CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1017 /1992

Date of Decision: 02.03.1998

Pandit Bhaskar Lakhapate — Petitioner/s

Adv. Mr. B Dattamoorthy — Advocate for the Petitioner/s

V/s.

U.O.I. & Ors. — Respondent/s

Mr. S.S. Karkera for ~~Mr. P.M. Pradhan~~ — Advocate for the Respondent/s

CORAM:

Hon'ble Shri **Justice R.G. Vaidyanatha, V.C.**

Hon'ble Shri **M.R. Kolhatkar, Member(A)**

(1) To be referred to the Reporter or not ? no

(2) Whether it needs to be circulated to other Benches of the Tribunal ? no

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH. 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 1017 OF 1992

DATED : THIS 2nd DAY OF March, 1998

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri M R Kolhatkar, Member(A)

Shri Pandit Bhaskar Lakhapate
C/o. B. Dattamoorthy
Advocate
47/4 Asmita
Tarun Bharat Society
Chakala
Mumbai 400099
(By Adv. Mr.B. Dattamoorthy) ..Applicant

V/s.

1. Union of India
through the Post Master General
Pune Region
Pune 411001.

2. The Director
Postal Services
Office of the Postmaster General
Pune Region, Pune 411001

3. The Senior Superintendent of
Post Offices, Satara Division,
Satara 415001
(By Adv. Mr. S.S. Karkera for
Mr. P M Pradhan, Central Government
Standing Counsel) ..Respondents

ORDER

[Per: R.G.Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel for the applicant and the learned counsel for the respondents.

2. The applicant was at the relevant time viz., 1988 working as Sub Post Master at the Post Office at Katar Khatav. It appears on 12.1.1988 the Senior

Superintendent of Post Offices, Satara, along with his staff made a surprise visit to the said post office in the morning when the office was just opened. The Superintendent of Post Offices asked the applicant about the cash balance and it was found that the cash safe had been locked and the applicant did not have the keys of the cash chest. The applicant replied that he had left the keys at home. Then a jeep was sent to the applicant's village to go to the house of the applicant to bring the keys of the cash chest. The jeep driver came back and stated that the keys of the cash chest are not traced and an attempt was made to break open the cash chest with the help of a black smith. But the lock could not be broken. The lock was sealed by preparing a 'Panchanama'. The Senior Superintendent and staff stayed in the Post Office itself for the night. The applicant also stayed there and left the Post Office at about 1030 p.m. in the night. On 13.1.1988 the applicant returned from the house with the keys as they were traced. Then the seal was removed and the door of the cash chest was opened. Then it was found that the cash found in the cash chest did not tally with the closing balance of the cash book dated 11.1.1988. There was shortage of cash of Rs.14,750/- which is admitted by the applicant also. Even to this effect a 'Panchanama' was prepared mentioning all the facts. Then in the evening at about 5.45 p.m. the applicant confessed that the he had removed the cash from the cash chest and he had given to

one Mr. S.M.Bodke who had brought the cash and kept in a rexin bag and hidden behind the cash chest. Then the rexin bag was taken out as pointed out by the applicant and it contained exactly the missing amount of Rs.14,750/-. The same was seized. The applicant has given a statement admitting these facts on that day itself.

Then a charge memo was issued to the applicant mentioning three articles of charge. One is regarding the shortage of cash of Rs.14,750/-, the second charge is about keeping excess cash on hand without submitting excess balance memos to the Head Office and the third charge that the applicant was not residing in the quarters provided to the Sub Post Master, but he was residing in a different village and then leaving the village Post Office daily without permission of the competent authority.

3. The Appellant's defence was that he had kept the cash of Rs.14,750/- in a bag hidden behind cash chest by way of safety and he had told this fact to the concerned officer on 12.1.1988 itself. He has not misappropriated any money and he had not removed any amount nor given it to Bodke, but his confessional statement on 12.1.1988 was taken by threat and it was not a voluntary statement. As for as excess cash balance is concerned he has state that the amount was drawn for being paid to an Account holder

and he had not turned up to take the amount and therefore the amount was lying with him. As for as the third charge is concerned the applicant's version is that the quarter was not in a good habitable and condition he could not stay there and therefore he was staying in an adjacent village in his own house.

4. The Disciplinary Authority appointed one Mr. I.A. Deshpande, Assistant Superintendent of Post Offices as an Inquiry Officer. The officer held the inquiry and examined nine witnesses produced by the prosecution and two witnesses on behalf of the applicant. After the inquiry he submitted a report dated 26.3.1990 holding that all the charges are duly proved. Then the inquiry report was furnished to the applicant and he was asked to submit his say in the matter. The applicant gave his written reply to the inquiry report. After considering the entire material the disciplinary authority viz., the Director of Postal Services, Pune, accepting the inquiry report held that all the charges are proved and imposed the punishment of removal from service as per the order dated 31.10.1990.

