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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 320/90
~~XXXXXXXX~~

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DATE OF DECISION 9/7/91

SHRI V.N.KATOLE Petitioner

Applicant in person Advocate for the Petitioner (s)

Versus

Union of India & ors. Respondent

Mr. P.M. Pradhan Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. U.C.SRIVASTAVA, VICE-CHAIRMAN

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
 2. To be referred to the Reporter or not ? ✓
 3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
 4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

Original Application No.320/90

Shri V.N.Katole
Now Dy.Sub Postmaster
Washim ... Applicant

vs

Union of India, Through
The Sr.Suptt. of Post Office
Akola & 3 ors. Respondents

Coram: Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman
Hon'ble Mr. M.Y.Priolkar, Member(A)

Appearance:
Applicant in person.

Shri P.M.Pradhan
for the respondents.

Date: 9-7-1991
~~16/91~~

Judgement

(Per: Shri Justice U.C.Srivastava, Vice-Chairman)

The applicant who was working in lower selection grade as Postal Assistant at Akola Head Post Office Akola, has challenged the order under rule 16 of C.C.S.(CCA) Rules to recover an amount of Rs.19,188/- from the applicant's pay. As the Disciplinary Authority the Member(P) modified the said order reducing the recovery to Rs.5000/-.

2. The applicant entered in the Railway Service as Postal ~~xxxx~~ Assistant and has put in more than 25 years of service with unblemish^{ed} record. He performed duties as ledger card/book clerk whenever required. In the same year when he was working as ledger card/book clerk a separate establishment of staff called as "Savings Bank Control Organisation" was functioning. It appears that some miscreants, according to the applicant miscreants working in SBCO, have committed a fraud by passing fictitious deposits entries in the ledger cards which were noticed by the respondents when full investigation was done and F.I.R. to that effect was filed by the respondents in the police

Station, Akola against the said miscreant. The miscreant^{has} withdrawn the said amount from the fictitious deposits. Thereafter the chargesheet was given to the applicant and the charges framed against him was that the applicant during investigations denied having made deposit entries. But it is said next transaction ^{entry} upseted / in the date column No.5. The charges precisely made against the applicant was that the applicant ~~is not~~ violated the provisions of Rule 412(2) of P&T Man. Vo. VIth Part II and Rule 4(1) of PO SB Rules 1981 read with D.G.P&T No.35.4/79-SB dt. 9.4.79 and not maintained devotion to duty as required by rule 3 (1) (ii) of C.C.S(CCA) (Conduct) Rules 1964 causing huge loss to the Govt. This fraud remained undected for a long time. Due to negligence of rules the applicant loses an amount of Rs. 2,40,000,00 for the Govt. On enquiry the applicant submitted his explanation and denied the allegation. The Enquiry Officer holding the applicant guilty had issued the order of punishment to recover the amount mentioned above from his pay. The appeal was rejected and the applicant preferred representation to the Postal Board. The representation was rejected. Then applicant preferred Memorial to the President that was also dismissed. Thereafter he approached ~~to~~ this Tribunal. According to the applicant the charge itself ~~do~~ not affect the competence of ledger clerk. The ledger clerk is not expected or bound by duty to detect the fictitious entries if any in ledger card. In fact the Post Master has been entrusted to verify the entries made in the ledger card with the help of relevant voucher. Asstt. Post Master , Akola: having more responsibility he was shown favour by an order of recovery of Rs.5,000/ was sited by the Postal Rules, which rejected the position.

The order has been challenged on the ground that the respondent contained Rule No.11 CCA (CCS) 1985 and the instructions contained in ~~xxx~~ Rule No.11 as such the chargesheet is invalid ~~and~~ ab-initio. The case of the ^{applicant's} Advocate was deprived from making advance. The charges against the applicant were baseless under Rule 14 ^{of} Establishment Manual. Savings Bank Rules are made known to applicant. With that if, otherwise also, no misconduct has been contained ⁱⁿ the charges framed amounts to mis-conduct. That the discrimination was made as far as ~~as~~ Shri M.R.Udaparkar A.P.M. Akola Head Post Office has been shown favour by setting aside the appellate order of punishment which has been given to him. In the written reply the respondent stated that the case of applicant includes the persistent loss, and lack of devotion in performing the duties. It is, further, stated that the details of the charges which were made includes ~~of~~ the transactions and entries which were made. It has also been stated ^{that} ~~by~~ the applicant was not involved in the activity. However he was performing his ^{normal} duties ~~normal~~ as such fraud cannot be detected at proper time. The charges which includes ~~against~~ the monetary loss. The Disciplinary Authority held that the applicant while discharging of the duties had no devotion to the duty. Non following the procedures laid down in rule 412(2) of P&T Manual. Vol.VI Pt.II ~~and~~ rule 4(1) of PO & SB rules 1981 read with D.G.P&T New Delhi No.35-4/79-SB dted. 9.4.79 is the breach of the said rules and gross neglect. Applicant was ordered to pay sum of Rs. 19,188 which was to be recovered from his salary.

