

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 179/92

Lucknow, this the 26<sup>th</sup> day of August, 94.

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. K. MUTHU KUMAR, A.M.

Dronacharya Misra aged about 33 years, son of  
Shri Ram Samujh Misra, Ex.EDSPM, Rupaidih,  
EDSO, Gonda, R/o Birpur Bhoj, Gonda.

Applicant

By Advocate Shri R.V. Tewari.

versus

Union of India through Secretary Ministry of  
Communication (Dept. of Posts), New Delhi  
and others.

Respondents.

By Advocate Dr. Dinesh Chandra.

O R D E R

(HON. MR. K. MUTHU KUMAR, A.M.)

The applicant in this case was working as Extra Departmental Sub Post Master in Rupaidih, EDSO, Gonda. Disciplinary proceedings were initiated against the applicant and the following charges were levelled:

(i) That Shri Dronacharya Misra remained absent from duty on 9th June, 84 in unauthorised manner without prior permission of the competent authority and thereby violated the provision of Rule 5 of the E.D.A. (Conduct and Service) Rules,

✓  
17/8

1964.

(ii) That Shri Dronacharya while functioning as EDSPM Rupaidih during the period from 6.8.82 to 8.6.84 made fraudulent withdrawals of Rs 2400/- and Rs 1768 on 23rd of June, 84 and 30th of January, 85 respectively in the Five year T.D account No. 7000011 and he misappropriated the above amounts temporarily and returned them to the depositors subsequently on 9th June, 1994. Although these withdrawals were sanctioned by the head office on the date date, their payment was shown to have been effected from different dates. There was also similar fraudulent withdrawals of Rs 500/- from another account No. 6000047 on 21.2.83 alongwith two amounts of Rs 489.35 and Rs 409.35 on 21.2.83 and 6.8.82 respectively from five year account No. 7000050.

2. Enquiry was held into these charges and the enquiry officer held that while the charge relating to unauthorised absence was proved, the other charge relating to fraudulent withdrawals was not proved. However, S.P.O. Gonda, i.e. the disciplinary authority disagreed with the findings of the enquiry officer relating to charge No. 2 and imposed penalty of removal from service on the applicant.

3. The applicant's appeal to the Director of Postal Services was also rejected. His representation to the Chief Post Master General for review of the order was also rejected.



Aggrieved by this order, the applicant has approached this Tribunal with the prayer that the impugned order of appointing authority, punishment memo, and impugned order of appellate authority as well as reviewing authority, should be quashed and a suitable direction should be issued to the respondents to pay the pay and allowances pertaining the period put off duty beyond 120 days prescribed by the rules.

4. In the averments made by the applicant it has been stated that he was not supplied with the copy of enquiry report and that the disciplinary authority had not applied his mind prior to the issue of the punishment order. Similarly, the appellate authority had also improperly rejected the appeal without full appreciation of facts of the case and did not apply his mind. The applicant has also alleged that the disciplinary proceedings were conducted in a malafide manner. The applicant has also averred in his petition that the proceedings in his case were initiated by Shri Mohd. Yamin, the then Superintendent of Post offices, Gonda Division. He was vested with the status of the disciplinary authority of the applicant. However, the disciplinary authority was changed after commencement of the disciplinary proceedings and the enquiry officer's report was transferred to Shri R.S. Singh, the successor disciplinary authority and Superintendent of Post offices Gonda, who has



imposed this punishment.

5. The applicant relies on the judgment by the Madras Bench of the Tribunal in G. Vishwanathan vs. Works Manager, Heavy Water Plant, Tuticorn (1989 (9) ATC, 837) to substantiate to the effect that the new disciplinary authority could not impose a penalty on the basis of enquiry ordered conducted by S.D.I, Gonda and the disciplinary proceedings were initiated by Shri Mohd. Yamin when he was disciplinary authority. The applicant has also cited certain cases in support of his contention that the disciplinary proceedings were conducted in a prejudicial manner and suffered due to non application of principles of natural justice and therefore, the acts of the disciplinary authority was arbitrary and deserves to be quashed.

