

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 299 /2005

This the 6th day of May, 2010

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)

Hon'ble Dr. A.K. Mishra, Member (A)

Laxmi Prasad Mishra aged about 57 years son of late Sri Ram Sewak Mishra resident of Village Balapur, P.O., P.S. Ganj, District- Gonda employed as Postal Assistant in the District Gonda.

Applicant

By Advocate: Sri R.S. Gupta

Versus

1. Union of India through the Secretary, Ministry of Communication and I.T., Department of Posts, Dak Bhawan, New Delhi-110001.
2. Member (Personnel), Postal Services Board, Dak Bhawan, New Delhi-110001.
3. P.M.G. Gorakhpur, Region Gorakhpur- 273008.
4. D.P..S. Gorakhpur Region, Gorakhpur-273008.
5. SPOs, Gonda Division, Gonda-271001.

Respondents

By Advocate: Sri D.P. Singh

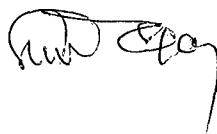
ORDER

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)

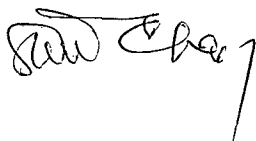
Under challenge in the instant O.A. are the orders passed by Disciplinary Authority and Appellate Authority regarding punishment of the applicant (Annexure No.A-1 to A-4). Further prayer has also been made for refund of Rs. 39,750/- wrongfully recovered on 20.6.97 with interest @ 18% per annum. Further prayer has also been made to treat the period of suspension as a consequence of quashing the order of punishment of minor penalty in major penalty.

2. The pleadings of the parties are summarized as follows:-

Sri Jagat Narain Lai was posted as Sub Post Master, Pure Shiva Dayal Ganj, District-Gonda during the year 1991-93. He was transferred on administrative ground and thereafter applicant was posted vice him. Due to that reason, he was annoyed with the applicant and he concocted the case against the applicant. One Suraj r/o Village Kanakpur, P.O. Pure Shiva Dayal Ganj (in short Ganj) purchased joint 'B' type K.V.Ps for Rs. 25,000/- in the

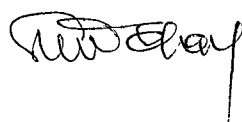


name of himself and his wife Smt. Meena Devi through agent Rama Shanker Gupta on 1.10.1991 from P.S. Pure Shiva Dayal Ganj. Maturity of these KVPs was on 10th July, 1996. Subsequently, Suraj made nomination in favour of Smt. Genda Devi and Smt. Kewla Devi, his daughter. He got nomination registered at Sl. No.22. in the register maintained regarding nomination. Suraj died on 13.1.1996. The co-holder of KVPs Smt. Meena Devi informed loss of the KVPs vide her application dated 18.1.96. Her L.T.I on application was attested by Shri Binda Prasad son of Sri Raj Kumar. Later on Meena Devi applied for issue of duplicate KVPs and produced Sri Binda Prasad as surety on indemnity bond which was witnessed by Sri Raj Kumar and Bramhadeen of her village. The papers were submitted at Gonda Head Post Office. The indemnity bond was accepted by SPO, Gonda and issue of duplication KVPs was sanctioned by the Post Master, Gonda. Duplicate KVPs were issued from the Head Post Office, Gonda and Smt. Meena co-holder got the KVPs discharged on 13.2.96 and received the payment. Sri Arun Kumar Tewari, Delivery Agent witnessed the payment. Afterwards, Jagat Narain Lal and Sri K.K. Maurya conspired against the applicant and obtained concocted complaint from Smt. Genda Devi and Smt. Kewla Devi. Both these ladies appeared as witnesses before the disciplinary authority and deposed about the facts and in the inquiry, they stated that they knew nothing about the KVPs. Affidavits were submitted by Smt. Meena Devi and Sri Arun Kumar about Meena Devi being the co-holder and having received payment on 13.2.96. Copies of the affidavits have been annexed as Kha-1, Kha-2, Kha-3, Kha-4 and Kha-5. The payment was made to the co-holder as per law as nominees had no claim pre-life time of co-holder of the KVPs, but in spite of these facts, SPOs, respondent No. 5, suspended the applicant and issued charge sheet (Annexure A-15). Inquiry officer submitted the inquiry report (Annexure A-16). Certain documents were also not produced during the inquiry. Certain witnesses were not produced by the Department during inquiry. Inquiry Officer exonerated the applicant from charges framed against him. Respondent No.5 issued a show cause notice dated 17th September 1998 on disagreement with



