

R

RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 18 day of 7 2008.

Original Application No. 115 of 2006

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

Hari Kishun Yadav, Ex-Branch Post Master, Gomakhas
Lich District Maharajganjh, Gorakhpur, Division.

... Applicant

By Adv: Sri A. Srivastava

V E R S U S

1. Union of India through Secretary, M/O Post and Telecommunication, Department of Post, New Delhi.
2. Post Master General, Gorakhpur Division, Gorakhpur.
3. Director Postal Services, Gorakhpur Region, Gorakhpur.
4. Sr. Superintendent of Post Offices, Gorakhpur Region, Gorakhpur.

... Respondents

By Adv: Sri S. Srivastava

O R D E R

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

Through this OA the applicant has challenged the impugned orders dated 17/18.06.1997, 31.01.1999 and 31.12.2002 (Annexure A-1, A2 and A-3). While the applicant was working as Branch Post Master, Doma-Khas Gorakhpur, he was ordered to put off duty vide order dated 08.01.1994. Subsequently, vide order-dated 30.03.1994 he was put back in service and continued to work as such. On 11.04.1994 the respondent No. 4 issued a charge sheet under Rule 8 of EDA (Conduct and

h

Service) Rules 1964. Copy thereof is annexed as Annexure A-4 to the OA. The main charge against the applicant is that he violated the provisions of Rule 11 (2) of the Postal Manual, and w.e.f. 05.01.1994 to 08.01.1994 the amount of cash remained short in the Branch Post Office to the tune of Rs. 3025.05 P. In reply to charge sheet given to the applicant, he submitted that since there was no security of the cash in the Branch Post Office where he was working, and as such as a safety measure he used to take cash at his residence after the day's work which is situated at a distance of one furlong from the concerned Branch Post Office. On 05.01.1994 Shri Sri Niwas Pathak Sub Divisional Inspector (SDI) suddenly visited to inspect the Post Office in the late hours of the evening, when the Post Office was already closed. Later on the applicant was called from his residence and the SDI insisted him to open the Branch Post Office, where he found shortage of Rs. 3025.05P. The said shortage was noted by the SDI in daily account sheet of the Post Office. Not only this, the SDI even asked the applicant under threat to write down at his dictates and the applicant has no option except to write down according to his dictates. The applicant also put his signature on those papers at one place on 05.01.1994 and the other on 06.01.1994. The applicant was compelled to write down that the money in question was spent by him and he may be given an opportunity to make good the deficiency. According to the applicant another paper was also got signed at the dictate of

H

the SDI on 08.01.1994, on which it was written that the applicant could manage only Rs. 1600/- till then and rest of the amount shall be deposited subsequently. Enquiry Officer submitted a report on 30.09.1996 wherein the charges leveled against the applicant were held to be proved. After receiving the reply to the enquiry report the punishment of removal was issued by respondent No. 4. The appeal against the punishment order was also rejected vide order 31.01.1999 (Annexure A-2). The applicant preferred a Revision Petition, which too was dismissed on 31.12.2003 (Annexure A-3). According to the applicant he preferred further representation on 15.10.2003 but the same was not decided by the higher authorities.

2. Denying the pleas taken by the applicant, respondents have filed detailed counter reply and in paragraph 12 of the reply it is clearly and specifically submitted that the applicant has approached this Tribunal after an inordinate delay of about 03 years and as such the OA is barred by delay and latches and liable to be dismissed on this ground alone.

3. According to the respondents the shortage of amount has been admitted by the applicant and the same was adjusted under the unclassified account by the applicant. The applicant was given full and complete opportunity to have his say in the matter. The applicant has approached the Tribunal carelessly,

after passing of order dated 31.12.2002 by the Revisional Authority. The applicant has approached this Tribunal by filing the aforesaid OA on 30.01.2006. According to the respondents ample opportunity was given to the applicant during the course of the enquiry and this Tribunal cannot sit as a Court of Appeal over the findings recorded by the Enquiry Officer.

4. Applicant has also filed rejoinder affidavit denying the averments contained in the counter reply. The respondents also filed supplementary counter affidavit and again in paragraph 10 of the said supplementary counter affidavit, it is submitted that the Revision Petition of the applicant was rejected on 31.12.2002. The ground of delay in filing OA is not acceptable and the OA deserves to be dismissed on the ground of delay and latches.

5. The preliminary objection raised in paragraph 12 of the counter reply and in paragraph 10 of Supplementary Counter Reply has not at all been denied by the applicant. According to the respondents the OA has been filed after about 04 years from the date of Revisional Order and therefore, it is clearly barred by Section 21 of the A.T. Act, 1985.

6. We have heard Shri A. Srivastava learned counsel for the applicant and Sri P. Srivastava brief holder

W

of Sri S. Srivastava learned counsel for the respondents.

7. When we turned to the pleadings of the applicant, we find that there is no prayer for condonation of delay or no reasonable or plausible ground has been shown for condoning the delay. The question of limitation appears to be very glaring. There is no application for condoning the delay under Section 21 (3) of the A.T. Act, 1985 supported by an affidavit. No such application was in-fact made. Even otherwise without insisting on the formality of an application under Section 21 (3) of the A.T. Act, 1985 the applicant has filed the OA.

8. In view of the said lapse we must refrain from interfering with the matter on merits of the case. Even the applicant made no effort to explain the delay and seek condonation. We find no valid explanation on record for coming to the conclusion that the case for condonation of delay is made out. We have also carefully gone through the decisions rendered by Hon'ble Supreme Court in following two decisions:

- a. 1995 SCC (L&S) 1148 : Secretary to Govt. of India and others Vs. Shiv Ram Mahadu Gaikwad
- b. 2000 SCC (L&S) 53 : Ramesh Chandra Sharma Vs. Udhama Singh Kamal

9. In Udhama Singh Kamal's case (Supra) the Hon'ble Supreme Court clearly observed that despite the objection of limitation raised by the respondents the applicant did not file any application for condonation

of delay. Section 21 (3) of the A.T. Act, 1985 gives power to the Tribunal to condone the delay if sufficient cause is shown. The provisions of Section 21 (3) of the A.T. Act, 1985 is being reproduced hereunder:

"21. Limitation - (1) A Tribunal shall not admit an application, -

- a. in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- b. in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

2. _____

- 3. Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1), or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

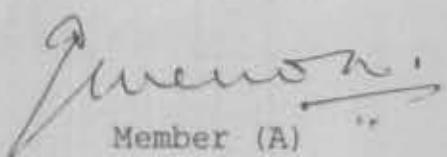
10. In the absence of any application under Sub Section 3 of Section 21 praying for condonation of delay we have no jurisdiction to dispose of the OA on merits.

11. On a careful analysis of the case and on perusal of the material on record and after going through the aforesaid two decision of the Hon'ble Supreme Court, we have no doubt that the Tribunal has no jurisdiction to go into the merits of the case. It was open to the applicant to make proper application under Section 21 (3) of A.T. Act for condonation of delay and having not done so we may not enter into the merits of the case.

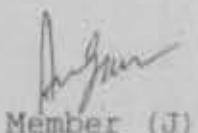
✓

12. In our considered view the OA has been filed after an inordinate delay and for which no reasonable or plausible explanation has been offered by the applicant. The OA deserves to be dismissed on the ground of delay and laches and the same is accordingly dismissed.

No order as to costs.



Member (A)



Member (J)

/pc/