

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

Dated: Allahabad, the 7th day of June, 2001

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION NO. 1222 OF 1994

Madan Keshore Srivastava,

s/o Sri M.B. Srivastava,

aged about 47 years,

r/o 126/18, Block-J, Govind Nagar,

Kanpur.

..... Applicant

(By Advocate: Sri O.P.Gupta)

Versus

1. Senior Superintendent of Post Offices,
Kanpur City Division, Kanpur in P.M.G.
Office, Kanpur.

2. Director, Postal Service Kanpur, in the
office of P.M.G. Kanpur- 208001.

3. Member (P), Postal Service Board Department
of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.

4. Union of India, through Ministry of
Communication (Department of Posts),
Government of India, Sansad Marg,
New Delhi- 110001.

.... Respondents

(By Advocate: Ms. Sadhna Srivastava)

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(By Hon'ble Mr. Rafiq Uddin, J.M.)

The applicant, while serving as Sub Post Master, Post Office Munshipurwa, District Kanpur, was served with a charge-sheet dated 14.3.84. A regular departmental enquiry was conducted on the basis of charges and the applicant was dismissed from service, vide order dated 1.10.86. On appeal, the punishment was reduced to removal, vide order dated 31.3.87 by the appellate authority, namely, Director, Postal Services, Kanpur, Respondent No.2. The applicant challenged the validity of the aforesaid punishment order before the Tribunal by filing an O.A. No.464 of 1987. This Tribunal vide order dated 20.12.90 allowed the O.A., set aside the dismissal order dated 1.10.96 as well as the appellate order dated 31.3.87. The applicant was, however, directed to submit a representation regarding the enquiry report to the disciplinary authority and the disciplinary authority was directed to consider the representation including all points raised by the applicant and passed final order in the enquiry. The applicant accordingly submitted a representation dated 17.1.91 before the disciplinary authority, namely, Senior Superintendent of Post Offices, Kanpur City (Respondent No.1), which was, however, rejected and the applicant was again removed from service, vide order dated 15/20-3-91. The applicant submitted an Appeal against the removal on 30.4.91 before the Respondent No.2. The Appeal was also rejected, but the punishment order was modified by reducing the removal order to the order of compulsory retirement, vide order

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Revision

dated 11.6.91. The applicant submitted ~~Review~~ R Petition on 10.9.91 before the Member, Postal Services Board, New Delhi (Respondent No.3).

Revision

The ~~Review~~ Petition of the applicant has also been rejected, vide order dated 17.3.93. Not satisfied with this order, the applicant also submitted a Review Petition before the President of India on 20.5.93 but the same has also been rejected, vide order dated 4.2.94. Thus, the applicant has approached this Tribunal in second round challenging the validity of his removal order dated 15/20-3-91, appellate order dated 11.6.91, revisional order dated 17.3.93 and the order dated 4.2.94 passed by the Reviewing Authority which have been annexed to O.A. as Annexure Nos. A-5 to A-10 respectively.

2. The applicant was charge-sheeted under 7 heads of charges, which have been detailed in Articles 1 to 7. In short, the allegations against the applicant are that while he was functioning as S.P.M. Munshipurwa Post Office, he renewed B.R.L. licences by obtaining the requisite fee from the individuals but failed to credit the said amount to the Government account and, thus, misappropriated the government money. It was also alleged that the applicant failed to follow the prescribed procedures laid down under Rules 11 and 12 of Chapter VI of Broadcasting Receiver Licensing Manual. But, the applicant denied charges.

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3. The punishment order as well as appellate order have been challenged mainly on the ground that the findings recorded by the disciplinary authority are not proved by the evidence on record and the applicant was not permitted to inspect and produce Order-Book and Error-Book to prove that an official of the Post Office used to make his forged signature.

4. We have heard Sri O.P. Gupta for the applicant and Km. Sadhna Srivastava for the Respondents.

5. It may be stated that at the outset of the interference in the findings recorded by the disciplinary authority ^{an R} ~~that~~ domestic enquiry has limited scope. The findings of domestic trial can be interfered only when the same are perverse and are not based on the evidence on record or no reasonable person would reach on such conclusion. In the present case, it is not in dispute that B.R.L. licences were renewed on the dates mentioned in the articles of charges. It is also not in dispute that the amount of licence fee was received from the licensee, but the same was not credited in the Government account, showing seal of B.R.L. for renewal of licences. It is also not in dispute that the used up B.R.L. stamps were affixed in the B.R.L. Books. It is also not in dispute that the applicant was working as Sub Post Master on the dates mentioned in the Articles of charges. The only controversy is whether the amount so received or obtained from

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the licencees for this purpose was received by the applicant or not ? The allegations as disclosed in the Articles of charges are that it was the applicant, who received the amount from the licencees as licence fee but did not credit the same in the government account. We find from the perusal of the enquiry report, which is Annexure A-2 to the OA that the Enquiry Officer did not find the charge of non-maintenance of integrity based misappropriation ^{on Re} ~~Rn~~ was not proved against the applicant for want of evidence, because at the time of enquiry the licencees admitted that the renewal was not done by themselves and the same was got done by some other person. ^{in three cases} ~~in three cases~~ ^R The Enquiry Officer, however, gave a finding that the charge of not following procedures as laid down in Rules 11 and 12 of Wireless Licensing Manual was proved. The disciplinary authority, on the other hand, disagreed with these findings of the Enquiry Officer and found all the charges levelled against the applicant as proved.