the inquiry officer's report . Annexure A-18 is the copy of show cause notice and Annexure A-19 is the reply of the notice. In the absence of any provision, respondent No.5 issued show cause notice twice. On 21st September, 1998, issued a show cause and explaining the reason of being disagreed with the inquiry officer's report merely by relying on the statement of witnesses recorded during the preliminary inquiry. After considering the explanation of the applicant, the SPOs, Gonda imposed punishment of reduction of pay by two stages for 2 years with recurring effect and no increment to be earned during this period (Annexure 4 is the order of punishment). Against the order of punishment, applicant preferred an appeal (Annexure A-22) to the respondents but surprisingly the appellate authority on receipt of appeal issued a show cause notice for enhancement of punishment. Duly reply was submitted but the punishment was enhanced to reduction of pay by 3 stages for 3 years without cumulative effect. Thereafter, the applicant preferred an appeal against the order of Appellate Authority enhancing the punishment to respondent No.3 but the Appellate authority rejected the appeal. Further the applicant was put under pressure to credit Rs. 39,750/- on 20.6.97 towards alleged loss by way of alleged non-payment of discharged value of the KVPs. Hence the applicant is entitled for refund of money. The applicant was also put under suspension from 16.6.97 to 7.10.98 but the minor punishment for reduction of pay by 3 stages for 3 years without cumulative effect was imposed whereas an employee can only be suspended if the punishment is to be awarded for major misconduct, hence the period of suspension must be treated as on duty for all purposes. That in view of law, the punishment was awarded by the disciplinary authority and appellate authority illegally.

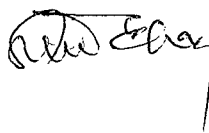
3. The respondents contested the case, filed the reply and denied the allegations of the applicant. It has further been alleged that one Suraj purchased the KVPs in a single name but the KVPs were fraudulently converted into the joint 'B' type by the applicant to cheat the department. The nomination in favour of Smt. Genda Devi and Smt. Kewla Devi was registered by Suraj himself. At the instance of the applicant's pressure for issue of duplicate



KVPs in the name of Smt. Meena Devi who was not entitled for the same, it was done fraudulently by Sri Binda Prasad and applicant. Smt. Meena Devi, so called wife of Suraj had denied in her statement during the preliminary inquiry for applying for issuing of duplicate KVPs. It was the applicant himself who encashed the KVPs fraudulently. The entry in the nomination register has been made by Sri Jagat Narain Lal, the then SPM on 1st October, 1991 and he had admitted specifically on 23rd June, 1998 that the KVPs were issued in the name of single holder Sri Suraj and he nominated his two daughters Smt. Genda Devi and Smt. Kewla Devi. This nomination was registered in the register on the date of issue of KVPs. That initially, the KVPs were issued in the single name of Suraj but afterwards the name of Smt. Meena Devi was inserted by the applicant with malafide intention. She had also admitted that upto the date of recording of statement, the amount of KVPs were not paid to her but subsequently she admitted that she received the amount of KVPs afterwards. Hence, it shows that the applicant himself paid the amount of KVPs to Smt. Meena Devi. It is wrong to allege that two show causes notices were issued to the applicant after receipt of report of inquiry officer. Earlier, only the copy of inquiry report was sent to the applicant and subsequently on 21st September, 1998, disagreement memo was issued. As the applicant himself discharged the KVPs fraudulently and he himself deposited the amount, he was found guilty of misconduct and question does not arise for refund of money. That the punishment was awarded of having committed grave misconduct by the applicant, the O.A. is liable to be dismissed.

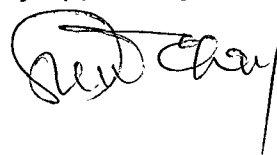
4. We have heard Sri R.S. Gupta, Advocate for the applicant and Sri D.P. Singh, Advocate for the respondents. We have also perused the entire material on record.

