

96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, AT MUMBAI-400 001.

REVISION PETITION NO. 03 OF 1998.

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ORIGINAL APPLICATION NO. 990 OF 92.

(A) SHRI. A.N. JOSHI. PETITIONER
APPLICANT

V/s...

(R) Senior Superintendent of
Post Offices,
Aurangabad Division,
At AURANGABAD and Others. ... RESPONDENTS.

REVISION PETITION OF THE PETITIONER (APPLICANT)

ABOVENAMED SEEKING REVISION OF THE TRIBUNAL'S

FINAL ORDER DATED 16.09.1998.

(A) BRIEF HISTORY LEADING TO THE SUBJECT
PETITION FOR REVISION :

1. The Petitioner was proceeded against,
alleging misconduct, vide Respondent No.1
Memo dated 06.03.1986 under Rule-14 of
C.C.S. (C.C. & A.) Rules, 1965. The
articles of Charge were in brief as under:

ARTICLES OF CHARGES :

"ARTICLE (I) :

That the said Shri. Awadhut Narayan
Joshi while functioning as Sub-
Postmaster, Jalna, Mondha T.S.O.,
during the period from 20.07.1982
to 11.01.1986 allowed his wife as
Small Savings Authorised Agent

contravening the Provisions of Rule-3 of SAS Rules quoted in D.G. PO Circular No. 66 dated 04.03.1960 amended from time to time and inserted in Cl. XXXI of Small Savings Scheme Part-I and by claiming commission thereon in contravention of Rules 543(9) of P & T Manual Volume VI Part-II.

#ARTICLE (II) :

That during the aforesaid period and while functioning in the aforesaid Office the said Shri. Awadhut Narayan Joshi accepted the amount of Rs.1000 from Shri. B.S. Bhosale towards purchase of 6 N.S.S.No.E/6-334693 on 4.x.85 and Rs.1300 from representative of Shri. Sureshchand Pannalal Jain towards purchase of 3 XIX year & NSCs of Rs.100 D.N. and 2 of Rs.500 DN. on behalf of Shri. Sureshchand Pannalal Jain R/o. Jalna at counter and shown them to have purchased through an authorised Smt. S.P. Kulkarni and contravened thereby the Provisions of Rule 543(8)(A) and (D) of P & T Man. Vol. VI Part-II & Rule 3(1)(ii) of C.C.S. (Conduct) Rules, 1965.

2

"ARTICLE (III) :

That during the aforesaid period and while functioning in the aforesaid office the said Awadhut Narayan Joshi temporarily misappropriated the amount of rebate of Rs.40/- by recovering excess from the Depositor of R.D. A/c. No.421457 standing open at Jalna Mondha T.S.O. For a period of 6.1.1986 to 10.01.1986 on which the amount stands paid by him to the agent Shri.Shankarrao Bhimrao Deshmukh Savings Agent, Jalna for payment to the Depositor. Thus the Provisions of Rule-4 of FAB VOL. IV Rule-502 of P & T Manual Volume. VI Part-II and Rule-8 of P.O. R.D. Rules 1981 is contravened by the said Shri. A.N. JOSHI.

"ARTICLE (IV) :

That during the aforesaid period and while functioning in the aforesaid office the said Shri.Awadhut Narayan Joshi misbehaved arrogantly and discourteously with Shri.S.B. Deshmukh, the Member of Public while dealing at the counter on 09.01.1986 by contravening the provisions of Rule 3(1)(iii) of C.C.S.(Conduct) Rules, 1964."

2. The above Charges were denied by the applicant and Inquiry was held by the Disciplinary Authority by appointing "Inquiry Officer, who gave a report returning the finding as Article of Charge No.1 to 3 as not proved and Article of Charge No.4 as proved (viz. behaving arrogantly and discourteously with member of Public.) A Copy of Inquiry Report was sent to the Petitioner for his comments thereon if any.

3. The Petitioner was however not apprised about the tentative decision taken by the Disciplinary authority viz. his dis-agreeing with Inquiry Officer's findings (Articles of Charge No.1 to 3 as 'NOT PROVED') with reasons therefore while forwarding the Inquiry Officer's Report (Pre-decisional stage) on 05.09.1989.

