

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 08.10.1999

O.A. No. 251/1996

Kana Ram Suthar son of late Shanker Lalji aged about 38 years resident of Ram Muhalla, Outside Nagorigate, Jodhpur, last employed to the post of postal Assistant in the office of Jodhpur Head Office.

... Applicant.

v e r s u s

1. Union of India through Secretary to Government of India, Ministry of Communication (Department of Posts), Dak Bhawan, Sansad Marg, New Delhi -1.
2. Director of Postal Services, Office of P.M.G. Rajasthan Western Region, Shastrinagar, Jodhpur.
3. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

... Respondents.

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

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(Per Hon'ble Mr. Gopal Singh)

Applicant, Kana Ram Suthar, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned orders dated 9.4.91 (Annexure A/1), dated 29.12.95 (Annexure A/2) and dated 6.6.96 (Annexure A/3) with all consequential benefits.

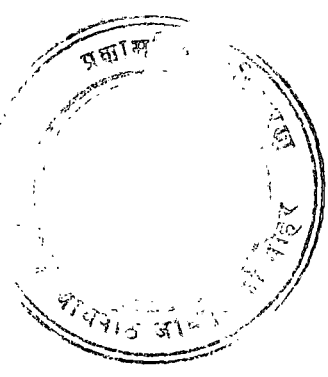
Gopal Singh



2. Applicant's case is that he was initially appointed as Postal Assistant on 14.8.80 with the respondent-department. He was on temporary duty at Nagori Gate Sub-Post Office during the year 1991. He was served with a charge sheet on 9.4.91 and on completion of the departmental enquiry, the punishment of removal from service was imposed upon the applicant vide order dated 11.12.91. Appeal submitted by the applicant against the orders of disciplinary authority was also rejected on 26.3.92 by the appellate authority. Feeling aggrieved, the applicant had approached the Tribunal vide OA No. 147/94 which was allowed on 24.10.94. The Tribunal had given direction to the respondents to allow/give him the opportunity to cross examine the witnesses and also to produce the defence witnesses. An enquiry was again held in terms of Tribunal's order dated 24.10.94 and on culmination of the enquiry, the enquiry report dated 6.6.95 was given to the applicant. The applicant had submitted a representation against the finding of the enquiry officer on 30.6.95 (Annexure A/5). In the meantime, the disciplinary authority conveyed to the applicant on 26.9.95 his disagreement on the findings of the enquiry officer on charge No.1. Applicant had represented against the disagreement of the disciplinary authority. The disciplinary authority vide his order dated 29.12.95 imposed the punishment of removal from service upon the applicant. The respondents had also lodged an F.I.R. on 31.1.91 with the Police and a criminal case was registered against the applicant under Section 409 of I.P.C. The criminal case was decided on 18.3.98 by the Court of Additional Chief Judicial Magistrate, Jodhpur. In the order dated 18.3.98, the Additional Chief Judicial Magistrate, Jodhpur, acquitted the applicant giving him the benefit of doubt. Applicant's contention is that there is no application of mind on behalf of the disciplinary authority while passing the order of punishment. The disciplinary authority had at one time forwarded the enquiry report to the applicant for his comments and after three months that the disciplinary/changed his mind and recorded his disagreement with the findings of the enquiry officer. The appellate authority has also not given personal hearing to the applicant, though asked for. Feeling aggrieved, the applicant has again approached the Tribunal through the present O.A.

3. Notices were issued to the respondents and they have filed

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the reply. It has been contended on behalf of the respondents that there are no procedural lapse in the conduct of enquiry and the disciplinary authority had applied his mind and imposed the punishment after going through the enquiry report and the record of the case. The appellate authority had also applied his mind before rejecting the appeal of the applicant.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It would be relevant to go through the charges levelled against the applicant in the charge-sheet dated 9.4.91 as also the F.I.R. lodged on 30.1.91. The charges levelled against the applicant in the charge-sheet dated 9.4.91 are extracted below:-

ARTICLE - I

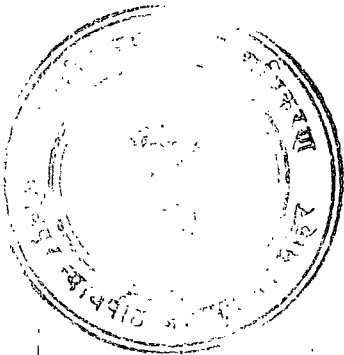
That the said Shri Kanaram Suthar while working as Sub Postmaster, Nagorigate, Jodhpur Post Office on 25.1.91 did not ascertain the weight of sealed leather cash bag which was without lock, though he was informed by the SPM Mahamandir Bazar Jodhpur that the cash bags have been exchanged and the SPM Mahamandir Jodhpur also deputed his EDMC to Nagorigate P.O. to ascertain about receipt of his cash bag. Shri Kana Ram Suthar despite of all these facts opened the account bag as well as cash bag alone while he should have opened these bags in the presence of the EDMC Mahamandir Bazar and Nagorigate. When the weight of L.C. bag received by said Shri kana Ram Suthar was got ascertained in his presence on 5.3.91 by placing cash Rs. 10,000/- (200 C.Notes of Rs. 50/-) its exactly came to 670 gms. i.e. actual weight of sealed cash bag noted in S.O. Slip dated 25.1.91 prepared for Nagorigate P.O. by Jodhpur H.O. This fully corroborated that a sum of Rs. 10,000/- was actually receipted by him but he wilfully accounted for only Rs. 2,000/- and failed to account Rs. 8,000/- more.

