

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 94 of 2002

day, this the 21st of April, 2007

**Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. K.S. Menon, Member Administrative**

Attaullah Siddique S/o Sri Bakaullah Siddique, R/o H-12, Postal Colony, Anwar Ganj, Kanpur Nagar.

Petitioner

By Advocate Sri B.N. Singh

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. The Director, Postal Services, Kanpur Pin Code 208001.
3. The Sr. Supdt. Of Post Offices, Kanpur City DN., Kanpur 01

Respondents

By Advocate Sri R.K. Tiwari

O R D E R

By K.S. Menon, Member (A)

The applicant is challenging the legality and validity of the Order dated 31.05.2001 dismissing the applicant from service by respondent No.3 and Appellate Order dated 17.10.2001 passed by respondent No.2, dismissing the appeal of the applicant and upholding the order of dismissal passed by respondent No.3. He has sought the following reliefs: -

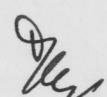
1. Quash the order of dismissal dated 31.05.2001 and appellate order dated 17.10.2001 passed by respondent no.3 and 2 respectively;
2. Treat the applicant in service and pay also service benefits, backwages and allowances and other admissible benefits.
2. His case in brief is that while working as Sub- Post Master in Colonelganj Post Office, Kanpur, he was suspended by respondent No.3 vide order dated 10.07.1997 (annexure-). He states that immediately after he was suspended, the respondents filed an FIR under Crime Case No.151 of 1997 in the Colonelganj Police Station, Kanpur under Section 419/420 I.P.C. The case

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was ultimately transferred to Special Investigation Branch of the Police. A charge sheet was issued to the applicant vide O.M. F 5/1/97-98/AU Siddiqui dated 01.12.1997, which alleged that while he was working as Sub Post Master, Colonelganj Post Office, kanpur during the period 08.01.1994 to 10.07.1997, he facilitated fraudulent encashment of Kisan Vikas Patras (KVP) in violation of Rule 23 and 31 of the Post Office Savings Bank (BOSB), Manual Volume II (annexure-1). The applicant denied these charges. The respondent no.3, therefore, initiated proceedings under Rule 14 of CCS (CCA) Rules, 1965 and appointed an Inquiry Officer (IO) on 31.12.1997 but since no inquiry was started another I.O. Sri R.P. Agrawal, Assistant Post Master General, (retired) was appointed as I.O. on 16.01.998.

3. The inquiry officer came to the conclusion that the charge against the applicant was not proved but took the view that he failed to maintain devotion to duty attracting provision of Rule 3(1) (ii) of CCS Conduct Rules, 1964. The disciplinary authority i.e. D.P.S., Kanpur disagreed with the findings of I.O. and a copy of the inquiry report alongwith disagreement letter was given to the applicant vide annexure 8. The applicant represented against the I.O. report and the disciplinary authority's disagreement letter. The respondent no.3 rejected the applicant's representation and found him guilty of the charge and issued an order of dismissal on the applicant vide letter dated 31.05.2001 (annexure-11). The applicant aggrieved by this order of dismissal filed an appeal on 06.07.2001 before respondent no.2 on the grounds that the order of dismissal was made without considering his objections and passing any comments on them. The respondent no.2 rejected the appeal on 17.10.2001.

4. The details of the charges against the applicant are that while functioning as the Sub Post Master at Colonelganj Post Office, Kanpur during the period from 08.01.1994 to 10.7.1997, he facilitated fraudulent encashment of 5 ½ years Kisan Vikas Patra (K.V.P.) of Rs.5000/- denomination on 27.06.1997, 28.06.1997 and 30.06.1997 involving an amount of Rs.15,00,000/- purported to have been issued from Sahatwar Post Office (Ballia) without prior verification from the office of issue. Besides the applicant Sri Siddiqui did not obtain the identification of the so called holder of the KVPs (which were encashed) from a person known to the Post Office as there was nothing on record to prove the genuineness of the so called investor at Colonelganj P.O. Investigations revealed that the above mentioned KVPs were never issued from Sahatwar P.O. (Ballia) and the address given by Dr. Sultan Ahmad to whom the entire payment shown to have been made by Sri Siddiqui was a fake. The charge further states that circular instructions were issued vide SSPOs,

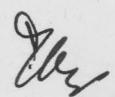


Kanpur City ___ Circular No. F/Misc./M-Prev/98-97 dated 26.03.1997 and same No. dated 05.06.1997 about 8900 KVPs of the said denominations and the said series were reported missing in course of transmission between Nashik Road and Patna Junction and to guard as against fraudulent encashment Sri Siddiqui however did not pay heed to these instructions and allowed the encashment and thus failed to perform his legitimate duties and showed utter negligence and thus violated provisions of Rule 23 and 31 of the POSB Manual Volume II and cause a loss of Rs.15 lakhs to the Department. He also failed to maintain absolute integrity and devotion to duty as required under provisions of Rule 3 I (i) and (ii) of CCS (Conduct) Rules, 1964.

