

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 493 of 2001.

Dated this Friday the 23rd day of Apr 2004.

R. G. Chavan,

Applicant.

Shri G. K. Masand,

Advocate for
Applicant.

VERSUS

Union of India & Others,

Respondents.

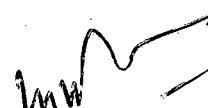
Smt. H. P. Shah,

Advocate for
Respondents.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other ✓
Benches of the Tribunal ?
- (iii) Library. ✓


(S. G. DESHMUKH)
MEMBER (J).

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R. G. Chavan,
Ex. Postal Assistant,
Residing at Sahajivan Bldg.,
1/44, Ganesh Nagar,
Lalbaug,
Mumbai - 400 012.

... Applicant.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union of India through
The Chief Postmaster General,
Department of Post,
Maharashtra Circle,
Mumbai - 400 001.

2. Director Postal Services,
Mumbai Region,
Mumbai - 400 001.

3. Senior Superintendent of
Post Offices,
Deptt. of Posts,
Mumbai City, North East
Division, Mumbai - 400 042.

4. Senior Post Master,
Nehrunagar Post Office,
Mumbai - 400 024.

... Respondents.

(By Advocate Smt. H. P. Shah)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

The present O.A. is filed for quashing and setting aside the order of suspension dated 24.05.1995, Charge sheet dated 18.11.1997, Order dated 29.10.1999 by the Disciplinary Authority dismissing the applicant from service and order dated 07.12.2000 dismissing the appeal.

2. The applicant's case is that he was appointed in Postal Department as Packer in Class IV Service in the year 1966. After passing requisite departmental examination he was promoted to Class-III category in the year 1982. He worked as a Postal Assistant at Matunga Post Office for the period from 12.06.1991 to 04.04.1995. Thereafter, he was posted to Nehru Nagar Post Office when he was suspended by order dated 24.05.1995.

3. While working as a Postal Assistant at Matunga Post Office, the applicant was summoned for the enquiry conducted under the Custom Act for appearing before Customs Superintendent in connection with seizure of currency found in Speed Post Parcels booked at Matunga Post Office. It is contended that 12 Speed Post Parcels were seized on 12.03.1995 by the Customs Department and 8 Mail Bags were found to have contained Indian and foreign currencies valued equivalent to Rs. 3,52,83,178/-. Nine parcels out of 12 were booked from Matunga Post Office by booking clerks Ms. Neeta Desai and Mrs. Priya Sahani. The applicant was arrested on 20.04.1995 under Section 104 of Customs Act read with provisions of F.E.R.A and was produced before the Magistrate and was remanded to judicial custody till 02.05.1995. The applicant was placed under suspension vide order dated 24.05.1995 without any justifiable reasons.

4. The applicant was served with a charge memo dated 18.11.1997 framing three distinct charges, namely - (i) that applicant prevailed over Ms. Neeta V. Desai, Ms. S. V. Bansode and Mrs. Priya Sahani working on Speed Post booking counter to accept Speed Post articles without observing prescribed formalities, (ii) that applicant was aware of the contents of the parcels under reference and with the intention to suppress the details/value of the contents, the applicant prevailed over the counter booking Postal Assistants to accept the parcels for

booking without examining the contents, (iii) that applicant was arrested on 20.04.1995 in connection with seizure and remained in judicial custody till 02.05.1995 but did not intimate about his arrest to his official Supervisor.

5. The Enquiry Officer erroneously held the applicant guilty of Charge No. (i) and (iii) and submitted his report dated 30.04.1999. The applicant submitted his representation dated 03.08.1999 against the enquiry report. The Inquiry Officer had held that applicant was not found guilty of Charge No. (ii) i.e. he was aware of the contents of the parcels under reference. The Disciplinary Authority held the applicant guilty of Charge No. (ii) and called upon the applicant vide his letter dated 09.09.1999 to submit his report. The applicant submitted his representation dated 21.09.1999 to the Disciplinary Authority's show cause notice dated 09.09.1999. The Disciplinary Authority rejected the contention of the applicant by order dated 29.10.1999 and dismissed the applicant from service. The applicant, thereafter, submitted an appeal dated 13.12.1999. The Appellate Authority without considering the grounds taken by the applicant, rejected the appeal by its order dated 07.12.2000 and thus this O.A.

6. The respondents filed their counter affidavit and contended that the enquiry report submitted by the Enquiry Officer is self explanatory in all pros and cons. According to respondents, the evidence of prosecution witnesses recorded in the departmental enquiry clearly shows that the applicant prevailed over the counter Postal Assistants to accept Speed Post articles without getting them opened. It is also contended that as per Rule 15(2) of CCS (CCA) Rules, 1965, the Disciplinary Authority has recorded its reasons for disagreement with the findings of the Inquiring Authority and then recorded its own findings on such a charge. The charges levelled against the

applicant were proved. The points raised by the applicant have been discussed elaborately in the order. The disciplinary action was initiated after following the procedure as laid down in the CCS (CCA) Rules and decision was taken only after giving full opportunities to the applicant. The punishment was issued considering the gravity of lapses.

