

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NUMBER 06 OF 2002.

ALLAHABAD, THIS THE 24th DAY OF OCTOBER, 2005

HON'BLE MR. A.K. BHATNAGAR, MEMBER-J
Hon'ble Mr. D.R. TIWARI, MEMBER-A

Bhawani Dutt Son of Shri Gopal Dutt, R/o Village
Kimbager, P.O. Barangal, District Almora.

.....Applicant.

(By Advocate: Shri A.K. DAVE)

Versus.

1. Union of India through the Secretary, Ministry of Communication, Department of Post, Government of India, New Delhi.
2. Superintendent of Post Office, District Almora.
3. Sub Divisional Inspector, (P. Os) Ranikhet (West), Sub Div. Ranikhet, District Almora.

.....Respondents.

(By Advocate: Sri V.V. Mishra)

O R D E R

By Hon'ble Mr. D.R. TIWARI, MEMBER-A

By this O.A. filed under section 19 of A.T. Act, 1985, the applicant has prayed for quashing and setting aside the impugned order dated 26.09.2000 (A-2) and appellate order dated 19.09.2001 (A-1). He has further prayed for issuance of direction to the respondents to re-instate the applicant in service with all consequential benefits.

2. Shorn of details, the applicant was appointed on the post of Extra Departmental Delivery Agent on 6.6.78 and he was posted at Barangal Branch Post Office in account with Deghat Sub Post Office under Ranikhet Head Office. On 31.12.2000, three money orders were handed over to the applicant for delivery but the same could not be delivered to the concerned persons as the applicant on the same day received an information that his Bhabhi was seriously ill at

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Dehradun and he rushed to that place. He returned from Dehradun on 17.1.2001 and thereafter he delivered the amount of money orders to the concerned persons on the same day. He was served with a chargesheet by charge memo dated 23.5.2001 (Annexure A-3). The chargesheet contained misappropriation of the money involved in three money orders inasmuch as the real payee of the M.O. did not receive the money and forged thumb impression and forged witnesses were arranged by the applicant. It was in violation of Rule 10 of Postal Manual as well as he was charged with the violation of Rule 17 of the E.D.D.A Conduct and Service Rules 1964. The charge memo also contained the list of documents by which charges were to be sustained along with list of witnesses by which charges were to be proved. By his letter dated 18.07.2000 (Annexure A-4), he denied the charges and requested for appointment of defence assistant. By another letter dated 12.9.2000 (Annexure A-5) addressed to S.D.I. Ranikhet (West), he admitted the guilt and requested for being pardoned as he was a very low paid employee. He has submitted that the admission of guilt was because he was under pressure from the S.D.I. He was given assurance that on admission of guilt, he would not be punished and he was assured of being forgiven for the misconduct. Ordersheets dated 18.7.2000 and 4.8.2000 which at Annexure A-6 may be referred. On the first occasion, he has not accepted the guilt and asked for detailed enquiry whereas in the ordersheet dated 4.8.2000 accepted the guilt and submitted that he does not want to proceed with the enquiry proceeding. He requested for dropping the enquiry.

3. The Enquiry Officer dropped the Enquiry Proceeding and submitted the report to the Disciplinary Authority who got it forwarded to the applicant and the applicant submitted representation on the enquiry report. The Disciplinary Authority thereon imposed upon him the penalty of removal from service. The applicant filed the appeal memo and the Appellate Authority affirmed the order of the Disciplinary Authority.

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4. Aggrieved by the above order, the applicant has filed the instant O.A. and challenged the impugned orders on various grounds mentioned in para 5 of the O.A. The main ground of challenge is that the report of the enquiry officer is vitiated which may be seen from the ordersheets dated 18.7.2000 and 4.8.2000. It has been pleaded that it is not fair and judicious conclusion reached by examination of the the evidence, oral or documentary and it is without providing opportunity to the applicant to cross-examine the proposed departmental witnesses by whom the charges were to be sustained. The appellate order is a non-speaking one and none of the points raised has been taken into account by the appellate authority hence the appellate order was decided on extraneous consideration which cannot be sustained in the eyes of law. The quantum of punishment in comparison to the gravity of charge is totally disproportionate, in view of the fact that payee of the respected money orders have admitted the payment of money orders. Finally, it has been pleaded that the admission of charge under pressure of Disciplinary Authority cannot be said to be unqualified, clear, unequivocal and precise. Admission has to be clear and not vague or ambiguous which could warrant non-holding of detailed enquiry. In this case, the admission obtained under pressure prima-facie require holding of detailed departmental enquiry. As such, it has been pleaded that the O.A. deserves to be allowed.