5. The applicant states that during enquiry he was not supplied copies of certain relevant documents sought by him. The Inquiry Officer in his report has however indicated that out of 29 documents requisitioned by the charged official (CO) 19 documents were produced for the scrutiny of the C.O., while the other 10 were either not available or were not necessary etc. It is, therefore, apparent that most of the relevant records were made available to the applicant during the inquiry to defend himself.

6. The main submission of Sri B.N. Singh the learned counsel for the applicant is that after the Police submitted final report, after investigating into the allegation made in the F.I.R. against the applicant and others, which the learned Magistrate accepted, the respondents ought to have taken back the dismissal order and to have exonerated him of the charges framed against him. With a view to support this argument the learned counsel has referred to Captain M. Paul Antony Vs. Bharat Coal Mines Ltd. (1999) 2 SCC pg. 679, Hari Shanker Sharma Vs. Commissioner, Agra Division (1987) 1 SCC pg. 262 and Hafizuddin Inayatullah Kazi Vs. J.C. Agrawal, F.L.R. 1980 (41) pg.171 Bombay High Court. The learned counsel for the respondents has, however, tried to say that the charges made in the FIR, lodged against the applicant and others were not identical to the charges leveled against the applicant in departmental proceedings and evidence was also different.

7. We have considered the respective submissions in the light of the material on record. There is no dispute that after investigation into the allegations made in F.I.R, Police submitted a report that case against the applicant is not made out and the learned Magistrate accepted it. There is nothing on record to say that there was any trial of the applicant in a competent criminal court on the allegations made against him. Captain M Paul Antony's Case (supra) is not on this point. That deals with the case, where criminal trial



as well as departmental proceedings are going on simultaneously on the identical charges and on the same set of evidence. We have a grave doubt, whether result of the criminal investigation can be elevated to the status of finding of a criminal court after trial. If a criminal court after trial, records an acquittal, there is much scope for the argument that after such acquittal, finding of misconduct on identical charge is not sustainable but the same cannot be said, where Police has given a particular conclusion and disciplinary authority has given a different view. In so far as Hari Shanker Sharma's case (supra) is concerned, that turned on its own peculiar facts and circumstances. There allegations against the employee concerned were first inquired into by Tehsildar and he gave a report that the employee was not at fault. Sub Divisional Magistrate, authority superior to Tehsildar, however, asked the Tehsildar to reconsider his report and submit a charge sheet. There upon the employee was charge sheeted. FIR was also lodged against the employee U/s 409 of I.P.C. but the Police submitted a final report. It was in these circumstances that the Hon'ble Supreme Court said: -

"In our opinion, the Sub-Divisional Officer did not act fairly in the matter. We are not at all impressed with the reasons given by him in the impugned order of termination. It is manifestly clear on the face of the records that the charges against the appellant were not substantiated inspite of that the services of the appellant were terminated by the impugned order. The materials on record show that the appellant had made payment to respondent no.3 for the month of April to Sept. 1995. The Prescribed Authority was not at all justified in vitiating departmental proceedings against the appellant inspite of the report of Tehsildar. The Appellate Authority and the High Court did not properly consider the case of the Appellant that he could not be held guilty of manifest in the facts and circumstances of the case."

8. So from above, it is more than clear that their Lordships did not lay down any law to the effect that if police investigation has exonerated the employee concerned of the allegations made against him in FIR, departmental proceedings cannot be vitiated or finding of guilt cannot be recorded. The last case Hafizuddin Kazi's case (supra) relied on by Shri B.N. Singh, also appears to be off the point. There the Hon'ble Bombay High Court was considering the meaning of 'Honourable Acquittal' in the peculiar set of facts. The employee was perhaps deprived of the pay and allowances for the period of suspension, and his pension was also reduced, inspite of the acquittal by the criminal court. His Lordship took the view that the acquittal was honourable one and so there was no good justification for depriving the person concerned of pay, allowances etc. for the period of suspension and portion of his pension. So this case also does not help Shri B.N. Singh in saying that after submission of the final report by the police, the dismissal was not sustainable.



9. Besides the above, this much is clear from perusal of the charge sheet that charge against him was that he violated the provisions contained in Rule 23 and 31 of Post Office Savings Bank Manual, Vol-II and thereby facilitated wrongful withdrawal of the amount to the tune of Rs.16 lacs. One can easily say that breach of the above rules was not to be probed into by the Police or by the Criminal Court. In other words, the charges framed against the applicant in departmental proceedings were not identical to the allegations or charges made in the FIR. So from this angle also, it cannot be said that the finding of guilt so recorded during the course of the proceedings is not sustainable in law or in fact, after submission of the final report by the Police. In the result, we find no force in the first submission of Sri B.N. Singh and the same is rejected.

