

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 819/99

Date of Decision: 05/02/2002

B.V. Male.

Applicant(s)

Shri R.C. Kotiankar.

Advocate for Applicants

Versus

Union of India & 3 Ors.

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM

HON'BLE SHRI S.L. JAIN.
HON'BLE SMT. SHANTA SHAstry

.. MEMBER (J)
.. MEMBER (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library

Shanta F
(Smt. Shanta Shastry)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 819/99

THIS 05TH DAY OF ~~February~~, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

B.V. Male,
(Ex EDBPM, Salunkwadi B.O.),
At & Post Salunkwadi,
Via: Ghatnandur,
Dist. Beed Pin 431 519. ... Applicant

By Advocate Shri R.C. Kotiankar.

Versus

1. Union of India,
through Secretary to Govt.
of India, Dept. of Posts,
New Delhi.
2. Postmaster General,
Aurangabad Region,
Aurangabad-431 002.
3. Director, Posta Services,
Aurangabad Region,
Aurangabad-431 002.
4. Superintendent of Post Offices,
Beed Division,
Dist. Beed 431 122. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicant in this case is aggrieved by the order of removal from service passed on 17.6.1998 by the Disciplinary Authority i.e. Superintendent of Post

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Offices and the order rejecting the appeal dated 25.01.1999 by the Director of Postal Services, Aurangabad.

2. The applicant was employed as Branch Post Master Salunkwadi Branch office during 1982-99. On 09.01.1995 a charge sheet was served on him with the following articles of charges:

"ARTICLE-I: That the said Shri B.V. Male, while working as EDBPM Salunkwadi B.O. w.e.f. 6.4.94 to 21.4.94 failed to effect the payment of Ambajogai S.O. MO No.2874/958 dated 30.3.1994 for Rs.200/- and MO No.2874/1211 dated 30.3.94 for Rs.300/- to the concerned payees, thereby violated the provisions of Rule 106 and 107 of Rules for Branch Offices (Seventh Edition) and Rule 17 of EDAS (Conduct & Service) Rules 1964.

ARTICLE-II: That the said Shri B.V. Male, while working as EDBPM Salunkwadi B.O. w.e.f. 1.2.94 to 28.2.94 failed to file & keep the B.O. slips for the period 1.2.94 to 23.2.94 in the B.O., thereby violated the provisions of Rule 126 of Rules for Branch offices (Seventh Edition) and Rule-17 of EDA's (Conduct & Services) Rules, 1964."

3. On denying the charges, an enquiry officer Shri G.V. Bagale, Assistant Superintendent of Post Offices (HQ), Beed Division was appointed. Shri H.R. Mandve was appointed as Presenting Officer. The enquiry was held between 16.9.95 and 23.11.96 and the enquiry report was given to the applicant on 20.01.97. He submitted

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the same to the Disciplinary Authority on 10.02.97. The Disciplinary Authority imposed punishment of removal from service vide memo dated 27.3.97. He preferred an appeal to the Postmaster General, Aurangabad Division on 02.7.97. The Appellate Authority remanded the case back to the Disciplinary Authority on the ground that he had not commented on the representation of the applicant dated 10.2.97 on the report of the enquiry officer. He also observed that the Disciplinary Authority should have enquired into the genuineness of the submission and directed *denovo* proceedings from the stage of consideration of the representation given by the applicant. The Disciplinary Authority after giving due consideration to the representation of the applicant dated 10.2.97 passed the impugned order dated 17.6.98 imposing the same punishment i.e. removal from service. The applicant again preferred an appeal on 14.8.98 which was rejected by the memo dated 25.01.99.

4. It is the contention of the applicant that he had pointed out several irregularities in the inquiry proceedings in his written brief dated 08.1.97 given to the enquiry officer. The enquiry officer has held the charges as proved without considering those points. No evidence nor violation of any departmental rules has been brought out in the proceedings.

