

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 25th day of July, 1996

Coram - Hon'ble Dr. R.K. Saxena, Member - J
Hon'ble Mr. D.S. Baweja, Member - A

O.A. No. 1075 of 1993

Purnanand Tiwari, S/o Dinesh Tiwari, R/o Village
and Post Dumwalia, Ex-Branch Post Master, Dumwalia,
District Deoria.

APPLICANT

Vs.

1. Union of India through Ministry of Post &
Telecommunication.
2. Director, Postal Services Gorakhpur Mandal,
Gorakhpur.
3. Prawar Adhichak, Dak Ghar Deoria Mandal, Deoria.

RESPONDENTS.

Advocates

Sri Rakesh Verma Advocate-For the applicant
Km. Sadhna Srivastava, Advocate- For the
respondents.

JUDGMENT

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has filed this O.A. to challenge the order of removal dated 15.3.93 annexure-1 passed by the disciplinary authority, and order dated 26.5.93 annexure-2 passed by the appellate authority whereby the appeal was dismissed.

2. The facts as are set out from the pleadings of the parties are that the applicant was working as Extra-departmental branch post-master, Dumawalia (Salempur). He worked in the said capacity during 3.3.1981 and 5.4.1990. Sri Jagdamba Tiwari of the said village had opened R.D. account no. 101949.

Similarly other persons particularly Smt. Lalmati Devi, Km. Poonam Tiwari and Smt. Kanchan Lata Tiwari had opened their R.D. Accounts nos. 103253, 101003 and 101746 respectively. Sri Jagdamba Tiwari used to deposit Rs.50-00 per month in his account by giving the money and slip to the applicant. The father-in-law of Smt. Lalmati Devi used to deposit the amount on her behalf. Other depositors also deposited the amount by giving to the applicant every month. The modus-operandi of the applicant is alleged to be that he used to make the entries of deposits in the pass-books of the depositors but the said amount was neither shown in the account of the post-office of that day nor was any entry made in the R.D. journal. The money which used to be deposited by the depositors, used to be utilized for some-time by the applicant and thereafter, he used to make entries in the R.D. Journal on subsequent dates. The same date used to be shown in the pass books after collecting them from the depositors. It could be detected at late stage when it was found that the depositors amount was not shown deposited on due dates but was received in subsequent months but without charging late fee. For instance, the amount due in October, 1987 in the pass-book of Sri Jagdamba Prasad Tiwari, was shown deposited on 7.12.87 but without charging fee of late deposit. Not only this, the lump sum amount of several months was shown deposited in one month. The report shows that in the account of Sri Jagdamba Prasad Tiwari, the amount of 17 months i.e. from Feb.1988 to June, 1989 amounting Rs.850-00 was deposited on 6.12.89 although the depositor deposited the amount every

month. Similarly, the amount of other depositors was deposited belatedly and in some cases lump sum amount for several months. It is shown in the report that by showing the belated deposits and without charging the late fee, the department was put to a loss of Rs.707-00 in the accounts of four persons already named.

3. The applicant was charge-sheeted for not showing the deposits which were made each month in R.D. accounts no. 101949, 103253, 101003 and 101746. The applicant denied the charges. Hence inquiry proceeded. Sri K.P. Pandey Post Master, Basti was made inquiry officer. He collected evidence and come to the conclusion that the applicant was responsible for not having collected the late fee of Rs.707-00 from various depositors. He did not find the charge for not having made entries and adjusted the deposits on their actual dates, established.

4. The disciplinary authority found that all the allegations were established. Hence he passed the impugned order of removal from service with immediate effect. The appeal which was preferred by the applicant was also rejected. Hence this O.A. is filed on the grounds that the inquiry officer held one charge established while the disciplinary authority held all charges established; that the factum of deposit of Rs. 707-00 by the applicant has been ignored; that the applicant is put to double jeopardy; that the punishment which is awarded, does not commensurate with the charge; and, that there was no charge of

mis-appropriation of money. On these grounds are challenged the impugned orders.

