

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1068 OF 2000

ALLAHABAD THIS THE 28th DAY OF March 2007

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN
HON'BLE MR. P. K. CHATTERJI, MEMBER-A

Girja Shankar Pandey,
Son of Sri Brij Nath Pandey,
Ex-BranchPost Master, Panasa (Khain),
Allahabad, resident of Village & Post Panasa,
District-Allahabad.

..... .Applicant

By Advocate : Shri Anand Kumar

Versus

1. Union of India through the Postmaster General, Allahabad Region, Allahabad.
2. The Director of Postal Services, Allahabad Region, Allahabad.
3. The Senior Superintendent of Post Offices, Allahabad Division, Allahabad.

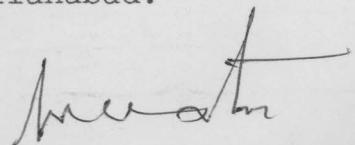
..... . Respondents

By Advocate : Shri S. Singh

O R D E R

HON'BLE MR. P. K. CHATTERJI, MEMBER-A

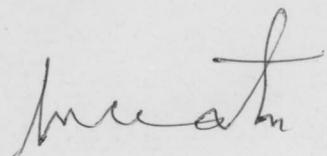
The facts of this OA briefly is that while working as GDS Branch Post Master the applicant was served a memo of charge sheet vide Memo No. CRF/16/92-93 dated 14.10.93 by the Senior Superintendent of Post Offices, Allahabad levelling the charges that on 12.3.1992 the applicant made fakedelivery of Kandivali, Bombay Insured Letter no.810, dated 6.3.1992 of Rs.2000/- addressed to Smt. Anar Kali, Village and Post Panasa, Allahabad.



In this way the applicant misappropriated the value of the Ensured article and violated Rule 10(5) of the Branch Post Office Rules and acted against rule 17 of the Extra Departmental Agents (Conduct and Service) Rules 1964.

2. The applicant has impugned three orders i.e. CRF/16/92-93 dated 8.6.1998 by the SSPO's Allahabad dismissing him from service, No.CCEPOI/Vig/3-4/98/1 dated 26.11.1998 issued by the Director of Postal Services, Allahabad and Memo no.RPA/VIG/4-2/99/1 dated 12.1.2000 issue by the PMG Allahabad which is the order on the revision petition.

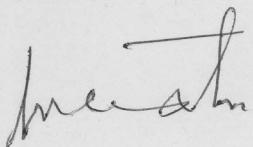
3. The applicant has stated in the OA that in the first week of March 1992 a lady named Smt. Anar Kali of Village Panasa visited Post Office and enquired about the receipt of the Insured letter sent from Bombay to her name from her relation. The applicant informed her that no such article had been received till the date. The applicant further told her that she will be informed on receipt of such Insured letter. On 11.03.1992 an Insured letter no.810 dated 6.3.1997 for Rs.2000/- booked at Kandivali, Bombay to Smt. Anar Kali, R/o of village & Post-Panasa, District Allahabad was received in the Branch Post Office through its Account Office, Khain. The applicant intimated Smt. Anar Kali about the Insured letter, who visited the post office on



12.3.1992 alongwith Sri D.N. Dwivedi and demanded the Ensured letter. The applicant delivered the Ensured letter to Smt. Anar Kali after obtaining her thumb impression on receipt of B.O. Journal. Sri D. N. Dwivedi identified the Thumb impression of Smt. Anar Kali, Sri Manik Chandra Gupta was the witness of delivery of Ensures letter on 12.3.1992 to Smt. Anar Kali.

4. When the sender of the Ensured letter lodged a complaint that the Insured letter was not delivered to Smt. Anar Kali the matter was enquired into. The applicant realized that he delivered the article to another Anar Kali who was not the real addressee. Then he called the same person and got the amount refunded. The sender of the article also filed a case in the consumer forum at Bombay which passed a decree of Rs.6000 against the department. The applicant was asked to deposit Rs.4000/- which together with Rs.2000/- refunded by the wrong payee was paid as compensation.

5. Even after he paid the money from his pocket the applicant was not spared. He was proceeded against by a charge sheet dated 14.10.93. However, the SSPO's Allahabad cancelled this charge sheet on 15.11.93 and issued a fresh charge sheet on 3.12.93. The reason for withdrawing or canceling the first charge sheet was not shown by the disciplinary

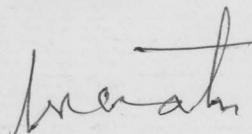


authority. Thereafter an enquiry was made under Rule 8 of the ED rules by appointment of one enquiry officer. Defence witnesses as well as prosecution were examined and cross examined. The enquiry was concluded on 21.11.1994. The enquiry report was submitted on 26.6.96. But the disciplinary authority issued the order of dismissal after another two years on 8.6.98. Being aggrieved by the impugned order of dismissal the applicant submitted appeal and then a revision petition both of which rejected his representation.

