

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

11/38

ORIGINAL APPLICATION NO. 18/2006

Date of Order: 10-8-2010

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

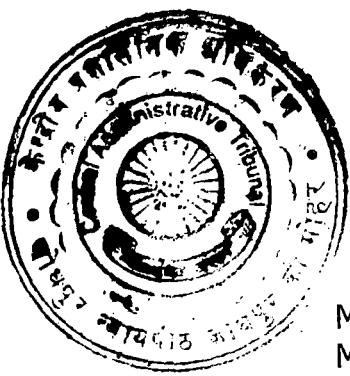
Bhagwati Prasad Sharma S/o Shri Chimna Raj Ji Sharma, aged 55 years, R/o Niwasi Village Bidasawer, Tehsil Sujangarh, District Churu. (Presently applicant is not in service) – Applicant was working on the post of G.D.S.M.C. at Gopalpura (Chhadwas).

.... Applicant

Mr. Vinay Jain, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Communication, Post and Telegraph Department, Sanchar Bhawan, New Delhi.
2. Superintendent Post Office, Churu Division, Churu.
3. Inspector (Post) Ratangarh.



.... Respondents.

Mr. Vikas Seoul, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

(Per Mr. V.K. Kapoor, Administrative Member)

Shri Bhagwati Prasad Sharma has filed present O.A. against orders of respondents dt. 05.4.2004 (ann A-1) and 23.8.2004 (ann A-2). The applicant has sought reliefs that are as follows:-

"It is therefore prayed that record of the case may kindly be called for and by appropriate order impugn order dated 05.04.2004 ANNEX. A-1 and impugn order dated 23.08.2004 ANNEX. A-2 may kindly be quashed and set aside with all consequential benefits. Any other order which this Hon'ble Court deems fit and proper in favour of the applicant may kindly be passed."

2. The factual matrix of the case is that the applicant was working under respondent dept. on the post of G.D.S.M.C.,

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Gopalpura (Chhadwas). He was issued charge-sheet under rule 10 of Gramin Dak Seva (Conduct & Employment) Rules, 2001, on 12.8.2003 (ann A-3). The allegations levelled against him were that he did not pay money order of Rs. 400/- to Smt. Ladkanwar, falsely put forged thumb impression on payment receipt and used money order amount for his personal use. In reply, the applicant has narrated that the said money was deposited by one Shri Umaidaram who embezzled this amount. The applicant's version is that he was wrongly implicated, Smt. Ladkanwar in evidence has not levelled any allegations against him for embezzling this money (ann A-5, A-6). The respondent-3 without going through evidence and submissions made by applicant, passed impugned order dt. 05.4.2004 under rule 9 of the Rules of 2001, by which penalty of removal was passed against him (ann A-1). The applicant's appeal against this order was rejected by appellate authority vide order dt. 23.8.2004 (ann A-2). The applicant has prayed to set aside impugned orders dt. 05.4.2004 (ann A-1) & 23.8.2004 (ann A-2) and give all consequential benefits.

3. The respondents in reply have stated that order of dismissal of applicant from service is passed on the basis of enquiry report in which charges levelled against him were proved; he was provided ample opportunity to defend his case. It is averred that charges levelled against applicant were as regards misappropriation or embezzlement of pension amount of Rs. 400/- which was not paid to Smt. Ladkanwar. The applicant got false thumb impression on acknowledgement receipt & kept Rs. 400/- with him. The charges levelled against applicant were got proved during enquiry in which

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Smt. Ladkanwar has stated that she did not receive the pension money order of Rs. 400/-. This amount was deposited by applicant later on 09.4.2003. The applicant has not alleged mala fide or bias on the part of departmental authorities. The respondents have prayed to dismiss the present O.A. with costs.

