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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 25.9.2000

O.A. No. 153/95

Tej Pal Yogi, son of Shri Kishore Nath Yogi, aged about 50 years, resident of Shri Sunder Singh, Baggar Chowk, Khicho-Ki-Haweli-Ke-pass, Jodhpur, last employed on the post of Postal Assistant, Head Post Office, Bundi.

... Applicant.

v e r s u s

1. Union of India through Secretary to Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Director, Postal Services, Eastern Region, Rajasthan Circle, Ajmer.
- 3- The Superintendent of Post Offices, Tonk Division, Tonk, Rajasthan.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed challenging the impugned charge-sheet dated 2.7.87 (Annexure A/1) and the order imposing the penalty of removal passed by the disciplinary authority dated 3.9.93 (Annexure A/2) and the order dated 5.4.94 of the appellate authority, reducing the punishment of removal to that of compulsory retirement.

2. The learned counsel for the applicant vehemently contended that the entire proceedings right from the issue of charge sheet are liable to be quashed in view of his

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acquittal from the High Court in a criminal case. He also submitted that regarding alleged dereliction of duty in not filling up the SO A/C. of Uniara SO for the period from 15.4.74 to 29.4.74, the applicant has already been punished by imposing the punishment of 'Censure' and the present punishment regarding the various periods, including the period 15.4.74 to 29.4.74, is hit by doctrine of double jeopardy. It is also stated that, the applicant's alleged admission vide Annexure A/7 was taken from him under coercion. Therefore, the same could not have been taken as a proof of charges. Even otherwise, on the basis of the record, the charges on the applicant have not been proved. Accordingly, the impugned orders are liable to be set aside. He alternatively contended that even otherwise the penalty imposed ~~xxx~~ on the applicant is too harsh and the same is liable to be set aside.



3. The respondents, by filing counter, have denied the case of the applicant. The learned counsel appearing for the respondents contended that so far as the first contention of the applicant is concerned, the applicant had raised the same contention in O.A. No.210/98 before the Jaipur Bench of the C.A.T., but the said Tribunal dismissed that O.A. by following the judgment of Hon'ble the Supreme Court in Nelson Motis Vs Union of India, reported in 1992 (5) SLR 394, by holding that on the basis of the acquittal of the applicant in criminal case, it cannot be concluded that the departmental proceedings cannot lie. He further submitted that in the said order, this Tribunal observed that the disciplinary authority would have to issue a fresh order on the basis of the enquiry report. Therefore, there are no merit in the first contention of the applicant.

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4. Respondents' Counsel further contended that the charge related for the different period, including the period from 15.4.74 to 29.4.74, the doctrine of double jeopardy would not apply to the facts of the case. So far as the 3rd point pertaining to Annexure A/7 is concerned, it is stated that the said point has been urged for the first time before the Tribunal that the statement at Annexure A/7 was taken under coercion. This stand was not taken before the lower authorities. He stated that a detailed enquiry was conducted by the enquiry officer and the enquiry officer held that the charges were proved against the applicant and accordingly, the disciplinary authority accepted the enquiry report and imposed the punishment of removal from service, while the appellate authority has reduced the punishment to the one of compulsory retirement. It is not a case of no evidence. The charges proved are very grave in nature. Therefore, the punishment awarded is quite proportionate. He further submitted that this Tribunal is not sitting as a 2nd Appeal Court and the entire evidence cannot be looked into. Therefore, there are no merits in this application. Accordingly, he submits that the application deserves to be dismissed.

5. By taking the point No.1 urged by the learned Counsel for the applicant, we perused the judgment of the Jaipur Bench dated 7.7.93 passed in OA No.210/88. That was a case filed by the applicant himself challenging the chargesheet on the ground that the departmental enquiry on the basis of the said chargesheet, could not be proceeded with on the basis of the acquittal by the criminal Court. This Tribunal rejected that contention by following the law declared by Hon'ble the Supreme Court in Nelson Motis Vs Union of India reported in 1992 (5) SCR 394. Ultimately, the Jaipur Bench of CAT., held that the chargesheet could not be quashed only

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on the ground that the applicant was acquitted by the Court in a Cr. Case. Now, it has been brought to our notice that the applicant has been acquitted by the Criminal Court by giving benefit of doubt and it was not a case of clear exoner-
ation of the charges. Even otherwise, in our humble opinion, when the applicant has already suffered the order at the hand of the Jaipur Bench of the CAT., in O.A. No.210/81 and this very contention has already been rejected by the said Bench, we will not allow the applicant to raise the same issue again in this application. Accordingly, the point No.1, as prayed for by the applicant merits only for rejection.

