

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

...

Original Application No. 279 of 1999  
this the 4th day of March 2004.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)  
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Bal Krishna Dwivedi, S/o Sri Ram Bahal Dwivedi, R/o  
Village & post Delhwa, District Basti.

Applicant.

By Advocate : Sri B. Ram.

Versus.

1. Union of India through the Secretary posts,  
Department of posts, Ministry of Communications,  
Dak Bhawan, Sansad Marg, New Delhi.
2. postmaster General, Gorakhpur Region, Gorakhpur.
3. Director post Services, Gorakhpur Region,  
Gorakhpur.
4. Supdt. of post Offices, Basti Division,  
Basti.

Respondents.

By Advocate : Sri S.C. Tripathi.

O R D E R

PER MRS. MEERA CHHIBBER, MEMBER(J)

By this O.A., applicant has challenged the  
order dated 31.8.96 whereby applicant has been removed  
from service with immediate effect (page 36) and the  
appellate order dated 6.9.97 (page 40) whereby his  
appeal has been rejected and the revision petition  
which was rejected vide order dated 12.10.98 (page 42).

2. It is submitted by the applicant that he was  
given chargesheet on 11.12.1995 (page 46) on the  
following allegations:

"शाखा पोस्टमास्टर डेलहवा के पद पर 12/94 से 13-9-95 तक की अवधि में कार्य करते हुए श्री बाल कृष्ण द्विवेदी ने धनादेश संख्या §1§ 295 दिनांक 8-8-95 मूल्य रुपया 1500/- तथा §11§ 3689 दिनांक 14-8-95 मूल्य रुपया 1000/- के भुगतान में सड़ शाखा डाकघर नियमावली के नियम 10, 109 तथा अतिरिक्त विभागीय रजिस्ट्रार आचरण एवं सेवा नियमावली 1964 के नियम 17 का उल्लंघन किया।"

Simultaneously he was put off duty vide order dated 29.12.1995 (page 50). Since the applicant denied the charges, an enquiry was held and Enquiry officer (in short E.O.) submitted his report on 12.8.96 (page 59) holding therein that the charges against the applicant is proved. Applicant gave his representation, but the disciplinary authority removed him from service vide order dated 31.8.96, which was carried-out in appeal and also in revision, but appeal as well as revision were also rejected by the orders mentioned above. Being aggrieved, applicant has filed this O.A. He has challenged the orders primarily on four grounds (i) that the charge against the applicant was that he had not given the amount of cheque to Sri Y. Prasad and Sri B. Prasad, whereas both these persons had given their affidavits stating therein clearly that they had received the amount of Rs.1000/- and Rs.1500/- respectively in time and statement given by them was wrong. They have also stated in the said affidavits that there was no fault of postmaster, Delhwa post office (page 52). In view of the affidavits given by these two persons, applicant submitted that the charge against him may not be said to have been proved, (ii) Applicant next argued that <sup>since</sup> the amount was already paid to both the persons, applicant could not have been removed from service on this allegation that the amount were <sup>not</sup> paid to those two persons especially when all the prosecution witnesses cited by the



department were not even produced by them. They have further stated that <sup>there were 12</sup> 10 witnesses, <sup>but 12</sup> ~~out of~~ only 4 of them were actually produced. The rest of the witnesses even though did not appear, but their statements given in the preliminary enquiry were taken into consideration, which amounted to denial of opportunity to cross examine those witnesses as such it amounts to right to defend himself, (iii) In any case, since the amount involved was only Rs.2500/-, punishment given is too excessive and disproportionate, therefore, it is liable to be quashed and matter should be remitted back to the authorities concerned to reconsider the quantum of punishment (iv) Applicant's counsel has also submitted that the appellate order as well as revisionary order are liable to be quashed as they are non-speaking orders

3. Respondents have opposed this O.A. on the ground that proper enquiry was held, <sup>by</sup> giving full opportunity to the applicant and in case applicant wanted, he could ~~have~~ always have produced the other witnesses as his defence witness, but since no such effort was made by the applicant, he cannot claim denial of opportunity. They have also submitted that no such objection was raised by the applicant during the enquiry regarding non-production of prosecution witnesses. They have specifically stated in para 31 that both these persons namely Y. Prasad and B. Prasad appeared before the enquiry board on 8.3.96 and 17.4.96 respectively and confirmed their earlier statements recorded during the preliminary enquiry and disowned clearly their signature/thumb impression on M.O. paid vouchers and further stated that the amount of the aforesaid M.Os were paid to them later on by the father of the applicant, therefore, the affidavits which were produced by the applicant carry no weight, as if these affidavits had been given <sup>by</sup> ~~to~~ those persons, applicant <sup>would be</sup> ~~should~~ have

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put those affidavits to the said persons for confirming it when they had appeared in the enquiry. Therefore, respondents have submitted that since the E.O. <sup>as report is 12</sup> ~~was~~ based <sup>prosecution</sup> on the evidence given by the four/witnesses, no interference is called-for as Hon'ble Supreme Court has repeatedly held that in matters of disciplinary case, Tribunal should not re-appreciate the evidence and so long there is even some evidence, punishment imposed should not be interfered with. As far as the orders passed by the authorities are concerned, they have submitted that those orders have been passed on the basis of evidence available on record. On the question of quantum of punishment, respondents have submitted that since the charge against the applicant was <sup>the same way</sup> ~~proved~~ and punishment imposed should not be interfered with as has been held by the Hon'ble Supreme Court.