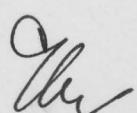
10. The second main contention of Shri B.N. Singh is that the applicant was not supplied the copies of relevant documents nor was afforded an opportunity to inspect the same and so in view of the law laid down by our own High Court in Paras Nath Singh Vs. Addl. Commissioner (Admn) Trade Tax (2002) 1 U.P.L.B.E.C. 600, Allahabad, The finding of guilt is not sustainable and the order of punishment deserves to be quashed on this ground alone. It is true that applicant had demanded copies of as many as 29 documents (see Annexure-2) but according to the extract of daily order sheet dated 13.08.1998 (A-6) copies of some of the documents were supplied and copies of other documents could not be supplied. A perusal of Annexure-6 reveals that the applicant did not press for copies of some of the documents. This much is clear that none of these 29 documents was cited in the charge sheet as a document to substantiate the charges. We have to see whether non-supply of copies of some of the documents will vitiate the inquiry or the punishment order. The facts in Paras Nath Singh's case, relied on by Shri B.N. Singh were quite different. His Lordship has, referred to the observations made by the Apex Court in State Bank of Patiala Vs. S.K. Sharma, 1996 (3) SC pg-722 where their Lordships have said that in such cases the sole question is as to whether any prejudice was caused to the employee or whether there was fair play or not. In other words, the view appears to be that mere non-supply of the copy of the document to the charged employee by itself will not vitiate the punishment order, unless the employee demonstrates that he was prejudiced in his defence. Nothing like this has been demonstrated by Shri B.N. Singh. Moreover, those were not the documents cited in the charge sheet. So we are not prepared to interfere with the punishment order on the ground that copies of some of the documents were not supplied or could not be supplied to the applicant.



11. The next argument of Shri B.N. Singh is that Shri Ajai Singh, Postal Assistant, also charged to ~~here~~ facilitate fraudulent encashment Kishan Vikas Patras, was let off with minor punishment of reduction in pay for 3 years but the applicant has been visited with extreme penalty of dismissal from service. Relying on Sengara Singh and others Vs State of Punjab and others 1983 LAB I.C. 1670 (SC) and Paras Nath Singh's case (supra), Shri B.N. Singh has argued that there should have been equality in punishment. We think the argument is misplaced. In the cases cited the facts were different. In Sengara Singh's case about 1100 police personnel were dismissed from service, on the ground that they participated in an agitation. Some (about 1000) were subsequently taken back in job. Some were punished. So in these circumstances, the Apex Court said similar treatment ought to have been given to the persons, before the Court. In Paras Nath Singh's case, allegations against the petitioner as well as against Prasad Satsangi, were that both submitted a report ~~an~~ application of traders, without verifying the actual amount deposited by traders. So, the Hon'ble High Court took the view, different punishment should not have been awarded to the petitioner. In the case in hand, the applicant was posted as Sub Post Master and his job as such was totally different to ~~this~~ job of Postal Assistant, who worked under him. Whether the person concerned was genuine and was legal holder of KVPs and whether he was entitled to encashment, was to be looked into by the applicant and the Postal Assistant was to carry out his orders. So we are not prepared to interfere with the punishment order on the above ground.

12. Relying on Kuldeep Singh Vs. Commissioner of Police (1999) 2 SCC page 10, Shri B.N. Singh has argued that this Tribunal can, in exercise of its power of judicial review, interfere with the finding of guilt, as according to him, the same is perverse and is based on evidence, not cited in charge sheet. While there can be no debate ^{on regards} of legal point, but we have not been able to persuade ourselves to accept that finding of guilt is perverse or is based on evidence, not cited in the charge sheet. We do not think it necessary to refer to that evidence, on which the finding is based. Several witnesses were examined, from both the sides, besides the documents. The E.O. Disciplinary Authority has discussed it quite at length.

13. It is next argued that the points of disagreement, as recorded by the Disciplinary Authority in its letter note (A-8), are beyond the evidence led, during the course of enquiry, and are based on presumptions and assumptions, so are not acceptable. The learned counsel has, after referring to written representation (A-10) tried to assail the points of disagreement. We are afraid,



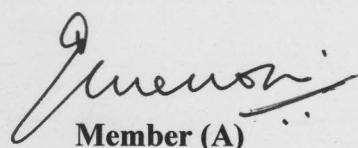
we cannot test the correctness or otherwise of these points of disagreement, as we are not sitting in appeal.

14. It is also said that appellate authority did not apply its mind and rejected the appeal mechanically. After having gone through the appellate order (A-13), we do not find substance in this argument. The authority has discussed almost all the aspects and order is exhaustive and speaking.

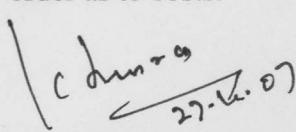
15. Shri B.N. Singh says that considering the facts and circumstances of the case and especially deposit of Rs.12 lacs, the punishment appears to be harsh and so the Tribunal should interfere with the same. A perusal of record reveals that the applicant disowned the deposit of that amount by his wife but the authorities took the view that it was deposited by his wife. But the question is as to whether the punishment can be said to be shockingly disproportionate to the guilt. We think it is difficult to say so.

16. The applicant had raised the issue of a joint level investigation not being carried out even though different units were involved in the fraud case. We are in agreement with the respondents' contention that this is an issue which should have been raised by the applicant during the course of the inquiry proceedings. Raising it at this juncture appears irrelevant.

17. In the result, this O.A. is dismissed but with no order as to costs.



Member (A)



Vice Chairman

/M.M./