6. It has been contended by the learned counsel for the applicant that the findings to the effect that it was the applicant, who received the amount of licence fee is not proved, because during the enquiry reliance has been placed on the statements of the applicant recorded during the preliminary enquiry, because the applicant has already stated that the same was recorded under threat and duress. It is also contended that in the absence of any evidence, findings are not valid. We are, however,

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not in agreement with the learned counsel for the applicant on this point, because, firstly, it is not established satisfactorily that the statements of the applicant recorded during the enquiry on 17.6.83 and again on 6.9.83 were made by him under duress or threat. An attempt has been made by the learned counsel for the applicant to convince us that the sole statement of the applicant cannot be the basis of the findings. But we find that besides the statements of the applicant, the Enquiry Officer as well as disciplinary authority have also taken into account the statements of licencees also. Besides, the statement of the applicant of his admission of having made entry in the B.R.L. Register in his own handwriting is well evidence and strong evidence against him.

In this connection, it is also ^{not} ~~not~~ stated that such statement can be used during the enquiry and the same is not admissible evidence. Therefore, it cannot be said that the conclusion/findings made by the Enquiry Officer as well as by the disciplinary authority are based on admissible evidence and the findings cannot be termed as perverse or having been recorded without any material on record.

7. It is contended by the learned counsel for the applicant that since the Enquiry Officer did not find the charge of misappropriation proved against the applicant, whereas the disciplinary authority has found the same proved in his report,

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it was necessary for the disciplinary authority to issue a show-cause notice before this disagreeing with the findings of the Enquiry Officer. We do not find any force in this argument also, because no such plea has been taken by the applicant in his O.A., secondly because in the present case, the proved Enquiry Officer found certain allegations/against the applicant during the enquiry including violation of Rules 11 & 12 of Wireless Licencing Manual. In other words, it is not the case that the Enquiry Officer exonerated the applicant from all the charges framed against the applicant and the Enquiry Officer found some charges proved against the applicant. Under these circumstances, we do not find it sufficient ~~ground~~ to quash the punishment order on this point. On this point, learned counsel for the applicant referred to the decision of the Apex Court in the case of Yogi Nath D.Bagde Vs. State of Maharashtra and another, 1999 SCC (L & S), 1385, in which it has been held that it is necessary to the disciplinary authority before forming its final opinion, if in the enquiry report there are findings favourable to the charged employee, to convey its tentative reason for disagreeing the findings of the Enquiry Officer. In this case, the Enquiry Officer in his report submitted to the disciplinary authority had found the charges against the appellant not established but the disciplinary authority considered the report ^{while} of the Enquiry Officer and/disagreeing with the findings of the Enquiry Officer held the charges against the appellant proved and decided to impose

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the penalty of dismissal from service. The facts of both cases are obviously different. As stated above, in the present case, however, Enquiry Officer had found the charge of misappropriation not proved in respect of 4 out of 7 Articles of Charges only. The Enquiry Officer did find charge of misappropriation in respect of Articles 3, 6 and 7 proved and violation of Rules 11 and 12 of Wireless Licencing Manual in respect of all the 7 charges. It is not the case of complete exoneration of the applicant from the charges levelled against him. We, therefore, do not find any illegality in the action of the disciplinary authority in not issuing show-cause notice to the applicant, while disagreeing with the findings of the Enquiry Officer in respect of some charges. So far as the arguments of the learned counsel for the applicant regarding non-production of Error-Book and Order-Book is concerned, it is sufficient to state that no such plea has been taken by the applicant in this O.A. nor this objection was raised during the disciplinary proceedings before the Enquiry Officer.

8. The learned counsel for the applicant has contended that the orders passed by the appellate authority, revisional and Reviewing authorities are not valid, because they are not based on evidence and have been passed in arbitrary manner and without considering the plea taken by the applicant in his Appeal/Petitions. We have perused the impugned orders passed by the appellate, revisional and Reviewing authorities. We find that the same have been passed by giving reasons and points raised by the applicants have also been considered by the authorities concerned.

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Thus, the aforesaid orders cannot be termed as invalid or non-speaking. For the reasons stated above, we do not find any merit in the O.A. and hence the O.A. is dismissed.

9. There shall be no order as to costs.

Rafiq Uddin
(RAFIQ UDDIN)
JUDICIAL MEMBER

S. Dayal
(S. DAYAL)
MEMBER (A)

Nath/