7. Heard the Learned Counsel, Shri G. K. Masand, for the applicant. According to him, the person who had brought the parcels for booking was introduced to the applicant by one of the staff member of another Post Office and the applicant did not force the Postal Assistants on counter to accept parcels without complying with usual formalities. It is also his contention that the matter was referred to the Supervisor, Shri Nandivdekar, who had allowed irregular booking of parcels and no action was taken against him and the applicant was made a scapegoat. The statement of Shri Nandivdekar is not recorded in the departmental proceedings. According to the Learned Counsel, there are procedural lapses on the part of the Booking Clerk who accepted the parcels for booking without opening and verifying the same. The applicant's honest intention was to increase the traffic of Speed Post parcels directing the party to booking window.

8. It is also contended that the Inquiry Officer had held the applicant not guilty of Charge No. II i.e. knowing the contents of the parcels. Even then, the Disciplinary Authority held him guilty of the charge merely on assumption and presumption and without application of mind. There is no independent evidence to prove the charge in question. The Disciplinary Authority has taken decision with pre-determined and closed mind.

9. On the other hand, the Learned Counsel, Smt. H. P. Shah, submitted that the evidence of Booking Postal Assistants show that the parcels were booked by them without getting those opened at the instance of the applicant. It has also come in the enquiry that those parcels found to have contained foreign and Indian currency valued equivalent to Rs. 3,52,83,178/-. The findings of the Disciplinary Authority and the Appellate Authority are based on the evidence brought before the Inquiry Officer. The Learned Counsel submitted that the Tribunal cannot go into the deficiency or reliability of the evidence when there is some evidence on which the findings could be based. All the statutory provisions and the rules prescribed in the mode of enquiry have been followed. There is no violation of principles of natural justice. The punishment has been imposed considering the gravity of the proved charges.

10. The Learned Counsel for respondents relied on the following case laws :

- (i) Lalit Popli V/s. Canara Bank & Others [2003 (1) SC SLJ 294].
- (ii) Syed Rahimuddin V/s. Director General, C.S.I.R. & Others [2001 (2) SC SLJ 132].
- (iii) Union of India & Others V/s. Sunil Kumar Sarkar [2001 (1) SC SLJ 402].
- (iv) District Judge, Bahraich & Another V/s. Munijar Prasad [2003 SCC (L&S) 779].
- (v) Mithilesh Singh V/s. Union of India & Others [2003 SCC (L&S) 270].

11. It is settled principle that in case of departmental enquiries and the findings recorded therein, the Tribunal does not exercise the powers of Appellate Authority. The jurisdiction of the Tribunal in such cases is very limited. For instance, it is found that disciplinary enquiry is vitiated for non observance

of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of the employee.

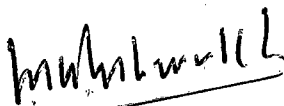
12. After perusal of the record it reveals that the enquiry conducted by the Enquiry Officer is consistent with the rules and in accordance with the principles of natural justice. Sufficient opportunity was given to the applicant to defend his case. The findings of the Disciplinary Authority and the Appellate Authority are based on the evidence on record, recorded by the Enquiry Officer. The evidence of Postal Assistants recorded by the Enquiry Officer shows that the applicant prevailed over them to accept the Speed Post articles weighing 200 gms. without observing the prescribed procedure to accept it in open condition. It is apparent that the applicant is not at dispute that he had introduced the person who had come to book the parcels. The evidence shows that the applicant was the Senior Postal Assistant and both the witnesses who were working as Postal Assistants were junior to him and they acted as per his instructions. The report of the Enquiry Officer is self explanatory. The Disciplinary Authority has observed that the intention of the charged officer beyond the parcel booking without getting it opened was nothing but to conceal the nature of contents put therein. It is also apparent that the Disciplinary Authority while disagreeing with the findings of the Enquiry Officer on Charge No. II i.e. knowing of the contents of the parcel and before arriving at his final conclusion, had given an opportunity to the applicant by issuing a show cause notice. After considering the representation given by the applicant, the Disciplinary Authority came to his own conclusion.

13. The enquiry is consistent with the rules and in accordance with the principles of natural justice. The findings of the Disciplinary Authority and the Appellate Authority are

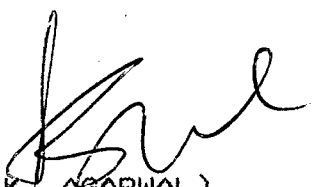
based on the material available on record and they arrived at a conclusion in a reasonable manner and objectively. The conclusion arrived at by the Disciplinary Authority and the Appellate Authority cannot be termed either being perverse or not based on any material or without application of mind.

14. The power to impose penalty is conferred on the competent authority. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. The eight parcels which were accepted by the Postal Assistants without opening those at the instance of the applicant, were found to have contained Indian and foreign currency valued equivalent to Rs. 3,52,83,178/-. The Disciplinary Authority and the Appellate Authority have considered the gravity of the charge proved against the applicant. In such circumstances, no interference is required.

15. In view of the above discussions, the O.A. deserves to be dismissed and is accordingly dismissed. No costs.


(S. G. DESHMUKH)
MEMBER (J).

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(A. K. AGARWAL)
VICE-CHAIRMAN