

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Dated: This the <sup>04</sup>20<sup>th</sup> day of <sup>21</sup>February 2008.

Original Application NO. 738 OF 1999.

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

Shyam Babu, S/o Sri Munshi Lal, R/o Village Rithan  
Shikohabad, Distt: Firozabad.

.....Applicant

By Adv: Sri S.K. Mishra

Versus.

1. Union of India through the Secretary, Ministry of Post and Telegraph, New Delhi.
2. The Supdt. Post Offices Mainpuri Circle, Mainpuri.
3. The Director, Postal Services, Agra Region, Agra.
4. The Post Master General, Agra Region. Agra.

.....Respondents

By Adv: Sri S. Singh

O R D E R

By Hon'ble Mr. Justice A.K. Yog, Member (J)

Heard learned counsel for the parties. Perused the pleadings on record.

2. The applicant before us, Shyam Babu, was appointed as Extra Departmental Delivery Agent on 17.10.1994 by the Postal Department of Government of India and, at relevant time, he was posted and working at Sub Post Office, Dakhinara, (Shikohabad).

3. According to the applicant, he was served with a charge sheet dated 06.01.1995, issued by Sub Divisional Inspector (Postal) Shikohabad containing 02

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charges; Copy of charge sheet is annexure A-4 to compilation-II to the OA. According to the charges framed in the charge sheet, the applicant was guilty of 'dereliction of duty' and 'lack of integrity' and thus guilty of violating Rule 17, Extra Departmental Agent (Conduct and Service) Rules 1964 and liable to be punished accordingly.

4. Facts in brief constituting alleged 'offences' under the charge sheet, may be summarized to appreciate gravity of 'charges' in question. The applicant on 21.11.1994 collected Registered Letter/Unregistered letter, money orders alongwith Rs. 1258/- for distribution from the Branch in question but did not return the same at due time, date and place i.e. he failed to return aforementioned article/s and cash on 22.11.1994; on the other hand he left those article/s (without money) in open B.O. Bag in the Post Office on 23.11.1994 without informing/intimating any one in 'Post Office', the applicant had also received Rs. 2500/- and other articles in sealed B.O. Bag on 22.11.1994, which were also not delivered back to the concerned Branch Post Master and that the Applicant - returned those articles/Letter/s, total Money - Rs. 3758/= <sup>as in an</sup> 'open' <sup>as to the an</sup> unsealed leather B.O. Bag <sup>in</sup> Branch Post Office, Dakhinara, on 30.11.1994.

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5. Admittedly, all the above articles including cash amount of Rs. 3758/- (Rs. 1258 + Rs. 2500) were delivered/received in the Shikohabad Post Office either on 23.11.1994 or 30.11.1994 - without damage or loss of articles/Money.

6. The records show that an 'enquiry' was initiated in the Branch Post Office when the applicant failed to deliver back articles/cash money in question on 22/23.11.1994.

7. It has also come on record that initially one Ram Nath, Assistant Superintendent Post Office, Mainpuri Upmandal was appointed as Enquiry Officer on 25.01.1995. Later, on 28.02.1995 one Sri S.N. Sharma, Sahayak Dak Pal was appointed as Enquiry Officer. The Enquiry Officer, after holding enquiry submitted his Report dated 28.07.1995 (Annexure A-7 to compilation II to OA). The said Enquiry Report was admittedly communicated to the applicant on 11.08.1995 to submit his reply and the applicant has submitted his reply/explanation on 28.08.1995 which was received in the office of the Superintendent Post Offices, Mainpuri Circle/the Disciplinary Authority, Respondent No. 2 - on 30.08.1995.

8. The applicant claimed that he had <sup>an</sup> ~~an~~ unblemished service record prior to the alleged incident in question.

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9. The Disciplinary Authority vide order dated 27.12.1995/ (Annexure A-1 to the OA) held that charges were proved. Appeal filed by the applicant has been rejected vide order dated 25.08.1996 (Annexure A-2 to the OA). The applicant filed a Review Petition before Post Master General, Agra Region, Agra/Respondent No. 4, which has also been dismissed on 19.01.1999 (Annexure A-3).

10. In the counter affidavit the opposite parties have denied the contentions made in the OA.

11. The proof of 'charges' against the petitioner depends upon the answer - <sup>Q.</sup> whether the applicant was in a position to deliver articles and cash amount within the stipulated time as per Departmental Order/rule or he was prevented by 'sufficient cause' as pleaded by the applicant in his defence? <sup>Q.</sup> - Objections of the applicant regarding appointment of the Enquiry Officer (K.G. Kulshresthra etc.) and other deficiencies in Enquiry Procedure are not of much consequence <sup>Q.</sup>.

12. Perusal of the impugned order passed by the Disciplinary Authority/Respondent No. 2 shows that defence of the applicant (viz. he had fallen sick on 22.11.1994 and he returned the articles and the cash amount as soon as he partially recovered on 30.11.1994) has been rejected primarily disbelieving



his evidence in this respect, i.e. medical certificate (Ex. Kha-1) and the statement of the Doctor (DW5) on following reasons:

- a. The applicant did not submit medical certificate on 22.11.1994 i.e. day on which the applicant claims to have fallen sick.
- b. The medical certificate does not indicate as to whether the applicant was not able to perform Govt. duties for entire day, on 22.11.1994.