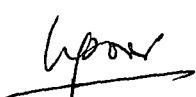
4 (a). Learned counsel for applicant in arguments has drawn attention in regard to memorandum of charges dt. 12.8.2003 (ann A-3) with details of charges. The applicant filed reply on 10.02.2004 in which he has raised fingers at Shri Chaina Ram, branch postmaster. He has contended that as Smt. Ladkanwar was not available, this pension money Rs. 400/- could not be delivered to her, it was deposited in the post office later. It is averred that Smt. Ladkanwar has not categorically levelled charges on applicant and refused to recognize thumb impression, besides she has drawn attention to the objectionable behaviour of Shri Chaina Ram, branch postmaster. As regards false / fabricated thumb impression, it was not authentically proved. The matter was enquired into; the respondent-3 agreed with enquiry report and removed applicant from service. The appeal against this order was also rejected. The order of removal was not passed on sound evidence but on conjectures & surmises. The applicant deposited the pension amount as Smt. Ladkanwar was not available. It is a conspiracy hatched against him & his representations were not heeded to. The charges levelled against him were not proved in enquiry report. In defence, applicant has placed reliance on Roop Singh Negi vs. Punjab National Bank & Ors.-(2009) 2 SCC 570.

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4 (b). The learned counsel for respondents in arguments has stated that the applicant did not deliver payment of money order to pensioner Smt. Ladkanwar, embezzled this amount of Rs. 400/- which he kept with him for his personal use. The statement of Smt Ladkanwar is clear that she did not receive this amount. The applicant deposited this amount later after there were complaints against him. The enquiry conducted by the Inquiry Officer is proper as per prescribed rules & procedure, sufficient opportunity was given to applicant. There is definite misconduct on applicant's part who falsely & fraudulently usurped this pension amount. Learned counsel for respondents have placed reliance on Employees in relation to the Management of West Bokaro Colliery of M/s TISCO Ltd. vs. The Concerned Workman, Ram Pravesh Singh - AIR 2008 SC 1162. The applicant worked with criminal intention, he never approached any authority or senior officers to clarify his position. He wants to complicate the position by raising the name of Shri Chaina Ram and Shri Ummaidaram so as to save himself from wrong acts committed & perpetuated by him.

5. The applicant was working on the post of G.D.S.M.C. at Gopalpura (Chhadwas). He went to deliver pension amount of Rs. 400/- to Smt. Ladkanwar at her residence. The applicant's version is that this amount was not delivered to her as she was not at her residence. Smt. Ladkanwar was definitely not in receipt of this amount, false/fabricated thumb impression was taken on payment receipt. A complaint as regards embezzlement was made against applicant, charges were framed against him. He was given memorandum of charges vide letter dt. 12.8.2003, besides



particulars, details of charges & list of witnesses. The charge was that the applicant was to deliver Rs. 400/- as pension amount to Smt. Ladkanwar d/o Shri Mob Singh Rajput, village Dunras Athuna, Post Gopalpura, he got false thumb impression on her name on 09.8.2002. The applicant is not said to have made payment of this amount of Rs. 400/- to her which is against rule 10 of Gramin Dak Seva (Conduct & Employment) Rules, 2001. The applicant gave reply to allegations levelled against him by letter dt. 10.02.2004, he denied the charges. A departmental enquiry was conducted against him in which the charges levelled against him were found to be proved. The Inquiry Officer took statement of Smt. Ladkanwar who stated that she did not get pension amount of June & July, 2002, she refused to accept that thumb impression on money order receipt was hers. She made certain allegations against Shri Chaina Ram and Shri Umaidaram but it was proved without doubt that she was not in receipt of this pension amount. The applicant was GDSMC of that particular area, village Dunras Athuna, Post Gopalpura, where Smt. Ladkanwar normally lived. Under these circumstances, the applicant is singularly responsible for the wrong acts of commission on his part. It is proved beyond doubt that applicant kept this amount of Rs. 400/- with him which he did not deliver this to the concerned lady.

