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May 17/21
for
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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

O.A. No. 258/2002

DATE OF DECISION :

Gopal Lal	: Petitioner
Mr. Vijay Mehta	: Advocate for the Petitioner
Versus	
Union of India & Ors.	: Respondent (s)
Mr. S. K. Vyas	: Advocate for the Respondents

**Coram : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman,
Hon'ble Mr. S. K. Malhotra, Member (A).**



1. Whether Reporters of local papers may be allowed to see the Judgment?
- ✓ 2. To be referred to the Reporter or not? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Signature)
**(S. K. MALHOTRA)
MEMBER (A)**

(Signature)
**(G.L. GUPTA)
VICE-CHAIRMAN**

(Signature)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application 258/2002

Date of Decision: 08-9-03.

Gopal Lal son of Shri Krishna Chandra, aged 40 years, R/o Village Sanganer, District Bhilwara, Ex-Extra-Departmental Sub Post master, Sanganer, District Bhilwara.

.....Applicant

Versus

1. Union of India through the Secretary to the Govt. Ministry of Communication (Dept. of Posts) Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Bhilwara.
3. Director, Postal Services, Southern Region, Ajmer.

.....Respondents

Mr. Vijay Mehta, counsel for the applicant.
Mr. S.K. Vyas, counsel for the respondents.

CORAM:

**HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN.
HON'BLE MR. S.K. MALHOTRA, ADM. MEMBER**

ORDER

(PER MR. G.L. GUPTA)

The Applicant was EDSPM, Sanganer. He absented himself from duty from 12.01.95 to 27.02.98. It was also detected that the applicant did not disburse a sum of Rs.3200.70 and interest to the depositor though he had drawn the amount on 14.11.94.

2. The applicant was served with a charge sheet on 30.09.99. An inquiry was held. The Inquiry Officer held that both the charges were proved. The Disciplinary Authority



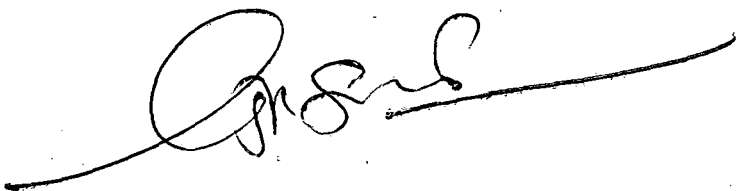
agreeing with the findings of the Inquiry Officer imposed the penalty of removal on the applicant. The appeal preferred by the applicant was dismissed by the Appellate Authority.

2.1 The applicant through this O.A has called in question the order of penalty imposed by the Appointing Authority and affirmed by the Appellate Authority on the ground that the department had failed to prove the charges.

3. In the counter the respondents' case is that a full fledged inquiry was held against the applicant and the charges were found established by the documents and oral evidences. It is also stated that a criminal case under Sections 406, 420, 467, 468, 409 and 471 of IPC was also filed against the applicant in the Criminal Court Bhilwara and that a claim of Rs. 25,000/- preferred by one Sushila Devi and claim for Rs. 47158/- has been entertained by the Consumer Forum against the applicant.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

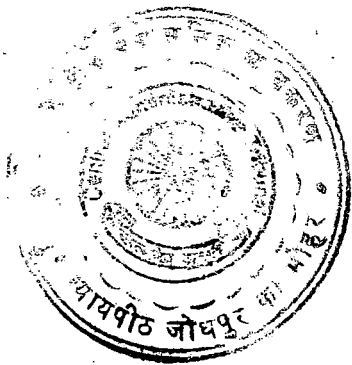
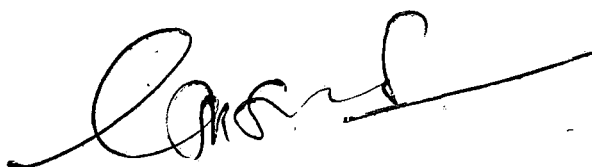
5. The contention of Mr. Mehta, was that the finding of guilt has been recorded on the basis of conjectures and the findings are perverse and therefore this Court should interfere in the matter. He pointed out that the depositor has admitted that he had received Rs. 3200/- + interest thereon. He also pointed out that the applicant was not allowed to resume duty on 24.1.95,



and contended that the finding of guilt for absence ought not to have been recorded by the appointing authority.

