

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 366/2008

This the 9th day of June, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)

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

Krishna Mahesh Shukla aged about 52 years son of Sri Brij Bhushan Shukla r/o Quarter No. Type II, 40 Rajaji Puram, Lucknow Ex-Postman, Gomti Nagar Post Office, Lucknow.

Applicant.

By Advocate: Sri R.S. Gupta

Versus

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Director Postal Services (HQ), O/o Chief Post Master General, U.P., Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.
4. A.S.P.Os (South), East Sub Division, Lucknow.

Respondents.

By Advocate: Sri S.P. Singh

ORDER

By Hon'ble Mr. A.K. Mishra, Member (A)

The applicant has challenged the order of dismissal from service passed by respondent No.3 on 26.10.2007 and its confirmation by the Appellate Authority in its order dated 22.9.2008.

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

The applicant was working as a Postman, when a disciplinary proceeding was initiated against him under Rule 14(2) of the CCS (CCA) Rules, 1965 by issue of a charge sheet dated 29.5.95. The allegations in the charge sheet were that the applicant had misappropriated Rs. 500/- under money order No. 3584 dated 3.3.94 meant for S.T.A.A Kumar, Rs.300/- under money order No. 3260 dated 17.3.94 meant for Smt. Swarnlata, Rs. 1000/- under money order no. 1493 dated 29.4.94 meant for Smt. Radha Devi. On denial of charges, a regular inquiry was held. Originally Sri R.S. Khusro was appointed as Inquiry Officer, but he could not complete the inquiry; as a result, Sri S.A. Ansari was appointed for the purpose. Sri Ansari completed the inquiry and submitted his inquiry report (Annexure A-5). Sri Answari

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found that the charge No.1 was not established as the payee did not turn up even in spite of many notices and there was no evidence to hold him guilty of the charge. However, he found that allegations No. 2 and 3 had been established against the applicant.

3. The learned counsel for the applicant has taken the legal plea that both the inquiry officers were retired officers and were not competent to hold the inquiry. He not only relied on the case of Vijay Bhatnagar Vs. Union of India and others reported at ATJ 2005(3) 40, decided on 2.6.2005 by Guwahati Bench of this Tribunal but went on to allege that both the inquiry officers were not competent to hold the inquiry even in terms of the approvals granted by the respondent authorities. According to him, retention of Sri R.S. Khusro in the panel of inquiry officers was approved only for a period of 3 years vide order dated 28.2.91 by the Chief Post Master General, U.P. Circle, Lucknw (Ann. A-9). His tenure ended on 28.2.94 but he carried on the inquiry from the date of his appointment in 1996 when he was no longer in the panel approved by the competent authority for the purpose of engagement of inquiry officer.

4. In any case, Sri Khusro could not compete the inquiry but it was taken up from the incomplete stage by Sri S.A. Ansari, who was appointed as inquiry officer on 31.7.2001 again for a period of 3 years or upto the age of 65 years which ever was earlier, vide order dated 24.6.2004. Sri S.A. Ansari, whose date of birth was 1.8.41 was completing 65 years of age on 31st July 2006. Beyond this period, he has no legal authority to hold the inquiry. In spite of such infirmity, he completed the inquiry after this date and submitted his report on 4.6.2007.

5. The issue about validity of inquiry by a retired person is being considered by the full Bench of this Tribunal. In this case, it has been alleged that both the inquiry officers were not entitled to take up the inquiry in terms of the orders of approval of their empanelment by the competent authority.



6. The respondents authorities have not rebutted this statement. Prima facie, we find that the inquiry was conducted by incompetent officers even in terms of empanelment orders issued by the CPMG, U.P. Circle, Lucknow. In the circumstances, any punishment order inflicted on the applicant on the basis of findings of an inquiry made by an incompetent officer cannot be sustained. The applicant has also taken other grounds on merit which we are not discussing in view of our finding on the legal plea of the applicant.

7. As a result, the application is allowed on this ground alone with a liberty to the respondent authorities to appoint fresh inquiry officer and take up inquiry afresh. No costs.

A.K.Mishra 09/06/09
Dr. A.K.Mishra
Member (A)

M. Kanthaiah
(M. Kanthaiah)
Member (J) 09.06.2009

HLS/-