4. The Petitioner, being totally unaware as to the reasoning and the tentative decision (of ~~disagreeing~~ x with I.O.) of Disciplinary Authority, was virtually caught unaware and he thought that the findings of the Inquiry Officer would be upheld by Disciplinary Authority. Naturally the Petitioner submitted his comments only on Article of Charge No.4 supra.(and first Para of Representation dated 13.09.1989 is self explanatory).

5. The Disciplinary Authority thereafter issued Punishment Order inflicting major penalty vide Memo dated 25.01.1990. On preferring appeal on 22.02.1990 (Page-52 of Original Application) ^{lt} which was decided ^{by} on 4.6.1990 (modifying penalty). Being aggrieved the Petitioner preferred Revision Petition on 27.09.1990 (Page 57 of O.A.). But the same was rejected on 03.12.1991 (Page-61 of O.A.). The Petitioner submitted Petition for Review on 22.01.1991 to the Hon'ble President of India but the decision was not it appears communicated by the time the O.A. was filed on 04.09.1992.
6. The Petitioner having waited patiently for Review Order upto August, 1992, filed the subject O.A.- No. 990 of 1992 on 04.09.1992 (i.e. within one year from the final Order in Appeal dated 03.12.1991).
7. This Hon'ble Tribunal was pleased to hear the arguments on behalf of Petitioner and Respondents at length and pronounced Tribunal's Order (Judgment) on 16.09.1998. Herewith annexed a True-Copy of the Judgment which was delivered to the Petitioner's Advocate on 25.09.1998 (forward dated 22.09.1998 signed for Registrar, C.A.T. Mumbai Bench on 23.09.1998).

The Subject Revision Petition is filed in the Registry on 20.10.1998. The Subject Petition is therefore preferred within the time-limit of 30 days.

8. This Hon'ble Tribunal was pleased to dismiss the Subject O.A. barring clarification regarding the Penalty (Technical point), holding the following:-

- (1) Since Tribunal can not sit in appeal and reappreciate the evidence, this Court is not taking up the said exercise. However, we have seen that Disciplinary Authority has given cogent reasons as to why the Charges 1 to 3 are also proved (holding his own view on them by disagreeing with Inquiry Officer on them). This Tribunal however, though having heard about merits of the case, are not persuaded to hold that finding of the Disciplinary Authority is perverse or bad-in-law.
- (ii) Relying on the following Judgments this Hon'ble Tribunal held that there is no necessity to give fresh opportunity for hearing (or Representation) on the findings disagreeing with Inquiry Officer with reasons therefore

before passing final Punishment Order.

- (a) 1994 SCC (L & S) 1019 S.B.I. V/s...
S.S. Koshal.
- (b) Narayan Mishra (S.C.)
- (c) Full Bench 22.01.1998 (Madras C.A.T.)).
- (d) 1998(1) S.C. SLJ 379 : State of
Rajasthan V/s.. M.C. Saxena.

9. The Petitioner has however come to know the following two points, which would go to the root of the matter and eventually change the course of the decision taken by this Hon'ble Tribunal on 16.09.1998.

ONE : In the recent Judgment the Hon'ble Apex Court (1998(2) S.C. S.L.J.117 : P.N. Bank V/s.. Kunj Behari Mishra) while deciding O.A.No. 1884 of 1993 on 19.8.1998 (Reported in SC SLJ of August/September, 1998 coming to hand on or about 26.09.1998 having held that the law laid down in Ram Kishan's Case 1996(6) SCC-157 is agreed upon and that the contrary view expressed in S.S. Koshal's Case and M.C. Saxena's Case do not lay down correct Law)

TWO : The Petitioner has come to know recently that the correct position in regard to the powers of Respondents No.1 having issued Order of placement in

in higher grade of the Petitioner are restricted and not absolute (empowering him to inflict major penalty on such Government servant viz. Petitioner).

