

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 620/92

Date of Decision: 17.6.97

Shri Notary, R. Srinivasan,

.. Applicant

Sgri Y.R. Singh,

.. Advocate for  
Applicant

-versus-

Union of India and others,

.. Respondent(s)

Shri S.S.Karkera for  
Shri P.M.Pradhan,

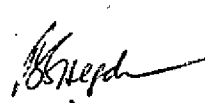
.. Advocate for  
Respondent(s)

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 ? x
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal ? x

  
(B.S. Hegde)  
Member(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNALS  
BOMBAY BENCH 'GULESTAN' BUILDING NO: 8  
PRESCOT ROAD, BOMBAY:1.

Original Application No. 620/92

17<sup>th</sup> the Twelfth day of June 1997.

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

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

Notary  
S/o Rangachari Srinivasan  
residing at Village Kok,  
Via Bari, Taluka Jantoor  
District : Parbhani  
State of Maharashtra.

... Applicant.

By Advocate Shri Y.R. Singh.

V/s.

Union of India through  
The Director of Postal  
Services,  
Near Army Recruiting Office  
Near Nagar, Naka Contonments,  
Aurangabad.

Superintendent of Post Offices  
Nanded, Nanded Division  
District : Aurangabad.

The Enquiry Officer and  
Assistant Superintendent  
of Post Offices,  
Aurangabad Division.  
Aurangabad.

... Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

ORDER

( Per Shri B.S. Hegde, Member(J) )

In this O.A. the applicant has challenged the impugned order dated 21.10.82 and 23.7.84 (Exhibit A & B). The applicant has prayed for setting aside the aforesaid orders and to direct the respondents to re-instate the applicant in service from the date of his suspension.

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claim the amount from the un-operated account. The department after detecting the said misappropriation, initiated disciplinary proceedings under the provisions of the Rules for violating various Rules. A charge sheet was issued on 10.7.78 directing the applicant to submit the statement within 10 days. The applicant did not prefer to submit his statement either accepting or denying the charges. Thereafter the disciplinary authority decided to proceed against the applicant under Rule 14 of CCS(CCA) and thereafter appointed an Enquiry Officer and Presenting Officer. The Enquiry Officer had conducted an oral inquiry and the applicant was provided fair and reasonable opportunity to submit his say and after conducting the said inquiry and on the basis of evidence which is produced before the Enquiry Officer. The Enquiry Officer had submitted his report on 10.8.83. The Disciplinary authority thereafter passed the order dated 23.7.84 and the said order was served on the applicant on 25.7.84. Against which the applicant has preferred an appeal on the same day which was rejected by the Appellate Authority vide order dated 29.4.84 stating that the said order was sent to the applicant in his address by post with a covering letter dated 6.5.85 which the applicant was refused to accept, zerox copy of the same is enclosed herewith.

3. The learned counsel for the applicant urged that the disciplinary authority has initiated the enquiry subsequent to the acquittal from the

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2. The brief facts are that at the relevant time the applicant was working as Postal Assistant, Parbhani, Post Office. In July 1977 the applicant made entry in respect of the two pass books of two Post Office Fixed Deposit (FD) Account Nos 9215 and 9378. The applicant was entrusted the duty of transferring some fixed deposit pass books to SBCO to keep them in safe custody as the said books were lying undelivered with Parbhani Head office. The applicant while depositing the said pass books was subject to make a suitable entries or remarks at ledger card and applicant in fact made certain remarks and entries on some of the card, however the applicant with the intention to defraud the department retained some of the pass book within. Thereafter he managed to transfer the said account to various Sub-Post Offices by submitted SB 10(b) from making fictitious signature of the depositors and thereafter withdrawn some amount with the help of Riksha driver. He has also signed warrant of payment and as identified the person as original depositor, whereas in fact the person was not original depositor. The applicant has taken undue advantage of his official position. He also instructed Sub-Post Master to effect payment in the said account to the said Riksha driver and after identifying and on the instruction of the applicant the said payment was effected by the various Sub-Post Master. It is also detected that the said Riksha driver handed over entire amount to the applicant after receipt the same for some consideration for his co-operation to

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High Court after a lapse of 5 years. The applicant was convicted under Section 420 and Section 468 of the IPC by the Learned Chief Judicial Magistrate, Parbhani in both the cases 18/80 and 19/80 and pleased to pass sentence of conviction awarding the punishment of three months R.I. and fine of Rs. 200/-. The High Court also observed that there was no evidence that the applicant was real depositor.