6. The respondents in the Counter Affidavit have averred that the applicant was proceeded against departmentally for temporary of misappropriation / government money. At the sametime criminal case under sections 409 and 420 of I.P.C was also registered against him and the enquiry was conducted according to rules and procedure in terms of rule 8 of the E.D.A. Rules, 1964 which culminated in removal of applicant from service. The disciplinary authority disagreed with the findings of the enquiry officer, as according to the statement of depositors it was established that the applicant had misappropriated the amount of withdrawal on the date when it was taken out from government



account and the amount was later on paid to the depositors and there was thus a temporary misappropriation for the intervening period. The respondents have also averred that there was no instruction or requirement to supply the copy of <sup>the</sup> enquiry report to the delinquent employee when the punishment was imposed and the case was decided on merits, taking into account the charges, the relevant documents statements of depositors showing disagreement with the findings of the enquiry officer and only thereafter the punishment order was passed. They have also averred that during open enquiry under rule 8, procedure laid down was adopted and the statement of witnesses were recorded according to rules and without any prejudice. During the course of enquiry under rule 8 depositors of the Savings Bank accounts clearly stated that the amount was not paid to them on the alleged date of transaction and it was established beyond doubt that the applicant defrauded the amount during the period of actual withdrawal ~~from~~ of the government account and the date when money was subsequently paid to the account holders. The respondents have also contended that the disciplinary proceedings were initiated by the Superintendent of Post Offices who was competent authority in this case and it was <sup>the</sup> competent authority who passed the order of punishment and therefore, the contention of the petitioner in regard to the competence of the successor, Superintendent of Post Offices for imposing punishment was not

tenable. It was further averred that during the enquiry, the statement of witnesses were duly read over to the applicant and brought on record and the enquiry report was based on statement of witnesses, list of documents etc. and the applicant was given adequate opportunity to defend and prove his innocence after prosecution evidence was closed. He also submitted his defence statement ~~and xxproposed~~ ~~through xxthe xxdefence xxstatement~~ to the enquiry officer and therefore, full opportunity was provided to the applicant.

7. The learned counsel for the applicant reiterated the averments made in the petition.

8. We have heared the learned counsel for the parties and perused the record in detail.

9. At the outset, we have to consider the contentions of the applicant regarding the non submission of the enquiry report to him and also incompetence of the disciplinary authority for imposing the penalty, in the light of the decision cited by him. As far enquiry report is concerned, in terms of decision in Mohd. Ramzan Khan's case, the imposition of penalty can not be / <sup>invalidated</sup> on the ground of non supply of enquiry officer's report as the punishment order was issued on 29.9.88, <sup>in</sup> the light of the decision in Managing Director E.C.I.L., Hyderabad vs. V. Karunakar and others (J.T., 1993(6), S.C.l. <sup>the</sup> Regarding/other contention that the disciplinary authority was not competent and the enquiry proceedings ~~were~~ vitiated on the ground of change of disciplinary authority, we are of the opinion that the reliance of the applicant in G. Vishwanathan (supra) is

misplaced. In the above case the proceedings were held to be vitiated on the ground that the first respondent in the case was the disciplinary authority when he issued Memo of charges and when enquiry was in progress, he was no longer disciplinary authority while the enquiry officer furnished his report to the same respondent although he ceased to be the disciplinary authority, whereas in the instant case, the enquiry officer's report was submitted to the successor disciplinary authority who was competent and had passed the orders and therefore enquiry proceedings were not vitiated and the decision in the above case is not on all **fears** with the present case. Coming to the main contention of the applicant that the enquiry was conducted in a prejudicial manner and that he was not provided opportunity during the enquiry, we find that there is no substance in this contention as seen from the records and also the averments made in the counter affidavit. The disciplinary authority had rightly relied on the statement of depositors that they did not receive the money on the date of original withdrawal from their accounts but they were paid subsequently, <sup>which</sup> established the fact that there had been temporary misappropriation of funds by the applicant and therefore, the conclusion reached by the disciplinary authority cannot be held to be unjustified. In judicial review, the review is not an appeal from the decision but the review of the manner in which the decision is made. As

2/20

pointed out by Hon'ble Supreme Court in H.P. Gandhi Excise and Taxation Officer/Assessing authority, Karnal, and others. vs. Gopinath and Sons and others (1992, Supplement (2) SCC, 312) "purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that authority after according fair treatment reaches on a matter which it authorised by law to decide a conclusion which is correct in the eyes of the court. It will be erroneous to think that the court sits in judgment not only on correctness of the decision making process but also on the correctness of the decision itself."

8. In the light of the foregoing discussion, and the averments made in this case, we find there is no ground to interfere with the impugned order of punishment on the applicant and the orders on appeal and review petition. We find that there is no merit in the application and the application is accordingly dismissed. There will be no order as to costs.

  
ADMN. MEMBER

  
VICE CHAIRMAN.

LUCKNOW: Dated; 26<sup>th</sup> August 94