

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH.

O.A. No.520/2000

Mumbai this the 20th day of January, 2004

Hon'ble Mr. Kuldip Singh, Member (J)  
Hon'ble Mr. S.K. Naik, Member (A)

Shri Anil Devappa Kumble  
at Postt Narande, Tal. Hatkangangale  
District Kohlapur Pin-416110.      Applicant

By Advocate: Shri G.M. Savagave.

Versus

1. Chief Post-Master General  
Maharashtra Circle, Old GPO Building,  
Fort, Mumbai-400 001,
2. Director Postal Services,  
Goa Region, Panji-403 001.
3. Sr. Superintendent of Post Offices,  
Kohlapur Division,  
Kohlapur-416 001.
4. Asstt. Superintendent of Ichalkarnaji (Enquiry  
Officer)  
Sub-Division, Ichalkaranji-416 001.      ... Respondents

By Advocate: Shri V.S. Masurkar.

ORDER (ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has assailed an order dated 19.7.1999  
passed by the Superintendent of Post Offices, Kohlapur Division,  
Kohlapur vide which the applicant has been removed from service.

2. Facts in brief are that the applicant was proceeded  
departmentally on the following charges:-

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"Charge No.1

Shri Anil Devappa Kumble, while working as EDBPM Barande on 22.7.1998 retained Rs.40.85 short in the B.O. Cash Balance. The Asstt. Supdt. of Post Offices Ichalkaranji Sub Division visted Narande B.O. on the said date, physically counted the Cash and Stamp balances of the B.O. and fojund that the B.P.M. held a Cash Balance of 1156.50, comprising of Postage and Cash, Kheras the B.O.Account showed the Cash Balance as Rs.1197.35.

Thus, the short found amount was recovered from Shri A.D. Kamble and charge to UCR on the very day.

It is, therefore, alleged that Shri A.D. Kamble while working as EDBPM Narande on 22.6.1998, has violated the provisions of Next Below Rule 136 and further violated the provisions of Rule 17 of E.D. Conduct & Service Rules, 1964.

Charge No.2

Shri Anil Devappa Kamble while working as EDBPM Narande accepted an amount of Rs.1000/-from Shri Amol Vishnu Shetye for purchase of Certificate (i.e. double return scheme) in September, 1997 but he did not issue a receipt for the said amount nor did he incorporate the said amount to B.O. Account till 22.7.1998. Thus Shri A.D. Kamble accepted the amount, fully knowing that, he is not authorised to accept such amount for purchase of Certificate and used it for his own private purpose.

It is, therefore, alleged that Shri A.D. Kamble has failed to maintain devotion to duty and acted in manner, unbecoming of a E.D. Servant, violating the provisons of Rule 133 (2) of B.O. Rules, corrected upto 31.3.1986 and provisions of Rule 17 of E.D. Conduct & Service Rules, 1964".

3. An enquiry was held. The Inquiry Officer returned the findings that the charge No.1 is not proved while charge No.2 is proved against the delinquent official.

4. An appeal against this order was also filed but the respondent No.2 confirmed the order of respondent No.3 and rejected the same vide Exhibit-B.

5. In the gorund to challenge the same the learned counsel for the applicant submitted that there is no documentary evidence

on record to show that as to how charge No.2 stands proved. Regarding the entire charge it is submitted that the same is based on political and personal enmity and jealousy and only because of that the charges have been framed.

6. It is further stated that Shri Das had brought pressure on the applicant and had taken the statement of the applicant with regard to charge No.2.

7. The next ground taken by the applicant is that since the applicant has not been paid the suspension allowance so the enquiry on that ground is vitiated.

8. The counsel for the respondents pointed out that as regards the findings recorded by the Inquiry Officer on charge No.2 is concerned, i.e., based on evidence. Charged official while drawing the conclusion had given his reasons also as to how the charge No.2 is proved against the delinquent official. On this aspect we may mention that the function of this Tribunal is only of the nature of judicial review and the Tribunal is not to sit in appeal to reappreciate the facts. Of course the Tribunal can intervene the findings recorded by the Inquiry Officer as well as the Disciplinary Authority if the same are perverse or if the same are based on no evidence but in this case the perusal of the enquiry report goes to show that the Inquiry Officer while recording the findings had mentioned that as to how payment was <sup>received by In</sup> ~~made to~~ the applicant when he was not authorised to accept the same and to do the NSC work.

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9. It is also mentioned that the complainant has been visiting the post office and enquired about the receipt and certificate about the amount deposited by him with the applicant. He did not lodge a complaint since the applicant was a local person and was hopeful that the amount would be returned.

10. Thus we find that the findings on record is available which goes to show that the applicant did accept a sum of Rs.1,000/- from the complainant to deposit the same under the double benefit scheme for which he was not supposed to work. So it cannot be said that there was no evidence or the findings recorded by the Inquiry Officer are perverse in any manner.

11. The next ground taken by the applicant is that no subsistence allowance has been paid to him and in support of his contention he has relied upon the judgment given in OA No.222 of 1991 in the case entitled as V.B. Raval Vs. U.O.I. & Others which did mention that in the absence of payment of subsistence allowance there is denial of ample opportunity to the applicant and he has also referred to another judgment of the Hon'ble Supreme Court in Fakirbhai Fulabhai Solanki Vs. The Presiding Officer and Another reported in AISLJ 1986 (2) 150 wherein also it was mentioned that non-payment of subsistence allowance amounts to denial of opportunity.

12. However, the learned counsel for the respondents has tried to distinguish the same and submitted that first of all the judgment is under the old rules whereas rules have been <sup>amended</sup> ~~replaced~~ by 1997 rules and according to the new rules put off is a

synonymus term for Extra Departmental Post Master and if a person is put off then he is entitled for compensation as ex-gratia payment which is 25% of employees basic allowance plus DA thereof and this compensation has been introduced for the year 1985 and prior to that the same was not to be paid, hence the judgment relied upon by the applicant has no application.

13. Besides that it is also submitted that department has released the payment of compensation but the applicant has not accepted for the reasons best known to him.

14. It is further submitted that the non-payment of subsistence allowance can be taken into consideration if the applicant or the delinquent employee has been prejudiced or has been deprived of a reasonable opportunity to defend because of non-payment of susbsistence allowance but in this case applicant has no where pleaded that he has been deprived of the reasonable opportunity to defend himself for non-payment of subsistence allowance/compensation allowance and in support of his contention he has relied upon the judgement reported in JT 2003 (8) SC 471 [Indra Bhanu Gaur V/s. Committee, Management of M.M. Degree College & Others. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him.

15. So relying upon the same we are of the view that since the applicant himself has not alleged that he had been prejudiced as he could not avail of reasonable opportunity to defend himself for the sole reason of non-payment of subsistence allowance so we hold that the enquiry proceedings are not vitiated. Even from

the record placed by the applicant along with the OA go to show that the defence assistant of the applicant had been defending the case of the applicant upto the culmination of the proceedings so no prejudice has been caused to the applicant.

16. By the foregoing discussion, we are of the view that the OA has no merits and the same is dismissed. No costs.

Naik  
(S.K. Naik)

Member (A)

Kul  
(Kuldeep Singh)

Member (J)

Rakesh