Then the applicant preferred an appeal before the appellate authority who gave a personal hearing to the applicant and after perusing the entire material on record by his order dated 30.9.91 while agreeing with the finding of the disciplinary authority but accepting the

applicant's plea for mercy and taking a lenient view he modified the order of punishment by imposing the penalty of compulsory retirement instead of removal from service.

5. Being aggrieved by the orders of the Inquiry Officer, Disciplinary Authority, and the Appellate Authority the applicant has come up with the present application. According to him he was fully innocent and none of the charges are proved. His case is that he is prejudiced during the inquiry since the documents required by him were not produced and all the witnesses required by him were not examined. It is therefore stated that the inquiry is vitiated. He also attacked the findings of all the three authorities on the three charges and has prayed that the orders be set aside and he be reinstated.

6. Respondents have filed reply justifying the orders of the respective authorities and stating that no case is made out calling for interference by this Tribunal.

7. At the time of hearing the learned counsel for the applicant contended that the findings of the authorities regarding guilty of the applicant are erroneous and that the findings are liable to be set aside and the applicant be exonerated from the three charges framed against him. The learned counsel for the applicant further submitted that the inquiry is vitiated due to violation of principles of natural justice and violation of the

constitutional mandate under Article 311 of the Constitution of India since the applicant had not been afforded with an opportunity to defend himself by producing the documents and all the witnesses required by him. On the other hand the learned counsel for the respondents while supporting the order of respective authorities contended that no prejudice is caused to the applicant even if there was any fault in the inquiry in rejecting the request of the applicant for producing documents and witnesses. He further contended that the Tribunal cannot sit in appeal over the finding of fact recorded by the respective authorities.

8. The main argument by the learned counsel for the applicant is that the applicant wanted to examine nine witnesses as per his application, but the inquiry officer allowed only two witnesses to be examined and further the applicant wanted 19 documents to be produced by the department, but only six documents were allowed to be produced and therefore the whole inquiry is vitiated by violation of principles of natural justice and Article 311(2) of the Constitution of India. He has also referred to some authorities on this point.

9. In our view there is no necessity for an authority on the preposition that if there is violation of Principle of Natural Justice or violation of Article 311(2) of the Constitution of India that the inquiry is vitiated unless

the respondents can show that no prejudice is caused to the applicant. Hence it is not necessary to refer to the authorities cited by the learned counsel for the applicant. Let us for a moment accept the contention of the applicant that the applicant was prejudiced since seven witnesses and 13 documents were not produced. The question is whether the entire inquiry is vitiated on this ground? In our view the answer is in the negative. Admittedly these witnesses and these documents pertain to charges Nos. 2 and 3 only. The learned counsel for the applicant fairly conceded before us that all the witness and all these documents pertain to Articles of Charges 2 and 3 and therefore at best we can say that the inquiry so for as Charges 2 and 3 are concerned they are vitiated in view of violation of principles of natural justice for not permitting the applicant to examine 7 witnesses and non production of 13 documents. Admittedly these documents and these witnesses have nothing to do with the charge No.1 framed in this case.

10. As for as charge No.1 is concerned the contention of the learned counsel for the applicant is that there is not sufficient evidence to prove charge No.1 and the concerned authorities should not have acted on the evidence of Bodke which suffers from contradictions and that they should not have acted upon the applicant's statement which had been taken under duress.

11. As already stated on 13.1.1988 the applicant had made a statement before the Senior Superintendent of Post Offices that he had taken out the amount and subsequently brought it and kept in a rexin bag behind the cash chest on the night of 12.1.1988. If this statement is accepted then there is a temporary misappropriation of the amount by the applicant. The argument is that it was taken under duress but the same has been denied by the department. Except for a bare allegation by the applicant there is nothing to show that the statement was taken under duress. It is a case of surprise visit of senior officer like the Senior Superintendent of Post Offices who found that the cash in the cash chest is not tallying with the closing balance shown in the accounts. Admittedly the entire cash was not in the cash chest. The contention of the applicant is that as a practice he was keeping the excess cash always in a rexin bag hidden behind the iron safe. Except his self serving and interested assertion there is no other material to corroborate the statement. There is no reason for such a senior officer such as the Senior Superintendent of Post Offices to extract a confession from the applicant. There is no allegation that there is any enemity or hostility between the applicant and the said officer. Even otherwise the question whether a particular statement should be accepted or not is in the realm of the appreciation of evidence.

12. Similarly the question is whether the statement of Bodke should be accepted or not? The statement of Bodke

is that on the night of 12.1.1988 the applicant came to him and pleaded that the cash is short of Rs.14,750/- and if he does not produce the same he may lose his job and therefore on his request he gave that amount. That amount has been found in the rexin bag which was produced by the applicant on the evening of 13.1.1988. It may be that in the preliminary inquiry Bodke had added some thing more viz., that on 11.1.1988 the applicant had given him Rs.14,750/- for temporary use for purchase of a piece of land and thus he is contradicting the first portion of the statement. Therefore the question of accepting the evidence of Bodke in view of the contradictions brought out in the his evidence is a question of fact and it is in the realm of appreciation of evidence.

