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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.42/2008

Dated this the 13th day of April, 2011

CORAM

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Krishan Kumar Sharma,
S/o Shri Parmanand Sharma by
Caste Brahmin aged 35 years
Resident of Village and Tehsil Kesarisinghpur,
District Sri Ganganagar.
(GTDS Messenger in the office of Sub Post Master,
Kesarisinghpur) ...Applicant

(By Advocate Mr. Yuvraj Sonel)

Vs.

1. The Union of India, through Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi.
2. The Chief Post Master General,
Rajasthan Circle, Jaipur.
3. The Post Master General,
Rajasthan West Zone, Jodhpur.
4. The Divisional Inspector of Post Offices,
Sriganganagar.

5. The Sub-Post Master,
Kesarisinghpur,
District Sriganagar.

... Respondents

(By Advocate Mr. Godara proxy counsel for Adv. Vinit Mathur)

ORDER

Hon'ble Mr. Justice S.M.M. Alam, Judicial Member

Shri Krishna Kumar Sharma who was working as GDS Messenger in the office of Sub Post Master, Kesarisinghpur has preferred this Original Application for grant of following reliefs:

- (i) That the impugned order dated 29.3.2003 Annexure.A.15 dated 7.11.2003 annexure.A.16, 24.3.2006 Annexure.A17.19.12.2006 Annexure.A20), 21.2.2007 Annexure.A1 may kindly be quashed and set aside and the respondents may kindly be directed to reinstate the applicant with all consequential benefits.
- (ii) That the impugned charge-sheet dated 17.9.2011 Annexure.A4 may kindly be quashed and set aside.
- (iii) That the respondents further be directed to award the benefit of promotion with the consequential benefits.
- (iv) The order D.G. P&T ND No.151/1/78-Disc.II dated 23 November 1978 may kindly be declared null and void and may kindly be set aside.
- (v) That any other direction or order may kindly be passed in favour of the applicant for which this Hon'ble Tribunal deems just and proper in the facts and circumstances of this case in the interest of justice.

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- (vi) That the cost of this application may kindly be awarded kin favour of the applicant.

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

The applicant was initially appointed on the post of E.D.Messenger vide order dated 9.11.1983. Thereafter vide order dated 24.6.1985 (Annexure.A1/A) he was regularized on the said post. During the entire service period the services of the applicant remained satisfactory and he discharged his duties with full zeal and dedication. But vide order dated 7.6.2001 (Annexure.A2) he was "put off duty". For about three months when the respondents did not communicate any allegation on which the applicant was ordered to be "put off duty", he filed a representation on 15.9.2001 (Annexure.A3) requesting to hand over the complaint if any against him. On receipt of representation, the respondents issued Charge Sheet (Annexure.A4) dated 17.9.2001 incorporating articles of charge and stating therein that on the basis of allegation the applicant has violated the provisions of Rule 21 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001. It is stated that prior to the issue of the said charge sheet a preliminary enquiry was conducted by R.A.Sharma, Inspector, Post Offices on the

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allegation leveled against the applicant. It is alleged that the applicant was served with the charge sheet but the respondents failed to supply the relevant documents along with the charge sheet. In reply to the charge sheet the applicant submitted his representation dated 3.10.2001. In his representation (reply to the charge sheet) he raised objection that although he was working as E.D.Messenger but the charge sheet relates to the working of Sub Post Master and submitted that he was doing the job of Sub Post Master as per the direction of Sub Post Master Mani Ram who was posted at that time at Kesarisinghpur Sub Post Office. He also sought giving opportunity for personal hearing. This reply/representation is annexed as Annexure.A5. It is further stated that vide application dated 25.2.2002 (Annexure.A7) the applicant demanded several documents in respect of the charges leveled against him but the respondents failed to supply the documents. Thereafter the applicant submitted several representations vide Annexures.A8, A9 and A10. However, the enquiry proceeded and the Enquiry Officer submitted his report on 27.1.2003 stating therein that Charge No.1, 3 and 4 have been proved. With regard to ChargeNo.2, the Enquiry Officer reported that the same has been partly proved. It is stated that the Enquiry officer proceeded

