RESERVED

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : ALLD BENCH

ALLAHABAD

Dated: ALLD. on this 15th Day of ~~November~~ December, 1997.

CORAM **Hon'ble Mr Justice B C Saksena, V.C**
Hon'ble Mr S Das Gupta, A.M.

ORIGINAL APPLICATION NO.360 OF 1993

Smt Ram Dulari W/o Late Ram Deo Yadav
& Ors (Sons of Late Ram Deo Yadav, the
original applicant), Village Post-Shankerpur
via- Harayya, Distt: Basti.

...Applicants

C/A Shri Manoj Upadhyay and
Shri R K Tiwari

Vs.

(1) Superintendent
Posts Basti.

(2) Director Postal Services
Office of PMG Gorakhpur

(3) Union of India, through Secretary
Ministry of Communications,
New Delhi-1

... Respondents.

C/R Shri S C Tripathi and
Shri C S Singh

O R D E R

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

This O.A. was initially filed by Shri Ram Deo Yadav challenging an order dated 29.07.1991 by which the disciplinary authority had imposed on him the penalty of reduction to a lower stage of pay and the appellate order dated 06.11.1992 by which the penalty was enhanced to that of dismissal from service. During the pendency of the application, applicant having died, he was substituted by

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his legal heirs.

2. The original applicant had worked as Village Postman at Captainganj from January,1980 to June, 1985. He was thereafter transfered to Harraiya Post Office in District- Basti (UP). While he was working at Harraiya, he was served with a major penalty charge memo in which it was alleged that he had misappropriated the amounts of certain money orders and insured letters while working as Village Postman in Captainganj. The other allegations were that he had returned several unpaid money orders without obtaining the acquittance of the money orders and cash in his register and that on the money order's returned, he had endorsed the remark of "NOT MET" and thereby failed to perform the Govt. duty. Applicant having denied the charges an enquiry was held. The Enquiry Officer held that the charge that the applicant had falsely shown certain money orders having paid to their payees while not actually paying them to such payees, had not been established. He, however, found the other two charges relating to the return of the money orders as established against the applicant. The disciplinary authority accepted the findings of the enquiry officer in respect of the charges which were found to have been established and disagreed with the findings of the E.O. in respect of the charge which the enquiry officer held as not proved. The disciplinary authority held that this charge was also proved and proceeded to impose penalty of reduction in pay by the impugned order dated 29.07.1991. The applicant preferred an appeal against the said order whereupon the Appellate authority after giving a notice to the applicant regarding enhancement of the quantum of penalty, issued the impugned order dated 6-11-1992 enhancing the penalty to that of dismissal from service.

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3. The applicant has challenged the order of penalty on the ground that the disciplinary authority had held the charge No.1 as proved on the basis of presumption which was not based on any evidence. It is alleged that the disciplinary authority has not discharged his statutory responsibilities of indicating the reasons for disagreement. The applicant has taken the plea that the entire case against him was fabricated at the instance of a mail overseer and the Inspector who were biased against the applicant as a result of his failure to submit to their illegal demands. It has been further alleged that the disciplinary authority was won over by mail overseer and the inspector and that is why the disciplinary authority had disagreed with the findings of the Enquiry Officer in respect of the charge No.1 without furnishing any reasons and found him guilty on the basis of presumption. The appellate order has been challenged on the ground that allegations made by the applicant in his appeal were rejected by the disciplinary authority without assigning any reasons and therefore, appellate order is not maintainable.

4. The respondents had appeared and contested the case by filing counter affidavit. It has been stated therein that while the applicant was earlier working as Village Postmaster in Sikanderpur, a complaint was lodged regarding misappropriation of the amount of a money order originating from Parliament Street Post Office, New Delhi. The complaint was investigated and found to be fully proved. The applicant was thereupon transferred to Captainganj post office where also he misappropriated the value of several money orders and insured letters. The allegations in this regard were found to be established in a preliminary enquiry during which the receipients of such money orders and insured letters denied having received the

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amount although applicant had shown the amounts of these money orders as having paid to the correct payees. The applicant was, thereafter placed under suspension. The complaint regarding misappropriation of the amount of the money orders and insured letters by the applicant was lodged with the police and after investigation of the complaint a charge sheet was filed on 09.10.1987 in a Criminal Court. The criminal case against the applicant is still pending in trial. At the same time, a departmental chargesheet was also served on the applicant in which three articles of charges were levelled. First related to alleged misappropriation of the amounts of money orders and insured letters by the applicant while the remaining two related to the return of the money orders without paying the amount to the payees concerned. In the departmental enquiry,none of the payees appeared. Some of the witnesses and scribes who appeared in the enquiry also did not support the case against the applicant. The Enquiry Officer, therefore, found the charge of misappropriation as not proved but held the other two charges as established on the basis of the documents which were produced in the enquiry. The disciplinary authority disagreed with the findings of the Enquiry Officer in respect of the first charged and indicated the detailed reasons in his order for disagreement. He, thereafter, imposed penalty of reduction in pay which was enhanced to that of dismissal from service by the appellate authority after issue of proper notice to the applicant. They have denied the allegation made by the applicant that the inspector or Mail overseer were biased against him. They have further stated that even though the payees of various money orders and insured letters did not appear before the Enquiry Officer and scribes and witnesses who did appear, did not support the allegation against the applicant, the disciplinary authority relied upon the various statements of the payees, scribes and witnesses during the

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preliminary enquiry. Such statements have been proved in the enquiry by the person who recorded the same.

