

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.75/2004

Date of decision: 22-1-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Mr. V. K.Kapoor, Administrative Member.

Jan Mohd Khan, S/o Shri Fakir Chand, aged about 57 years, resident of Ho. No. 53, Indira Colony, Mandor Road, Jodhpur, last employed on the post of SPM Krishi Upaj Mandi Post Office, Mandor Road, Jodhpur.

: Applicant.

Rep. By Mr. Kamal Dave: Counsel for the applicant.

Versus

1. Union of India through the Secretary Ministry of Communication, Department of Posts, Govt. of India Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur. (Raj)
3. Senior superintendent of Post Offices, Jodhpur Division, Jodhpur.
4. Director of Postal Services, Rajasthan Western Region, Jodhpur.

: Respondents.

Rep. By Mr. M. Godara proxy counsel for
Mr. Vinit Mathur

: Counsel for the respondents.

ORDER

Per Mr. Justice S.M.M.Alam, Judicial Member.

Jan Mohd Khan, who was previously working on the post of Sub Post Master, Krishi Upaj Mandi, Mandore Road, Jodhpur, has preferred this O.A challenging the charge memo dated 25.01.1999 and order dated 29.11.1999, issued by the second respondent, through which a major penalty of removal from service was passed. He has also challenged the orders dated 04.8.2000 passed by the Appellate Authority as well as the order dated 23.07.2003 passed by

the Revisional Authority. The applicant has prayed for quashing and setting aside of the above mentioned orders of the respondents with all consequential benefits.

2. The brief facts of the case are that the applicant was served with a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 on 25.01.1999 alleging violation of Rule 3 and its sub clauses of CCS (Conduct) Rules, 1964. The charge sheet contains eight articles of charges alleging misappropriation of money by the applicant to the tune of Rs. 12,352/-. The applicant denied the charges and as such a disciplinary enquiry was initiated against him and after conclusion of the enquiry, the enquiry officer found that all the charges levelled against him were proved. On the basis of the inquiry officer's report, the Disciplinary Authority, after giving a show cause notice to the applicant imposed the major penalty of removal from service vide order dated 29.11.1999. The applicant preferred an appeal on 05.01.2000 to the Appellate Authority. The Appellate Authority vide his order dated 04.8.2000 rejected the appeal. Thereafter it appears that the applicant had preferred O.A. No.284/2000 before this Bench, of the Tribunal challenging the orders of Disciplinary Authority and Appellate Authority. This Bench vide its order dated 23.05.2003 disposed of the said O.A with the following directions:

" In view of the submissions made by learned counsel for both parties at the Bar, we dispose of the O.A with a direction that if the applicant prefers a Revision Petition against the order passed by the AA within a period of 15 days from the date of receipt of a copy of this order, the same shall be considered and decided by the competent Revisional Authority of the respondents by a speaking order within a period of two months from the receipt of the said revision petition. We further direct that while considering the revision petition, the same shall be decided on merits particularly with reference to the request of the applicant for conversion of the penalty into that of compulsory retirement."

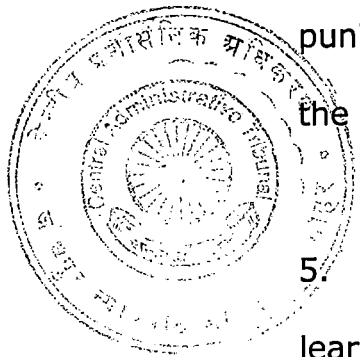


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3. After disposal of the above O.A and in view of the directions contained in the order passed in the said O.A, the applicant preferred a revision petition dated 09.6.2003 before the Chief Post Master General, Jaipur. But the revisional authority also rejected the revision petition by his order dated 23.7.2003 and gave some new grounds for rejecting the review petition. The said order of revisional authority is placed at Annex. A.4. Thereafter, the applicant preferred this O.A taking the plea that the revisional authority without applying his mind rejected the revision petition mechanically.

