

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.268/2007

Date of decision: 14-12-2010

**Hon'ble Mr. Justice S.M.M. Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar Administrative Member.**



Vishnu Kumar Meena S/o Shri Rajendra Kumar,
aged 37 years, Ex-GDS BPM,
Jolar, District Chittorgarh,
R/o village Bhuria Leva,
District Chittorgarh

.....Applicant

By Advocate Mr. Vijay Mehta.

Versus



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

..... Respondents.



**By Advocate Mr. M. Godara Proxy counsel for
Mr. Vinit Mathur**

ORDER

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

Applicant Vishnu Kumar Meena has filed this Original Application
seeking the following reliefs:

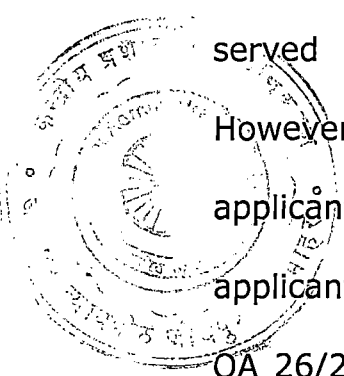
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"That the applicant prays that the impugned orders Ann.A/1 and Ann. A/2 may kindly be quashed and the punishment of removal of the applicant may kindly be quashed and the applicant be reinstated with full back wages and all consequential benefits. Any other order, as deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

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2. The brief facts of the case are as follows:

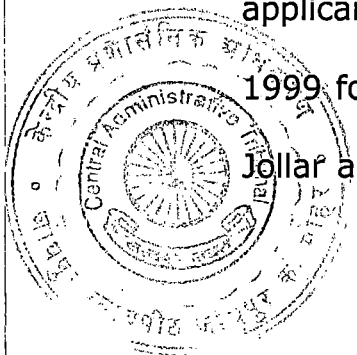
The applicant was employed as GDS BPM, Jolar within Chittorgarh District. He was on 'put off' duty and vide Memo dated 11.9.2000 a charge sheet was issued to him alleging that he failed to make payment of two money orders worth Rs. 200/- and Rs. 400/- respectively payable to Smt. Koyari wife of Harji Meena and Shri Roppa Son of Sri Dev Ji Megwal. On the basis of the Charge Sheet detailed enquiry was conducted and on enquiry it was held that the charge leveled against the applicant stood proved and accordingly order of his removal from service was passed by Disciplinary Authority. The applicant preferred appeal against the order of the Disciplinary Authority mentioning the fact that copy of the enquiry report was not served upon him and so he could not file appeal within time. However, the Appellate Authority rejected the appeal filed by the applicant on the ground of delay without considering the request of the applicant for condonation of delay. Thereafter the applicant preferred OA 26/2003 challenging the order of Disciplinary Authority as well as the Appellate Authority with regard to his dismissal. The said OA was disposed of vide order dated 3.2.2004 whereby this Tribunal quashed the order dated 10.1.03 passed by the Appellate Authority and directed the Appellate Authority to treat the appeal filed by the applicant in time and decide the same on merits as per Rule 27(2) of the CCS (CCA) Rules, 1965 after giving an opportunity of hearing to the applicant. In compliance with the direction of the Tribunal, the Appellate Authority after hearing the applicant quashed the enquiry proceedings and the order of punishment passed on the basis of the enquiry report and directed to hold a de-novo enquiry. Thereafter a



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de -novo enquiry was held and report^{-3✓} was submitted and on the basis of the enquiry report the Disciplinary Authority again imposed the penalty of removal of the applicant from service vide order dated 23.1.2006 (Annexure.AI). Thereafter the applicant filed an Appeal before the Respondent No.3 but the said authority also dismissed the appeal of the applicant vide order dated 3.10.06 (Annexure.A2). Thereafter the applicant again preferred this O.A. challenging the above orders and the said OA is now before us.