6. On the other hand Mr. Vyas, learned counsel for the respondents contended that the scope of judicial review in such matter is very limited. He pointed out that the applicant did not make any attempt to join duty after 24.01.95. He also pointed out that the applicant had changed his stands in the disciplinary proceeding regarding the payment of Rs. 3200/- to the depositor.

7. We have given the matter our thoughtful consideration. It is settled legal position that the scope of judicial review in such matters is very limited. This court cannot act as an appellate forum over the findings recorded by the Disciplinary Authority and confirmed by the Appellate Authority. The adequacy or reliability of evidences is not a matter which can be permitted to be canvassed before the Court in these proceedings. It is also settled legal position that strict rules of evidences are not applicable to the departmental inquiries and every violation of procedure does not vitiate the inquiry. See **R.S.Saini vs. State of Punjab** [1999 SCC (L&S) 1424] **K.L. Shinde vs. State of Mysore** [AIR 1976 SC 1080]; **Rae Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and others** [AIR 1997 SC 1908]; **Bank of India and another vs. Degala Suryanarayana** [1999 SCC (L&S) 1036]; **Inspector General of Police vs. Thavasiappan** [JT 1996 (6) SC 450].



8. It is, of course, true that if there was no evidence worthy name on record to hold the charges proved, the order can be set aside by this Tribunal. This case, however, is not of that type where the finding of guilt has been recorded without any evidence whatsoever.

9. As to the charge of absence from duty for more than 180 days from 12.1.95 to 27.2.98, it is not disputed that the applicant had not attended duties during that period. What is stated is that the applicant's mother was not well and therefore he had to proceed on leave from 12.1.95 but when he tried to join duty on 24.1.95, he was not permitted to join. It is stated that the applicant made attempts to join duty but he was not taken on duty.

9.1 As already stated, admittedly the applicant was not on duty from 12.1.95 to 27.2.98. It may be that because of pendency of another case relating to misappropriation, the applicant was restrained to join duty on 24.1.95, but there is nothing on record to show that the applicant had made attempts thereafter to join duty at any time. As a matter of fact, after he came to know that action was being taken against him for misappropriation of some amount, he avoided his presence in the office. The applicant has not placed on record any material which could suggest that he made representation after 24.1.95 to take him on duty.

9.2 It is also not irrelevant to state that the applicant had proceeded on leave without sanction. It was the misconduct of



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the applicant when he proceeded on leave without sanction. Thereafter he continued to remain absent for three years. His attempt to join duty on 24.1.95 does not disprove the charge of absence from duty for more than three years.

9.3 It is seen that in January 1995 some enquiry was being conducted against the applicant as there was some complaint against him that he had taken Indra Vikas Patra of the value of Rs. 25,000/-. A case has also been filed against the applicant in the District Consumer Forum Bhilwara by Smt. Sushila Devi for that amount and the matter is pending in the State Forum. In those circumstances, if the applicant was not allowed to join duty on 24.1.95, it cannot be said that the charge of remaining absent for more than 180 days was not proved against the applicant. The applicant does not say that he had tried to join duty any day after 24.01.1995. Rather evidence had been produced in the Inquiry that attempts were made to contact the applicant after 24.01.95, but he was not found.

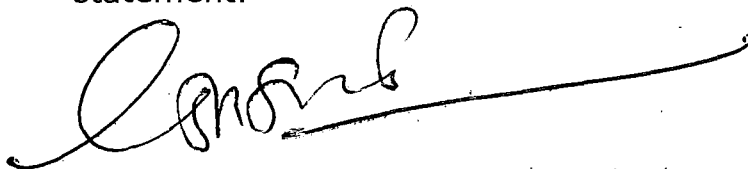



10 Coming to the second charge, it may be stated that admittedly, the amount was received by the applicant on 14.11.94. The depositor had submitted the pass book on 9.11.94. It was his duty to issue a receipt under Form SB 28 to the depositor, which he did not do and thus he contravened the provisions of Savings Bank Rules as stated in the charge sheet.