5. From the pleadings of the parties, it may be inferred that there are certain admitted and established facts by the parties. Undisputedly, Jagat Narain Lal remain posted as Sub-Post Master at Pure Shiva Dayal Ganj during the year 1991-93. On his transfer, he was replaced by the applicant. It is also an admitted fact that Suraj resident of Kanakpur, P.O. Pure Shiva Dayal Ganj



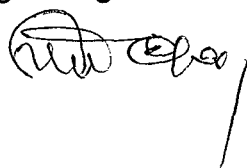
purchased KVPs for Rs. 25,000/- . Suraj died on 13.1.1996 but it is the case of the respondents that Suraj purchased the KVPs in his own individual name and not jointly in the name of himself and his wife. It is also an admitted fact that Suraj (deceased) nominated Smt. Genda Devi and Smt. Kewla Devi, his daughters as his nominees but the case of the applicant is that Suraj purchased the KVPs in the joint name of himself and his wife Meena Devi and as the KVPs were in joint name and co-holder is entitled to receive the amount of KVP. The nominees were entitled to receive the amount of KVPs in case the KVPs were in the single name of the purchaser, but it is the definite case of the applicant that as the KVPs were purchased in the joint names of Suraj himself and his wife and there was one survival co-owner Smt . Meena Devi hence after the death of her husband, she moved an application with the respondents for issue of duplicate KVP due to loss of original KVP and she also asserted that Suraj had died on 13.1.96. While moving an application for issue of duplicate KVPs, she also produced one Binda Prasad as surety on indemnity bond and Sri Raj Kumar and Bramhadeen stood as witnesses of the indemnity bond. The head post office of Gonda district ordered for issue of duplicate KVPs in the name of the applicant and thereafter the amount of the KVPs was discharged on 13.2.1996.

5. A complaint was received of Smt. Meena Devi as well as Genda Devi and Kewla Devi regarding non-receiving the amount of KVPs and thereafter an enquiry was ordered and during preliminary inquiry, the witnesses supported the factum of the complaint but later on in the regular inquiry witnesses turned hostile and they have not supported the contents of the complaint and consequently, the inquiry officer submitted the report to the disciplinary authority by exonerating the applicant from the charges. Under these circumstances , according to rules, there was an option for the disciplinary authority either to accept the report of the inquiry officer and pass an order for discharge of the delinquent official from the charges levelled against him and the second option was also available to the disciplinary authority of passing an order for fresh inquiry by appointing another officer.

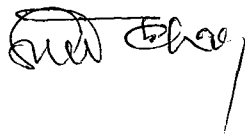


Thirdly, if the disciplinary authority is of the opinion that the inquiry officer has not submitted the correct report in spite of available material otherwise. Then on the basis of the same evidence, the disciplinary authority may serve a show cause notice to an employee of being disagreed with the inquiry officer's report and if the disciplinary authority had adopted any of the course, then it cannot be said that inquiry officer has acted illegally and beyond his jurisdiction. It was much emphasized by the learned counsel for the applicant that twice show cause notice was issued by the disciplinary authority, firstly the copy of the enquiry officer was sent to the applicant without calling any explanation, subsequently the respondent No. 5, disciplinary authority issued a show cause notice along with reasons of being disagreed with the report of the inquiry officer. Firstly, the copy of the report of inquiry officer was forwarded to the applicant on 17th September, 98, it will not be justified to call this letter of dispatch as the first show cause notice. It was only the notice of dated 21st September, 1998 in which the order was passed of being disagreed with the conclusion of the disciplinary authority. The respondents counsel also argued that it is wrong to allege that twice show cause notices were issued to the applicant after receipt of inquiry report, firstly on 17th September, 98 and secondly on 21st September, 1998. We are also of the opinion that only one show cause notice was issued on 21st September, 1998. In the subsequent notice, detailed reasons were mentioned of being disagreed with the report of the Inquiry Officer. We are also of the opinion that in issuing the show cause notice on the basis of available material of being disagreed with the report of the inquiry officer, the disciplinary authority respondent No.5, cannot be said to have acted beyond the jurisdiction in view of several decisions of the Hon'ble Supreme Court and High Court as well as Central Administrative Tribunal, we are of the confirmed opinion that the disciplinary authority have got every authority and every right to disagree with the report of the inquiry officer.

6. We have to peruse the material available before the inquiry officer which was received by the inquiry officer in order to ascertain whether disciplinary authority was justified for being disagreed according to law.

