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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 223/2003

Date of decision : 25th Feb. 2009.

Hon'ble Mr.N.D. Raghavan, Vice Chairman.

Hon'ble Mr. Tarsem Lal , Administrative Member.

Devi Lal, S/o shri Chunnilal aged 53 years, R/o Village Kanti
District Chittorgarh, EX-EDBPM, Kanti District Chittorgarh.

: Applicant.

Mr. Vijay Mehta : Counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Colmmunication (Department of Post) Sanchar Bhavan, New Delhi.
2. Superintendent of Post Offices, Chittorgarh.
3. Director of Postal Services, Southern Region, Rajasthan, Ajmer.

:Respondents.

Mr. M. Godara, proxy counsel for

Mr. Vinit Mathur

: Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member .

Shri Devi Lal has filed this O.A praying for the following

reliefs:

" The applicant prays that the impugned order Ann. A/1 and Ann A/6 may kindly be quashed and the applicant be reinstated with full back wages and all consequential benefits. Any other order, as deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

2. The brief facts of the case are that a charge sheet came to be served on the applicant vide memo dated 02.04.91 alleging that during the period 22.06.90 to 1.12.90 he accepted deposit of Rs.



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500/- on 22.06.90 and Rs. 240 on 13.12.90 and made entries in the respective pass book but failed to make entries in the BO, GB journal and BO accounts and did not account for the said amount in Government accounts. A departmental inquiry was held where prime witnesses were not examined and the witness who were examined did not support the case of the department. The inquiry officer has held that acceptance of Rs. 500/- and Rs. 240/- have not been proved but it was held that the relevant entries were made by the applicant and to that extent the applicant was held guilty. However, the second respondent while disagreeing with the inquiry officer's report imposed the penalty of removal from service. The appeal filed by the applicant was also dismissed.

3. The applicant challenged the said order of removal and the appellate order by filing O.A No. 72/94 before this Hon'ble Tribunal. The Hon'ble Tribunal quashed the impugned orders and directed the reinstatement of the applicant. It was also observed by this Tribunal that the respondents were given liberty to continue the disciplinary proceedings from the stage of furnishing the findings of the disciplinary authority on disagreement with the inquiry officer's report. The respondents challenged the order of this Tribunal in the High Court but no relief was granted to the respondents and the respondents had to reinstate the applicant.

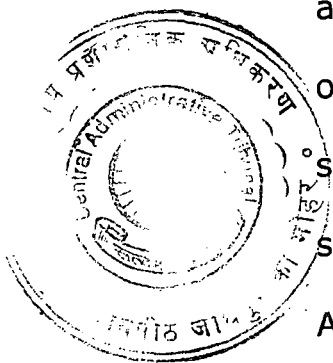
4. Subsequently the respondent No. 2 vide his order dated 23.05.2001 (Annex.A/3) furnished the grounds of disagreement




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with the enquiry report. The applicant submitted his reply on 26.06.2001 (Annex. A/4). The respondent no. 2 vide his order dated 06.09.2001 (Annex. A/1) imposed the penalty of removal on the applicant. The applicant preferred an appeal on 08.12.2001 (Annex. A/5). The respondent No. 3 vide his order dated 16.09.2002 (Annex. A/6) dismissed the appeal filed by the applicant.

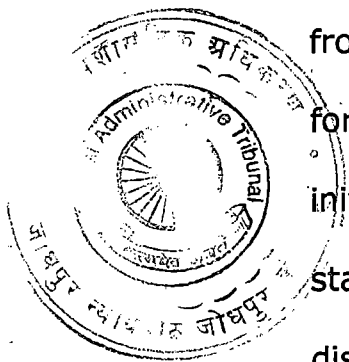
5. It is clear that the respondent No. 2 had disagreed with the findings of the inquiry officer on the basis of assessment of the evidence produced during the course of inquiry. The applicant vide his reply has submitted that important and material witnesses like Nand Lal Joshi and Prahalad Rai and hand writing expert were not examined. But Mathura Lal and Udai Lal who were alleged to have deposited the disputed money have denied that they ever deposited the said money. There are serious and material contradiction in the statements of the witnesses produced by the department and they are not at all trust worthy and reliable. The applicant had categorically denied his hand writing and signature on the disputed documents. Despite this, hand writing and signatures have been held to be that of the applicant, where as the same should have been proved only by hand writing expert. Aggrieved by the above, the applicant has filed this O.A and prayed for the relief as given in para 1 above.



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6. The respondents have filed a detailed reply stating that, while the applicant was serving as EDBPM, Kanti (Gangrar) Chittorgarh a charge sheet under Rule 8 of ED Agents (Conduct and Service) Rules, 1964 for certain charges of violation of BO Rule 131 and 174 (2), 144 read with 143 (3) and 131 as he failed to maintain devotion to duty as required vide Rule 17 of the Rules, 1964. After finalisation of these proceedings, the penalty of removal from service was imposed on the applicant with immediate effect vide order dated 10.06.1992.