6. The applicant has assailed the three orders on the following grounds:-

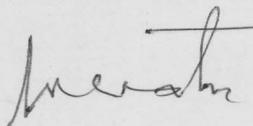
i) The disciplinary authority could not issue a second charge sheet after withdrawing to that too without assigning any reasons. In this connection the applicant has furnished copies of judgment of the Tribunal at Madras 1989 11 ATC 676 P. Dasarathan Vs. Sub-Divisional Inspector (Postal) (Mad) which held that issue of second charge sheet after withdrawing the first one after commencement of the enquiry was illegal. The relevant portion of the judgment is as follows:-

"The main ground urged by the counsel of the applicant was that when the memorandum of charges dated 22.03.1985, which itself was issued more than seven months after putting the applicant off duty in contemplations of the disciplinary proceedings, was withdrawn by the proceedings dated 28.8.1985, the issue of



the subsequent memorandum of charges dated 20.12.1985, on the same set of facts is illegal. In the said proceedings, there is absolutely no indication of any reason for the withdrawal of the earlier charge-memo. In the reply filed by the respondents as well there is no explanation offered fro the withdrawal of the earlier charge-memo and the issue of the second memorandum of charges. It is submitted in paragraph 12 of the reply that "in this case the earlier charge-sheet has been laid by the first respondent". At the time of hearing, the counsel of the respondents was not in a position to place any material before us to satisfy us that it was necessary to make a modification of the earlier memorandum of charges by amending the same. Moreover, as is admitted in the reply, it was a withdrawal of the earlier charge-sheet and the issue of "a fresh charge-sheet" on the same set of facts. When a memorandum of charge is issued, on which the employee is called upon to submit his defence, it will not be proper to withdraw the same after the commencement of the enquiry and to issue a fresh memorandum of charges, again calling upon the employee to submit his defence. It is seen from a perusal of the subsequent memorandum of charges that after the issue of the earlier memo investigation was being conducted by the department and materials were being collected, which have also been added on. No doubt it is open to the disciplinary authority to conduct a preliminary enquiry before the issue of a memorandum of charges. Actually, the memorandum of charges can be issued only if on such investigation it is found that there is a *prima facie* case for proceeding against the employee. After the issue of the charge-memo the disciplinary authority is not empowered to conduct an enquiry relating to the imputations made therein, behind the back of the employee and collect material to be used against him in the disciplinary proceedings".

ii) The applicant has further stated that the penalty imposed is too harsh and disproportionate compared to the lapse which was only a bonafide mistake of wrong delivery. The applicant has cited

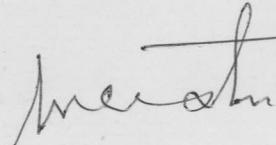


from the apex court judgment 1999 SCC (L&S) 666

which is as follows:-

"In our view, in the facts and circumstances of the case, the punishment of dismissal from service is too harsh and on the contrary, it required to be substituted by an appropriate lesser punishment. Learned counsel for the respondents after instructions has stated that an appropriate lesser punishment may be awarded by this Court. It will be acceptable to the respondents. In our view, the ends of justice will be served if we set aside the order of dismissal of the appellant and instead direct reinstatement of the appellant in service will continuity and will all other benefits save and except withdrawing 50 per cent of back wages from the date of dismissal, i.e., 11.10.1988 till today. In our view, this punishment which will involve a substantial monetary loss to the appellant will meet the ends of justice and will be a sufficient corrective measure for the appellant. The request of learned counsel for the respondents that two future increments may also be withheld without cumulative effect does not appear to us to be justified on the peculiar facts and circumstances of the case. In our view, the aforesaid monetary loss to the appellant will meet the ends of justice so that he may be careful in future. It is ordered accordingly. At the request of learned counsel for the respondents, eight weeks' time is granted to the respondents to comply with the present order and to reinstate the appellant with continuity in service and will all other benefits. We make it clear that from today onwards, the appellant will be entitled to full salary. Both the appeals are allowed accordingly. The orders of the Tribunal dated 4.11.1996 and 13.2.1997 are set aside. OA No.714 of 1993 filed by the appellant in the Tribunal shall stand allowed in the aforesaid term. In the facts and circumstances of the case, there will be no order as to costs".

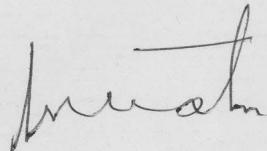
iii) The applicant has also stated after the wrong delivery was detected and after the decision of the consumer forum he paid Rs.4000/- out of his own



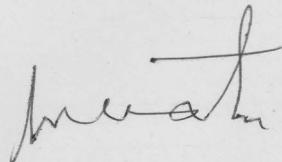
pocket. In this way he had already paid heavily for a bonafide mistake and so the punishment of dismissal in addition to this is totally unjustified and should be set aside by the Tribunal.

7. The respondents countered all the allegations made by the applicant and stated that there was no infirmity in the disciplinary proceedings. Firstly the case was not that of a bonafide mistake and the applicant made the fake delivery knowingly and after obtaining witnesses to legalize such fake delivery. It was a case of lack of integrity and therefore the punishment was not at all disproportionate to the lapses. The matter was fully enquired into giving full opportunity to the applicant at all stages. The respondents have also given a copy of the enquiry report for the perusal of the Tribunal. It is seen from the enquiry report that the enquiry officer has concluded that the article of charges was fully proved against the applicant. Not only that it has also been recorded at page 27 of the report that the applicant failed to maintain absolute integrity and devotion to duty.

