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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur**

Original Application Nos.189/2003

Date of decision: 29th August, 2008

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Laxman Giri, S/o Shri Gopal Giri aged about 48 years, resident of Sankhlo Ka Bas near Vidyshala School, out side Chandpole, Jodhpur employed on the post of Postal Assistant in Jodhpur Head Post office.

Applicant.

Rep. By Mr. B. Khan Counsel for the applicant.

Versus

1. Union of India, through Secretary to Govt. of India Ministry of Communication, department of Post Dak Bhawan, New Delhi.
2. The Principal Chief Post Master General, Rajasthan Circle, Jaipur. 307207
3. The Post Master General, Western Region, Jodhpur 342001
4. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
5. Senior Post Master, Jodhpur HO, Jodhpur.

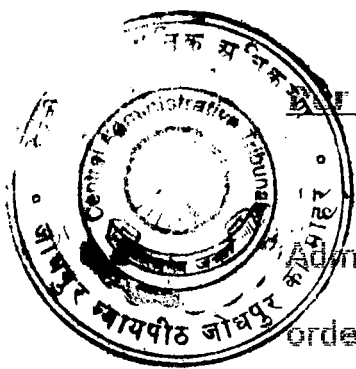
: Respondents.

Rep. By Mr. M. Godara proxy counsel
For Mr. Vinit Mathur, Counsel for the respondents.

ORDER

Mr. Tarsem Lal, Administrative Member.

The applicant has filed this O.A under Sec. 19 of the Administrative Tribunals Act, 1985, and prayed that the impugned orders at Annex. A/2 dated 27.07.2000 and A/3 dated 13.08.2002, may be declared illegal and be quashed with all consequential benefits.



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2. The case was called second time in the court. Neither the applicant nor his counsel was present. Therefore it was decided to take up case for adjudication under Rule 15 of the CAT (Procedure) Rules, 1987.

3. The facts, as relevant to the case, are that a charge sheet under Rule 14 of CCs(CCA) Rules, 1965 was issued alleging that Mr. Laxman Giri while working as Postal Assistant at MPCM Counter No. 1 on 09.07.99, did not account for Rs. 164, by making false entries in the shift report for registered mail posted on 09.07.99 relating to 8 registered letters and pocketed the same. It is also alleged that when this misdeed was detected at the closing time of the counter, the applicant is said to have voluntarily deposited Rs.164/- on the spot with the treasurer of HO. Thus the applicant has failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964.

4. The applicant denied the charges vide his letter dated 04.09.99 and bonafidely stated that the incident happened on 09.07.99 was only a irregularity due to excess of work load and he could not make proper entry. However, as soon as this fact was detected at the time of closing the counter on same day he deposited Rs. 164/- voluntarily and there was no bad intention on the part of him.



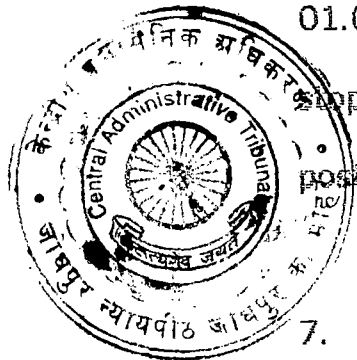
5. Shri B.R. Suther, SDI, Jaiselmar was appointed on 06.09.99 and Shri S.L. Patel SDI(P) was appointed as Presenting officer.

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The applicant vide his letter dated ⁻³⁻21.09.99 requested the Inquiry Officer for granting permission to appoint a legal practitioner as his defence assistant, which was rejected. The applicant again made a request vide his letter dated 27.09.99 to the Inquiry officer that as the charge against him is of serious nature and without having a legal knowledge, no one can defend his case properly. But his request was not considered and he was not permitted to defend his case through a legal practitioner. However, one Shri Dhanpat singh retired Inspector was permitted to appear as his defence assistant. After inquiry, the inquiry officer submitted his report to the Disciplinary Authority and delivered a copy of the inquiry report to the applicant also vide his letter dated 31.12.99. The inquiry officer held the charges as proved.

