

Reserved

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1075 of 2002

Thursday day, this the 22 day of March 2007

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. M. Jayaraman, Member (A)

Om Prakash Chaubey, Son of Ramagya Chaubey, Ex-
E.DM.C. Nadi Nidhaura, R/o Village & P.O. Nadir
Nidhaura, District Chandauli.

Applicant

By Advocates Smt. Kamla Singh
Shri B.N. Singh.

Versus

1. Union of India through its Secretary, Ministry of
Communication (P & T), Sansad Marg, Dak Bhawan,
New Delhi.
2. Director Postal Service, Allahabad Region, Allahabad.
3. Sr. Superintendent of Post Offices, East Division,
Varanasi.
4. Sub-Divisional Inspector, Sub Division, Chandauli.

Respondents

By Advocate Shri D.K. Dwivedi

ORDER

By M. Jayaraman, Member (A)

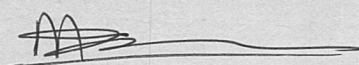
We have heard Smt. Kamla Singh and Shri Babu
Nandan Singh, Counsel for the applicant and Shri D.K.
Dwivedi, Counsel for the respondents.



2. The short prayer made by the applicant through this O.A. is for setting aside the Order dated 08.06.2001 (Annexure A-1) dismissing him from the post of Extra Departmental Mail Carrier (for short E.D.M.C.), Nadi Nidhaura Post Office as well as Order dated 11.09.2001 (Annexure A-2) rejecting his Appeal against the aforesaid Order.

3. The brief facts of this O.A. are that while working as Extra Departmental Mail Carrier in Nadi Nidhaura Post Office, the applicant was served with a charge sheet on 01.02.2000 issued by Sub Divisional Inspector, Sub Division, Chandauli (respondent no.4) on the plea that he had misappropriated the Money Order sent to one Smt. Sharda Devi and the payment was made much later. After inquiry etc. the impugned order came to be passed, against which the present O.A. has been filed.

4. The applicant has stated in his O.A. that Smt. Sharda Devi-wife of Shri Sunder Ram was an illiterate house lady, who in her statement dated 14.11.2000 before the Inquiry Officer has categorically stated that she received the payment of Money Order No.1539 dated 17.07.1999 for Rs.1000/- on 24.07.1999 for which she had put her thumb impression in the Money Order form. She has also clearly stated in the statement that her previous statement dated 02.09.1999 was incorrect since one Shri Pappu Prasad had taken her thumb impression on a blank paper saying that since he had received the payment of Money Order, she should place her thumb impression on the paper. She had now deposed that being an illiterate lady, she did not realize the consequence thereof. She had further deposed that Shri Lav Prasad had witnessed the payment. The applicant has further stated that Shri Lav Prasad-the prosecution witness did not appear in the



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inquiry proceedings and his statement dated 02.09.1999 is a relied upon document and was not put to test during the inquiry by cross examination etc. He has further stated that Smt. Sharda Devi has filed an affidavit to the above effect, which has not been considered by the Inquiry Officer. One more argument of the applicant is that Shri Tripurari Singh Yadav-the defence witness has clearly stated in his statement dated 23.02.2001 that Rs.1000/- of the above said Money Order was paid to Smt. Sharda Devi on 24.07.1999 in his presence and was witnessed by Shri Lav Prasad. In these circumstances, he has argued that the impugned orders, which are based upon the irregular proceedings, should be set aside. Counsel for the applicant has also cited a decision of Hon'ble Supreme Court in the case of Kuldeep Singh Vs. Commissioner of Police and others reported in 1999 SCC (L&S) 429, to press the point that placing of the previous statement of the witness without supplying a copy thereof to the delinquent employee and without affording the delinquent employee an opportunity to cross-examine the witnesses would violate the Article 311 (2) since a reasonable opportunity namely hearing in accordance with principles of natural justice, is violated.


5. The above arguments have been met by the respondents by saying that Money Order No.1539 dated 17.07.1999 for Rs. 1000/- payable to Smt. Sharda Devi was received in the Branch Office Nadi Nidhaura on 21.07.1999 and the amount of Rs.1000/- was given to the applicant for delivery after obtaining his signature on 24.07.1999 in the Branch Office Journal. According to the respondents, the applicant had put bogus thumb impression of Smt. Sharda Devi and bogus signatures of Sri Lav Prasad on the concerned Money Order and then mis-appropriated the amount, returning the voucher as if the payment has been made on the said date namely 24.07.1999 to Smt. Sharda