This view was held in the Case of One Shri. Sugandhi while ~~deciding~~ a Review/ Revision Petition by an Order issued in the name of President of India and such a penalty Order (in an identical situation) was held as ultra licitum and was set aside. Though the Respondents are aware of the above Case of Sugandhi, they have suppressed this vital information which is fatal to the view taken by them while arguing before this Hon'ble Tribunal in the Subject O.A. This point too goes to the root of the matter and it has to be held that Respondents can not suppress such contrary view taken by and on behalf them which would ultimately change the course of the Case and affect their line of arguments. They are to be held as estopped from acting contrary to what was held by them in Sugandhi's Case (They may be directed to disclose Full details of the said Case for re-appreciation of the views held by this Hon'ble Tribunal. (This contention was not pressed by

104

- 9 -

Petitioner's Advocate as he was not made aware of Sugandhi's Case supra, though on facts it was apparent that powers of appointment and all penalties were vested in January, 1990 (Amendment). There is however, a specific point dealt upon in Sugandhi's Case viz. though the Respondent No.1 was equipped with Powers he being not having actually appointed (actual powers to appoint Petitioner were with Director of Postal Service when he came to be appointed) as he had then no powers to appoint the Petitioner. This was clear from the contents of D.G. P & T Memo dated 07.08.1959 printed as G.O.I. Orders No.4 below Rule-12 of C.C.S. C.C. & A. Rules, 1965 read with Digest Note-4 on page 280 of Swamy's Compilation of C.C.S. C.C. & A Rules, 1993 Edition. ^{Letter 15-12-85} The above view was fortified by a decision ^(By RPH) in Sugandhi's Case decided by Respondent's themselves. Moreover, this position in law and Rules is to be held as binding in as much as Respondent No.1 had no powers to be appoint Petitioner (as ^{it} grade can not be sub-delegated or devolved). This was the view held by and on behalf of the President of India in Sugandhi's Case.

The Petitioner being similarly placed, he deserves re-consideration of Contrary, view held in the Judgment, by ordering restoration of the Subject O.A. (by setting aside the Judgment of 16.09.1998) on this yet another ground besides main ground (binding president of the Judgement dated 19.08.1998 on this Hon'ble Tribunal, who was pleased to decide the Contentions issue involved in Narayan Mishra- S.S. Koshal. M.C. Saxena and Full Bench C.A.T. Madras.

GROUND FOR REVISION :

FIRST : The law on which the Judgment of this Hon'ble Tribunal is based (Supra) was not holding the field on 16.9.1998 as the Hon'ble Apex Court with X Coram of Three (Sitting) Judges of the Hon'ble Supreme Court viz. J.J. Hon'ble Mr. Justice S.C.Agrawal, Hon'ble Mr. Justice S.P.Bharucha and Hon'ble Mr. B.N. Kirpal have held on 19.08.1998 (i.e. prior to the Judgment dated 16.09.1998 of this Hon'ble Tribunal), that the view taken in S.S. Koshal and M.C. Saxena do not lay down a correct law.

In view of the above the Judgment of this Hon'ble Tribunal is to be held, with respects, as per incuriam. This view is expressed in Full Bench Judgment of Hon'ble C.A.T. Bangalore in C.R. Rangdhamiah case on 16.12.1993 (AT FB J - Kalra- 1994-1996 Page-89), vide Para-15. Even otherwise the law laid down and its binding effect on this Hon'ble Tribunal (The efforts would be made to produce relevant extract from Judgment Today or Scale or the like publishing the aforesaid Judgment in P.N. Bank V/s... K.B. Mishra's Case on an earlier date than 16.09.1998). In any case the said Judgment has a binding effect and the Subject O.A. deserves to be restored and heard on the above two points of law.

: P R A Y E R :

THIS Hon'ble Tribunal may be pleased to :

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- (i) Quash and set aside the Judgment Order dated 16.09.1998.
 - (ii) Restore the O.A. for Revision/Review of the Order in (i) above.

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(iii) Re-call the Records of the Case and
hear both the sides on an appropriate date.

(iv) Pass Orders as deemed fit and proper.


: VERIFICATION :

I, AVDHUT Son of Narayan Joshi, Age - 57 years,
Occu. Govt. Service, Residing at : Kadrabad
Jalna, 431 203 (Maharashtra) do state on
oath that the contents of the above paras
in Review/Revision Petition are true to
my personal knowledge, barring legal
expressions which are believed by me to be
true on legal advice and that I have not
suppressed any material facts.

PLACE : MUMBAI-1.

DATE : 20.10.1998.

BEFORE ME :


(S.P. KULKARNI.)
ADVOCATE FOR PETITIONER.
CAN JOSHI
(A.N. JOSHI.)
PETITIONER