It is, therefore, alleged that the said Shri kana Ram Suthar, contravened the provisions of Rule 22 (2) of Postal Manual Volume VI Part III and thereby failed to maintain absolute integrity and devotion to duty & acted in a manner which is unbecoming of a Government servant as required by him vide Rule 3(1)(i), (ii) & (iii) of C.C.S. (Conduct) Rules, 1964.

ARTICLE - II

That the said Shri Kana Ram Suthar while functioning as Sub Post Master, Nagorigate, Jodhpur P.O. for the period from 19.1.91 to 27.1.91 did not filled up the S.O. Account of Nagorigate, Jodhpur P.O. for the aforesaid period. It is, therefore, alleged that the said Shri Kana Ram Suthar contravened the provision of Rule 84 of Postal Manual Volume VI Part III and thereby miserably failed to maintain

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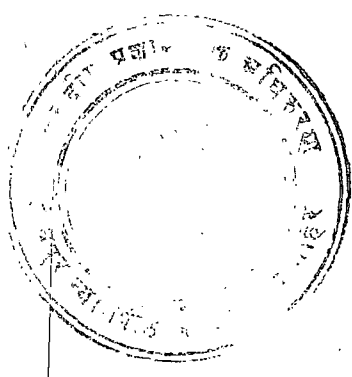
devotion to duty as required by him vide Rule 3 (1)(ii) of C.C.S. (Conduct) Rules, 1964.

ARTICLE - III

That the said Shri Kana Ram Suthar while functioning as SPM Nagorigate, Jodhpur P.O. on 28.1.91 was relieved by Shri Chinna Ram Tak regular SPM Nagorigate Jodhpur on 28.1.91 F/N. The said Shri Kana Ram Suthar was due to resume his duty at his place of posting Jodhpur Kachery P.O. on 28.1.91 A/N but the official remained absent from the duty wilfully without permission for the period from 29.1.91 to 24.2.91 and produced combined medical certificates of sickness and fitness on 25.2.91 through SPM Jodhpur Kachery and resumed his duties on 25.2.91 F/N.

It is, therefore, alleged that the said Shri Kana Ram Suthar contravened the provision of Rule 62 & 162 of P&T Manual Volume III and thereby failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Govt. servant as required by him vide Rule 3(1)(i), (ii) & (iii) of C.C.S. (Conduct) Rules, 1964."

6. Facts of the criminal case against the applicant under Section 409 of I.P.C. are as under :-



"Shri P.R. Chawla, Postmaster, Jodhpur, submitted a written report to the Police Station, Mahamandir, stating therein that as per the demand of the Sub Post Offices under him, cash is sent to them in leather bags duly sealed. On 25.1.91, Mahamandir Post Office demanded Rs. 10000/- and the Nagorigate Post Office demanded Rs. 2000/-. The cashier, Babulal Vaishnav, kept Rs. 10000/- in the bag of Mahamandir Post Office and Rs. 2000/- in the bag of Nagorigate Post Office, but due to mistake of the cashier, the label of Nagorigate was pasted on the bag of Mahamandir Post Office and the label of Mahamandir Post Office was pasted on the bag of Nagorigate Post Office. Thus, Rs. 10000/- meant for Mahamandir Post Office was sent to Nagorigate and Rs. 2000/- meant for Nagorigate Post Office was sent to Mahamandir Post Office. In the S.O. slip, Rs. 10000/- for Mahamandir Post Office and Rs. 2000/- for Nagorigate Post Office were correctly entered in. Thus, the Sub-Postmaster, Nagorigate, misappropriated Rs. 8,000/-. Shri Kana Ram Suthar is working as Sub-Postmaster, Nagorigate. The Sub-Postmaster, Mahamandir returned his cash bag, which was locked and whose keys were available with Nagorigate Post Office, to the Head Post Office, on the same day in the same condition and the said bag contained Rs. 2000/-. Thus, Kana Ram has misappropriated Rs. 8000/-. Requested necessary action."