5. Respondents, on the other hand, have resisted the O.A. and filed a detailed counter affidavit and it has been argued that the Mail Overseer, Ranikhet (West) paid a routine visit to Branch Post Office Barangal on 17.1.2000 and during his visit, the Gram Pradhan of the Village Kaliyalingur, Post Office Barangal submitted written complaint dated 13.1.2000 alleging that the applicant has misappropriated the money of the money-orders of old aged pensioners of Village Kaliyalingur. Copy of the complaint is Annexure CA-1. Thereafter a chargesheet under E.D.D.A (Conduct and

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Service) Rules 1964 was issued to the applicant and he submitted his defence statement dated 17.5.2000 wherein he had admitted all the charges leveled against him (Annexures CA-15 and CA-16). Thereafter S.D.I appointed an Enquiry Officer and Presenting Officer on 23.5.2000. The Enquiry Officer fixed the first date of hearing on 18.7.2000 and the applicant attended the enquiry proceeding and denied the charges leveled against him and wished to appoint Sri K.S. Manral, retired Post Master Ranikhet as his defence assistant which was acceded to by the Enquiry Officer and the next date of hearing was fixed on 4.8.2000 for inspection of relevant document. On that date, the applicant alongwith his defence assistant attended and inspected the records and after inspection of all the listed documents the applicant admitted all the charges leveled against him and desired not to proceed further (Annexure CA-17). The Enquiry Officer did not proceed with the enquiry further and held in guilty of all the charges and submitted his report to the Disciplinary Authority (Annexure CA-18). Disciplinary Authority sent a copy of the enquiry report to the applicant on 5.9.2000 asking him to submit his representation, if any, against the finding of enquiry officer (Annexure CA-19). In reply to that, the applicant admitted the charges leveled against him under his letter dated 12.9.2000 (Annexure CA-20). Considering the entire matter, the Disciplinary Authority imposed the penalty of removal from service and on appeal the Appellate Authority agreed with the Disciplinary Authority and rejected the appeal. It has, thus, been argued by the respondents that the impugned orders do not suffer from any legal infirmity and are validly passed after following prescribed procedures on the subject and the O.A. is devoid of any merit and be dismissed.

6. During the course of the argument, the counsel for the applicant commenced his arguments by reiterating the facts and the legal pleas from the applicant's O.A. In addition, he also relied on the decision of Jaipur Bench in the case of Mam Chandra

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Bajoria Vs. Union of India and others reported in Vol-3 A.T.J 2001 page 296. The headlines of the order is being reproduced which is as under:-

- "(A) Dismissal- Dismissal from service ordered on the basis of admission of guilt by the applicant- No enquiry Officer was appointed- No enquiry of any kind was conducted- No evidence was recorded and the letter purporting to be admission of the applicant does not establish the fact that it was plain, unequivocal, precise and unambiguous admission of the applicant-impugned order quashed- Reinstatement with all consequential benefits ordered.**
- (B) Departmental Enquiry- Admission of Guilt- In departmental enquiries, admission of guilt by a government servant can be used only to corroborate independent evidence led to prove the charge against the delinquent".**

Placing heavy reliance in the case of Mam Chandra Bajoria (supra), the counsel for the applicant has submitted that the admission obtained from the applicant under pressure from the S.D.I cannot be said to be a voluntary, clear and precise admission of the guilt. On this ground alone, the O.A. deserves to be allowed.

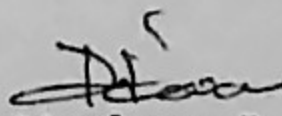
7. The counsel for the respondents have made strenuous efforts to refute the contention of the applicant's counsel and has relied the admission of the guilt by the applicant right from the beginning. He has submitted that in reply to the chargesheet, the applicant has admitted the guilt and has requested forgiveness. Even during the enquiry he has accepted the guilt and has requested the enquiry officer that Enquiry Proceeding should not be continued. Even when he was asked to submit a representation against the enquiry report he has written to the Disciplinary Authority admitting the guilt. In support of his contention, he has relied on the documentary proof which has been annexed with the counter affidavit. Finally, he concluded his argument by making a statement that the admission of guilt is clear, precise and unambiguous which are supported by relevant documents. As such, this O.A. deserves to be dismissed.

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8. We have very carefully heard the rival submissions of the counsel for the parties and perused the records.

9. The only question which survives for consideration is the validity of the impugned orders. We are of the view, the facts and circumstances of this case point to the fact that the admission of guilt is unambiguous and we are inclined to agree with the arguments of the counsel for the respondents. The facts of the present case is distinguishable from the facts of the case of Mam Chandra Bajoria (supra) relied on by the counsel for the applicant. The Tribunal in that case found on the basis of the fact that no enquiry officer was appointed, no enquiry of any kind was conducted, no evidence was recorded and letter purporting to be admission of the applicant did not establish the fact that it was plain, unequivocal, precise and unambiguous admission by the applicant. In this case, we find that the enquiry officer was appointed and the applicant attended the enquiry on two dates and he admitted the guilt and submitted that enquiry need not proceed further. In view of this, we are not inclined to agree with the arguments of the applicant's counsel as the case relied on by him is distinguishable and the O.A. is liable to be dismissed.

10. In view of the facts and circumstances mentioned above and discussion made, we are of the considered view that the O.A. fails on merit and is accordingly dismissed. There are no grounds to quash the impugned order dated 26.9.2000 (A-2) and the appellate order dated 19.9.2001 (A-1) which have been passed in accordance with the procedure prescribed. Cost easy.


Member-A


Member-J

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