13. If the statement of the applicant made by the applicant on 13.1.1988 and the statement of Bodke given before the Inquiry Officer are to be accepted then it clearly proves charge No.1. As already stated the question whether these two statements should be accepted or not is in the realm of appreciation of evidence and this Tribunal cannot sit in appeal over the finding recorded by the competent authority and come to a different conclusion that their statement cannot be accepted. Recently there are a number of judgments of the Apex Court interfering with the orders passed by the High Courts and the Tribunals observing that on matters

like this they cannot act as if they are sitting in appeal over the orders of the disciplinary authority or appellate authority. The Supreme Court has held in recent judgments that the High Court or the Tribunal has only judicial review over the decision making process and not over the actual decision. Suffice it to refer to the latest judgments on this point which are reported in 1998(1) SC SLJ 74 [UNION OF INDIA & ORS. Vs. B.K. SRIVASTAVA]; 1898(1)SC SLJ 78 [UNION OF INDIA Vs. A. NAGAMALLESHWAR RAO]. It has been clearly pointed out in these decisions that the Tribunal has no appellate power and cannot reappreciate evidence and reach different conclusions on findings of fact. In view of the law declared by the Apex Court we cannot now reappreciate the evidence and decide whether the earlier statement of the applicant should be accepted or not, whether the evidence of Bodke should be believed or not etc. The Inquiry Officer, the Disciplinary Authority and the Appellate Authority have given concurrent findings that Charge No.1 is proved against the applicant. They have considered the evidence on record and appreciated the same and recorded concurrent finding of fact which is not open to challenge before this Tribunal on the ground that they should not have believed the evidence in view of contradictions etc.

14. If once we come to the conclusion that there is some evidence which has been believed by the said three authorities and they have held that Charge No.1 is proved

we have to accept the said finding of fact. Then as far as punishment is concerned the Supreme Court time and again has pointed out in number of recent judgments that the Tribunal cannot interfere with the discretion exercised by the competent authority in imposing the punishment. As for as Charge No.1 is concerned there is a grave dereliction of duty and a grave misconduct in misappropriating the amount. In case the applicant had taken the amount which was missing from the cash box and subsequent found in a rexin bag and was seized on the next day, applicant's statement given on the first day makes clear admission that he had given this amount to Bodke for purchase of land. The Disciplinary Authority has found that Charge No.1 as a very grave charge and serious misconduct and passed the order of dismissal from service. Though the Appellate Authority agreed with the finding of the Disciplinary Authority he took a lenient view on the plea of mercy of the applicant and converted the punishment to one of compulsory retirement. By no stretch of imagination the punishment of compulsory retirement can be said to be excessive so as to call for interference by this Tribunal having regard to the gravity of misconduct.

15. As already stated the learned counsel for the applicant has some arguable case so for as Charges Nos. 2 and 3 are concerned. Since the documents are not produced and some witnesses were not examined in respect of charges 2 and 3 the question is as to what order

should be passed. We may have to set aside the finding of guilt recorded by all the authorities regarding charges Nos. 2 and 3 and may even remand the matter to the disciplinary authority for production of those documents and witnesses and then given findings on charges 2 and 3. In the alternative we may just set aside the finding on charges 2 and 3 and leave the matter at that stage without remanding the matter in view of the matter being about ten years old. In our view in the peculiar circumstances of this case there is no necessity to follow any one of these alternatives since charges 2 and 3 are minor irregularities which would result in some minor punishment.

16. The Disciplinary Authority has mentioned in his order that charges 2 and 3 are only technical violations or minor violations which can be let off with some minor penalty. He has observed that charge No.1 is grave misconduct and calls for highest punishment viz., removal from service. The Appellate Authority agreed with the reasoning and the findings of the Disciplinary Authority, but however taking a lenient view of the matter he reduced the punishment to compulsory retirement. In these circumstances nothing turns out if the findings on charges 2 and 3 are set aside since the punishment of compulsory retirement for the grave misconduct has to be confirmed. It would be waste of public time and money if the matter is to be remanded for re-inquiry or full

inquiry regarding charges 2 and 3 which are minor irregularities and it serves no purpose if the order of compulsory retirement on the basis of Charge No.1 stands.

17. Charge No.2 is only showing excess amount on hand without submitting excess amount memo to the Head Office. As far as charge No.3 is concerned it is the case of applicant not residing in the quarter in the same place but residing outside the Head Quarters in his own village. These are two minor irregularities and therefore it will be a purely academic exercise if any further inquiry should be ordered by setting aside charges no. 2 and 3 and remanding the matter on the ground of violation of principles of natural justice. Therefore, we hold that we can confirm the order of punishment imposed on the applicant on charge No.1 and dispose of the application on that basis.

18. In the result the application is dismissed since the order of punishment has to be confirmed on the basis of concurrent findings of all the three authorities on Charge No.1. Hence no direction is given on Charges No.2 and 3 which are minor irregularities. No order as to costs.

M R Kolhatkar

(M.R.Kolhatkar)
Member(A)

R G Vaidyanatha 13/9/96

(R.G.Vaidyanatha)
Vice Chairman