

Reserved on 06.03.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 118 of 2006

Allahabad this the, 4th day of April, 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member (A)**

Lodhai Ram son of Sahdeo Resident of Village Nadan Post Office Unch Gaon, District Jaunpur Ex D.D.A./E.D.M.C. Unch Gaon, Balwarganj, District Jaunpur.

Applicant

By Advocate: Sri Gulab Chandra

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General Allahabad Division, Allahabad.
3. Superintendent of Post Office, District Jaunpur.
4. Sub Divisional Inspector Post Office Machhalishahar, District Jaunpur.

Respondents

By Advocate: Sri Saurabh Srivastava

O R D E R

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

The applicant has prayed for the following relief(s): -

(A) to quash the impugned order dated 2/3-5-2005 passed by Post Master General, Allahabad, on 30.12.2003 passed by Superintendent of Post Master, Jaunpur and 28/5/2003 passed by Sub Divisional Inspector, Machhalishahar, District Jaunpur.

(B) to direct the respondents to review the applicant in service as EDMC cum EDDA Unch Gaon Branch Office, Balwarganj, Jaunpur and to pay salary.

[Signature]

(C) any other order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case.

(D) to award the cost to the applicant."

2. The facts of the case, in brief, are as follows: -

The applicant was posted as EDMC cum EDDA (Gram Sewak Mail Carrier cum Mail Deliverer) at Unch Gaon Branch Office, Balwarganj, District Jaunpur. The background of the case is that the applicant while working as Gramin Dak Sevak MD/MC at Unch Gaon Branch Post Office in account jurisdiction of Balwarganj Sub Post Office, Jaunpur during the period from 24.04.1993 to 27.04.1993 identified the depositor Shri Bhanu Pratap Singh for withdrawal of money from TD Account Nos. 6401 and 6402 amounting to Rs.6,281.35 and Rs.1570.00 respectively. It is further alleged that it was found later on that the account holder of the aforesaid TD Account had not signed the withdrawal form nor got any amount so withdrawn and the amount was withdrawn and misappropriated in connivance with the applicant and the Branch Post Master, Unch Gaon. It is further alleged that again the applicant made an identification for payment on 03.04.1996 and 03.02.1997 for Rs.1325/- and Rs.2791.35 respectively from the RD Account No. 11450, and on 15.09.1997 of Rs.25,444/- from RD Account No. 11663, and the amount was withdrawn and

misappropriated in connivance with the applicant by the Branch Post Master of Unch Gaon.

3. The applicant was served with a charge sheet dated 29.04.1999 under Rule 8 of GDS (Conduct and Service) Rules, 1964. The applicant submitted his reply on 03.08.2002. The Disciplinary Authority being not satisfied with the aforesaid reply of the applicant, ordered for a regular inquiry proceedings against the applicant. The Inquiry Officer after collecting the evidence submitted the inquiry report and the Disciplinary Authority passed an order removing the applicant from service.

4. Aggrieved with the aforesaid order, the applicant preferred an Appeal, which was rejected on 30.12.2003. He preferred a Revision Petition before the Post Master General, Allahabad, which was also dismissed vide order dated 02/03-05-2005.

5. The applicant filed the present O.A. before this Tribunal challenging the aforesaid order of the removal passed by the respondents' authorities, as already mentioned above mainly on the grounds that the Inquiry Officer submitted the inquiry report without considering the Objection filed by the applicant; the Disciplinary Authority awarded the punishment to the applicant



without examining the objections filed by him; no charge could be proved against the applicant on the basis of evidence on record; the applicant signed the papers under the advice/pressure of Branch Post Master- Anil Kumar Singh who fully knew the depositors; the Appellate and the Revisional Authorities have rejected the Appeal and Revision respectively without applying their mind to the facts of the case; no proper opportunity of hearing has been given to the applicant before passing the impugned order.

6. The respondents filed the Counter Affidavit, denying the allegations made by the applicant, alleging that the applicant falsely identified the signatures of the depositors on different dates on the withdrawal forms in connivance with the Branch Post Master resulting in withdrawal of a huge amount from different accounts, as mentioned in the Counter Affidavit. It is further submitted by the respondents that proper opportunity of hearing and sufficient opportunity to cross-examine the witnesses was given to the applicant. The applicant could not prove his innocence. The depositors in their statement have denied their signatures on the withdrawal form and their presence at the Post Office on the alleged dates of withdrawal of the amount. The applicant knowing well the

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fact that the depositors are not present, even then he identified their signatures and presence and signed on the withdrawal forms. The applicant has got no case and the O.A. deserves to be dismissed.

7. The applicant has placed reliance on documentary evidence also which is annexure A-1 to annexure A-7 on record including the enquiry proceedings and impugned order passed by the respondents.

