

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 19th day of March 2001.

Original Application no. 528 of 1995.

Hon'ble Mr. Rafiq Uddin, JM

Hon'ble Maj Gen K.K. Srivastava, AM

K.S. Gaur,

S/o Sri Barjor,

R/o Vill & Post, Roshanmau,

KANPUR DEHAT.

... Applicant

C/A Sri R.K. Nigam

Versus

1. Union of India,
through Secretary,
Ministry of Communication,
Department of Posts,
NEW DELHI.
2. Director Postal Services,
Kanpur Region,
KANPUR.
3. Superintendent of Post Offices,
Kanpur Mufassil Division,
KANPUR.

... Respondents.

C/Rs. Km. Sadhana Srivastava

...2/-

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O R D E R (Oral)

Hon'ble Mr. Rafiq Uddin, Member-J.

The applicant, Sri K.S. Gaur, was working as EDBPM, Roshanmau, Kanpur,. The applicant was served with a charge sheet dated 04.01.1990 by the disciplinary authority namely Superintendent of Post Offices, Kanpur (respondent no. 3).

2. In brief it was alleged that while working as EDBPM, Roshanmau the applicant received a sum of Rs. 800/- on 04.09.87 for opening a new S.B. account. He accounted for Rs. 300/- only and the remaining amount of Rs. 500/- was misappropriated. It was further alleged that the applicant accepted Rs. 802.50 p. and Rs. 100/- on 15.09.87 and 29.10.87 respectively for deposit in the R.D. account no. 421809 but failed to account for the same. It was also alleged that the applicant accepted a sum of Rs. 1700/- on 19.02.87 for deposit in SB account no. 2145252, but failed to credit the same into Govt. Account. It was also alleged that the applicant accepted Rs. 8,500/- on 06.11.87 from one Sri Ram Sajivan for issue of NSC. He issued NSC for Rs. 1500/- only on 21.11.87. Thus the applicant failed to maintain absolute integrity and devotion to duty ^{Ram} ~~for~~ violation of rule 131 (2) and (3) of the Branch Office Rules. The applicant was required to submit his defence reply for the above charges, which he submitted on 11.01.90. Thereafter, the inquiry under rule 8 of P & T, E.D. Agents (C & S) rules 1964 was conducted by the inquiry officer. The inquiry officer after completing inquiry submitted his report dated 09.01.1991. The inquiry officer found

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that all the charges against the applicant were fully proved. The disciplinary authority accepted the findings of the inquiry officer and imposed the penalty of dismissal from service vide impugned order dated 19.02.1991. The appeal preferred by the applicant against the aforesaid order was also dismissed by the appellate order vide order dated 30.09.91. The applicant, thereafter, submitted the petition before the Secretary posts, which was also rejected vide order dated 08.07.94. By means of this OA the applicant has challenged the validity of the aforesaid punishment order dated 28.1.91/19.2.91 (annexure 1), appellate order dated 30.09.91 (annexure 2) and order passed on the petition dated 08.07.94 (annexure 11).

3. We have heard learned counsel for the rival contesting parties and perused the record.

4. Learned counsel for the applicant has urged two points before us (i) in the present matter the inquiry officer prejudged the matter and issued order without considering the defence brief submitted by the applicant. (ii) the quantum of punishment is disproportionate and deserved to be quashed on this point.

5. It has been pointed out by learned counsel for the applicant that the inquiry report was submitted by the inquiry officer on 31.12.90, whereas admittedly the defence brief was submitted by the applicant on 7.1.91. We, however, found from perusal of the inquiry report (annexure A1) that the same was submitted on 09.01.91

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and not on 31.12.90. It is further contended by learned counsel for the applicant that it has been changed by overwriting the same. It is clarified by learned counsel for the respondents in their counter affidavit in para 17 that the inquiry officer has written the inquiry report on 31.12.90, but after receiving brief submitted by the applicant on 07.01.91, he prepared the inquiry report again and by mistake the date has again been written as 31.12.90. It was however, subsequently corrected. We find from the perusal of the inquiry report that the inquiry officer has clearly mentioned that in para 11 of the inquiry report that he duly considered the defence brief dated 07.01.91, which was submitted by the applicant. It is also worth mentioning that the applicant has not refuted this claim of the respondents by filing any RA. We, therefore, do not find any force in this point that the inquiry officer has prejudged the matter and prepared the inquiry report without considering the defence brief.

6. There is no other irregularity and infirmity pointed out by the applicant in conducting the inquiry proceedings. Considering the facts that proceedings were conducted properly, we do not find any justification to interfere in the findings of the inquiry officer and the order of the disciplinary authority based on such findings.

7. Learned counsel for the applicant has contended that the punishment awarded to the applicant is harsh and disproportionate to his misconduct committed by the applicant. It is seen from the perusal of the charges

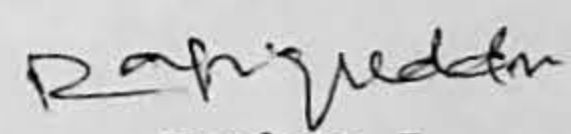
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levelled against the applicant that he has been found having committed embezzlement of public money. Therefore, under the circumstances the punishment of dismissal cannot be said to be shocking or disproportionate to his misconduct. The Apex Court in UPSRTC Vs Basudeo Chaudhary and Another (1997) 11 SCC 370, has held that ~~where~~ the Conductor of the Corporation was found to make attempt to cause a loss of Rs. 65/- to the corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35, but recovering @ Rs. 5.35/- per head. It was not possible to say that the corporation in removing the conductor from service, has ^{imposed} ~~imposed~~ a punishment disproportionate to the misconduct of the Conductor. We, therefore, do not find any merit in the O.A. and the same is dismissed.

8. There shall be no order as to costs.


Member-A


Member-J

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