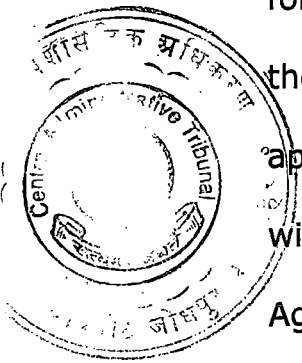
7. The applicant preferred an appeal before the Director Postal Services, Ajmer, which was rejected vide memo dated 22.12.1992. The applicant, thereafter, preferred O.A. No. 72/94 before this Bench of the Tribunal against the orders dated 29.05/10.06.92 which was decided in favour of the applicant on 11.02.2000 by setting aside the orders dated 29th May/10th June 1992. This Hon'ble Tribunal further directed the respondents to reinstate the applicant in service on the post on which he was working before his removal from service with half back wages. The period of removal from service to his reinstatement would, however, will be counted for pensionary benefits. The respondents will be at liberty to initiate the disciplinary proceedings against the applicant from the stage of furnishing the findings of the disciplinary authority on disagreement with the findings of the inquiry officer and also ordered to comply with these directions within a period of three months from the date of receipt of a copy of this order.



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8. The respondents, thereafter, preferred a writ petition before the Hon'ble High Court of Rajasthan by filing S.B. civil Writ Petition no. 3146/2000 challenging the order passed by this Hon'ble Tribunal dated 11.02.2000 upto the extent of making payment of half back wages to the applicant and counting the intervening period for pensionary benefits. The writ petition was partly allowed to the extent that the direction issued by this Hon'ble Tribunal in the operative part of the order in para 7 directing the respondents (petitioners in the Writ Petition) to consider the period of removal from service of the applicant till he is reinstated for the purpose of pensionary benefits is hereby quashed and set aside. The remaining direction issued by this Hon'ble Tribunal in the impugned order is not disturbed and the same are hereby confirmed.

9. In compliance of the directions of this Tribunal and the Hon'ble Rajasthan High Court, a copy of inquiry report dated 05.03.1992 with the statement of reasons of disciplinary authority for disagreeing with the points of the inquiry report were sent to the applicant and on receipt of the representation submitted by the applicant against the same, the penalty of removal from service with immediate effect was awarded vide memo dated 08.06.2001. Aggrieved by the order dated 08.06.2001, the applicant filed an appeal to the Director Postal Services, Ajmer on 8th December 2001 and the same was rejected vide order dated 06/11 09.2002.

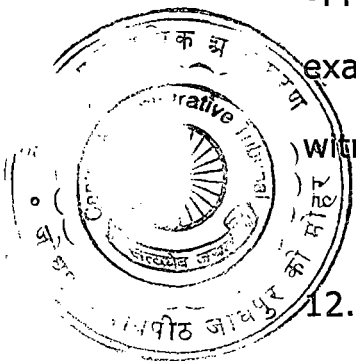


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Aggrieved by the same, the applicant has filed the present O.A without availing the departmental remedies available to him.

10. The respondents have stated that it was proved in the inquiry that the entries relating to the deposit of Rs. 500/- and Rs. 240/- were made by the applicant in the respective pass books. The submissions of the applicant were considered by both the Disciplinary Authority and Appellate Authority and due to serious irregularity committed by him, the applicant was given reasonable opportunity to defend himself and the applicant could not produce convincing evidences in his favour.

11. The respondents have further stated that Mr. B.L. Meena, Inspector of Posts and prosecution witness has confirmed that the entries in the pass books were in the hand writing of the applicant and the finding is based on careful consideration of the entire record of the inquiry. It is also stated that Shri Nand Lal and Prahalad Rai were not examined and the applicant was given full opportunity to defend himself and nothing prevented him from examining Shri Nand Lal and Shri Prahalad Rai as defence witnesses.



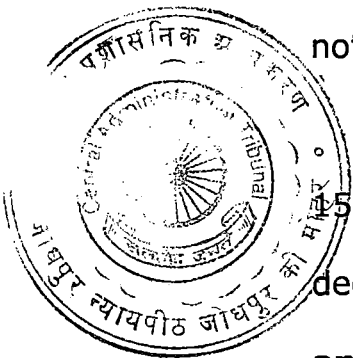
12. The respondents have stated that the applicant has not exhausted the departmental remedies available to him before approaching this Tribunal. Therefore on that basis, the O.A is

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premature and the same is liable to be dismissed on this ground alone.