5. The applicant has filed an R.A. in which he has stated that the statements recorded at the back of the applicant and not confirmed before the Enquiry Officer by those who had made such statements could not have been relied upon.

6. We heard the learned counsel for both the parties who took us through the pleadings on record.

7. The main ground taken by the applicant is that the disciplinary authority had disagreed with the findings of the Enquiry Officer in respect of the more serious charge of misappropriation without indicating any reasons for the disagreement and merely on the basis of presumption which was not supported by any evidence on record. We have carefully considered this plea. No doubt most of the 21 persons who were cited as witnesses for the prosecution did not appear before the enquiry. Also a few of the witnesses who did appear -- none of whom was the payee of any of the money orders or insured letters -- supported the allegation made in the chargesheet. The disciplinary authority, however, took the view that the witnesses have been won over by the applicant and therefore, they did not come forward to depose against him. He has given elaborate reasoning in the impugned order dated 29.07.1991 as to how he arrived at the conclusion that the Article of charge No.1 was established against the applicant.

8. It is settled law that standard of probity of evidence in a departmental proceeding is not the same as that in a criminal proceeding. This is because of the reason that the object of the criminal proceeding is to punish the criminal and the object of a departmental proceeding is to take corrective action for departmental

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misconduct. In the case of State of Rajasthan Vs. Shri B K Meena & Others J.T. 1996 (8) S C 692, the Hon'ble Supreme Court had made the following observations:-

> "The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different."

Also in the case of Depot Manager A.P.S.R.T.C. Vs. Mohd. Yousuf Miya And Others 1997 SCC (L&S) 548, the Hon'ble Supreme Court inter alia observed :-

> " The purpose of departmental enquiry and prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So Crime is an act of commission in violation of law or of ommission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of the public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in

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crminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act."

9. It would, therefore, be seen that the rigour imposed on assessment of evidentiary value in criminal proceedings by the Evidence Act is much less in a departmental proceedings and if in such proceedings, the conclusion arrived at by the Enquiry Officer or the disciplinary authority on the basis of evidence on record, is not wholly perverse, such conclusion cannot be set aside by a court or Tribunal on the ground of inadequacy of evidence. In the case before us, we have seen that the payees of the disputed money orders and insured letters had given statements at the time of preliminary enquiry stating that they had not received the amount. The person who had recorded the statement, appeared before the Enquiry Officer and affirmed that he had recorded such statements. If, therefore, the disciplinary authority had relied on such statements, even though the person who had actually made such statements, did not appear before the Enquiry Officer, it cannot be held that the conclusion of the disciplinary authority based on such evidence is wholly perverse. We, therefore, see no reason to hold that disciplinary authority had imposed penalty on the basis of a charge which was not established in the enquiry.

10. The allegation that the disciplinary authority did not record the reasons for his disagreement with the findings of the Enquiry Officer, is wholly untenable. The impugned order of the disciplinary authority runs into several pages, giving elaborate reasoning as to why he found the first article of charge as proved contrary to the findings of the Enquiry Officer.

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11. During the course of arguments, learned counsel for the applicant took a plea that the appellate authority could not have passed the order enhancing the penalty to that of dismissal from service in view of the fact that period of limitation prescribed in rule 29 of CCS (CCA) rules had already expired. we have carefully considered this plea. Rule 29 of CCS (CCA) rules relates to revision of an order already passed in a departmental proceedings. When the appellate authority desires to exercise the powers of revision, he must do so within a period of six months from the date of the order proposed to be revised. Thus, if the appellate authority had exercised his powers under rule 29 in revising the order of the disciplinary authority in enhancing the penalty imposed, the plea taken by the learned counsel for the applicant would have been a valid one as the order of the appellate authority was passed on 06.11.1992 which was much after the expiry of period of six months as indicated in rule 29. We, however, find that the impugned order dated 6.11.92 was not passed in exercise of revisionary powers of the appellate authority. This is purely an appellate order. In terms of rule 27 of the CCS(CCA) rules, an appellate authority can pass orders confirming, enhancing, reducing or setting aside the penalty imposed by the disciplinary authority. However, if the penalty is proposed to be enhanced, the appellant has to be given a reasonable opportunity of making a representation against the enhanced penalty. This rule does not impose any time limit for passing an appellate order. It is not disputed that the appellate authority did give opportunity to the applicant to make representations against the proposed enhanced penalty. Thus statutory provision contained in rule 27 of the CCS (CCA) rules in this regard was complied with. The appellate order , therefore, does not suffer from any flaw. Moreover, the appellate order is a reasoned and speaking order and therefore, does not call for any interefence.

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12. We have also considered the plea of the malafide taken by the applicant. In the first place, the plea of bias on the part of the mail overseer and the inspector is a bald one. Secondly, none of the functionaries who are alleged to be biased against the applicant, has not been impleaded by name. Thus the basic requirement of establishing malafide are not satisfied.

13. In view of the foregoing, we find no merit in this O.A. and the same is accordingly dismissed. Parties shall, however, bear their own costs.

A.M. V.C.

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