8. On the other hand, the respondents have not filed any documentary evidence.

9. Rejoinder and Supplementary Counter Affidavit have also been exchanged between the parties.

10. The present O.A. was dismissed by a Division Bench of this Tribunal vide Order dated 22.04.2010. Thereafter, the applicant filed a Writ Petition, which was allowed by the Hon'ble High Court by Judgment/Order dated 08.02.2012 setting aside the Order passed by this Tribunal on 22.04.2010.

11. We have heard the learned counsel for the parties and perused the documents on record.

12. It is contended by learned counsel for the applicant that the Inquiry Officer submitted the inquiry report

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against the applicant without sufficient evidence against him. Learned counsel for the respondents has rebutted this argument stating that there was sufficient evidence on record both the documentary and oral, it was mentioned in the charge sheet itself. The deposit forms and the name of depositors as witnesses was mentioned in it. The statement of witnesses was recorded and the applicant fully participated in the inquiry proceedings. He also submitted written objection which is annexure A-2 on record before the Inquiry Officer, refuting the charges mentioned in the charge sheet. The Inquiry Officer called the witnesses/depositors to verify their presence and signature on the withdrawal forms and the depositors have denied their signatures and presence, and also denied receiving of money so withdrawn. It is also contended by the respondents that the inquiry was not concluded in a day. It was conducted on about 10 dates in the presence of applicant and the relevant witnesses, as it is apparent from annexure A-3. The Inquiry Officer has given finding on each charge, levelled against the applicant. Mere allegation of the applicant that proper opportunity was not given for hearing will not help the applicant. Learned counsel for the respondents has placed reliance on the observations made by the Hon'ble Apex Court in the case of State Bank of Patiala Vs. S.K.

Sharma (1996) 3 SCC 364, in which the Hon'ble Apex Court has made an elaborate observation regarding the scope of review of the inquiry proceedings and the evidence collected by the Inquiry Officer by the Tribunal or the Courts, which may be mentioned, as follows: -

"A two Judge Bench of the Supreme Court, after an elaborate discussion (nothing leading authorities), has summarized the position in relation to disciplinary proceedings as follows:

We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things.

In the light of above observations of the Hon'ble Apex Court, and the facts of the case, as already discussed above, the contention of applicant that the inquiry report has been submitted against him without application of mind and without opportunity of hearing, is not correct. Similarly there is nothing on record to prove that the applicant has been prejudiced in any way. The explanation given by him for verifying the signature and presence of the depositors on the withdrawal forms has been disbelieved by Enquiry Officer by a reasoned finding.

13. Learned counsel for the applicant has also argued that the punishment awarded to the applicant is not proportionate to the alleged charges levelled against him. In this regard, he has also argued that nothing has been done against the Branch Post Master – Anil Kumar Singh who was equally responsible rather more responsible for withdrawal of the money. The respondents' counsel during his arguments has argued that the disciplinary proceedings have already been started against the aforesaid Branch Post Master. Learned counsel for the respondents has also argued that ordinarily the Tribunal should not interfere with the punishment awarded by the departmental authorities if it is based on evidence and proper opportunity of hearing has been given to the

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applicant. Reliance has been placed on the observations made by the Hon'ble Apex Court in the case of "*Union of India vs. Parma Nanda* [Civil Appeal No. 1709 of 1988] with *Parma Nanda Vs. State of Haryana and others* {Special Leave Petition [Civil] No. 6998 of 1988} (1989) 10 Administrative Tribunals Cases 30", the Hon'ble Apex Court has observed as follows: -

"The jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In the light of above observations of the Hon'ble Supreme Court, when we consider the present case, it is apparent from record that the applicant, not only once but at least three times identified the signatures and presence of the depositors on withdrawal forms knowing the fact that the depositors are not present, and they have not

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signed the withdrawal forms, also knowing the fact that their amount of money so withdrawn from their respective accounts was for misappropriation. His simple contention that he did so under the pressure of Branch Post Master is not acceptable because it is not an incident of once, but such repeated acts have been done by him, causing loss not only to the depositors, but also to the Government revenue. There is also evidence to the effect that he has been given opportunity of hearing and to defend himself at every stage. Thus, even if there has been some irregularity in conducting the inquiry proceedings, which does not vitiate the inquiry proceedings, the applicant cannot get any benefit of it. In these circumstances, it cannot be said that the punishment awarded to him is without any sufficient evidence on record. Accordingly, this argument of learned counsel for the applicant is also of no help to the applicant.

14. In the light of above facts and circumstances, we conclude that the applicant has got no case and the O.A. deserves to be dismissed. Accordingly, the O.A. is hereby dismissed. No order as to costs.

J Chandra

(Ms. Jayati Chandra)
Member - A

S.S. Tiwari
{Justice S.S. Tiwari}
Sr. Member-J/H.O.D.