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arbitrarily and wrongly placed reliance upon the evidence which was never produced before him as he based his finding on the evidence collected during the course of preliminary enquiry. A copy of the enquiry report had been annexed as Annexure.A11. It is stated that the applicant was doing the duty of Sub Post Master as per the order dated 26.9. 2000 issued by Sub Post Master Mani Ram. He has produced a photo copy of the said order (Annexure.A12) before the Enquiry Officer but he refused to accept the same on the ground that original should be produced. It is stated that the applicant in his representation had categorically stated that the complainant Jasbir Singh had stated that he had not made any complaint against the applicant. Likewise Bhupendra Singh had also denied that he ever gave any statement against the applicant and that Smt. Rampyari had stated that she had deposited the amount with Shri Mani Ram, Sub Post Master who had returned the same on 1.5.2001 but these facts were not considered in the enquiry report and on the basis of the enquiry report, the disciplinary authority, namely, R.A.Sharma, Sub Divisional Post Master imposed the penalty of removal of the applicant from the service by order dated 29.3.2003 (Anexure.A15). Against the order of the disciplinary authority, the applicant preferred appeal

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but the appellate authority ie.,⁻⁶⁻Supdt. Of Post Offices without appreciating the material on record dismissed the appeal vide order dated 7.11.2003 (Annexure.A16). Thereafter the applicant preferred representation before the Post Master General but vide order dated 24.3.2006 (Annexure.A17) this was also rejected. Even thereafter the applicant filed several representations. Lastly the Superintendent of Post Offices, Sriganaganagar vide letter dated 21.2.2007 (Annexure.A1) informed the applicant to the effect that Post Master General, Jodhpur has directed to inform him (applicant) that his petition had already been rejected by PMG and so later representations are not maintainable. Being aggrieved by the said communication the applicant has preferred this original application.

3. On filing of the application, notices were issued to the respondents and in compliance of the notices, the respondents appeared through their lawyer and filed reply of the OA. As per the reply of the respondents their case in brief is that the present matter relates to the disciplinary proceedings which were initiated against the applicant in accordance with the rules and on charges having been proved against the applicant after due enquiry the punishment order was passed by the disciplinary authority in

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accordance with law and therefore, this Tribunal has no jurisdiction to interfere with the lawful orders passed by the competent authority. At best the Tribunal is competent to make judicial review of the process and not the decision. It has been stated that the procedure adopted by the departmental authorities has got neither any infirmity nor any illegality and the applicant has failed to point out any such infirmity and illegality in the process adopted during the enquiry. It has been stated that the Tribunal is not permitted to sit as an appellate authority for the purpose of reappreciation of the evidence and so on this ground alone the application is liable to be dismissed. As regards the factual aspect of the matter it is stated that the applicant was appointed on the post of E.D.Messenger on 9.11.1983. However on allegation for misappropriating the public money he was ordered to be "put off" duty and was issued with charge sheet under Rule 10 of GDS (Conduct) Rules on 17.9.2001 and thereafter enquiry was conducted by Enquiry officer Shri R.S.Shekhawat, who submitted his report and on the basis of the report the disciplinary authority, ie IPO, Srigananagar passed order of removal of the applicant from service vide order dated 29.3.2003. The applicant preferred appeal before the SSP, Srigananagar on 30.6.2003 which was

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dismissed vide order dated 7.11.2003. Then the applicant submitted petition to the Director of Postal Services which was also rejected vide order dated 24.3.2006. Thereafter the applicant filed this OA which should be dismissed as this Tribunal has got no jurisdiction to reappraise the evidence and findings arrived at in the disciplinary proceedings.

4. Mr. Yuvraj Sonal, learned advocate appeared for the applicant and Shri M. Godara, proxy counsel for Adv. Vinit Mathur, appeared for the respondents and argued the case.

