

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 27th day of June 2000.

Original Application No. 1836 of 1993.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member.

Hon'ble Mr. M.P. Singh, Administrative Member.

Vimal Kumar Singh son of Sri Raj Bahadur  
Singh ex-postal Assistant, Gorakhpur,  
H.O. resident of B2/4, Golghar Postal  
Colony Gorakhpur.

.....Applicant

C/P Sri R.P. Singh and Sri A.V. Srivastava.

Versus

1. The Union of India through the Secretary, Ministry of communication Dak Bhawan, New Delhi.
2. The Member Board Department of post Dak Bhawan, New Delhi.
3. The Director postal Services, Gorakhpur.
4. The Senior Superintendent of Post Offices, Gorakhpur, Division, Gorakhpur.

.....Respondents

*(Signature)* C/R Km. S. Srivastava.

ORDER

By Hon'ble Mr. S.K.I. Naqvi, JM

1. While posted as Postal Assistant Gorakhpur, Sri V.K. Singh was served with memorandum of charges to the effect that while working at Civil Court Post Office, <sup>and deputed</sup> to look after the work of the SPM, who was on leave from 25.11.1988, to 26.11.88, an amount of Rs. 1000/- alongwith pass-book and the pay-in-slip for deposit into Bank Account No. 1800682 was given to him but he took the amount with Government account on 26.11.88 and not on 25.11.88 and also that on 26.11.88, the applicant received an amount of Rs. 1,050/- alongwith the pass-book and the pay-in-slip for deposit in saving Bank Account No. 1800374, the applicant made entry in the pass book but he did not take into Government Account and as such it is alleged that he violated the provisions of relevant Rules. On these charges, the applicant was subjected to disciplinary departmental proceedings. After due inquiry, the Inquiry Officer submitted his inquiry report <sup>holding</sup> and found the applicant guilty of charge vide order dated 31.8.92, the copy of which has been annexed as annexure A-1 to the O.A. The Disciplinary authority agreeing with the findings of Inquiry Officer, passed an order, dismissing the applicant from the service. The applicant preferred an appeal against this dismissal order, which was rejected by the appellate authority, vide order dated 17.11.92. As last Departmental remedy the applicant filed revision, before respondent no. 2 in which the findings of punishment of disciplinary authority were upheld, but the punishment was reduced on

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humanitarian grounds and the order of dismissal was converted to compulsory retirement and then the applicant came before the Tribunal seeking relief by impugning the punishment order, appellate order as well as order passed in revision, on the ground that the applicant was denied the reasonable opportunity <sup>at enquiry stage,</sup> to put his case and was not allowed opportunity to cross-examine the witnesses as per list and thereby he was prejudiced in his defence. Regarding appellate order it has been mentioned that the appellate authority did not afford the opportunity of personal hearing. About the Revisional authority it has been pleaded that the revisional authority decided the matter mechanically without considering the legal aspects and statutory provisions.

2. The respondents have contested the case and defended the impugned orders.

3. Heard learned counsels for rival contesting parties and perused the records.

4. The learned counsel for the applicant assailed the proceedings on the ground that the applicant was not given fair opportunity to put his case and cross-examine the witnesses. Taking into consideration these arguments we perused the pleadings and also had an occasion to go through the Departmental Proceedings record, which were produced by learned counsel for the respondents. We find that the allegations against the applicant are mainly

based on the records of concerned post offices. Sri Brahma Nand has proved during the Departmental proceedings the entry regarding the deposit of Rs. 1000 on 25.11.88 in S.B. Account No. 1800682. It has also been proved that this amount was entered into the Government's account only on 26.11.88 which does not only amount to temporary misappropriation but also non-compliance of Rules in this regard. During the Departmental proceedings this fact has also been proved by this witness that on 26.11.88 the applicant received the sum of Rs. 1050 as deposit in S.B. Account No. 1800374. The applicant made entry in concerned pass-book but did not take into Government Account and thereby he violated the provisions and relevant rules and is also liable for defalcation of Government money.

5. The Departmental Proceeding records show that the applicant himself declined to avail the opportunity to cross-examine the witnesses, which was allowed to him. The opportunity allowed but not availed, does not amount to denial of opportunity. The learned counsel for the applicant has also assailed the departmental proceedings on the ground that material witnesses have not been examined which also amounts the denial of proper opportunity to defend his case. After due consideration of the arguments placed on behalf of the applicant and on perusal of record we find ourselves unable to agree with the contention of learned counsel for the applicant. We find that admissibility and reliability of <sup>evidence and</sup> witness has to be considered by the inquiry officer and the findings based on such evidence cannot be assailed on the ground of paucity or non-reliability. As discussed above we find that the applicant

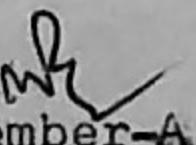
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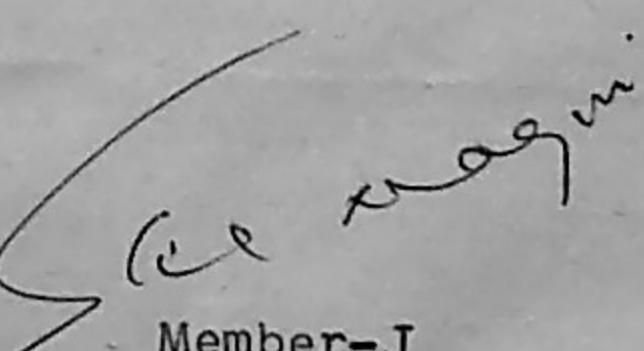
was allowed full opportunity to defend his case. This contention of learned counsel for the applicant can also not be accepted that the applicant could not put his defence case because he could not cross-examine any witness. The defence stage in proceedings is a separate stage in which the party charged is allowed the opportunity to <sup>advise</sup> defence.

6. The learned counsel has also assailed the appellate order on the ground of its being passed mechanically without applying his mind. On the perusal of appellate order we find that it is a well detailed, reasoned and speaking order and therefore the contention of applicant fails on this count also.

7. With the above discussion we find that the disciplinary proceedings were carried in accordance with the rules and the appropriate orders have been passed. There is no dispute in respect of jurisdiction of authority, who passed the impugned orders. There is also no allegation of bias or prejudice. We also do not find any violation of natural justice or of any provision of rules in this regard.

8. We do not find any merit in the O.A. which is, therefore dismissed accordingly. There shall be no order as to costs.

  
Member-A

  
Member-J