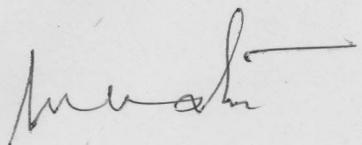
8. The main contention of Shri Anand Kumar, the learned counsel for the applicant, is that in view of two decisions dated 21.06.1989, in OA No. 21.06.1989 P. Dasrathan Vs. Sub Divisional Inspector (Postal) Kankal reported in [1989] 11 ATC 676 and



the other dated 30.08.1989 in OA No. 7 of 1988 Chandrashekhar Seth Vs. Union of India and others [1990] 1 ATC 868 of two Benches of this Tribunal, no charge memo dated 03.12.1993, could have been issued and the enquiry held on the basis thereof, after cancellation of earlier memo, on the same facts. We have already extracted relevant part of decision dated 21.06.1989, and we think that same do not help Sri Anand Kumar, in assailing the holding of enquiry on the basis of memo dated 03.12.1993 and the impugned orders, passed as a result of that enquiry. In the case before the Madras Bench of this Tribunal, the reasons for cancelling earlier charge sheet and for issuing fresh charge sheet, could not be placed even during the course of arguments, but here the same are not only mentioned in punishment order but also in appellate and revisional orders. Secondly, there in the case before Madras Bench, some preliminary enquiry was made behind the back of delinquent official, after commencement of formal disciplinary proceedings, but here that is not the case. The facts of the case before Jabalpur Bench, were also different. There the employee had submitted his reply, to the first charge sheet. Here the applicant does not say so. So, we find no good reasons to interfere with the impugned orders on the grounds urged to above By Shri Anand Kumar.



9. One of the submission of Shri Anand Kumar is that since according to the evidence led during the course of enquiry it was simply a bonafide delivery of parcel of an article to a wrong person and so no such extreme view in regard to the matter of punishment ought to have been taken. The learned counsel has taken us through the impugned order as well as through the enquiry report etc so as to say that it was not a case of dishonest delivery of an article to a person or it was not a case of misappropriation of the property in question. Shri Anand Kumar states that the lady who received the article refunded the amount soon after it was detected that she was not the correct person to receive the same and not only this, the applicant was asked to deposit the amount ordered by the Consumer Forum and the applicant deposited the same. He says that in these circumstances the extreme penalty of dismissal from service is totally unwarranted and unjustified. On the other hand, the learned counsel for the respondents has contended that since the Enquiry Officer and the disciplinary authority have concluded, that the applicant was not honest in the matter in question and it was not a delivery to a wrong person only so the punishment of dismissal cannot be faulted. He says that the Tribunal sitting in judicial review cannot enter into reevaluation of the material so as to examine whether the finding of guilt is based on correct or



incorrect appreciation thereof. He says that it is not a case where it can be said that the finding of guilt is not based on evidence. According to him, whether the evidence led, could have been relied on for recording the finding of guilt is a matter which was solely in the domain of the disciplinary authority. The learned counsel says that the punishment cannot be characterized shockingly disproportionate to the guilt so proved, so there are no good grounds for interference with the same.

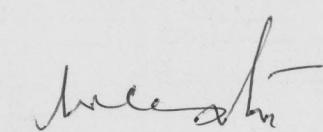
10. After perusing the enquiry report, the punishment order which is quite in detail appellate order etc, we are of the view that we cannot interfere with the order of punishment for the simple reason that the punishment of dismissal is on the finding that there was a dishonest intention on the part of the applicant and such a person, according to the punishing authority, did not deserve to be retained in service. It has also been found that there was no proof that there were more than one such ladies namely Anarkali in the village in question. So the defence of the applicant that it was a case of mistaken identity was not accepted. On the finding so recorded by the Enquiry Officer and accepted by the Disciplinary Authority, the dismissal cannot be termed shockingly disproportionate so as to warrant interference from

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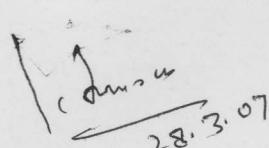
this Tribunal. So we reject this submission of Shri Andnd Kumar.

11. A few minor points were raised during the course of submission. One of the points was that the Enquiry Officer was behaving as if he was the prosecutor but on perusal of the material we find no substance therein. In case the Enquiry Officer, with a view to probe into the matter puts some question to one or the other, it is difficult to say that he was acting as a prosecutor. That job is often done by the Presiding Judges of the regular courts with a view to ascertain the truth. After all, the purpose of the disciplinary proceedings ~~as~~ to ascertain the truthfulness or otherwise of the allegations so made. It cannot be ruled that the Enquiry Officer will be a silent spectator to the proceedings that may be going on before him.

12. We find no substance in this OA and it deserves to be dismissed. It is accordingly dismissed with no order as to costs.



Member-A



Vice-Chairman

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