4. The learned counsel for the applicant has drawn our attention to Rule 80 of P & T Manual wherein " Prosecution should be the general rule in all those case which are found fit to be sent to the court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental action should not precede prosecution." After recording misappropriation the complaint was also lodged with the local police authority and the local police authority entered into investigation. After completion of the said investigation, the criminal case No. 129/77 and 130/77 had lodged under section 381, 409, 420, 468, 477A of IPC. The learned Chief Judicial Magistrate, Parbhani after conclusion of the Trial was pleased to pass sentence of conviction of awarding the punishment of three months R.I. and fine of Rs. 200/- . Against which an appeal was preferred in Session Court Parbhani. The same was dismissed by the Session Court confirming the earlier sentence. Against which revision appeal was preferred before the Hon'ble Bombay High Court Aurangabad Bench and the same was registered in C.R.A. 55/89 and 52/89. The High Court was pleased to decide the both C.R.As by their judgement and order dated 3.4.1990, allowed the review petition and set

set aside the earlier court's order.

5. Pursuant to the conviction from the Lower Court on 31.8.82, the respondents has issued Show cause notice as per Rule 19 of CCS(OA) served on the applicant to submit his representation. against the said proposed unishment on account of conviction. It is also stated that separate disciplinary proceeding) were conducted and on the basis of the findings in the departmental inquiries, the disciplinary authority had came to the conclusion to dismiss the applicant and passed its order on 23.7.84. From the order of disciplinary authority it is clear that the conviction was not the foundation of dismissal of the applicant.

6. The applicant has filed condonation of delay explaining the reasons. the Same is not satisfactory on that score the application is liable to be dismissed.

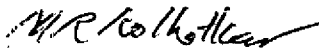
7. Heard counsel for the parties and perused the pleadings and oral arguments of the parties. On perusal of the enquiry report, we find that Shri Shoukat Hussain APM Parbhani in his statement dated 31.8.77 has stated that he had given 85 FD pass books to the applicant for passing suitable remarks in the ledger cards but the applicant did not pass a remark in the ledger card of Pathri FD (account No. 95022 and did not return the said pass book to the APM. The applicant in his statement dated 30.8.77 has stated that he had received some pass books for passing suitable remarks in ledger cards. It is not the case of the applicant that he was not given any opportunity. It is clear that he has been asked to give list of evidence as back as 1980.

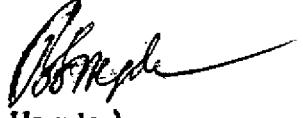
8. In the light of the above, the question to be seen here is whether it is permissible for the Tribunal to re-open the finding of the Inquiry officer/ Disciplinary Authority and quash the penalty against the applicant. Admittedly, the disciplinary authority imposed the punishment as back as 1984. The applicant was not preferred any appeal against the disciplinary enquiry on the score of punishment and he filed this O.A. after a lapse of 8 years. The applicant was given sufficient opportunity but he has not availed this opportunity. Merely on the reasons that the applicant was convicted by the Courts below, that does not mean that he should not be re-instated in service. It is seen that the High Court has acquitted the applicant. The penalty was imposed by the disciplinary authority. It is incorrect to state that the disciplinary enquiry was initiated against the applicant subsequent to the acquittal by the High Court. In fact, the disciplinary enquiry was initiated as back as 1978. and after completion of enquiry, order of dismissal was passed on 23.7.84. Once it is established, that the enquiry is conducted in accordance with Rules, the Apex Court has held in the case of Union of India V/s. Parma Nanda that the Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is

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a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. Unless it is made out that the order passed by the respondents is malafide. No such case has been made out by the applicant in this O.A. Needless to mention that repeated representation by itself does not revive the limitation.

9. In the facts and circumstances of the case we do not find any merit in the O.A. Firstly the O.A. is liable to be dismissed on the point of limitation. Secondly on merits also the applicant has not made out any case for our interference. In the result O.A. is devoid of merits. Accordingly the O.A. is dismissed. No order as to costs.

  
(M.R. Kolhatkar)  
Member (A)

  
(B.S. Hegde)  
Member (J)

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H17-697  
Order/Judgement despatched  
to Applicant/Respondent (s)  
on 20.6.

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