6. After the above situation transpired on complaint, an enquiry was initiated against the applicant and charge-sheet under rule 10 of Gramin Dak Seva (Conduct & Employment) Rules, 2001 was issued. The Inquiry Officer took statement of witnesses, besides

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affording sufficient opportunity to the applicant to defend himself. There is practically no allegation of malafide and showing bias on the part of respondents. The applicant has accepted that he did not deliver this amount to Smt. Ladkanwar on 09.8.2002 but later on 09.4.2003 this amount was deposited by him under receipt book A.H./A.-336545, post office Chhadwas. This is a clear admission on applicant's part, he could not properly explain as to how he retained this amount for such a long period. If this pension could not be delivered to Smt. Ladkanwar, this amount was to be deposited in the concerned post office without any further delay. This is a basic allegation which is mainly responsible for holding the applicant guilty of this offence. Smt. Ladkanwar has referred to the names of Chaina Ram and Umaidaram but it is admitted that an area was allotted to him, he has accepted that he went to give this amount to her, due to non-availability, could not deliver this on 09.8.2002 to her. It is specifically clear that he kept this amount with him for a long time without any rhyme or reason. This is not proper to go into the tales narrated about Chaina Ram and Umaidaram just to divert court's attention from the focal point. The non-delivery of pension amount of Rs. 400/- to Smt. Ladkanwar itself is a solid proof that holds him guilty on the first sight and is reflective of clear mens rea on his part.

7. In the conduct of enquiry, sufficient time and opportunity were given to him and after hearing him, respondent-3 took action of his removal from service vide order dt. 05.4.2004 (ann A-1). His appeal against this order was rejected by the appellate authority (respondent-2) vide order dt. 23.8.2004 (ann A-2). The applicant

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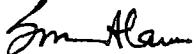
has relied on Roop Singh Negi vs. Punjab National Bank & Ors. (2009) 2 SCC 570 which relates to departmental enquiry, in which it is held that contents of documentary evidence has to be proved by examining witnesses, that confession itself was not sufficient – some evidence ought to have been brought on record. In the instant case, there is confession on applicant's part that he did not deliver the pension amount of Rs. 400/- to Smt. Ladkanwar, kept this amount sent by money order for quite some time for his personal use. Even on money order receipt, a thumb impression was taken which was not of Smt. Ladkanwar, which she deposed in her statement. There is strong documentary and oral evidence that point to the guilt of applicant and his confession all the more implicates him. The misconduct on his part is proved, had he would innocent, he would have gone to senior officers or even police to file a report against the guilty. The findings of Inquiry Officer are substantiated by evidence so as to prove this grave misconduct against him, as per Employees in relation to the Management of West Bokaro Colliery of M/s TISCO Ltd. vs. The Concerned Workman, Ram Pravesh Singh AIR 2008 SC 1162 quoted by the respondents. The findings of the Inquiry Officer are based on evidence; the applicant does not get solace from this, as findings are given after proper evidence. Mere refund of this amount after a long lapse would not lighten the gravity of applicant's offence and charges levelled against him. It is clearly indicative of the fact that he embezzled and misappropriated this amount for his own use. There are strong documentary and oral evidence against him, it cannot be accepted that such orders were passed on extraneous considerations. The Inquiry Officer gave his

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report / findings after going through the material on record and oral evidence; the procedure adopted in enquiry is quite clear and transparent. The disciplinary authority has acted in good faith after affording an opportunity of hearing to applicant, it is not to be accepted that the respondent- 2, 3 acted in the matter with a prejudiced mind. The applicant himself is responsible for misdeeds and acts of commission; the punishment imposed upon him is quite just and proper in view of the prevailing circumstances and nature of this case. The applicant has not alleged any bias or mala fide intent on the part of official respondents. Therefore, there is no need to intervene in any way in orders dt. 05.4.2004 (ann A-1) and 23.8.2004 (ann A-2) passed by the respondents.

8. In the light of deliberations made above, no interference is called in the orders dt. 05.4.2004 (ann A-1) and 23.8.2004 (ann A-2) passed by the respondents. Accordingly, the present O.A. is hereby dismissed with no order as to costs.


[V.K. Kapoor]
Administrative Member


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

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सेरी उपस्थिति ॥ २६ ॥

को ज्ञा-॥ १ ॥ अह लिख गय ।

अधिकारी
कोन्ट्रीप व तत्त्व के अधिकारी
जोधपुर न्यायालय, जोधपुर