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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 261/92

Transfer Application No:

DATE OF DECISION: 22 95

Ibrahim Hayatchand Tahsildar Petitioner

Shri S.P.Kulkarni Advocate for the Petitioners

Versus

Union of India and others. Respondent

Shri S.S. Karkera for Advocate for the Respondent(s)
Shri P.M.Pradhan.

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

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

1. To be referred to the Reporter or not ? *Y*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *X*

B.S. Hegde
(B.S. Hegde)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 261/92

Ibrahim Hayatchand Tahsildar

... Applicant.

V/s.

Union of India through
Chief Postmaster General
Maharashtra Circle
Bombay,

The Postmaster General
Goa Region,
Panaji.

The Sr. Superintendent of Post
Offices, Kolhapur Division
Kolhapur.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

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

Appearance:

Shri S.P. Kulkarni, counsel
for the applicant.

Shri S.S.Karkera proxy for
Shri P.M.Pradhan, counsel
for the respondents.

JUDGEMENT

Dated: 2.2.95

¶ Per Shri B.S. Hegde, Member (J) ¶

The applicant has filed this O.A.
challenging the order passed by the respondents
on 17.10.89 and 6-7/12/90 respectively.

2. The brief facts which are undisputed
is that the applicant was working as Extra Departmental
Branch Postmaster at Akivat. On 17.10.89 the
Inspector of Post Offices Pune inspected Akivat
Post Office and inspected the cash and other
valuable as per procedure. While verifying the cash,
stamps, blank Money Order forms etc., it was found
that the cash balance was not tallying and that
there was a shortage of cash. While explaining
about the said shortage the applicant admitted that
the said shortage was due to the withdrawal of the
said cash by the applicant for his personal needs.

The Inspector gave him ample opportunity to adjust the accounts. The said deficit of cash balance could not be adjusted by the applicant by way of remittance of unauthorised withdrawal. The statement of the applicant was recorded on the same day. After taking into consideration the unauthorised withdrawal of the money for personal use by the applicant disciplinary proceedings have been initiated against the applicant under Rule 8 of E.D.A. (Conduct & Service) Rules 1964 for violation of the provisions of Rule 17 of E.D.A. (C&S) Rule 1964 and Rules 106, 107 and Rule 11 of the B.O. Rules. An Enquiry Officer was appointed to hold enquiry into the following charges:

ANNEXURE -I

. Summary of charges on Shri Ibrahim Hayatchand Tahsildar put off E.D. B.P.M. Akivat B.O. (Kurundwad):

Article of Charge No.1

On 17.10.39, while Shri Ibrahim Hayatchand Tahsildar was working as E.D. B.P.M. Akivat, shortage to the tune of 991.05 (Rupees Nine hundred ninety one, paise five) was notified in the office cash. As such Shri Tahsildar is charged with, violation of B.O. Rule No.11 and note thereunder, and service rules for Extra - Department Agents (Conduct & Services) Rules 1964.

Article of charge No.2

Shri Tahsildar while working as E.D. B.P.M., Akivat on 13.10.39, and 14.10.39 the following money orders were received for payment from Kurundwad Sub-Office:-
Shanivar Peth M.O. No. 6289/33 dated 12.10.39 for Rs. 484/- and Kolhapur M.O. No. 7363/33 dated 13.10.39 for Rs. 250/-
Their entry was made in the B.O. journal on 13.10.39 and 14.10.39 respectively.

15 days of "putting off duty" i.e. 31.10.89. As per the aforesaid order, the concerned confirmation order was passed by the Competent Authority on 2.11.89, a delay of two days. Since the Rule is mandatory in nature and the confirmatory order was passed within that period the same should be treated as illegal. Secondly, he contends that he had kept the cash with on Shri Hujare for safe custody who was reported to have gone to Kolhapur and he could not produce the cash for inspection. In this connection he relied upon Rule 11 of Branch Post Offices Rules, which reads as follows:

" When a safe is supplied to a branch office, the cash, postage stamps, articles in deposit, stamps and seal, and in short all articles of value including money order forms should be locked up in it, special care being taken to lock up insured articles in deposit and the branch postmaster should keep the key or keys on his person by day and night. The greater portion of the stock of postage stamps of the office should always, even during the day time be kept inside the safe, and only the stamps required for a day's sales, or half a day's sales should be taken out at a time.

Note: All extra departmental branch postmasters whether their offices are provided with iron safes or not should make their own arrangements for the safe custody of cash and valuable on their own responsibility. They are at liberty to keep the cash and valuables wherever they like provided that they are available when required and that, when called for, they can be produced for inspection within the time required for going to and coming back from the place where the cash is kept for safe custody. "

But the money order forms and amount was not entrusted to the E.D.A. for payment. As such Shri Tahsildar E.D.B.P.M. Akivat is charged that he violated the provisions of P.O. rule No.106, 107(2) and E.D. Agent (C & S) Rules No.17.

3. After completion of the enquiry, the Inquiry Officer submitted inquiry report to the Disciplinary authority. The Disciplinary Authority after taking into consideration of the Enquiry Officer's report and the representation submitted thereafter by the applicant passed an order of punishment vide order dated 7.12.90 (Annexure D) stating that the charges levelled against the applicant are undoubtedly proved and he agree with the findings of the Enquiry Officer. Accordingly, the applicant is not fit to be ~~retained~~ in service. Accordingly he passed the order of removal from the service with immediate effect. Against which the applicant has submitted an appeal to the Appellate Authority, who after considering the points raised by the applicant in the appeal and evidence available on record had come to the conclusion that there is no justification to interfere with the decision of the Disciplinary Authority and accordingly, rejected the appeal of the applicant. Thereafter, the applicant has filed this O.A. challenging the "putting off duty" as well as removal order passed by the respondents.

4. We have heard counsel for the parties and perused the documents. The learned counsel for the applicant contended that as per Rule 9 EDA Conduct Service Rule 1964 having passed the " put off duty" on 17.10.89 the Superintendent concerned, should have passed the confirmatory order within

According to the counsel for the applicant, since it is not safe to keep the case in the Branch Post Office in which he was working, the cash was kept with Shri Hujare. In that event of the matter he should have taken prior permission of the Competent Authority. In the instant case no such permission was taken, therefore, the action taken by the applicant is not in accordance with law. Further, the money orders which are to be disbursed to the respective payees was not paid in time, though the money orders was received in the Branch Post Office on 13.10.89 and 14.10.89 respectively. Money Orders for Rs. 250/- and above should have been entrusted to the E.D.D.A. in the normal course and intimation should have been sent through E.D.D.A. The learned counsel for the applicant nevertheless contends, that there is no merit in the action taken by the respondents and thus the removal order is required to be quashed.

5. Considering the rival contention of the parties, we are of the view, that the point raised by the applicant does not have much merit and there is no lacuna in the inquiry proceedings or in disciplinary or appellate authorities order. Keeping in view the ratio laid down by the Supreme Court in the case of Parmanada case AIR 1989 SC 1185:-

" The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The penalty can lawfully be imposed and if imposed on the proved misconduct, the Tribunal

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has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with etc."

6. In the light of the above, we are satisfied that the penalty imposed by the respondents are in accordance with relevant rule and it is not open to the Tribunal to interfere with penalty passed by the respondents unless it is arbitrary or mala fide. No such allegation was made by the applicant. In the circumstances, we are of the view, that there is no merit in the O.A. Accordingly O.A. is dismissed. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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