

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No.1449/1997

Present : Hon'ble Mr.B.V. Rao, Member(J)
Hon'ble Dr.A.R. Basu, Member(A)

Narayan Chandra Karmakar

-Vs-

- 1) Union of India service through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi – 1
- 2) Chief PMG, West Bengal Circle, Yogayog Bhawan, Calcutta – 12
- 3) The DPS, Calcutta Region, Calcutta – 12
- 4) SPOs., Barasat Dn., Barasat

For the applicant : Mr.S.K. Dutta, Counsel

For the respondents : Ms U. Sanyal, Counsel

Date of Order : 22.9.1994

ORDER

Mr.B.V. Rao, JM

The applicant, Shri Narayan Chandra Karmakar, joined service as Postal Assistant in Barasat Division on 15-10-1980. At the relevant point of time from 2-6-1992 to 10-3-1993 he was working as SPM, Palla Single Handed Sub Office in Bangaon Sub-Dn. He was issued with a charge-memo dated 22-2-94 containing two articles of Charge. The imputation of misconduct leveled against the applicant was that while he was functioning as SPM Palla S.O. he did not make entries of a deposit of Rs15000/- dated 23-2-93 in respect of SB A/C No.6661325 standing in the name of Shri Dhirendra Nath Biswas in the relevant records. Similarly, on 1-2-93 he failed to make entries in the relevant records in respect of another deposit of Rs12,500/- in respect of A/C No.6661367 standing in the name of one Shri Harasit Biswas. As it appears, the applicant made necessary entries in the Pass Books of the concerned depositors as also in the ledgers but in fact no amount was deposited in respect of the aforesaid accounts in the credit of S.O. Account on the relevant dates and thus he violated the relevant rule 98A of P&T



Man. Vol. VI read with Rule 4(1) of P&T Financial Hand Book Vol. I. In other words, the charge against the applicant was that on two occasions he although made entries in the Pass Books of the concerned depositors showing receipt of Rs15,000/- and Rs12,500/- respectively, but he did not deposit the amount in the Government Account and thus his integrity was doubtful.

2. A preliminary inquiry was held wherein the applicant as also the concerned depositors and other witnesses were examined and their statements were recorded. The applicant did not deny that he made entries in the Pass Books and also in the ledger, but contended that the amount was not in fact tendered by the concerned depositors. His case was that since he knew the depositors and when they produced the Pass Books, he made the entries without actually receiving the money. However, the said depositors promised to deposit the money afterwards. When the said amount was not deposited by the said depositors afterwards, he could not score through the entries in the pass books as the same were taken back by the concerned depositors. He also contended that this was a bonafide mistake on his part and that he acted on good faith that the concerned depositors would deposit the money in due course and in anticipation he made the entries.

3. A detailed inquiry was held by appointing an Enquiry Officer in which the applicant was given full opportunity to defend himself. However, during the course of inquiry, the depositors, i.e. Shri Dhirendra Nath Biswas did not turn up at all, while Shri Harasit Biswas though turned up but declined to be examined or cross examined. The Inquiry Officer on the basis of the records and the statement made by the applicant as also the depositors and other witnesses held that the charges were proved against the applicant and that the contention raised by the applicant that he acted bonafide was not believable. A copy of the Inquiry Report was supplied to the applicant who submitted a representation denying the charges. He also took the point that the main witnesses viz. the depositors were not produced in the inquiry or though produced, did not give any depositions and therefore he was denied the opportunities of cross examination and thus the principle of natural justice was violated and hence charges against him could not



have been said to be proved. However, the Disciplinary Authority by his final order dated 29-1-97 held that the charges against the applicant were proved and that he failed to maintain absolute integrity violating the relevant provisions of the Rules. Accordingly, he imposed the punishment of removal from service against the applicant with immediate effect. The applicant preferred an appeal and thereafter he approached this Tribunal challenging the removal order and praying for his reinstatement and payment of arrear salaries.