Devi. It is further pointed out by the respondents that as stated by the witness-Sri Lav Prasad in his written statement dated 02.09.1999, he was not witness for the payment of Money Order to Smt. Sharda Devi nor he had put his signatures. The respondents have further pointed out that in her Written Statement dated 02.09.1999, Smt. Sharda Devi had complained that she did not receive Rs.1000/- on 24.07.1999 and further that the applicant gave Rs.1000/- to her on 20.08.1999 without taking any thumb impression or signature. The main argument of the respondents is that the applicant himself has accepted in his Written Statement on 02.09.1999 that his son was seriously ill and that he had no money and, therefore, he put the signature of the payee and showed as if the same was paid to Smt. Sharda Devi and Rs.1000/- of Money Order was used by the applicant himself. Later on he gave Rs.1000/- to Smt. Sharda Devi without obtaining any signature/thumb impression. Accordingly, a charge sheet was issued by Sub Inspector, Chandauli on 01.02.2000 and the same was found to be proved in the inquiry proceedings, held subsequently. Therefore, the respondents have argued that the dismissal order as also the rejection order of the appeal were correct.

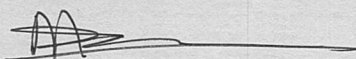
6. We have given our anxious consideration to all the submissions made by rival sides and have also perused the record.

7. With reference to the confessional statement dated 02.09.1999, referred to by the respondents, the applicant has stated in his Rejoinder Affidavit that he had given the statement under pressure of the authority and he had denied the same during the course of inquiry. We find force in the pleadings of the applicant. Even though confessional statement might have been given, the purpose of inquiry is to find out the truth by means of examination of witnesses,



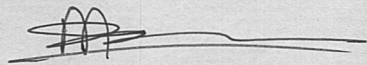
documents etc. so as to give an opportunity to the delinquent official to defend himself. If one has to give punishment on the basis of mere confessional statement given by a delinquent official in a disciplinary proceeding, then there would be no meaning of holding an inquiry. It is expected from the respondents to hold a proper inquiry in which a reasonable opportunity ought to have been given to the delinquent official. In this case, though admittedly the applicant had confessed, to the misdeed as stated by the respondents, it is also a fact he had denied the same during the course of inquiry. Further Smt. Sharda Devi has also clearly stated in her affidavit dated 13.09.2000 and also in the statement before the Inquiry Officer that she had received the money on 24.07.1999 only. She has also explained the circumstances under which she came to put her thumb impression on a blank paper, which she says might have been used by some one to make her complaint, which she has denied. All these factors go in favour of the applicant. Above all, the prosecution witness on whose statement the respondents have relied upon, has not been produced for cross examination by the applicant. Similarly, the defence witness has also not attended the inquiry. Therefore, we feel that Supreme Court's decision in the case of Kuldeep Singh cited (supra) would be squarely applicable in the present case. As observed by their Lordships in paragraph no.35 and 36 of the cited case, the Inquiry Officer was not right in ignoring the statement of defence witnesses without stating the reasons there for, which makes the finding of the Inquiry Officer to be arbitrary and perverse.

8. The respondents have cited the decisions of the Hon'ble High Court of Allahabad dated 31.07.2006 in the case of Bhanu Pratap Pandey to place the argument that punishment meted out would be in order having regard to the responsibility expected of a public servant. We have seen the

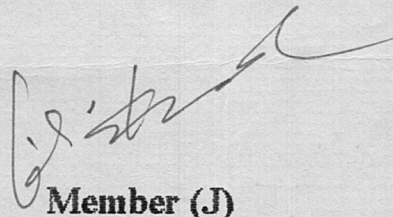


Judgment and we find that the decision is clearly distinguishable from the facts of the present case. In the cited case, the petitioner was a Constable of C.R.P.F., who has absented himself without any permission between 08.11.2001 to 27.12.2001 i.e. 36 days, accordingly he was charged with the desertion. The point to be noted was that the petitioner in that case was posted to Dimapur (Nagaland), which is a sensitive and terrorist affected area. In these circumstances, their Lordships had observed that the petitioner belonging to a disciplined force should have exercised the caution and should have acted responsibly and not deserted the place of duty without prior permission, whereas in the present case, the applicant does not belong to uniform service such as C.R.P.F. or Army, secondly the nature of duty being performed by him are civil in nature and in usual course of business of Postman/Post Office. Therefore, the arguments of the respondents to justify the extreme punishment of dismissal from service are not commensurate with the gravity of alleged offence. In view of the above, the O.A. succeeds.

8. We accordingly set aside the impugned order of punishment dated 08.06.2001 and also the Order dated 11.09.2001 passed in appeal. It is, however, made clear that the respondents are free to hold an inquiry afresh in accordance with law. The O.A. is disposed of in the above terms with no order as to costs.



Member (A)



Member (J)

/M.M. /