13. The 'reasons' noted above given by the Disciplinary Authority for rejecting 'medical certificate', are 'too - far stretched'. It is to be appreciated that no one is expected to obtain 'medical-certificate' of his treatment/illness immediately on contacting a Hospital or a doctor, and ordinarily 'medical certificate' does not contain - details like 'time' and whether 'patient' was able to discharge official duties for part of the days i.e. Ist and Last days - mentioned in the said Medical Certificate. The Disciplinary Authority failed to appreciate that as per the case of the department itself, the applicant had collected certain articles/Money Orders, cash amount, etc. on 22.11.1994 which shows that the applicant had fallen ill thereafter on 22.11.1994. Thus no 'good-reason' or 'valid reason' has been assigned for disbelieving 'medical-certificate'.

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14. The Disciplinary Authority did not believe statement of independent witness - Bharat Singh (DW-4) on the ground that he did not state that brother of the applicant (Ram Babu) had carried with him the 'postal-articles'. Ram Babu had gone to Post Office is not controverted. On the other hand - all articles and entire cash amount were delivered on 30.12.1994. Statement of the Doctor (DW5) has also been rejected on 'whimsical' and flimsy grounds.

15. The order of the Appellate Authority/Annexure A-2 dated 25.04.1996 reflects complete non-application of mind. It contains narration of facts through out and thereafter in last para jumping over to 'conclusions'. There are no reasons as to why the contentions of the applicant were not acceptable. The order of the Appellate Authority cannot be sustained merely by observing "the reasoning given by disc. authority while proving the charges is quite fair and acceptable. I agree with disc. authority." Even order of concurrence - should indicate that Appellate Authority, had concisely applied its mind and 'reasons' be disclosed, though in brief. The Appellate order fails on this score and therefore, not sustainable in law.

16. The third and the last impugned order dated 19.01.1999 passed by the respondent No. 4 rejecting Review Petition also suffers from patent 'error' since

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the reasoning given therein are not untenable. The Reviewing Authority observed that (i) the employee/Shyam Babu did not submit medical certificate promptly and the 'doctor' in question could not satisfactorily explain nature of 'illness' and failed to give medical registration number out of his memory.

17. The medical certificate in question shows that the Applicant was under treatment from 22.11.1994 to 30.11.1994 indicating that patient had partially recovered. It is not disputed by the department that said 'medical certificate' was submitted forthwith on that date - without delay, i.e. on 30.11.1994. Nature of 'illness' is clearly mentioned in the medical certificate (Annexure CA-6 to the CA).

18. The doctor in question, Sri G.P. Singh (DW-5) categorically stated that he had treated Shyam Babu from 22.11.1994 to 30.11.1994 and that the 'medical certificate', was issued by him, in cross-examination also he firmly stated that he maintains a 'register' of the patients treated by him and he is a registered Medical Practitioner. He fairly conceded that he did not remember his 'medical registration number' or the serial number of the patient (Shyam Babu entered in the Patients register).

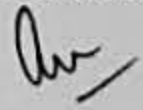
19. It was incumbent upon the prosecution to have called for that register and/or require the doctor to

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file proof of his 'registration certificate'. There was no suggestion to the contrary to prove other wise and hence he was not required to file documentary proof. No adverse inference can be drawn against the witnesses or his testimony. No one is expected to remember Registration Number, PAN, Insurance Policy Number, Pass Port Number, Bank Account number, etc.

20. The Reviewing Authority, in the impugned order, further observed that the doctor/DW-5, who gave treatment to Shyam Babu could not disclose the 'nature' of 'illness'. The medical certificate in question clearly indicates that patient was suffering from 'high fever'. The statement of DW-5/Annexure 23 to the compilation No. 2 to the OA shows that doctor was not cross-examined on the aspect of nature of illness of the patient. The reviewing authority has made perverse 'observation'.

21. In view of the above discussion we are satisfied that the impugned orders dated 27.12.1995 (Annexure A-1 to the OA), 25.04.1996 (Annexure A-2 to the OA) and 19.01.1999 (Annexure A-3 to the OA) cannot be sustained and are liable to be set aside. We refrain from remanding the case to the respondents for fresh decision, particularly because the applicant has not been charged nor found guilty of causing loss by misappropriation of Govt. property/money. However, it is made clear that the applicant being reinstated as a





consequence of this order, shall be entitled to continuity of service with seniority <sup>as and as</sup> ~~that~~ he shall be <sup>as provided as</sup> ~~entitled to~~ back-wages <sup>as for as</sup> the period in question when the applicant could not 'work' - ~~of~~ he was not gainfully employed within a period of three months from the date of receipt of a certified copy of this order. In the result the impugned orders dated 27.12.1995 (Annexure A-1 to the OA), 25.04.1996 (Annexure A-2 to the OA) and 19.01.1999 (Annexure A-3 to the OA) are set aside. The OA stands allowed.

22. No cost.

*[Signature]*  
Member (A) 20/2/08

*[Signature]*  
Member (J) 20/02/08.

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