5. It has been submitted by Shri Godara, learned counsel for the respondents that as per the reliefs sought by the applicant, the applicant mainly prayed for quashing and setting aside the order of "put off" duty, the entire disciplinary proceedings including the report submitted in the disciplinary proceedings, the order of the competent authority dated 29.3.2003 (Annexure.A15) passed on the basis of the Enquiry Report submitted in the disciplinary proceedings whereby the applicant was removed from service and subsequent order dated 7.11.2003, 25.3.2006, 29.12.2006 and 24.3.2006 whereby the appeal and several other petitions filed against the said order of removal were rejected by the appellate authority/higher competent authority. He submitted that the

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Hon'ble Apex Court in several of its decisions has held that the Tribunal cannot act as an appellate authority as it is not empowered to re-appreciate the evidence brought before the Enquiry Officer during the disciplinary enquiry. He submitted that the jurisdiction of the Tribunal is limited. To the judicial review of the process and not of the decision and so unless the applicant succeed in proving that there is incurable defect in the procedure adopted by the Enquiry Officer in the disciplinary proceedings, the Tribunal has got no power to interfere with the order of the disciplinary authority. He submitted that the enquiry report submitted in connection with this case is Annexure.A11 of the OA in which it is mentioned that that on behalf of the applicant Shri Kundan Singhji Shekhawat, PRI (P) Sriganganagar was appointed as defence assistant and on 11.2.2002 the charge was read over to the applicant who denied the charge and thereafter the Enquiry Officer proceeded further. He submitted that page 39 of the enquiry report (Annexure.11) (enquiry report is part of OA from page 34 to 46) will show that in support of the charge No.1 Shri Bhupendra Singh, consumer of telephone number 32960 and Shri Maniram Chauhan, SPM were examined before the Enquiry officer and several documents were exhibited. Likewise in support

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of second charge Shri Ranjit Singh, consumer of Telephone No. 33135. was examined. In addition to that several documents were also produced. He further submitted that page 43 will show that in support of third charge Shri Harnamsingh, Shri Jasvir Singh consumer of telephone Nos. 71050 and 71051 were examined and some documents were also brought on record. Likewise in support of 4th charge Smt. Rampyari and Shri Mani Ram, SPM were examined and several documents were brought on record. He submitted that the report of the Enquiry Officer will show that during the entire proceedings, the applicant participated along with his defence assistant and the enquiry report will further show that the Enquiry Officer after scrutinizing the evidence brought on record gave his finding which goes to establish that there is no procedural defect in conducting of disciplinary enquiry as such this Tribunal has no jurisdiction to interfere with the disciplinary proceedings. On the other hand the argument of the learned advocate of the applicant is that there is perversity in the enquiry report and the Apex Court in its several judgments has held that when the enquiry report is based on no evidence or the report is perverse, the Tribunal has got jurisdiction to interfere with the order passed in disciplinary proceedings.

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6. So first of all we would like to see whether in the light of the decision of the Apex Court given in several cases, this Tribunal has got power to interfere with the order passed by the competent authority in disciplinary proceedings if no procedural defect is found in the procedure adopted during enquiry. In order to decide the point first of all we would like to refer some decisions of the Apex Court which are relevant to decide the issue. In the case of *Transport Commissioner, Madras-5 Vs Thiru A.Radhakrishna Moorthy reported in JT 1994 (7) SC 744* the Apex Court has held at Para 7as under:

“So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into – more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence ie., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision making-process. For this reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.”

The next decision of the Apex Court has been reported in *JT: 1994(7) SC 492 (Government of Tamilnadu and another Vs.*

A.Rajapandian. Para 10 of the decision is relevant and as such the same is being quoted below:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matter 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 the 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 for that of the authority."

There are some other decisions also in which the Apex Court has taken similar views. These decisions are as follows:

JT 1997(3) SCC 717- Rai BareliKshetriya GraminBank Vs. Bhola Nath Singh and others and AIR 1999 SC 578 – Sanchalakshari and another Vs. Vijayakumar Raghuvirprasad Mehtra and another

7. From the decisions referred above, we are satisfied that the Apex Court has clearly laid down law that if the disciplinary authority in passing the order of penalty has not committed any procedural mistake and has given full opportunity to the applicant