5. The respondents contest the case on the grounds that the applicant has committed the mis-appropriation of the amount of the depositors of Rs.8970-00 and Rs.707-00, that the disciplinary authority agreed with the inquiry officer that the guilt of the applicant was established, and that the impugned order of punishment and rejection of appeal, was justified.
6. The applicant filed the rejoinder and re-stressed the facts which were stated in the O.A.
7. We have heard the learned counsel for the parties and have perused the record.
8. The learned counsel for the applicant has laid emphasis on the points that it was not a case of misappropriation. the fact of deposit of an amount of Rs.707-00 by the applicant, has been ignored and thus, double jeopardy has been caused. The third point is that there is disagreement between the inquiry officer and the disciplinary officer so far as the second charge was concerned.
9. As regards the first point, whether it is a case of mis-appropriation or not, the parties have claimed differently. To decide this issue, we will have to look into the evidence and its appreciation would be beyond the scope of judicial review. The departmental authorities are the best judges for the

purpose. If we glance at the report of the inquiry-officer in which the deposition of the witnesses has been assessed, the conclusion of a prudent man would be of mis-appropriation. The amount deposited each month by the R.D. account operators, was not shown in the account of the post-office and in R.D. journal; and deposited after 17 months with over-writing in the pass-books, shows the intention and modus-operandi of the applicant. Anyway, we do not see any substance in the first point as shown above.

10. So far as the deposit of an amount of Rs.707-00 by the applicant is concerned, it does not absolve the applicant from punishment. Assuming for the sake of argument that the depositors deposited amount belatedly, the applicant was under legal obligation to have realized late fee from them because that was the requirement of rules. Non-observation of rules or directions may also lead to misappropriation. Thus the deposit of this amount of Rs.707-00 will not mitigate the misconduct of the applicant. In our opinion, it is not a case of double-jeopardy; and thus this ground is also of no help to the applicant.

11. The third ground taken by the learned counsel for the applicant is that the inquiry officer does not hold the second charge established but the disciplinary authority holds established and awards punishment. In order to arrive at the correct conclusion, we would like to go through the charge. It has been given by the inquiry officer in his report. It

speaks that during the period from 3.3.81 to 5.4.90 while the applicant was working as branch post-master, Dumwalia, the monthly deposits were made in R.D. accounts no. 101949, 103253, 101003 and 101746 but those amounts were not adjusted in the account of the said dates and thus violated rule 131 of Branch Post Office Rules and rule 17 of E.D.A. (Conduct and Service) Rules, 1964. Thus it is clear that only one charge was framed against the applicant. It appears that the inquiry officer had split up the same into two parts.

12. The reading of the report of the inquiry officer suggests that he wanted to avoid recording a finding as to when the applicant had received the amounts from the depositors. He saw the over-writing and cuttings in the dates which were given in the pass-books. The report further speaks that the applicant had admitted the fact of overwriting and cutting made by him. The deposition of the witnesses particularly of Sri Jagdamba Prasad Tiwari was quite clear that he deposited the amount every month and never was given lump sum amount of Rs.850-00 to the applicant. Even if on this evidence, the inquiry officer records that second part is not established, it is perverse finding. The disciplinary authority is not under obligation to accept in toto. The reasons for not accepting that part of the report are given in the impugned order. According to the order of disciplinary authority, the applicant had admitted about the overwriting in pass-book and misappropriation. In these circumstances, the order

of the disciplinary authority does not suffer from any illegality.

13. The learned counsel for the applicant relied on the decisions of the Tribunal in S.Gopalan Vs. Directorate General of Works C.P.W.D. New Delhi (1991) 16 A.T.C. 691, and Kavindra Prasad Pandey Vs. Union of India and Others (1991) 16 A.T.C. 702, in which the view was taken that when the disciplinary authority disagreed with the inquiry officer, notice should be given to the delinquent employee. Reliance is also placed on Narayan Mishra Vs. State of Orissa 1969 S.L.R. 657, in which their Lordships of Supreme Court also took the same view. The learned counsel for the respondents relied on State Bank of India Bhopal Vs. S.S. Koshal 1994 S.C.C.(L & S) 1019, in which it was held by their Lordships of Supreme Court that the Enquiry Officer's report was not binding upon the disciplinary authority and it was open to the disciplinary authority to come to its own conclusion on the charges. Thus it appears from the decision in S.S. Koshal's case that on disagreement, notice is not required to be given.

14. As is already pointed out, this question of giving or not, the notice on disagreement is not of any vital importance because there is one charge and part of it was found established even by the inquiry officer. Hence the punishment can be awarded. For quantum of punishment the authorities in the department are the best judge. Thus we do not find any substance even in this plea.

15. No other procedural defect or violation of the principles of natural justice is pointed out by the learned counsel for the applicant. Thus on the consideration of the facts, circumstances and legal position, we come to the conclusion that there is no merit in the case. The O.A. is, therefore, dismissed. No order as to costs.

Sd./-
(D.S. Baweja)
Administrative
Member

Sd./-
(Dr. R.K. Saxena)
Judicial Member

/M.M./

Typed and Compared.

Completed
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