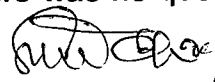


Although, it can be said that the evidence recorded in the preliminary inquiry cannot be relied if the witnesses resiled from their earlier statement in the regular inquiry, but it can be considered as a circumstance in which the witnesses resiled from earlier statement. It will be significant to mention that Jagat Narain Lai who was the Sub-Post Master at the relevant period in the year 1991-93 and specially on 1st October, 1991 fully supported the case of the complaint. He subsequently stated that on 1st October, 1991, Suraj r/o of Kanakpur Pure Shiva Dayal ganj purchased the KVPs of Rs. 25000/- in his own name and not in the joint names of the applicant and his wife and that he nominated his daughters Smt. Genda Devi and Smt. Kewla Devi in KVPs and this entry was made by him in the register at Sl. No. 22. It is not the case of the applicant that in this register, the KVP was shown to have been issued on the joint names of applicant and his wife Meena. In order to ascertain whether the KVPs were purchased by Suraj in his own name or jointly in his and his wife's names, KVPs in original might have been most important piece of evidence. None of the parties have produced the original KVPs and it is said that Suraj died on 13.1.1996 and after his death, his wife Smt. Meena Devi moved an application for issue of duplicate KVPs. This application was moved after 13.1.96 on 18.1.1996, and thereafter, the KVPs were discharged on 13.2.96 on receipt of the payment. It is not the case of the applicant that subsequently in the regular inquiry, Jagat Narain Lal has not supported his earlier statement hence there is consistent statement of Jagat Narain Lai to the effect that Suraj purchased the KVPs in his own individual name and not jointly as alleged by the applicant. There appears no reason to discard the statement of Jagat Narain Lal. Much has been argued by the learned counsel for the applicant that as Jagat Narain Lal was transferred from Pure Shiva Dayal Ganj Post Office on administrative ground and applicant was posted vice him and he has a grudge for the applicant and he was instrumental in getting a concocted complaint against the applicant. "A man may lie but not the circumstances." This is a known proverb of the law. Firstly, there can be no reason for Jagat Narain Lal for having any grudge for the applicant merely for the reasons that he



replaced him, secondly a Govt. servant is expected to maintain certain register in the discharge of their official duties and a Post Master is expected to maintain certain register and in this particular case, a nomination register was also maintained at the Post office and on 1st October, 1991. It was Jagat Narain Lai who was the Post Master of Pure Shiva Dayal Ganj Post Office, hence it was his duty to maintain nomination register. He specifically stated that he made entry in the nomination register and the applicant Suraj nominated his two daughters as his nominee and the KVPs were in his single name. He is expected to know the bare facts of the case. Inter-se rivalry if any in between the applicant and Sri Jagat Narain Lal was not in existence at that time in the year 1991. Hence he cannot be expected to fabricate or interpolate in this nomination register on 1st October, 1991. He maintained this register in his official discharge of duties. Moreover, KVPs were the most important piece of evidence and it is alleged that on loss of the KVPs, an application was moved by Smt. Meena Devi for issue of duplicate KVPs and after fulfilling all the formalities, duplicate KVPs were issued and immediately on 13.2.96, KVPs were discharged. All these circumstances also shows fabrication.

7. There was other material before the inquiry officer in the inquiry file and the inquiry officer placed no reliance on other existing circumstances whereas the respondent No. 5, disciplinary authority considered the circumstances seriously. During the preliminary inquiry, the statement of Meena Devi was recorded and in her statement, she had specifically stated that she had not received the amount of KVP. It means this statement shall be believed to the effect that upto the date of recording of her statement during preliminary inquiry, the amount of KVPs was not paid to her whereas according to the record, the amount of KVPs was paid on 13.2.96 and statement during preliminary inquiry was recorded after 13.2.96. The document shows that the KVPs were discharged and amount was paid to Meena Devi but when her statement was recorded in the regular inquiry, she stated that then she had received the amount of KVPs. It means that in between the amount of KVPs was paid to Meena Devi. But there was no question arise for

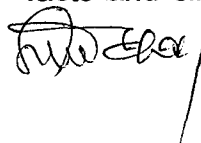


the post office or for the respondents of making any payment of KVPs upto that time. Hence, in these circumstances, to win over Smt. Meena Devi and other witnesses, the payment was made by the applicant himself. If the amount had already been paid on 13.2.96, then there was no possibility for the applicant to make the payment again to Smt. Meena Devi. Hence this was also an important circumstances which ought to have been considered by the inquiry officer irrespective of the fact that other witnesses have not supported the complaint but disciplinary authority was well within his right to consider the fact.