6. The second point of the learned Counsel for the applicant is that so far as the period between 15.4.1974 to 29.4.1974 is concerned, in the other departmental enquiry, there was same allegation that the applicant did not fill up the SO A/c for the period from 15.4.74 to 29.4.74, therefore, including that period within the present charge would be hit by double jeopardy. But in our considered opinion, there is no substance in this argument also. According to the present Article of the charges, while the applicant was working as Sub Post Master, Uniara, from 3.5.73 to 10.3.75, he failed to fill up the SO A/c. of Uniara SO for the period from 15.4.74 to 29.4.74, 15.1.75 to 29.1.75 and from 8.2.75 to 8.3.75, as required by Rule 673 A of P&T Manual Vol. VI Part-III. Even if we exclude the period from 15.4.74 to 29.4.74 as being covered by other departmental enquiry, in which the applicant has been awarded 'Censure', still the charge stands with regard to the periods 15.1.75 to 29.1.75 and 8.2.75 to 8.3.75, as per the present charge. It is not in dispute that the said period i.e., 15.1.75 onward was not covered in any other charge. Therefore, even if we exclude the period from 15.4.74

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to 29.4.74 as being included inadvertently, the charges are proved regarding other periods mentioned above. Therefore, the doctrine of double jeopardy would not apply to the entire charges. Regarding the other periods, still the chargesheet stands proved on the basis of the evidence or record. Therefore the 2nd contention of the applicant also is hereby rejected.

7. The third contention of the applicant was that the alleged statement of the applicant vide Annexure A/7 admitting the charges was taken by force. This contention is raised for the first time before this Tribunal. The learned Counsel for the applicant raised this contention on the basis that ~~xxx~~ in the certified copy of the said statement (zercox copy of which is filed at page 30 of the application), there is an endorsement "written by me as dictated", but we find that it can be an endorsement by the person, who typed it, or enquiry officer might have noted it that he noted as dictated by the applicant or that endorsement could be by the copyist. In all cases, statement made by witnesses are dictated by the Court to the Steno-typist and endorsement is made at the bottom. The instant case appears to be similar to that, some endorsement of that type are made on the certified copy. At any rate, it does not prove that there was any coercion. If the said statement was taken on coercion, we do not think that the applicant would keep quiet either before the enquiry officer, or before the disciplinary authority as well as the appellate authority. In this view of the matter, it is not possible for us to accept the contention urged by the applicant.

8. The learned Counsel for the applicant contended that the charges could not be proved on the basis of the material



on record. On going through the enquiry report, we find that in all, 12 witnesses have been examined, many documents have been marked regarding different periods and different amounts and on the basis of the entire evidence, both oral and documentary, ultimately, the Enquiry Officer recorded the finding that the charge Nos. 1 to 3 are proved. We do not think that we can reappreciate the entire evidence as 2nd Appellate Court. Having gone through the orders of the disciplinary authority and the appellate authority we are satisfied that in this case, that very extensive evidences have been recorded and on the basis of such evidence both oral and documentary findings are given by the enquiry officer, the same have been accepted by the disciplinary authority and the appellate authority. Therefore, these findings do not call for any interference at the hands of this Tribunal.



9. The last contention is regarding the quantum of punishment. We find from the material on record that the applicant has not accounted certain amount received by him by entering the same in the SO A/c. of Uniara, when he was working as Sub Post Master, Uniara, for different periods for different accounts. If such persons are given lenient punishment, the public money invested by the Government would be at stake. However, having regard to the circumstances, the appellate authority by taking lenient view, has modified the punishment of dismissal to one of Compulsory retirement. This itself appears to be a lenient view taken in the matter. Therefore, in our considered opinion, the case on hand is not one of disproportionate punishment.

10. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under :

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"The Original Application is dismissed. But in the circumstances, without costs."

The file received from Jaipur Bench in O.A. No.210/88 may be sent back immediately.



(GOPAL SINGH)
Adm. Member

(B.S. RAIKOTE)
Vice Chairman

Original affd. 10/21/88 Tej Pal 40%
 N/S 002 cons has been sent to
 Jai An Bench vide letter 10 CAT/ny/udl/13/97
 clt 10/10/2k

Part II and III destroyed.
 In my presence on 10-2-07
 under the supervision of
 Section Officer as per
 order dated 10/11/05
 NADAN
 Section Officer (Records)

Copy sent
 to S. J. J. /
 1992
 for Mr. Mathur

R/C 684
 on 29/9
 2007.

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