4. We have heard both the counsel and perused the pleadings as well.

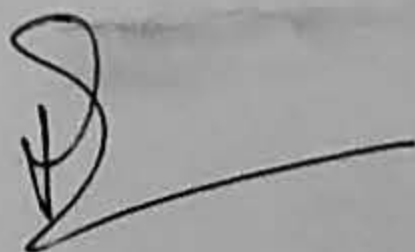
5. It is seen that the affidavits given by Sri Y. Prasad and B. Prasad were filed on 18.11.95, whereas admittedly both these persons had appeared in the enquiry on 8.3.96 and 17.4.96 respectively. The applicant had not taken any pains to put these affidavits to both these persons to confirm the validity of the said affidavits. In the absence of which, we would agree with the respondents that no weightage can be given to the said affidavits. As far as question of considering the statement of witnesses, who were produced in the enquiry, it is seen that one Sri R.C. Singh, who was examined as SW-4 had confirmed that these statements were given by the persons cited therein. This witness was very much available before the applicant for cross examination and he could easily have cross examined the said witnesses or even requested

8



the E.O. to produce the said person for cross examination, but no such effort was made by the applicant. In the case of State Bank of Patiala vs. S.K. Sharma, the Hon'ble Supreme Court has held that the Court should see what prejudice has been caused to the applicant by the irregularity pointed out by the applicant and whether the said objection was taken by the applicant or not. Applicant's counsel was not able to show us that any such objection was taken by the applicant during the enquiry proceedings. More-over, it is an admitted fact that atleast four witnesses who appeared in the enquiry confirmed their earlier statements and were produced in the enquiry for cross examination by the applicant. Even if the evidence of witnesses who had not appeared in the enquiry, is ignored, the fact remains that four witnesses did appear in the enquiry proceedings and confirmed their earlier statements against the applicant, so that evidence itself is sufficient to prove the allegations against the applicant and so long that evidence is available on record, applicant cannot say that any prejudice has been caused to him by not producing the other witnesses. Since this contention of the applicant's counsel does not meet the test of prejudice, this has to be rejected.

6. Coming to the next question, merely because the amount was subsequently paid to the persons concerned, it does not wipe away the charge made against the applicant. Sri Y. Prasad and B. Yadav had categorically stated in the enquiry proceedings that the amounts were paid to them by the applicant's father later on and so long this evidence is on record, contention of applicant cannot be accepted. The same is accordingly rejected.



7. Coming to the next point raised by the applicant's counsel that orders are non-speaking. We have seen the orders passed by the authorities and find that all the authorities have passed a reasoned and speaking order, which calls for no interference in view of the fact that it was based on evidence available on record.

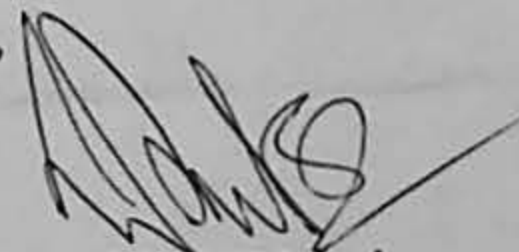
8. Coming to the last contention of the applicant with regard to dis-proportionate punishment, we would like to refer to the judgment given by the Hon'ble Supreme Court in the case of Hoti Lal & Another Vs. U.O.I. & Ors. 2003 SCC (L&S) 363 wherein it was held as under :

"Not only the amount involved, but the mental set-up, the type of duty and similar relevant circumstances have to be taken into consideration to decide the proportionality of the punishment. If the charged employee holds a position of trust where honesty and integrity and inbuilt requirements of functioning, held the matter should be dealt iron hands and not leniently. Termination of the service of a Bus conductor for carrying ticketless passengers in the SRTC bus, upheld and it was categorically stated that the loss of Rs.16/- is inconsequential."

9. The above judgment clearly covers the present facts of the case, / therefore, no interference is called for by the Tribunal.

10. In view of the above discussion, we do not find any merit in the O.A. The same is accordingly dismissed with no order as to costs.

  
MEMBER (J)

  
MEMBER (A)

GIRISH/-