

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR****ORIGINAL APPLICATION NO. 187/2003****Date of order: 19-1-2010****CORAM:****HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Dilip Singh S/o Shri Vijay Singh Parihar, aged about 42 years, resident of village & post Akra Bhatta, via Abu Road, District Sirohi (Raj.), last employed on the post of E.D.B.P.M. Akra Bhatta, Sub-Post Office Abu Road, under Superintendent Post Office, Sirohi (Raj.).

...Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Post & Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Western Region, Jodhpur (Raj.).
3. Director, Postal Services, Rajasthan Western Region, Jodhpur (Raj.).
4. Superintendent Post Office, Sirohi Division, Sirohi (Raj.).

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

**ORDER****Per Hon'ble Dr. K.S. Sugathan, Administrative Member**

The applicant was initially appointed as Extra Departmental Sub Post Master (E.D.S.P.M.) on 19.12.1981 and subsequently

posted as Extra Departmental Branch Post Master (E.D.B.P.M.) w.e.f. 14.03.1985. While working as E.D.B.P.M., he was issued a charge-sheet on 19th July 1999 (Annex. A/4). Two charges were leveled against him. One charge related to misappropriation of certain amount of money entrusted to him by two customers for the purpose of sending money order. The other charge is for delayed deposit of money received from customers for depositing in the R.D. account. In the oral enquiry that was conducted, both the charges were held as proved. A copy of the enquiry report was given to the applicant. After considering the applicant's representation, the disciplinary authority imposed the penalty of dismissal from service vide order dated 10.04.2000 (Annex.A/1). The appeal filed by the applicant against the order of dismissal was rejected. The revision petition filed by the applicant was also rejected. Aggrieved by the punishment imposed, the applicant has filed this Original Application. It is the contention of the applicant that the enquiry was conducted without following the procedure prescribed under law and that the complainant was not produced for examination during the enquiry and original documents such as pass-book of R.D. account was also not produced. Further, it is contended by him that the defence assistant selected by him was not relieved to assist him in the enquiry.



2. The respondents have contested the prayer in the Original Application and have stated in their reply that they have followed the prescribed procedure before imposing the penalty. A full-

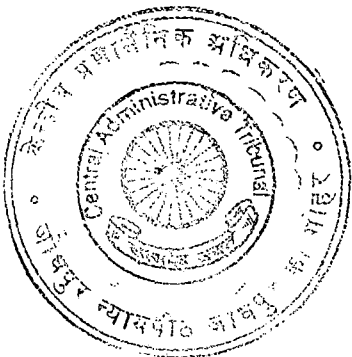
fledged enquiry was conducted. The applicant nominated one Shivaji Ram, UDC, from the office of PMG, Jodhpur as defence assistant who attended the hearing on 11.10.1999, 21.10.1999 and 22.10.1999. Thereafter, the applicant changed the defence assistant and nominated Gulab Singh, SPM, Diesel Shed, Abu Road who also attended the hearing held on 13.01.2000. The competent authority has decided the matter after due application of mind and considering all the arguments made by the applicant in his defence. The applicant has participated in the enquiry.

3. We have heard the learned counsel for the applicant Shri J.K. Mishra and learned counsel for the respondents Shri M. Godara for Shri Vinit Mathur. We have also perused the record carefully.

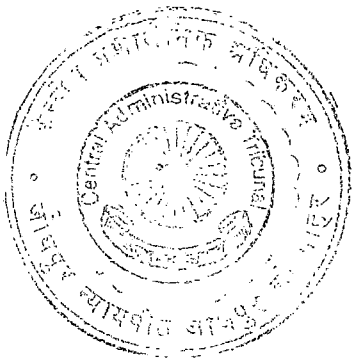
4. The grounds for judicial review in disciplinary matters are now well settled. From the case of **High Court of Judicature at Bombay vs. Shashikant S. Patil** - (2000) 1 SCC 416), these grounds can be enumerated as follows:

- (a). There is a violation of the principles of natural justice;
- (b) The proceedings have been held in violation of statutory regulations;
- (c). The decision is vitiated by consideration extraneous to the evidence and merits of the case;
- (d). The conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion.

5. We have examined the facts of the present case from the grounds cited above. It is not in dispute that the applicant was issued a formal charge-sheet in accordance with the rules. It is



also not disputed that a formal oral enquiry was held subsequent to the issue of the charge-sheet in which the applicant participated. A perusal of the report of the Inquiry Officer indicates that the charges have been proved on the basis of official documents, which were produced by the official witnesses and testified by them during the enquiry. The main objections raised by the applicant are that the complainant was not examined and that the services of the defence assistant nominated by him were not made available. It is seen from the report of the enquiry officer that he placed reliance on official documents and deposition of official witnesses to hold the charges as proved. These official documents have been testified by the officials of the Department during the enquiry. The applicant had an opportunity to cross-examine the witnesses. We are therefore of the opinion that mere non-examination of the complainant cannot undermine the conclusions drawn by the enquiry officer on the basis of valid official documents. As regards the availability of the defence assistant, it is seen from the records that the defence assistant nominated by the applicant attended the enquiry on three occasions. Thereafter, his services were not made available, but the applicant was permitted to nominate another defence assistant who attended one hearing on 13.01.2000. The enquiry report was submitted on 01.03.2000. Copy of the enquiry report was given to the applicant and he submitted a representation about the findings in the enquiry report. In his representation also he has strongly

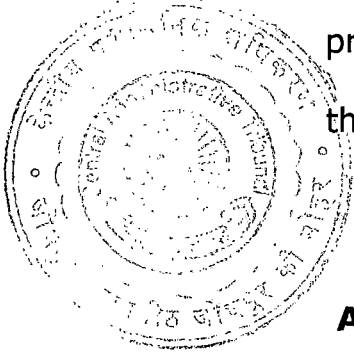



highlighted the non-availability of the defence assistant. However, if a particular defence assistant was not available for administrative reasons, it was open to him to nominate another one and ask for more time/adjournment during the proceedings. We are therefore of the opinion that the non-availability of a defence assistant in some of the hearings cannot be construed to mean denial of sufficient opportunity to the applicant. On the contrary the record shows that the applicant has made very detailed representations against the charge levelled against him and has tried to defend his case at every stage. It is also seen that all the points made by him in his representations have been considered by the respondents at three different levels – at the level of the Superintendent of Post Offices, the Director of Postal Services and the Post master General. The orders issued by the aforesaid officials are detailed and self-contained. We do not find any violation of the rules or procedures. We also do not see that there has been violation of the principles of natural justice. The charges against the applicant are of a serious nature. It involves misappropriation of money entrusted by members of public. The action of the applicant in not depositing the money received from customers on time is a serious misconduct that would tarnish the image of government institutions among the public and cause financial loss to the deposit-holders. The argument of the applicant that there is no loss to the Department (as the money was deposited at a subsequent date) is totally unacceptable to any organisation engaged in providing reliable service to its



customers. Looking to the serious nature of the misconduct, we do not consider that the penalty is disproportionate.

6. For the reasons stated above, we are unable to grant the prayers in the Original Application. The Original Application is, therefore, dismissed. No order as to costs.




(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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