13. In view of the above, they have stated that this Tribunal would not like to interfere with the lawful order passed by the competent authority and therefore the O.A is liable to be dismissed.

14. The learned counsel for the parties have been heard. They have generally reiterated their arguments given in their respective pleadings. Mr. Vijay Mehta, learned counsel for the applicant relied on judgements viz: (i) **Bhagwati Prasad vs. State of Rajasthan** reported in 2005 (8) RDD 2879- (ii) **Hardwari Lal vs. State of UP and ors.** [1998 (8) SC 418](iii) **Prabhu Lal Agarwal vs. State of Rajasthan** [1993 LAB IC 1000] (iv) **Ram Chander vs, UOI and ors.** [1986 ATC 47-SC]. Relying on the above decisions the learned counsel for the applicant contended that while re-considering the case of the applicant the applicant was not given an opportunity of personal hearing by the respondents. He filed an appeal against the same which was also rejected. However, he has not filed any Review Petition.



15. The learned counsel for the respondents relied on the decision of the Apex Court in the case of **S.N. Mukherjee vs. UOI and ors.** [AIR 1990 SC 1984] and explained that once the Appellate Authority is upholding the penalty imposed by the

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Disciplinary Authority, there is no need for giving an opportunity of personal hearing. He further pleaded that the Tribunal, under the guise of judicial process cannot review the lawful orders passed by the Disciplinary Authority and upheld by the Appellate Authority, under the powers vested with them. He further submitted that the applicant has not pointed out any deficiency in the procedure followed by the respondents. The learned counsel stated that the plea of the applicant that important witnesses namely, Nand Lal and Prahalad Rai were not examined is not sustainable since he himself has failed to produce them as defence witnesses.

16. We have considered this case carefully and find that when the applicant was earlier removed from service vide order dated 10.06.92, the penalty was set aside by this Tribunal vide order dated 11.02.2000. However, the respondents were directed to continue the disciplinary proceedings from the stage of furnishing the findings of the Disciplinary Authority on disagreement with the inquiry officer's report. The respondents have taken up the order before the Hon'ble High Court of Rajasthan. The Disciplinary Action was taken again against the applicant as per the orders of this Tribunal and the judgement of the Hon'ble High Court of Rajasthan. The applicant has been removed from service under the disciplinary powers vested with the Disciplinary Authority and the appeal has also rightly rejected by the Appellate Authority. The applicant has failed to file Review application before the authorities concerned.



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17. It has been seen that the applicant voluntarily deposited the amount in question which is clearly an admission of guilt by him. It has also been proved that the entries in the pass book of the depositors were made by his own hand writing and the same had also been confirmed by the concerned Inspector of Posts Shri B.L. Meena. The cases relied on by the learned counsel for the applicant is distinguishable on facts.

18. 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

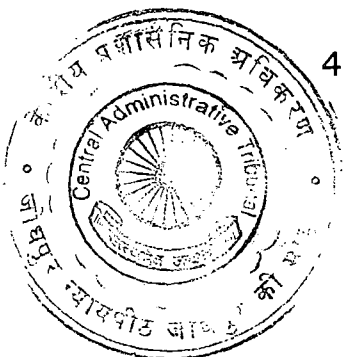
Of appeal over a decision based on the findings

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".

19. 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.

"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.

Accordingly, the Tribunal must be held to have exceeded its jurisdiction in entering upon a discussion



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whether the charges are established on the material available"

20. In **Ram Saran v. IG of Police, CRPF, (2006) 2 SCC 541**, at page 543 the Apex Court has held as under:


The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See *V. Ramana v. A.P. SRTC (2005) 7 SCC 338*)

21. In view of the above discussion and as in this case the penalty has been imposed by the Disciplinary Authority by following a due process of law under the powers vested in him and the Appellate Authority has rejected the appeal. The Disciplinary action has been taken in accordance with the rules.

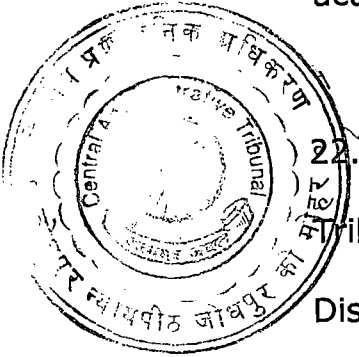
22. In view of the above discussion and settled case law, this Tribunal would not like to interfere with the orders passed by the Disciplinary Authority and the Appellate Authority. The O.A is accordingly dismissed.

23. No costs.


[Tarsem Lal]
Administrative Member


[N D Raghavan]
Vice Chairman.

Jsv.



Part II and III destroyed
in my presence on 8/2/05
under the supervision of
section officer () as per
order dated 07/07/2015

Section officer (Record)

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