10.1 It is seen that the depositor had desired that the amount be paid to Kamal Kishore, his messenger. The said Kamal

Kishore has been examined in the inquiry. He has categorically stated that the applicant had not given him Rs. 3494.45. He has also stated that the applicant had not paid this amount to Mohammed Farooq Ansari (depositor) in his presence. Mohammed Farooq Ansari was examined as S.W.-III. In his statement he has stated that he had received Rs. 3494.45 through his elder brother Shri Abdul Razzak Niyaz Mohammed. Abdul Razzak has been examined as a defence witness. He has stated that a sum of Rs. 3494.45 was paid to him by Shri Kamal Koshore on 14.11.94 and that he had paid this amount to his brother Mohammed Farooq Ansari after three and a half months.

10.2 The facts which have emerged in the statement of two brothers clearly indicate that they have been won over by the applicant. When Kamal Kishore says that no amount was paid to him by the applicant, there was no occasion for him to make payment to Abdul Razzak on 14.11.1994. It also cannot be believed that Abdul Razzak, if he had got the amount on 14.11.1994, he would not inform his brother for the same for about three and half months. It may be that his brother lived at Sahada but it has been admitted by Abdul Razzak that his brother used to come to Sanganer once or twice in a month. The fact that Abdul Razzak did not tell his brother about the receipt of amount for about three and half months goes to show that he had not received the amount and he has given false statement.



10.3 Shri Mohammed Farooq Ansari in his statement has stated that he had filed a complaint against the applicant on 2.2.95 and by that date he had not received the amount. He has also stated that his brother did not inform him as to who had paid the amount to him.

10.4 In our opinion, it cannot be said that the enquiry officer on the basis of the evidence produced before him had erred in concluding that the applicant had not paid the amount to Shri Kamal Kishore, the messenger, though he had withdrawn the amount on 14.11.1994.

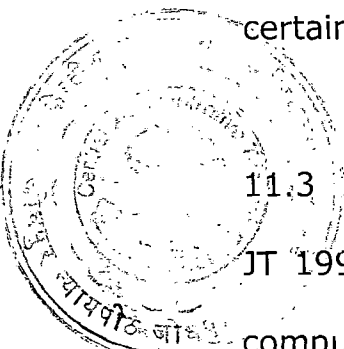
10.5 Even on assuming that two views is possible on the evidence produced in the disciplinary proceedings, this court cannot be justified in interfering with the finding of guilt recorded by the Disciplinary Authority and affirmed by the Appellate Authority since this Court is not an appellate court. It is not permissible to upset the findings on the ground of inadequacy or unreliability of evidence as has been held by the apex court in the cases cited above.

11. As to the quantum of penalty, it cannot be said to be harsh. The applicant not only neglected his duties by remaining absent for more than 180 days but also committed misappropriation of the amount by violating the provisions of savings bank account rules. This court cannot have sympathy towards such a person.

11.2 The case of **Kailash Nath Gupta V. Enquiry Officer (R.K.Rai), Allahabad Bank & Ors.** [JT 2003 (3) SC 322]



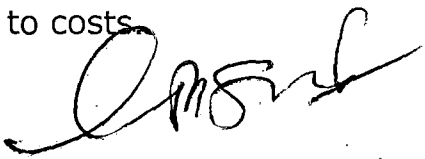
relied on by Mr. Mehta, in no way helps the applicant because in that case the appellant had committed only procedural irregularities. In the instant case, the misconduct proved is certainly of a grave nature.



11.3 In the case of **Ramachandra Raju vs. State of Orissa** [JT 1994 (5) S.C. 459] the question was whether the order of compulsory retirement was sustainable in law or not. That case in no way helps the applicant.

12 For the reasons stated above we find no merit in this Original Application and dismiss it. No order as to costs.


(**S.K. MALHOTRA**)
Adm. Member


(**G.L. GUPTA**)
Vice Chairman

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