

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT AURANGABAD.

Original Application No. 470/2001.

Monday, this the 3rd day of December, 2001.

Hon'ble Shri S.R.Adige, Vice-Chairman (A),
Hon'ble Shri S.I.Jain, Member (J).

C.J.Rahinj,
Ex-EDBPM Gondegaon Group 'C',
Via. Changdev Nagar Tah. Shreerampur,
Dist. Ahmednagar. ...Applicant.
(By Advocate Shri S.P.Inamdar)

v.

1. Union of India through
the Secretary/Director General,
Department of Post,
Ministry of Communication,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.

2. The Post Master General,
Pune Region,
Pune - 411 001.

3. The Director Postal Services,
O/o. PMG,
Pune Region,
Pune - 411 001.

4. Superintendent of Post Office,
Shreerampur Division,
Shreerampur - 413 709.

...Respondents.
(By Advocate Shri V.S.Masurkar):

O R D E R (ORAL)

By S.R.Adige, Vice-Chairman (A).

Applicant impugns Disciplinary Authority's order dt. 4.9.1996 (Annexure - A-1); Appellate Authority's order dt. 7.7.1997 (pages 19-20 of the OA; the Revisional Authority's order dt. 5.2.1999(Annexure - A-3) and the Reviewing Authority's order dt. 7.7.2000 (Annexure - A-4). He prays that the matter may be remanded to the concerned authorities who may be directed to dispose of the same by a speaking order, after giving him a personal hearing.

2. We have heard applicant's counsel Shri S.P. Inamdar and Respondents counsel Mrs. H.P.Shah.

3. Applicant was proceeded departmentally vide charge sheet dt. 18.1.1995 (Annexure - A-5) on three charges relating to :

- (1) Acceptance of Rs.1,100/- from a depositor Shri Karbhari Nanjaba Jadhav on 15.7.1994 for depositing in the S.B.Account No. 890243, which was accounted in the B.O. Account on 10.9.1994, but not crediting the said amount in B.C. Account and keeping it with himself from 15.7.1994 to 9.9.1994.
- (2) Not issuing the E.D. Agent M.O. No.6684 dt. 1.8.1994 for Rs.500/- which was received back on 11.8.1994 for payment to the remitter and by forging the bogus signature of one Shri Eknath Appa Guldad and retaining the amount of Rs.500/-.
- (3) By not issuing M.O. for payment to E.D.A. and putting remarks that the party was not found from 11.8.1994 to 13.8.1994 although the party was available in the village and thus illegally retaining Rs.500/-.

4. Applicant was put off (suspended) from duty vide Memo dt. 17.9.1994 (Annexure - A-12) by the order of the Assistant Superintendent of Post Offices in exercise of the powers vested under Rule 9(1) of EDA (Conduct & Service) Rules, 1964 on the ground that departmental proceedings were contemplated against him. The Enquiry Officer in his report held all the three charges as proved

beyond doubt.

5. A copy of the Enquiry Officer's report was supplied to the applicant for representation, if any. The applicant submitted his representation, upon consideration of which the Disciplinary Authority after going through the materials on record, accepted the Enquiry Officer's findings and by impugned order dt. 4.9.1996 removed the applicant from service. Applicant's appeal was rejected by impugned order dt. 7.7.1997 and his revision petition was also rejected by impugned order dt. 5.2.1999. Thereupon, applicant submitted a mercy petition and upon the same being rejected on 7.7.2000, has filed the present OA.

6. The first ground taken by Shri Inamdar is that applicant could not have been put off duty (suspended) in contemplation of Disciplinary Proceedings. In this connection, he has relied upon the CAT Ernakulam Bench order dt. 20.4.1994 in K.Velavudhan Pillai Vs. Chief P.M.G., Kerala Circle, Thiruvananthapuram & Ors. (ATJ 1994 (2) 122), as well as, the Orissa High Court Judgment in N.Sahu Vs. Inspector of Post Offices & Ors. (1983 LAB IC 1587).

7. A copy of the Swamys compilation of Service Rules for Postal E.D. Staff, Muthuswamy and Brinda 8th Edition 2000 has been shown to us. In that compilation Rule 9(1) EDA (Conduct and Service) Rules, it clearly provides that the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered in that behalf by the Central Government by the general or special order may

put an employee off duty :

- a) where the Disciplinary Proceedings against him is contemplated or pending or
- b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

8. Shri Inamdar contends that the aforesaid provision was inserted in the EDA (Conduct and Service) Rules only on 13.1.1997, vide asterisk mark below that Rule and prior to that date the aforesaid EDA (Conduct & Service) Rules, did not permit the concerned authorities to put an employee off duty where a disciplinary proceedings against him was merely contemplated, and was not actually pending. He states that it is for this reason that both Orissa High Court, as well as, the CAT Ernakulam Bench had held that an employee could not be put off duty merely because a disciplinary proceeding was contemplated against him and was not actually pending.

9. On perusal of Rule 9(1) in the aforementioned compilation, it does not clearly indicate on what date it was inserted in the EDA (Conduct and Service) Rules, because there is no supporting asterisk against Rule 9(1), but even if Shri Inamdar's contention is accepted that applicant could not have been put off duty merely because Disciplinary Proceedings were contemplated against him and had not actually been initiated against him, that will not help the applicant, insofar as, the present OA is concerned, because the matter has gone much beyond

that leading to applicant's eventual termination from service. Hence, this ground fails.