8. It is also material to mention that applicant himself alleged that under pressure from the respondents, he made the payment of Rs. 39,750/-. Prayer has also been made for refund of this amount. Respondents have specifically denied from putting any pressure on the applicant for making payment of this amount. It shows that the applicant in order to get favour from the inquiry officer himself deposited the amount of Rs. 39,750/- and this fact was also not taken into consideration by the inquiry officer while exonerating the applicant, whereas this fact was considered by the disciplinary authority otherwise, and we are also of the opinion that the disciplinary authority was justified in taking this fact into consideration against the applicant. There are other circumstances, which establishe the fraudulent act of the applicant. There are different inks of the thumb impression of Smt. Meena Devi on KVPs and also of the witnesses, which also shows fabrication.

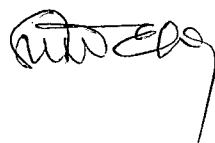
9. For the reasons enumerated above, irresistible inference may be drawn to the effect that there was overwhelming material available on the basis of which the disciplinary authority could reasonably disagree with the report of the inquiry officer and hence a show cause notice was served of his disagreement with the report of the inquiry officer by the disciplinary authority.

10. Although, the disciplinary authority has awarded a minor punishment for the serious misconduct of the applicant but it does not lie in the mouth of the applicant counsel to allege that as minor punishment was awarded, hence the applicant was wrongly put under suspension. The facts and circumstances of



the case establish that the applicant was guilty of grave misconduct. He fabricated the forged KVPs. He himself received the payment of the KVPs with the collusion of other persons. It is not at all expected from a public servant of fabricating a document and pocket the money of the KVPs on the basis of forged documents and we are of the opinion that it was an act of misconduct which deserved major punishment but the disciplinary authority as well as the appellate authority were kind enough to adopt a lenient view in the circumstances of the case. But, only punishment was awarded of firstly reduction of pay by two stages for two years without cumulative effect. Against this order of punishment, the applicant preferred an appeal to the respondent No. 4. We are also of the opinion that the appellate authority if not satisfied with the nature of the punishment of the disciplinary authority, may after service of a show cause notice enhance the punishment. It is an admitted fact that respondent no. 4 after receipt of the appeal of the applicant, issued a fresh show cause notice to the applicant to enhance the punishment and thereafter. On receipt of reply, the punishment was enhanced to reduction of pay by 3 stages for 3 years without cumulative effect. We cannot say that this punishment is too severe or there was any irregularity or it was beyond the scope of jurisdiction of the appellate authority, respondent No.4. Thereafter an appeal was preferred against the order of the appellate authority of enhancement of punishment to respondent No. 3, and the respondent No. 3 dismissed the appeal considering the grave misconduct committed by the applicant.

11. On the basis of above discussion, we arrived at the conclusion that there was overwhelming evidence as well as circumstances to establish the gross misconduct committed by the applicant in discharge of his official duties as Post Master. Suraj on 1st October, 1991 purchased KVPs to the tune of Rs. 25,000/- in his own name and nominated his two daughters as nominee but the applicant fraudulently managed to move an application for issue of duplicate KVPs after the death of Suraj and after issue of duplicate KVPs, the applicant himself received the payment paid to the bogus person. There



was the definite statement of Jagat Narain Lal , the then Sub Post Master, that Suraj purchased the KVPs in his single name and nominated his two daughters. It was the applicant who got fabrication to the effect that he inserted the name of Smt. Meena Devi as the co-holder of the KVPs and payment was received fraudulently. The act of the applicant is unbecoming of a Govt. employee. The applicant is prima facie guilty of misconduct and disciplinary authority has rightly awarded the punishment. There appears no justification to quash or set aside the orders of punishment passed by the disciplinary authority or the order of enhancement passed by the appellate authority in the appeal. The applicant is not entitled to any relief and we are also of the opinion that the punishment awarded is too lenient in comparison to gravity of misconduct committed by the applicant. The O.A. is liable to be dismissed.

12. O.A. is dismissed. No order as to costs.


(Dr. A.K. Mishra)
Member (A)


(Justice Shiv Charan Sharma)
Member (J)

HLS/-