3. The applicant filed an appeal against the same. The appeal was sent to the appellate authority and appellate authority reduced the amount to Rs. 5000/-. The appellate authority formulated ^{the} point that it is misconduct in the procedural way. It is not a monetary loss to the department. So far as the period between the date of fictitious deposit entries made by the miscreant in the ledger cards and the date of subsequent transactions shown in the statement is concern, the appellate ^{authority} was of the view that the entries were not in his handwriting and it was legitimate duty of the A.P.M to check before posting any transaction. If he had carefully checked the entries the department should not have suffered the loss to the tune of Rs.2,40,000.00. ~~It is express view that~~ the decision taken by the appellate authority was some what harsh [↓] punishment in view of the recovery of Rs.5000/-.

4. On behalf of the applicant it was contended that the charges ^{is} which ~~has~~ said to have been established or proved amounts to ^{is} negligence, carelessness but the same do not tantamount to misconduct and as such punishment for committing misconduct, the charge against him was violation of Rule 412 of PO SB Vol VI Pt.II. It amounts to violation of provision under Rule 412(a) and 412(b) 412(2) of the Manual, and the same is not amounting to misconduct. At ^{is} ~~the last~~ it can be said to be a case of carelessness or negligence on the part of Supervisor and not beyond that. In support of the plea the charges

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against the applicant does not establish misconduct. Reference was made to the case of Union of India v AIR 1971 Page 102 amounts to merely an act of negligence. Thereby, ~~soits to~~ amounts to exploit, constitute to misconduct, some other ~~action~~ or omission, of lack of higher standard while handling high post. However, there may be negligence in performance of duty. It would not constitute misconduct unless directed to result in damage with the high degree. Position in this case is substantially different. In the charge made against the applicant this can be borne in mind negligence and carelessness would not amount to misconduct even otherwise it was misconduct is the same as today that something connected with the conduct which is not always relatively to the way in which duty had been performed. It was contended that if it was misconduct ~~for holding~~ regular departmental enquiry should have been held. But all the same it was not done, and the statement which was recorded prior to issue of chargesheet was relied on against the applicant. Thus, by this, without holding the regular enquiry applicant ~~has~~ has been held for misconduct. This has vitiated the enquiry. While another contention on the part of the applicant is that that ~~is that that~~ discrimination has been practiced from Mr. M.R. Uduparkar A.P.M. Akola, ^{who} were also charged with the same kind of plea, taken by him applicable to applicant who has raised the same plea. In the case of applicant respondent has rejected the plea but ⁱⁿ the

case of Shri M.R.Udaparkar, A.P.M. Akola has been accepted and shown favour, and it was allowed. In case persones of same guilt one is allowed and another is disallowed the plea it will be arbitrary and discriminatory to punish one person ^{at} and/the same time allowing letting of by another. In this connection a reference to the Case of Shri Ramchander vs U.O. I reported in AIR 1986(2). There was no need for ordering any recovery from him. Such punishment order directing the recovery ~~amounting~~ from the applicant in instalment is bad in law and amounts to discrimination. It is being made clear that it is not for the respondent to decide ~~the~~ manner in which the punishment can be given to the appicant and not by way of recoveries. There will be no order as to costs.

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(M.Y.Priolkar)
Member(A)



(U.C.Srivastava)
Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Application No. 48/92 in OA 320/90

Shri V.N. Katole

... Applicant

V/s

Union of India through
the Sr. Supdt. of Post Office
Akola & 3 ors.

... Respondents.

CORAM: Hon'ble Shri Justice U.C. Srivastava, Vice Chairman
Hon'ble ~~Shri M.Y. Priolkar~~, Member (A)

TRIBUNAL'S ORDER

DATED: 7.4.92

X Per Shri U.C. Srivastava, Vice Chairman X

This ~~related~~ review application ^{is received} along with an application for condonation of delay. The ^{is} reason for delay which has been stated in the application that the papers ^{were} ~~are~~ forwarded to the Additional Standing Counsel for seeking opinion. ^{to} There after it was decided prepare a review application. No date whatsoever has been pointed out and the judgement/ ^{was} ~~admittedly~~ received on 9.7.91 and the review application has been filed on 12.2.91. The so called cause is not sufficient cause and no case for condonation of delay has been made out. Even otherwise also the case does not call for a review. The scope of review application is limited and the same does not need re-hearing or taking the written arguments in the shape of review application after the judgement is delivered and re-call the judgement and re-hear the parties. The applicant's to the review application viz Union of India and its officers who were respondents to the main application have not given any such ground on which the review application is permissible. And according to them the Tribunal ~~has~~ ^{is} not equated the case of one Udapurkar with the respondents and that it has not appreciated that out of 39 charge sheeted employees including the respondent the punishment order against 38 employees is maintained in the appeals and petition. Hence the case cannot be

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equated. We have taken into consideration all the relevant facts and ^{the} so called grounds which ~~have~~ been pointed out cannot ^{be} said to be an error much less ~~than~~ an error apparent on the face of the record and no case even on merit has been made out. The review application is dismissed summarily.



(M.Y. PRIOLKAR)
MEMBER (A)



(U.C. SRIVASTAVA)
VICE CHAIRMAN