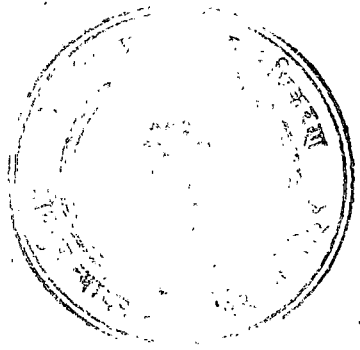
(Original in Hindi; English translation ours).

7. A close reading of charge No.1 in the charge-sheet and the F.I.R. case as mentioned above would reveal that it is for the same alleged misconduct that a departmental enquiry was initiated against the applicant and simultaneously, an F.I.R. was lodged. In the order dated 18.3.98 of the Additional Chief Judicial

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Magistrate, Jodhpur, it has been recorded that the prosecution story is concocted one and accordingly, the applicant was acquitted giving him the benefit of doubt. It is also seen that the witnesses appearing in the Court of Additional Chief Judicial Magistrate were also the witnesses in the departmental enquiry case. Hon'ble Supreme Court in Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., reported in 1999 (3) Supreme 376, has observed as under:-

" As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand. (Para 33)



Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case. (Para 34)

Held consequently: In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal Court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs. 15,000/-." (Para 35) "

8. In the light of the above judgement of Hon'ble Supreme

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Court, we are of the view that the respondents are precluded from taking any action against the applicant on the charge No. 1 in the charge-sheet. Moreover, it has been pointed out by the applicant that the alleged misappropriated amount of Rs. 8000/- was fully recovered from the actual culprits, i.e., from Shri Babu Lal, Treasurer - Rs. 3,000/-, from Shri Laxman Giri, Sub Accounts Clerk - Rs. 3,000/- and from Shri Rupa Ram, A.P.M. Treasurer - Rs. 2,000/- in the departmental action against them. This statement of the applicant has not been contested by the respondents and in reply, they have only stated that the disciplinary authority after going through all relevant documents, findings of the enquiry officer and the representation of the applicant, passed the order removing the applicant from service. It implies that the amount of Rs. 8,000/- was not misappropriated by the applicant.



9. The second charge pertains to not filling up the S.O. Account of Nagorigate Post Office from 19.1.91 to 27.1.91. It has been held by the enquiry officer that non-filling of S.O. Account on 19.1.91 is not proved and it is proved that the S.O. Account was not filled up between 21.1.91 to 25.1.91., On 20.1.91, 26.1.91 and 27.1.91 being holidays, i.e., Sunday, Republic day and Sunday respectively, it has been held by the enquiry officer that this charge is partially proved.

10. The third charge was in regard to unauthorised absence of the applicant from 29.1.91 to 24.2.91. The applicant reported back on duty on 25.2.91 and submitted medical certificates of sickness as also fitness certificates and thereafter, he was taken on duty. The submission of medical certificates and fitness certificates by the applicant has not denied by the respondents though it has been asserted by them that the these certificates were not submitted by the applicant in time.

11. In the light of the above discussion, we do not consider that the penalty of removal from service imposed upon the applicant is commensurate with the alleged misconduct. In our opinion, the charge No. 2, which has been partially proved and the charge No. 3 relating to unauthorised absence of the applicant do not warrant the penalty of removal from service.

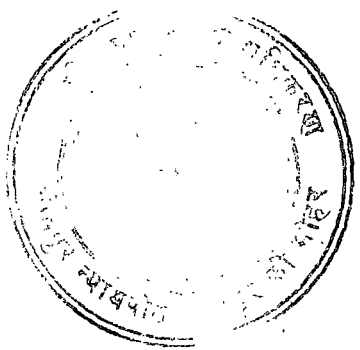
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12. The learned counsel for the respondents has cited many judgements in support of the contentions of the respondents, but we find that the facts of the case in the cited judgements are distinguishable from the facts of the case in hand and, therefore, we do not consider it necessary to discuss all these judgements.

13. In the result, the present O.A. is allowed with the following directions:-

(i) The impugned orders dated 9.4.91 (Annexure A/1), dated 29.12.95 (Annexure A/2) and dated 6.6.96 (Annexure A/3) are quashed. The applicant would be reinstated in service within 30 days from the date of receipt of a copy of this order. The period between the date of removal from service to the date the applicant is reinstated in terms of this order would be treated as on duty for which he shall be paid only 50% of the entitled salary and allowances. This period shall however, count for the purpose of seniority, promotion and pension etc.



(ii) The respondents are restrained from taking any action against the applicant with reference to Charge No. 1 as per law laid down by Hon'ble the Supreme Court. However, they shall be free to proceed against the applicant in respect of Charge No. 2 and Charge No. 3 afresh and pass a fresh order as per rules.

14. Parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K. Misra
(A.K. MISRA)
Judl. Member

CVR.