sewak by the inquiry officer, it has been stated that the applicant never requested the inquiry officer for examination of Ram Sewak.

6. The applicant has filed the Rejoinder Affidavit in which he has reiterated the contentions made in the Original Application. The additional point brought out by him was that under the departmental rules and instructions, the Assistant Superintendent of Post Offices ^{can} investigate the matter with regard to the misappropriation of Rs. 5,000/- and any allegation with regard to misappropriation of amount beyond Rs. 5,000/- and upto Rs. 10,000/-

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can be investigated by the Superintendent of Post Offices. Since in the instant case, the allegation was of misappropriation of Rs. 46,155/- the matter ought to have been enquired into by an authority higher than the Superintendent of Post Offices, but the preliminary inquiry was conducted by Sri B.B. Agrawal, Assistant Post Offices only to favour Ram Sewak.

7. We have heard the learned counsel for the parties and have gone through the pleadings of the case.

8. As regards the allegation of bias on the part of Sri B.B. Agrawal, apart from the fact that no foundation has been laid for any presumption of bias on his part, the presence of bias on his part or otherwise is not at all relevant to this case, since Sri B.B. Agrawal is neither the disciplinary authority nor the inquiry officer. As regards the allegation of bias on the part of the inquiry officer, no foundation whatever has been laid for such a presumption. The request of the applicant for change of inquiry officer was, therefore, rightly rejected by the respondents. The fact that the police had submitted a final report on the F.I.R. lodged by the department in connection with the alleged misappropriation cannot in any way affect the outcome of the disciplinary proceedings against the applicant. A final report

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even if it is accepted by the competent court, does not have the effect of acquittal on merits. Even an acquittal on merits by a competent court, does not ipso facto absolve an employee of the charges in a departmental inquiry on same facts. The respondents, therefore, have done nothing wrong in not taking into account the fact that the police had submitted a final report on the F.I.R.

9. We have given our anxious consideration to the plea taken by the applicant that there is no specific finding by the inquiry officer that the applicant had committed a grave misconduct or negligence which ^{is} a sine qua non for exercising power under Rule-9 of the Rules. The applicant in this regard has relied on the decision of the Supreme Court in the case of D.V.Kapoor Vs. Union of India, AIR 1990 SC 1923. In this case, the charge against the applicant was of ~~misconduct~~ misconduct in not reporting to duty after his transfer from Indian High Commission at London to the office of External Affairs Ministry, Government of India, New Delhi. The inquiry officer found that although, the appellant was guilty of dereliction of duty, ~~because~~ not the reason ~~why~~ why he could not move was ~~to~~ his wife's illness and he recommended sympathetic consideration of the case. The president accepted the findings and yet imposed the penalty of withholding on permanent basis, ~~and~~ the pension as well as the gratuity. In such facts and circumstances

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the Supreme Court held that the requirement of exercising the power under Rule-9 of the C.C.S. (Pension) Rules, 1972 that a finding should be recorded either in departmental inquiry or judicial proceedings with the pensioner committed gross misconduct or negligence in the discharge of his duty while in office has not ^{been} met and the impugned order was quashed.

10. D.V. Kapoor's case is clearly distinguishable ^{from} the case before us on facts. In the instant case, there is a clear finding by the inquiry officer to the effect that the charges against the applicant are fully established. There were seven articles of charge, each relating to the alleged misappropriation of specified sums of money by the applicant. Such charges are of grave misconduct. Once there is a finding by the inquiry officer that these charges have been proved, in our view, there is no need to make a separate statement that the applicant is guilty of gross misconduct since gross misconduct is inherent in the charges of misappropriation of depositors money. Thus, absence of ^a recital of commission of grave misconduct by the applicant in the inquiry report, in our view, does not vitiate the order passed by the president in exercise of the powers conferred under Rule -9 of the C.C.S(Pension) Rules, 1972 unlike in the case of D.V. Kapoor, in which the inquiry officer himself found certain

24

extenuating circumstances in favour D.V. Kapoor.

