

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH

A L L A H A B A D

DATED: THIS THE 24th DAY OF APRIL 1996

O.A.No.1928/94

Quorum: Hon'ble Mr. S. Das Gupta A.M.

Hon'ble Mr. T.L. Verma J.M.
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Sukh Ram Sharma s/o Late Salig Sharma,

R/O Ganga Ashram, Rishikesh,

District Dehradun. - - - - - Applicant

C/A Sri L.J.S. Srivastava
Sri P.K. Kashyap

VERSUS

1. Union of India through Secretary Communication,
Postal Wing, Parliament Street, Dak Bhawan,
New Delhi.

2. Post Master General, Dehradun.

3. Senior Supdt. of Post Offices,
Dehradun division, Dehradun.

4. Enquiry Officer, S. P. M., Dehradun.

- - - - - Respondents

C/R Sri N.B. Singh

ORDER

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

In this application filed under section 19 of the Administrative Tribunal Act, 1985, the applicant seeks quashing of an order dated 22.2.1994 by which a penalty of part recovery of Rs.17,760/- from the salary of the applicant and also reduction in pay of the applicant

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by two stages for a period of one year was imposed and also the order dated 28.11.1994 by which the applicant's appeal against the aforesaid penalties ^{was} ~~was~~ rejected. He also seeks direction to the respondents not to recover a sum of Rs.17,760/- from his salary.

2. The applicant was serving as Asstt. Post Master. On 13.5.1992, certain Insured letters were stolen from the post office and F.I.R. was lodged with the police and a criminal case was registered in the court of Munisf Magistrate, Rishikesh. The police, however, submitted final report on 12.1.1993. The applicant meanwhile was served with a Charge Memo dated 22.7.1992 for major penalty under section 14 of the CCS(CCA) rules 1965 for alleged failure in keeping the Insured letters in safe safe custody after having them checked and verified and thereby causing loss of the Insured letters. The applicant submitted reply to the charge sheet, whereupon an enquiry was ordered. The Enquiry Officer concluded that the charges against the applicant were established. Agreeing with the findings of the Enquiry Officer, Disciplinary Authority by the impugned order dated 22.2.1994 imposed penalty of part recovery of Rs.17,760/- and also reduction in pay by 2 stages for one year. The applicant submitted an appeal to the Chief Post Master General, Lucknow and the same was rejected by the impugned order dated 28.11.1994.

3. The applicant has challenged the order of the Disciplinary Authority on the ground that the charges against him have not been proved on the basis of evidence on record. He has alleged that as the Safe was kept in the custody of S.P.M. and the applicant was not provided with such facility, he could not have kept the Insured letters himself in the absence of Locker or Almirah. He has further

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alleged that Sri B.S.Bhasker, Sr.Suptd. of Post Offices, Dehradun, who had conducted the preliminary enquiry and recorded the statement of officials concerned, refused to appear as a witness and he was not produced as a witness by the Disciplinary Authority even after the applicant repeatedly requested for production of Shri Bhasker as witness. The applicant alleges that this had caused prejudice to his defence. The order of the Appellate Authority has been challenged on the ground that the said authority did not consider the ground taken in the appeal and rejected the appeal in a routine manner and though the applicant had specifically requested for personal hearing, the same was not considered by the respondents.

4. The respondents have filed counter affidavit in which it has been stated that a telegraphic message was sent from S.P.M./Rishikesh on 13.5.1992 regarding loss of 5 (five) Insured letters amounting to Rs.40,700/- before despatch. On receipt of this message, the Senior Suptd.of Post Offices, Shri B.S.Bhasker immediately proceeded to Rishikesh post office and conducted enquiry. A thorough search was made in the office, but there was no trace of the Insured letters. The S.P.M. had already sent a written report to the local police, Further enquiries were made and the statement of certain staff members were recorded. The applicant was working as A.S.P.M. to supervise the work of Registration Expert Branch. On checking the ^{list} ~~list~~ of Insured bundles, affixed his initials on the list of letters in token of having carried out the prescribed check, placed all the Insured letters with the list in the cover of Insured bundle, pasted the same and returned the bundles to the Registration Export Branch to ^{get} ~~keep~~ it

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sealed ^{by} ~~from~~ the group 'D' staff although he was required to get it sealed in his presence with the Insured Seal and to keep it in safe custody till the time of despatch. Due to this act of omission, the applicant was charge-sheeted. Enquiry was held in pursuance of the laid down rules and procedures and thereafter the impugned order of penalty was passed.

5. We have heard learned counsels for the parties and perused records.

6. The order of the Disciplinary Authority has been challenged mainly on the ground that the findings of the Enquiry officer that the charges against the applicant was proved are not supported by evidence on record. It is now settled law that the court/Tribunal do not sit on appeal against the action taken by the Disciplinary authority. That is the function of the ^{Appellate} ~~Disciplinary~~ authority. All that court/Tribunal can do is to see whether action taken by the Disciplinary Authority has been taken after following the rules and procedures and the charged employee has been given adequate opportunity to defend himself. The Court/Tribunal are not expected to re-assess the ^{evidence} ~~findings~~ on record in order to see whether the findings different from that arrived at by the Enquiry Officer was possible; Unless such findings are totally perverse on the face of facts on record or are based on no evidence, the court/Tribunal are not expected to interfere.

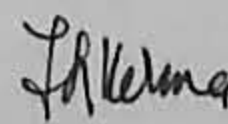
7. We have gone through the copy of the Enquiry report (annexure A-3). It does not appear that the findings of the Enquiry Officer are in any way perverse on the face of evidence on record, nor does it appear that such findings are based on no evidence. In view of this, substantive ground by the applicant in challenging the order of the Disciplinary Authority is to be rejected.

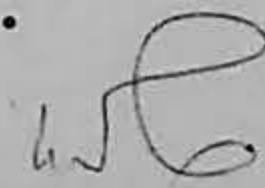
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8. The other ground taken by the applicant is the refusal of Sri Bhasker to appear as a witness. The applicant has not explained in what manner, he has been prejudiced by the refusal of Sri Bhasker to appear as a witness. Admittedly Shri Bhasker had conducted the preliminary enquiry and recorded statements of various concerned officials. Some of these officials appeared before the Enquiry Officer and they were examined and cross examined. It is not clear as to what information Shri Bhasker had in his possession which would have gone in favour of the applicant. In the absence of any explanation in this regard, mere refusal on the part of Shri Bhasker to appear as a witness can not be considered to have constituted denial of opportunity to the applicant to defend himself of such magnitude as to vitiate the enquiry itself.

9. The Disciplinary Authority also has not merely accepted the report of the Enquiry Officer. We have gone through the impugned order dated 22.2.1994. The Disciplinary Authority has discussed in detail evidence which has come on record and thereafter agreed with the findings of the Enquiry Officer. It is clear that the Disciplinary Authority had applied its mind independently to the evidence on record. The order of the Appellate authority also is a detailed order and the appeal does not appear to have been disposed of in a routine manner as alleged by the applicant.

10. No other plea has been raised. We, therefore, ^{find that} this application is lacking merit and the same is dismissed accordingly. No order for cost.


J.M.


A.M.