6. The applicant submitted a representation against the inquiry report vide his letter dated 15.01.2000. The 4th respondent, vide order dated 27.07.2000, (Annex. A/2), imposed the penalty of reduction of pay by two stage from Rs.4600/- to Rs. 4400 in the time scale of pay Rs. 4000-6000 for a period of two years w.e.f. 01.08.2000 and further ordered that the increment was also stopped and the period of reduction will have the effect of postponing his future increments.



7. The applicant could not file any appeal against the penalty order dated 27.07.2000 due to his personal unavoidable circumstances. However, he filed a revision petition dated 25.01.2001 (Annex. A/4) under Rule 29 of the CCS (CCA) Rules.

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1965. The Revision Authority, viz. the 2nd respondent vide his letter dated 13.08.2002 (Annex. A/3), without considering the grounds taken in the above Revision Petition rejected the same.

8. The applicant has averred that the disciplinary authority as well as the revising authority have not given their thought and only on the basis of finding given by the inquiry officer imposed the penalty. He has further averred that no personal hearing was given while rejecting the revision petition filed by him. Hence, he prayed that the impugned orders deserve to be quashed being violative of principles of natural justice. He also further prayed that the penalty imposed is shockingly disproportionate to the alleged misconduct and therefore the same deserve to be quashed/modified.

9. The respondents are contesting the O.A by filing a detailed reply, inter alia pleading that it was neither a computer error of command and jump nor the irregularity was due to excess of work load. It was clear cut instance of pocketing of government money to the tune of Rs.164/- by way of showing the 8 registered letter booked on MPCM by applicant on 09.07.99 as pre stamped in the shift report and tariff realised was shown 'nil' though no postal stamps were affixed on any of the above 8 registered letters. The amount of Rs. 164/- was realised in cash was pocketed by the applicant. If the version of the applicant was true, as sum of Rs. 164/- or its part or any sum would have been credited in UCR in hand to hand receipt book of the applicant for the day whereas on



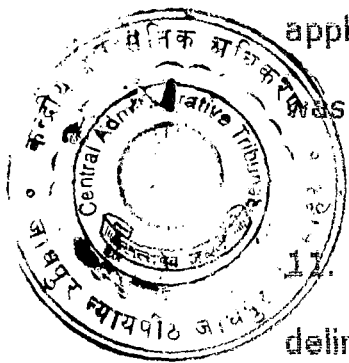
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09.07.99, the applicant booked 8 registered letters after receiving tariff in cash, but shown them as pre stamped articles in the MPCM receipt granted to customers and daily shift report.

10. Shri Bhagwana Ram PA who was doing the dispatch work had noticed the discrepancy on the registered articles booked while making despatch and brought the matter to the notice of Sr. Post Master, who to test the integrity of the applicant, confidentially checked up the facts up till close of the day's work when the applicant deposited cash in his hand to treasurer. The applicant was called in the chamber of Senior Post Master to explain the cause of discrepancy in shift report and registered letters booked. The applicant seeing that he was caught red handed and knew that there was no escape available with corroborative evidence as such immediately accepted it and made good the amount of Rs. 164/- on UCR as a result of detailed confidential inquiry on detection of his misconduct. The incident happened on 09.07.99 with the applicant, was neither irregularity due to excess of work load nor it was a simple error, but a deliberate act by him.



11. Rule 14 (6) (a) of the CCS (CCA) Rules 1965 provided that a delinquent government servant may not engage a legal practitioner to present the case on his behalf unless the presenting officer appointed is a legal practitioner. Hence the assistance of legal practitioner was denied on merits of the case of the applicant and the disciplinary authority exercised his discretion after applying judicious mind.

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12. In the inquiry conducted by the inquiry officer, the charges leveled against the applicant were fully proved and therefore, it is denied that punishment was awarded in a mechanical way without considering the material on record. The applicant has failed to explain sufficient reasons for not filing the appeal and the action of the applicant reveals that he is fully aware that the punishment awarded to him is just and proper and is proportionate to the gravity of the charges leveled against him.

