

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

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Date of Order : 01.04.2002

O.A No. 216/2001.

J. K. Shrimaii son of Shri Uda Ram, aged about 48 years, resident of Gali No. 7, Plot No. 173, Rajeev Gandhi Colony, Chandnabhakar, Jodhpur, last employed on the post of Postal Assistant in Barmer Head post Office, Barmer Division.

... APPLICANT.

versus

1. The Union of India through the Secretary to Govt. of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
3. Director Postal Services, Rajasthan Western Region, O/O PMG, Western Region, Rajasthan, Jodhpur.
4. The Member Post, Postal Board, Dak Bhawan, New Delhi.
5. Superintendent of Post Offices, Barmer Division, Barmer.

... RESPONDENTS.

Mr. B. Khan counsel for the applicant.
Mr. Kuldeep Mathur, Adv. brief holder for
Mr. Ravi Bhansali, counsel for the respondents.

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Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R. D E. R. :
(per Hon'ble Mr. Justice O. P. Garg)

The applicant who was holding the post of
Postal Assistant was dismissed from service on

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18.08.1987 (Annexure A-4), as a result of the departmental enquiry by the competent authority. The applicant preferred a departmental appeal which was dismissed. The charges which ~~were~~ culminated in the order of dismissal of the applicant were as follows :-

*** Article-I :**

That the said Shri J. K. Shrimali while functioning as SPM, Barmer Collectorate Sub Post Office for the period from 29.11.78 to 20.2.79 fraudulently withdrawn Rs. 350/- from SB Account No. 782600 in the name of Smt. Lali on 29.11.78, Rs. 136/- from R.D. Account No. 150167 of Shri Sawaisingh on 6.1.79 and Rs. 310/- and 609.90 from S.B. Account No. 782301 of Shri Maheshdansingh on 15.2.79 and 20.2.79 respectively. Therefore, the said Shri Shrimali while functioning during the aforesaid period failed to maintain absolute integrity and devotion to duty and exhibited an act of unbecoming of a Government Servant violating the provision of rule 3(1) (i) (ii) (iii) of CCS (Conduct) Rules, 1964.

Article-II:

That the said Shri J. K. Shrimali while functioning as SPM, Barmer Collectorate for the period from 29.11.78 to 20.2.79 did not follow the provision of rules 411-A, 425(1), Note 3, 425(3) (A) (iii) & (iv), 425, (5) (1) (a), 425A and 430 (7) of P & T Manual Volume VI Part-II. *

2. By means of this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order of dismissal and has also assailed the order rejecting his appeal and has prayed that he may be reinstated in service with all consequential benefits.

3. A reply has been filed by the respondents.

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4. Heard the learned counsel for the parties.

5. The only point conceded by Shri B. Khan, Learned counsel for the applicant, before us is that since the applicant has been finally acquitted of the criminal charge, no departmental enquiry could be initiated against him on the same allegations and evidence. In support of his contention, Shri B. Khan placed reliance on the decision of the Apex Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416.

6. We have thoroughly scrutinised the various observations made in the decision aforesaid and find that they are not of universal application and have to be confined to the set of facts in which they came into being. The decision, aforesaid, therefore, is of no assistance ^{or} help to the applicant.

7. Learned counsel for the respondents pointed out that the acquittal of an employee from a criminal charge is not to be taken as an impediment in the way of employer to initiate departmental enquiry into the misconduct of its employee. We find that the submissions of Learned counsel for the respondents is not without force.

8. In Nelson Motis vs. Union of India & Anr. AIR 1992 SC 1981, the Supreme Court has categorically held as under :

" The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

In State or Karnataka & Anr. vs. T. Venkataramappa, (1996) 6 SCC 455, the Apex Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same offence for the reason that in a criminal trial, standard of proof is different and the case is to be proved beyond reasonable doubt but the same is not true in a departmental proceeding as such a strict proof of misconduct is not required therein.

9. Besides the above decisions, there is a decision of Rajasthan High Court in the case of R.S. Tanwar vs. Marwar Gramin Bank, Head Office, Pali and Others 2001 WLC(Raj.) UC 154, in which the various authoritative pronouncements of the Hon'ble Apex Court were considered and it was concluded that there can be no doubt about the settled legal position that as the standard of proof in the criminal proceedings as well as departmental enquiry is quite different and the object of the two proceedings is distinct in nature. The acquittal of the employee in a criminal case cannot be the basis of taking away the right of the employer to initiate departmental proceedings against its employee for his misconduct.

10. In the backdrop of the above legal position we are of the view that merely because the applicant was found not guilty of the criminal charge, the departmental proceedings cannot be said to have initiated. The submission of Learned counsel for the applicant on the point is, therefore, devoid of any merit.

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11. Even otherwise, we find that the charges
as established against the applicant, justified
the extreme penalty of dismissal from service.
The punishment awarded to the applicant is quite
appropriate, justified and reasonable, calling for
no interference by this Tribunal.

12. No other point was raised to assail the
impugned orders.

13. In the result, we find that the present
Original Application turns out to be devoid of any
merits and substance. It is accordingly dismissed
without any order as to costs.

Chp
(A. P. NAGRATH)
Adm. Member

GP
(JUSTICE O. P. GARG)
Vice Chairman

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Part II and III destroyed
in my presence on 14-10-72
under the supervision of
Section officer (1) 1000
order dated 14-10-72

Section officer (Recon)