4. The respondents have contested the application. They have refuted the allegation of the applicant. It is stated therein that the applicant while working as SPM, Palla S.O. accepted the deposit on 23-2-93 tendered by Shri Dhirendra Nath Biswas along with the pay-in-slip duly filled in. Being satisfied regarding the entries in the pay-in-slip and the amount received tallying with the pay-in-slip, the applicant made entries in the pass book and authenticated the same with his initial and date-stamp impression of the relevant date of the office. The plea now advanced by the applicant that the amount was not actually tendered by the depositor and that the depositor only produced the pay-in-slip and the Pass Book and assured that he would deposit the money later on and on that basis the applicant made the entries in the Pass Book authenticated with his initial and date stamp impression of the office of the date and in other official records, cannot be accepted. As an experienced official he was well aware that the making of entries in the Pass Book along with seal and signature proves that the amount was actually deposited. It is unbelievable that a senior official like the applicant will put his signature and the office seal on the pass book without having received the money from the depositor as simply on the assurance of the depositor that the money will be deposited later on. Similarly, he did the same thing in respect of another account of Shri Harasit Biswas on 1-2-93. He himself made entries in the Pass Book with the date stamp and initial and the transaction was noted in the SB Ledger. However, the ledger entry was subsequently scored out. During the course of regular inquiry the applicant was given all opportunities and were also allowed to inspect all the listed documents. It is however admitted that the depositor Shri Dhirendra Nath Biswas could not appear in the hearing although summoned, but he sent

his representative to inform that he was unable to attend as he was seriously ill and bedridden. But in his written statement recorded that on 27-12-93 the said depositor clearly stated that he deposited Rs15000/- and only thereafter the applicant made entries in his pass book. The aforesaid statement was recorded in presence of Shri Ashok Dey, SDI(P) Bongaon, Shri Ajit Kr. Roy who were made witnesses in the inquiry. They also corroborated the fact of the depositor giving such statement. Similar is also the case in the case of another depositor Shri Harasit Biswas. Although he appeared on being summoned but he left the inquiry complaining that he could not withstand the examination and cross examination. However, on the basis of the statements made by the applicant himself during preliminary inquiry, which was also made a part of the listed documents and other evidence, the Inquiry Officer held that the charges against the applicant were proved. The applicant was given an opportunity to submit his representation against the Inquiry Report and on consideration of the same the Disciplinary Authority passed the order of punishment. It is also stated that the Appellate Authority also disposed the appeal on 25-11-97 (Annexure to the Supplementary Affidavit) and after recording a detailed order, the appeal of the applicant was turned down and the punishment imposed on the applicant was upheld. It is therefore, contended that the applicant cannot challenge the disciplinary proceeding and the punishment order as he was given full opportunity to defend himself and there was no irregularity in holding the inquiry nor the principle of natural justice was violated as alleged.

5. We have heard the learned counsel for the parties at length and perused the records produced.

6. Mr. Dutta, learned counsel for the applicant has mainly contended that that the concerned depositors/complainants who are the primary witnesses in the case were not produced in the inquiry, and therefore, the applicant could not get an opportunity to prove that the amount was not actually tendered. Therefore, the entire proceeding was vitiated and thus the punishment inflicted on such irregular and illegal enquiry cannot stand and has to be quashed and the applicant is entitled to be reinstated in service with full back salary and other consequential benefits.



7. The learned counsel for the respondents, on the other hand, has submitted that due opportunity was given to the applicant to defend his case. It is however true that Shri Dhirendra Nath Biswas, the depositor could not appear in the enquiry because of his illness, but he sent his representative and he also clearly stated in his written statement that he deposited Rs15000/- on proper pay-in-slip and that he gave such statement in presence of witnesses. It is the case of the respondents that even in his absence the charge can well be proved because the applicant also did not deny that he made entries in the Pass Book of Shri Biswas as token of receipt of Rs15000/- towards deposit in his SB Account. Similar is the case of the other depositor. Thus, according to the learned counsel for the respondents, here the charge can very well be proved on the basis of records and therefore failure to cross examine the depositors does not vitiate the enquiry.

8. In this case the charge against the applicant is that he made entries in the Pass Books of Depositors on two different dates as a token of receipt deposits in their respective SB Accounts maintained in his Post Office. But he subsequently denied of having actually received the money as according to him the money was not actually tendered and he made the entries on the assurance of the depositor that they would deposit the same in due course. In the enquiry the charge was proved because the applicant also could not deny that he did not himself made the entries. His plea that he did not accept the money actually, was not believed because whenever entries are made in the Pass Book and pay in slip are available, it is sufficiently proved that the concerned person has deposited the money, otherwise no employee could make such entries as the burden of giving adjustment of money would lie on him.