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According to the applicant, the departmental enquiry proceedings were held with the pre-determined intention to make the applicant a scape-goat. PW-1 and PW-2 i.e. payees had made the complaint after a period of 33 days and 42 days respectively. This is amply proved that the complainants have done so solely with the motive of falsely implicating the applicant. The complaints were not bonafide. Also the statement of PW-1 could not be relied as she failed to corroborate the statement that the applicant had demanded Rs.10/- as bribe in the presence of witnesses by stating that she did not remember the names of the witnesses whose statements were obtained in the house of Balasaheb Gaikwad by the mail overseer, whereas the mail overseer deposed that he had obtained the statement at the residence of PW-1. The applicant has further stated that he cannot be held responsible for the misplacement of slips. The mail overseer had admitted during the enquiry that he had verified the B.O. slips for the period upto 22.2.94 on 22.2.94 and had not found anything suspicious. The applicant has further alleged that the prosecution failed to examine the witnesses, who had attested the prosecution witness at the time of recording the statement during investigation, so also to bring on record vital departmental documents/records namely B.O.'s daily account, B.O.'s summary, B.O. slips B.O.'s SAC's report etc.

5. The applicant also had contended that the prosecution brief and the enquiry report contain more emphasis on preliminary investigation than what transpired during the enquiry proceedings. Thus, there are serious infirmities in the conduct of the enquiry violating principles of natural justice. The enquiry officer has not discussed these infirmities pointed out in the written brief. There is no discussion on the unexplained delay of 33 days and 42 days in lodging of the complaints, therefore, the enquiry is vitiated. According to the applicant, even the Disciplinary Authority failed to apply his mind despite the direction given by the Appellate Authority for *denovo* consideration of the representation. The applicant has also raised the technical objection that the appointment of Shri Bagale as enquiry officer was in blatant violation of the rules in that enquiry officer has to belong to different division. The enquiry officer who was associated with the enquiry during the earlier stage had also expressed his opinion on the merits of the case. His appointment caused prejudice to the applicant. Finally, according to the applicant, the punishment was manifestly disproportionate to the alleged misconduct.

6. The respondents have defended their action by stating that the enquiry was conducted after giving full

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opportunity to the applicant at every stage. The applicant had not raised objection regarding bias by the enquiry officer till the enquiry was completed. The Disciplinary Authority has carefully gone through the representation given by the applicant and has passed the proper speaking order vide memo dated 17.6.98. He has dealt with the representation of the applicant in para 5 of the order, thus rebutting the points made out by the applicant in his representation. The Appellate Authority also has passed speaking order on 25.1.99 and has agreed with the order of the Disciplinary Authority. According to the Appellate Authority, both the payees were available during the period from 06.4.94 to 21.4.94 at their village Chotewadi. MO should have been issued for payment to Shri Jagdale, EDDA if the applicant had not found the payees. The period of keeping the amounts is only seven days from the date of receipt of the MO or from the date of serving the intimation on arrival of MO to the payees. The BO slip is an important document required to be preserved for three years. The applicant had failed to establish that the payees were not available during the period 06.4.94 to 21.4.94. He was given ample opportunity to cross examine. Similarly he could not also produce the BO slips. Since there is ample evidence, the order of removal from service of the applicant cannot be faulted.

7. We have carefully considered the arguments advanced by both the parties and have perused the relevant record including the enquiry report as well as the orders of the Disciplinary Authority and the Appellate Authority. In our considered view, the enquiry was conducted in a fair manner and the applicant was given every opportunity to defend himself. He was allowed to cross examine. No doubt the enquiry officer has made reference to statements recorded of witnesses

reference is to be excluded. Even after excluding such statement there is ample material on record to arrive at a finding of guilt of the applicant. The applicant has joined the issue of the payees being available during the period 6.4.94 to 21.4.94. The applicant has joined the same. The applicant has joined the payees were not available during the period 06.4.94 to 21.4.94. There is enough record to show that the payees were present during the relevant period in the village concerned. The points raised by the applicant in his statement dated 08.01.97 have been replied to by the enquiry officer in para 5 of his report as already pointed out by the Disciplinary Authority. As the Disciplinary Authority and the Appellate Authority have both passed speaking reasoned orders and there was enough evidences to show the charges as proved, we do not consider it a fit case to interfere with.

8. The applicant has also raised the question of disproportionate punishment. It is for the Appellate Authority to consider. It is not for the Tribunals to enhance or reduce the punishment, unless it shocks the conscious of the Tribunal. We do not find it so.

9. In the facts and circumstances of the case, the OA is dismissed. No costs.

Shanta Shastray

(SMT. SHANTA SHASTRY)
MEMBER (A)

S. L. Jain

(S.L. JAIN)
MEMBER (J)

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