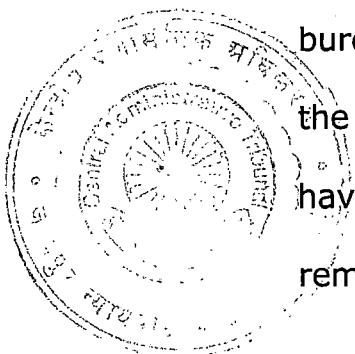
4. On receipt of notice, the respondents have filed a detailed reply contesting the O.A. The respondents have contended that disciplinary inquiry was conducted against the applicant in accordance with settled rules and the applicant fully participated in the disciplinary inquiry at all level and the inquiry officer on the basis of materials available on record had come to the conclusion that the applicant is guilty of the charges. It has been stated that there is no lacuna in conducting the disciplinary inquiry. It has been further stated in the reply that since the applicant was found guilty of misappropriation of government money, major penalty of removal was rightly imposed on him and the said punishment was just and proper considering the gravity of the charges and therefore the punishment imposed by the disciplinary authority was confirmed by the appellate authority as well as by the revisional authority.

5. During the course of hearing it has been submitted by the learned counsel of the respondents that in the previous O.A. No.



284/2000, filed by the applicant, ⁴the major punishment of removal of service of the applicant imposed by the disciplinary authority and confirmed by the appellate authority was the subject matter. This Tribunal did not quash or set aside the orders in the previous O.A filed by the applicant but only directed the applicant to prefer a review petition before the revisional authority for considering whether the order of removal could be converted into compulsory retirement. Therefore the learned counsel of the respondents submitted that at this stage the applicant again cannot raise the plea that the order of disciplinary authority as well as the appellate authority are bad in law as this controversy has been set at rest.

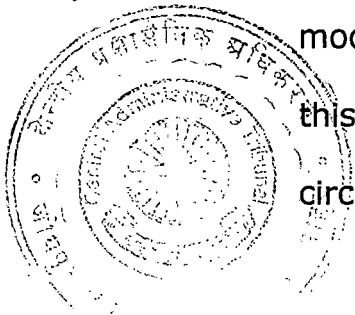
6. On the other hand the learned counsel of the applicant submitted that he does not want to argue the case on merit but he wants to restrict/limit his arguments on the quantum of punishment only. In support of this contention, his submission is that one Hemant Singh, who was postal assistant in the same post office was also charge sheeted along with the applicant for the same set of charges and an enquiry was initiated against him also. During the enquiry the said Hemant Singh admitted his guilt and gave a statement that he had misappropriated the amount in question. The learned counsel further submitted that unfortunately the said employee died before conclusion of the inquiry and therefore the burden was thrown upon the applicant. He submitted that in view of the admission of guilt by Hemant Singh at best, the applicant could have been awarded a minor penalty and not major penalty of removal. Therefore the learned counsel submitted that this Tribunal



should take a lenient view and the ends of justice would be met if the penalty of removal from service is converted into one of compulsory retirement.

7. In this regard the learned counsel for the respondents argued that this Court has no power to interfere with the quantum of punishment which had been awarded after due process of enquiry.

8. We have heard the argument advanced by both the counsel. It is true that ordinarily Court should not interfere with the quantum of punishment awarded by the Disciplinary Authority/Appellate Authority or by Revisional Authority. But this Tribunal can interfere with the quantum of punishment if the circumstances of the case so warrants. In support of our view we place reliance upon the following decisions of Apex court:- (i) **S.K. Giri vs Home Secretary, Ministry of Home Affairs and ors.** [JT 1995 (6)154]; (ii) **Subhash vs. The Divisional Controller, Maharashtra State Road Transport Corporation and Anr.** [2009 (6) SLR 41]; and also on the decision of the Hon'ble High Court of Madras in the case of **Management of Madurantakam Cooperative Sugar Mills Ltd. Vs. Presiding Officer II Additional Labour Court, Chennai and another** [2009 (6) SLR 43]. In all the above cases either the punishment was modified or the same was set aside. Thus we are of the view that this Tribunal is empowered to modify the punishment awarded if the circumstances of the case so warrants.



9. So far as this case is concerned, it is an admitted position that the applicant had served the postal department without any blemish career for a period of 33 years and for the first time he faced disciplinary inquiry. Therefore, while deciding the quantum of punishment, his unblemished service career should not be ignored. It is also not denied by the respondents that Hemant Singh was also charge sheeted for the misappropriation and he also admitted his guilt but before conclusion of the inquiry he died and so no action was taken against him.

10. In the above mentioned circumstances, we are of the view that the ends of justice would be met if the penalty of removal from service imposed on the applicant is substituted by compulsory retirement from the same date. The O.A is partly allowed and the penalty of removal of the applicant from service is modified into that of compulsory retirement.

11. In the facts and circumstances of this case, there will be no order as to costs.



[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member.

jsv