3. On filing of OA notices were issued to the respondents and in compliance of notice, respondents made appearance through lawyer and filed reply of the OA. The main contention of the learned Advocate of the respondents is that both the orders under challenge have been passed by the competent authority after due application of mind and due adherence to the provisions on the subject and so the orders under challenge are just and proper. It is stated that the procedure adopted by the respondents for conducting the enquiry and imposing the punishment is in accordance with law and the applicant has failed to point out any irregularity or lacuna in the procedure and so this Tribunal is not competent to interfere with the orders under challenge which are lawful. On factual aspect it has been stated that the Sub Divisional Inspector of Post Offices, Pratapgarh while carrying out the annual inspection of Jollar Branch office under Annuppura SO on 28.12.1999 verified payment of some money orders paid by the applicant and noticed that Pratapgarh MO No.2991-54 dated 16.12.1999 for Rs. 400/- payable to Shri Rupa S/o Deoji Megwal resident of Jollar and Pratapgarh MO No.2904/159 dated 7.12.1999 for Rs. 200/-

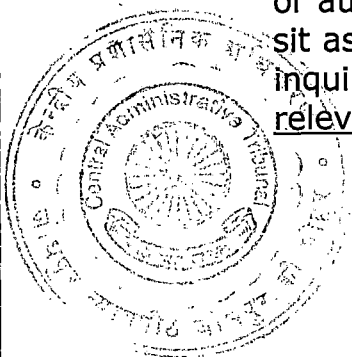


payable to Shri Koyari W/o Shri^u Harja Meena resident of Adavela (Jollar) have not been paid by the applicant to the actual payees and the applicant had misappropriated the said amount. During enquiry it was found that payment of money orders were shown on the basis of forged signatures of payees. It was also detected that the signature of the witness namely Tej Ram Meena S/o Sri Maliya Meena .was also found forged. It is stated that on the basis of the report of SDI, the Superintendent of Post offices, Chittorgarh initiated disciplinary action under Rule 8 of ED (Conduct and Service) Rules, 1964 and on enquiry the allegations stood proved and thereafter the Disciplinary Authority passed the order of removal of the applicant from service which stood confirmed by the Appellate Authority even after de-novo enquiry. On the basis of the above facts the respondents have prayed to dismiss this OA.

4. It is admitted fact that the scope of the Tribunal to interfere with the order of Disciplinary Authority/Appellate Authority which have been passed after departmental enquiry conducted as per law is very limited and in this regard we would like to place on record the law laid down by the Apex Court in several decisions:

5. In **1995 (1) SCC 216** the Apex Court at para 4 has held in the following manner:-

"The Administrative Tribunal set aside the order of dismissal solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charge against the respondent. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in re-appreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this court that the 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



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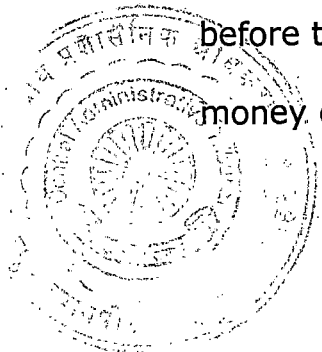
which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of this inquiring authority. At Para 10 of the decision the Apex Court quoting from the Judgment delivered in Union of **India Vs. Para Nanda** cited as (1989) 2 SCC 177 has held as under:-

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion of that of the authority.

6. In **(1995) 6 SCC 749** (Supra) the Apex Court has held as under:-

" the Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

7. The learned advocate of the applicant while arguing this case submitted that since the enquiry officer during de-novo enquiry failed to record the statement of Koyari as such there was no legal evidence before the enquiry officer to come to the conclusion that the amount of money order was not paid to Koyari. Likewise the statement of Rupa



is also very vague as such it is a ^{case} of no evidence and therefore, the finding of the enquiry officer is per verse. He has submitted that since the order of the Disciplinary Authority as well as the appellate authority were passed on the basis of perverse enquiry report as such this Tribunal has got ample jurisdiction to interfere with the orders of the respondents which are under challenge. However, the learned advocate of the applicant failed to point out any lacuna or irregularity in the procedure adopted by the enquiry officer in holding the enquiry. Moreover it is difficult to accept the argument of the leaned Advocate of the applicant that the enquiry report reveals that there was no evidence against the applicant for coming to the conclusion that the applicant has misappropriated the amount of money orders. We have already incorporated the law laid down by the Apex Court in the above paragraphs which clearly prohibit the Tribunal to interfere with the findings of the Disciplinary Authority as well as the Appellate Authority if there is no procedural irregularities and if the report of the enquiry officer is based on evidence.

8. Under the circumstances, we are of the view that the applicant has miserably failed to make out any case for interference in the orders under challenge ie., Annexure A1 and Annexure. A2. In the result we find no merit in the case and as such the same is hereby dismissed. However, there will be no order as to costs.


SUDHIR KUAMR
ADMINISTRATIVE MEMBER


JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

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