

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.190/2010

Date of decision: 20.05.2011

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar Administrative Member.**

Teja Ram S/o Shri Tara Ramji, aged about 41 years, R/o village & Post -7LC, Via Jaitsar, District Sriganganagar (Raj.). Last employed on the post of G.D.S. E.D.M.C. & adhoc working on the post of B.P.M. at 6 GB, Jaitsar, District Sriganganagar.

: Applicant.

Rep. By Mr. B. Khan: Counsel for the applicant.

Versus

1. Union of India through the Secretary to Government of India, Ministry of Post & Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Western Region, Jodhpur (Raj.).
3. Director, Postal Services, Rajasthan Western Region, Jodhpur (Raj.).
4. Superintendent of Post Office, Sriganganagar, District Sriganganagar (Raj.).

: Respondents.

Rep. By Mr. M. S. Godara Proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents.

ORDER

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

Applicant Teja Ram, who was working on the post of B.P.M. at Jaitsar Post Office within Sriganganagar district of Rajasthan, has preferred this Original Application claiming following relief:-

- "(i) That the impugned orders dated 21.12.2005 (Annexure-A/1), dated 28/31.05.2007 (Annexure-A/2), dated 03.12.2007 (Annexure-A/3) and dated 18.05.2009 (Annexure-A/4) may be declared illegal and the same may be quashed with all consequential benefits.
- (ii) That the respondents may further be directed to reinstate the applicant on the post of GDS EDMC/EDBPM with all consequential benefits.

- (iii) Any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) The cost may also be awarded to the applicant."

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

The applicant was served with memo dated 21.12.2005 (Annexure-A/1) on the allegation that he while working as GDS MC on temporary basis misappropriated government money by keeping short cash amounting to Rs.10,028/-, which was detected by the Inspector of Post Office during the course of inspection on 07.09.2005. It was further alleged that he retained excess cash with no liability beyond authorized limit between the periods from 26.08.2005 to 31.08.2005. Further case is that on receipt of charge Memo (Annexure-A/1), the applicant submitted reply explaining all the queries but the Disciplinary Authority without applying his mind issued order for holding Departmental Enquiry and accordingly one Shri S.N. Saini, Assistant Superintendent Post Office, Hanumangarh JN was appointed as Inquiry Officer, who conducted the enquiry and submitted his report dated 11.01.2007 (Annexure-A/5). Thereafter, the Disciplinary Authority issued show cause notice to the applicant and in compliance of show cause notice the applicant submitted his reply but vide order dated 28/31.05.2007, the Disciplinary Authority imposed penalty against the applicant for his dismissal from service. This order is Annexure-A/2, which is under challenge. It is further submitted that the applicant filed appeal as well as revision but the same were also rejected and then the applicant preferred this O.A.

13

3. On filing of the O.A, notices were issued to the respondents and in compliance to the notices, respondents appeared through lawyer and filed reply of the O.A. As per the reply of the respondents there is no infirmity in the impugned order as the order of dismissal of the applicant from service was passed by the competent authority after giving full opportunity to the applicant to participate in the departmental proceedings and accordingly, the applicant participated in the departmental proceeding and in his presence the enquiry was completed by the Inquiry Office, as such according to the settled principle of law this Court cannot interfere into the impugned orders and so a prayer has been made to dismiss the O.A.

4. Shri B.Khan, Advocate, appeared for the applicant whereas on behalf of the respondents Shri M.S. Godara, proxy counsel for Mr. Vinit Mathur, appeared and argued the case.

Smt

5. During the course of argument, Shri B. Khan, learned advocate of the applicant submitted that it is admitted case of the parties that within three days of inspection, the applicant had deposited the entire short amount found during the course of inspection. He submitted that as per Rule 11 of Postal Miscellaneous Rules; Chapter-I, which deals with the 'custody of cash by E.D.B.P.M.', all the E.D.B.P.Ms. are authorized under the Rule to make their own arrangement for safe custody of cash and

valuables on their own responsibility. He submitted that this Court in the case of **Dal Chand Balai vs. Union of India & Ors.** bearing O.A. No.83/2008 has referred the said Rule 11 of Postal Miscellaneous Rules; Chapter-I and relying upon the said Rule this Tribunal allowed the O.A. filed by the Dal Chand Balai, Ex. GDS, BPM. He submitted that the case of the applicant stands on similar footing as the applicant's pleas was that there was no provision of safe custody of cash and valuables in the post office premises and as such the applicant had kept the amount at his residence but due to the absence of his family members he could not produce the amount at the time of inspection but when his family members returned back, he deposited the amount immediately thereafter i.e. within three days of the inspection. He submitted that this fact establishes that the applicant had not committed misappropriation of government money, and the charge was baseless. The learned advocate appearing for the respondents refuted the argument of the applicant's lawyer.

6. We have perused the order dated 15.12.2010 passed in O.A. No.83/2008. At para 13 of the said judgment Rule 11 appearing at Chapter-I of Postal Miscellaneous Rules has been quoted. Since the said rule is also relevant in this case as such the same is being incorporated as hereunder:-

Note.- All E.D.B.P.Ms. whether their offices are provided with iron safes or not should make their own arrangements for the safe custody of cash and valuables on their own responsibility. They are at liberty to keep the cash and valuables wherever they like provided that they are available when required and that, when called for, they can be produced for inspection within the time required for going to and coming back from the place where the cash is kept for safe custody."

X8

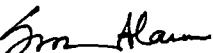
7. From perusal of the above provision, we are satisfied that E.D.B.P.M. is authorized under the Rule to make arrangement of safe custody of cash and valuables, if proper arrangement is not available within the post office premises, so we are of the view that in the absence of proper safe custody of cash in the post office premises the applicant was authorized under the Rule to keep the cash and valuables at a proper place where safety of cash and valuables are guaranteed. According to the submission of the applicant's lawyer since proper safe custody was not available at post office premises as such the applicant had kept the cash at his residence but unfortunately at the time of inspection due to absence of his family members he could not produce the same but within three days the applicant deposited the entire amount. We are of the view that the explanation given by the applicant's lawyer is acceptable in view of the fact that within three days, the applicant had deposited the entire amount. Under this background, we are of the view that the impugned order of dismissal of the applicant from services is not only unjust and improper rather it is very harsh and excessive. Thus, we are of the view that the applicant has got a good case for setting aside the order of dismissal from service.

[Handwritten signature]

8. In the result, the O.A. is allowed and the impugned order dated 28/31.05.2007 passed by the Disciplinary Authority of removal of the applicant from employment (Annexure-A/2), the

order dated 03.12.2007 passed by the Appellate Authority (Annexure-A/3) as well as the order dated 18.05.2009 passed by the Revisional Authority (Annexure-A/4) alongwith charge-memo (Annexure-A/1) are hereby set aside and the respondents are directed to reinstate the applicant in service with immediate effect. However, it is observed that the applicant will not be entitled for any back wages or any other consequential relief. No order as to costs.


[Sudhir Kumar]
Administrative Member


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