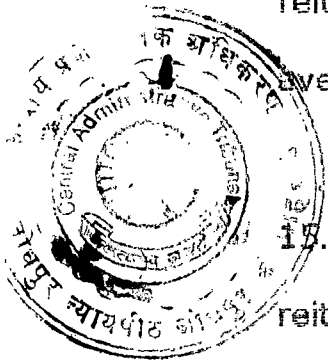
13. The Revisional Authority carefully considered the case of the applicant and after application of judicious mind the petition was rightly rejected while confirming the punishment awarded to the applicant. In view of the above the respondents have prayed for the dismissal of the O.A

14. Rejoinder has been filed by the applicant, while reiterating the averments already made in the O.A, and refuted the averments made in the reply.

15. Learned counsel for the respondents has been heard. He has reiterated the averments already made in his pleadings.

16. We have carefully considered the case and perused the documents placed on record. The applicant was issued a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965. An inquiry officer was appointed. The inquiry officer had held the charges

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levelled against the applicants have been proved. But none of the parties has placed a copy of the inquiry report on record. However, it is an admitted fact that the charges leveled against the applicant have been proved.

17. It is amply clear from the facts that the applicant while working as Postal Assistant at MPCM, counter No. 1, did not account for Rs. 164 by making false entry in the shift record for registered mail on 09.07.99, relating to 8 registered letters and pocketed a sum of Rs. 164/-. The same had been proved. The applicant has not filed any appeal and the Revision Petition filed by him had been rejected.

18. It is settled legal position that Courts/Tribunal had no jurisdiction, if the findings prima facie made out a case of misconduct and to direct the authorities to reconsider the order of penalty. This view has been fortified by the decision of the Hon'ble Apex Court in the case of **B.C. Chaturvedi vs. UOI** [JT 1995 (8)

SC 65]. In the case of **Government of Tamil Nadu Versus A. Rajapandian** [AIR 1995 SC 561= 1995 (2) SLJ 216 (SC), the Apex Court has held as under: -

"Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the Disciplinary Authority, it is not the function of Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority".

Further the Hon'ble Apex Court in the case of **State of Tamilnadu Versus Thiru K.V. Perumal and Others** reported in [1996(5) SCC 474= 1996(3) SLJ 43 (SC)] has reiterated the same view.



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"It has been repeatedly held by this Court that it is not the province of the Tribunal to go into the truth or otherwise of the charges and the Tribunal is not an appellate authority over the departmental authorities.....".

It is not the amount involved in misappropriation but it is the dishonesty of the charged official and in the instant case it has been proved that the applicant has pocketed the money. Thus the applicant had committed the breach of trust and confidence posed on him by the Department. The respondents instead of imposing a severe punishment for the dishonesty committed by the applicant, taking a lenient view imposed the penalty of reduction of pay by two stages with cumulative effect.

19. It is considered that the respondents have followed the process of natural justice. Inquiry has been held, charges proved and a copy of the inquiry report was also given to applicant before imposing the penalty. The applicant has not voluntarily preferred the appeal against the penalty. However, the Revision Petition filed by the applicant has been disposed of by the competent authority. The Disciplinary Authority has imposed the penalty for which disciplinary powers are vested with him.

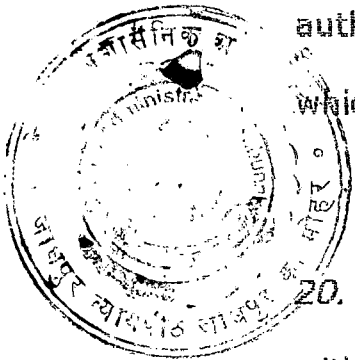
20. In view above discussion, this Court will not like to interfere with the orders passed by the respondents. The O.A is devoid of any merit and is disallowed.

21. No order as to costs.

Tarsem Lal
[Tarsem Lal]
Administrative Member

jsv

[Signature]
[Justice M. Ramachandran]
Vice Chairman.



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