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of being heard and has passed a speaking order, which prima facie does not appear perverse the Court or Tribunal has no jurisdiction to interfere with the order of the disciplinary authority/appellate authority. Applying the above principle in relation to this case, we find that the applicant was given full opportunity to participate in the disciplinary enquiry along with his defence assistant and accordingly he participated in the enquiry at all these stages. It further transpires that the disciplinary authority on the basis of the enquiry report passed speaking order and the copy of which was supplied to the applicant and he was given opportunity to file appeal and representation against the decision of the disciplinary authority and thereafter the appellate authority and other competent authority passed orders rejecting the prayer of the applicant. So we do not find any procedural defect in either conducting the disciplinary enquiry or passing the order by the disciplinary authority/appellate authority and so we are of the view that it is not within the jurisdiction of this Tribunal to interfere with the enquiry report/order passed by the disciplinary authority and appellate authority.

8. It has been submitted by the learned advocate of the applicant that the findings arrived at by the enquiry officer in his report is

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perverse and based on no evidence. His contention is that the enquiry officer has failed to consider this fact that the applicant was performing the duty of SPM as per the written order issued by the then SPM, Kesarisingpur namely Shri Maniram Choudahry and that before the enquiry officer the applicant had also produced the photo copy of the said order but the enquiry officer refused to take it on record and insisted to produce the original order of the SPM Mani Ram Choudhary. He submitted that had the enquiry officer taken into consideration the said order of the SPM Mani Ram he would have not found the applicant guilty of doing the work of SPM without any authority. We have perused the report of the Enquiry Officer at page 38 (Annexure.A.11). The Enquiry officer has dealt with this point and has stated that since the original of the said letter was not produced by the applicant and even Mani Ram Choudhary refused to accept that the above letter dated 26.2.2000 (photocopy) was in his handwriting. Thus the report of the enquiry officer shows that he had considered this point and refused to take the document in exhibit in the absence of original of the said document. We are of the view that the view taken by the enquiry officer was in accordance with the law and he has rightly refused to take into evidence the photocopy of the letter in the absence of original.

9. With regard to the charge that on 2.2.2001 the applicant received Rs.1771/- as per TRC Receipt No. 127 from the consumer of telephone No.32960 but he deposited only Rs. 177/- with the

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government exchequer we find that the enquiry officer has scrutinized the evidence of Bhupendra Singh in a rational manner on the basis of the documents/receipts issued in the pen of the applicant and thereafter he came to the conclusion that the applicant received Rs.1771/- against Receipt No.127 dated 2.2.2001 but he entered only Rs. 177/- with government exchequer and misappropriated the remaining amount of Rs.1594/-. Thus we are of the view that this finding of the enquiry officer cannot be said to be based on no evidence or that the same is perverse. Likewise the finding of the enquiry officer with regard to allegation that on 30.3.2001 the applicant had received Rs. 12000/- from Smt.Rampyari W/o Mohanlal for opening a new account but he did not enter the said amount in the SB Ledger. We find that from page 44 to 46 of Annexure.A.11 the enquiry officer has dealt with this point which shows that his finding is based upon the scrutiny of the evidence of Smt.Rampyari and evidence of Shri Maniram Choudhary, the then SPM, Kesarisingpur SPO and also on perusal of related documents. We further find that the enquiry officer has elaborately discussed this point and on the basis of the statement of Smt. Rampyari in her examination-in-chief that she had handed over Rs. 12000/- to the applicant for opening an account which is also supported by documentary evidence he gave his finding that the applicant had received Rs. 12000/- from Smt.Rampyari but did not deposit the same in government exchequer. Thus the finding of the enquiry

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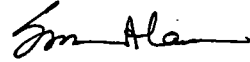
officer on this point can never be said to be perverse or based on no evidence. Thus we are of the opinion that the argument of the learned advocate of the applicant that the findings of the enquiry officer on the charge levelled against the applicant are based on no evidence and so the same are perverse is not correct and so the same cannot be accepted.

10. In the result, we do not find any merit in this application and as such the same is hereby dismissed. In the circumstances of the case, there will be no order as to costs.

Dated this the 13th day of April, 2011



SUDHIR KUMAR
ADMINISTRATIVE MEMBER



JUSTICE S.M.M.ALAM
JUDICIAL MEMBER

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