9. The only ground on which the applicant has challenged the punishment order is that the enquiry was vitiated as the complainants were not produced during the enquiry. He has relied on the Judgements of Hon'ble Supreme Court in the cases of **Hardwari Lal v. State of UP and Ors (1999(2) SCSLJ 360)**, **State Bank of Bikaner & Jaipur & Ors v. Shri Prabhu Dayal Grover (1995(2) SCSLJ 375)**, **Dr.J.N. Banavalikar v. Municipal Corporation of Delhi and Another (1995(2) SCSLJ 385)**, **Kuldeep Singh v. The Commissioner of Police (1999(1) SCSLJ 201)**, **Dwijen Chandra Sarkar v.**



Union of India (1999(1) SCSLJ 209), Union of India & Ors v. P. Thayagarajan (1999(1) SCSLJ 28) and Sanchalakshri & Anr v. Vijayakumar Raghuvirprasad & Anr (1999(1) SCSLJ 31). He also relied on the decision of Central Administrative Tribunal, Ahmedabad Bench in the case of Shri Rameshkumar Mansukhlal Bhatt v. Union of India and Ors (1998 (3) ATJ 457 and a decision of this Bench in the case of G. Ananda Rao v. Union of India and others in OA 666/1999.

10. We have gone through the judgements. It is true that complainant has to be produced in the enquiry so that the delinquent official could get a chance of cross examination. But the facts in Hardwari Lal's case or in Shri Rameshkumar Mansukhlal Bhatt case or in G. Ananda Rao case are distinguishable. In the instant case the charge against the applicant is not that of defalcation or misappropriation of Government money. The applicant has not denied in the preliminary or regular enquiry that that he made the entries in the Pass Book. However, he subsequently took the plea that the money was not actually deposited and he made the entries in good faith on the assurance of the depositors. This plea of the applicant was not rightly accepted by the authorities. Failure of the applicant to cross examine the said two depositors in our opinion has not vitiated the enquiry in the instant case as he did not deny that he made the entries in the Pass Book, which is the charge. Obviously, when such entries are made it gives rise to the natural inference that the money was received but not accounted for in the Government account. Be that as it may there is no allegation of misappropriation.

11. It is now well settled that the scope of interference in Departmental Proceedings by Court or Tribunal is very limited. The Court or Tribunal only can interfere when there is infraction of laid down procedure, when principle of natural justice is violated or if it is a case of no evidence. Although the learned counsel for the applicant has urged that since the depositors were not produced in the enquiry, the charge could not have been said to be proved. Hence, this is a case of no evidence. However, as we have observed above whether the depositors were produced or not in the enquiry it cannot be denied that the applicant had made the entries in his own hand under the seal of the office showing deposits of Rs15000/- and Rs12500/- on two different occasions.

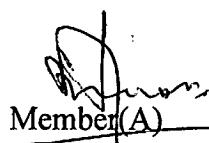


12. The Disciplinary Authority in his detailed order has considered all aspects of the matter and held that the charge against the applicant was proved and therefore he inflicted the punishment of removal of service. The Appellate Authority also considered the matter in great detail and upheld the punishment. In such circumstances there is little scope to interfere in the matter.

13. However, we noticed that the applicant has rendered service for about 17 years at the time when he was removed from service in the year 1997. As the charges against the applicant is not that of misappropriation, in our view the punishment of dismissal from service is disproportionate. Without doubt the conduct of the applicant gave rise to suspicion and the faith of the employer might have shaken on the applicant as he was detailed for dealing with public money. Therefore, the integrity of such a person should be above board. In any event, we are of the considered opinion that the Disciplinary Authority should reconsider the quantum of punishment inflicted on the applicant and pass appropriate lesser punishment in the facts and circumstances of the case.

14. In view of the above findings, we remand the case back to the Disciplinary Authority for reconsideration and issuing fresh punishment order with lesser magnitude instead of punishment of removal from service.

15. With the above direction the OA is disposed of. No order as to costs.



Member (A)



Member (J)