11. The plea that Ram Sewak was not examined and this vitiates the findings against the applicant has no force. As rightly pointed out by the respondents in the counter affidavit, the applicant does not appear to have asked for examination of Ram Sewak at any point of time and, therefore, he cannot now take the plea that non-examination of Ram Sewak prejudiced this case.

12. The plea that no opinion of hand writing expert was obtained is also not tenable. The inquiry officer has examined number of the depositors from whose account, the alleged misappropriation was committed. The findings of the inquiry officer are based inter alia on the evidence of such depositors. In the face of their positive assertions, there would have been no need to call a hand writing expert to determine whether the deposits were made by the applicant or not.

13. Another plea taken by the applicant is that the amount stated to have been misappropriated has been made good by the applicant's son and, therefore the extreme punishment awarded to the applicant is unwarranted. Restitution of the amount misappropriated does not mitigate the gravity of the misconduct just as return of stolen property does not

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mitigate the gravity of the crime of theft. This plea also cannot, therefore, come to any assistance of the applicant.

14. Lastly, during the course of argument, Sri Vijai Bahadur, learned counsel for applicant advanced the plea of disproportionate penalty. His argument was that even if, it is conceded that the applicant was guilty of misappropriation, the extreme ^{penalty} of withholding of the entire pension permanently is considered to ^{be} harsh. The scope of judicial review with regard to the quantum of punishment imposed came under scrutiny of the Supreme Court in a recent case of State Bank of India Vs. Samarendra Kishore Endow and another, 1994 SCC (L&S) 687. In this case, the Supreme Court held that though ~~in~~ the facts and circumstances of the case, the punishment of removal imposed on the respondents was harsh; this is the matter which the disciplinary authority or the appellate authority should consider and not the High Court or the Administrative Tribunal. The proper course is to send the matter either to the disciplinary authority or to the appellate authority to impose appropriate punishment. The Supreme Court remitted the matter to the appellate authority to consider whether a lesser punishment is not called for in the facts and circumstances of that case.

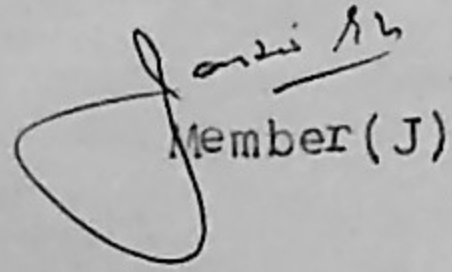
15. In the instance case, the charges

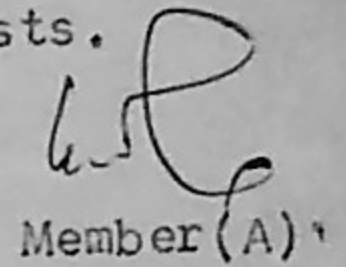
against the applicant are no doubt very grave. Infact, had the applicant been still in service, a penalty of removal from service would not perhaps been considered ~~as~~ a harsh penalty in comparison of the gravity of the misconduct. But the fact remains that the applicant is a retired person and is now 63 years old, He is unlikely to get any fresh employment at this age to earn his livelihood. He joined as a postman on 1.9.1955 and retired as sub-postmaster after putting in more than 35 years of service. There is no averment in the counter affidavit to indicate that the past service of the applicant had any blemish. It would appear that it was at the fag end of his career that the applicant fell prey to temptation and committed the gross misconduct of misappropriation of money. Keeping these facts in mind, we feel that there is some scope for the authorities concerned to reconsider the matter and see whether a lesser penalty—either in terms of reduction in the quantum of pension withheld or in the number of years for which pension should be withheld—can be imposed on the applicant.

16. We, therefore, dispose of this application with the observation that the appellate authority may reconsider whether in the facts and circumstances

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of the case. lesser punishment may be imposed on the applicant. The appellate authority shall pass final orders in this regard within a period of 4 months from the date of communication of this order. There shall be no order as to costs.


Member (J)


Member (A)

(n.u.)