10. The next ground advanced by Shri Inamdar also relates to applicant's being put off duty because he contends that as applicant had been appointed by the Senior Superintendent of Post Offices, he could not have been put off duty by the Assistant Superintendent of Post Offices.

11. We note that the order of the Assistant Superintendent of Post Offices putting applicant off duty vide order dt. 17.9.1994, (~~Exhibit~~ - R-4) has been confirmed by the Superintendent of Post Offices vide order dt. 19.9.1994 (Exh. R-5). In our view, this ground does not assist applicant in assailing the order of termination from service. Article 311 of the Constitution prohibits a government employee from being dismissed or removed by an authority subordinate to that by which he was appointed. This Constitutional provision cannot be construed to imply that a government employee cannot be put off duty for a limited period of time by an authority subordinate to that by which he was appointed. Under the circumstance, this ground also fails.

12. The third ground advanced by the counsel for the applicant is that no subsistence allowance was paid to him during the course of his being put off duty, as a result of which he could not appear in the Disciplinary Proceedings, which prejudiced him in his defence, and relied on B.R.Dave Vs. UOI & Ors. (1998) 37 ATC 483 decided by the CAT Ahmedabad Bench and V.B.Raval Vs. UOI & Ors. (AISLJ 2001(2) 230, also decided by the

Ahmedabad Bench. We note that this ground was not taken by the applicant either before the Enquiry Officer or indeed before the Disciplinary Authority in his representation against the Enquiry Officer's findings. Shri Inamdar stated that applicant had taken this as one of his grounds in his appeal petition. It is clear that if applicant was indeed prejudiced by the non-release of subsistence allowance, as a result of which he could not appear before the Enquiry Officer during the course of the Disciplinary Proceedings, or indeed could not engage the defence assistant, he could have raised this ground before the Enquiry Officer himself or at any rate in his representation against Enquiry Officer's findings. In paragraphs 21 and 23 of their reply, Respondents have stated that the Enquiry Officer had informed the applicant's defence assistant Shri M.S.Mule to attend the enquiry on 28.7.1995 and the Senior Superintendent of Post Offices, Ahmednagar was also requested to relieve Shri Mule well in advance to attend the enquiry, but applicant did not make any prayer to postpone the enquiry owing to the absence of his defence assistant and ended on 20.7.1995. He submitted an application to continue the enquiry in the absence of his defence assistant. As pointed out above, if indeed the applicant had been handicapped in his defence because of non-release of subsistence allowance, he could have raised the objection at the initial stage itself and not waited to raise it at the stage of filing the appeal. Clearly, therefore, this ground is an afterthought. *A*

13. The next ground taken by applicant is that the Disciplinary Authority did not know Marathi language, and as the proceedings were entirely in Marathi she was unable to do justice to the case. We are unable to accept this contention. Indeed, we find that applicant in his written statement dated 12.11.1994 has himself admitted that he had mis-appropriated an amount of Rs.1,500/- relating to the first charge from 15.7.1994 to 16.9.1994.

14. Lastly, it was contended that applicant was denied the benefit of personal hearing, despite the fact that he had requested for it, which vitiates the entire proceedings. In this connection, reliance was placed by Shri Inamdar in Hon'ble Supreme Court ruling Ramchander Vs. UOI (1936 SCC L&S 383).

15. In this connection, our attention has been invited by Ms. Shah to para 24 of Respondents reply, wherein it has been stated that applicant was granted a personal hearing by the Disciplinary Authority on 17.7.1996. Thus, it is not a case where no personal hearing was granted at all. The Appellate Authority in his order dt. 7.7.1997 has specifically given the reasons why he did not consider it necessary to give the applicant a personal hearing. The reasons were, because applicant had filed his appeal after delay, which was much beyond the prescribed time limit, and even then the Appellate Authority entertained the same after condoning the delay. In view of the documentary evidence on record,

applicant's own admission from time to time and his ~~attempt~~ ^{attempt} ~~admission~~ to mis-lead the Disciplinary Authority, as well as, Appellate Authority, the latter did not consider it necessary to give him a personal hearing.

16. In any case, we are satisfied that even if applicant had been given a personal hearing by the Appellate Authority, the conclusion would have been no different, in the light of applicant's own admission to having committed mis-appropriation of funds.

17. In Union of India Vs. Upendra Singh (JT 1994(1) SC 658, the Hon'ble Supreme Court has held that the function of the Court, Tribunal is not to look into the truth of the charges or into the correctness of the findings recorded by the Disciplinary Authority or the Appellate Authority as the case may be, but to consider whether applicant has been given a fair hearing.

18. In the present case, we are satisfied that applicant was given sufficient opportunity to defend his case in accordance with the prescribed rules and instructions; this case is not one where there is no evidence to inculcate the applicant; having regard to the seriousness of the mis-conduct, the penalty is not excessive or arbitrary; and the orders which have been impugned have been passed by the authorities competent to pass the same.

19. Under the circumstance, we find ourselves

unable to interfere in this matter, and the OA is therefore, dismissed. No costs.

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

S.R. ADIGE
(S.R. ADIGE)
VICE - CHAIRMAN (A)

B.