

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 812/92

Transfer Application No:

DATE OF DECISION: 16.3.1995

S.N.Jibhkate

Petitioner

Shri D.B.Walthare.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri A.B.Chaudhari

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

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

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

  
(M.S.DESHPANDE)  
VICE-CHAIRMAN

(S)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH,  
CAMP AT NAGPUR.

Original Application No.812/92.

S.N.Jibhkate. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande,  
Vice-Chairman,  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances :-

Applicant by Shri D.B.Walthare.  
Respondents by Shri A.B.Chaudhari.

Oral Judgment:-

¶ Per Shri M.S.Deshpande, Vice-Chairman Dt. 16.3.1995.

By this application, the applicant challenges the order of removal passed against him as a result of the departmental inquiry effected against him. The applicant was serving as a Postal Assistant <sup>and</sup> who was charged under three heads of charges for having misappropriated amounts of Rs.400/-, 600/- and 400/- respectively. After the charge sheet was served on the applicant he appeared before the Enquiry Officer and admitted the guilt. On the basis of that the Disciplinary Authority imposed the punishment of removal. The applicant appealed, but the appeal was dismissed and he has challenged the removal by filing the present application. The learned counsel for the applicant contended that the admission of the applicant was a result of the inducement offered to him by the Senior Superintendent of Post Offices that he will be dealing with the applicant lightly and continue him in service provided he admitted the guilt. According to the applicant he was already placed under

suspension when this statement came to be recorded by the Enquiry Officer on 5.12.1990. The statement (at Annexure-13) shows that the applicant had admitted, when questioned <sup>whether</sup> that he had received the copy of the charge sheet, that he had understood what the charges were and then clearly stated that he was admitting all the three charges. This statement was recorded by the Enquiry Officer and was also signed by the applicant, as well as, the Presenting Officer. The contention of the learned counsel for the applicant was that the statement was not properly recorded as laid down under Rule 14(9) of the CCS(CCA) Rules. That rule provides as follows :-

"If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon".

We find no justification for the contention that the requirements of Sub-Rule 14 were not followed, considering the very careful manner in which the Enquiry Officer recorded the applicant's statement after explaining the details of the charges to him. This was not a case where there was a denial of charge and a prayer for being dealt with leniently, but it was a case of unqualified admission of the guilt.

2. The learned counsel, while contending that the admission was a sequel to the inducement offered to him referred to at para 5 of his memo of appeal which was presented on 25.7.1991 i.e. nearly 7 months after the admission of guilt on 5.12.1990. It was mentioned in the memo of

appeal that Shri L.J.Sherke, S.S.P.O. vide memo dt. 15.1.1990 had promised that he will take the applicant on duty if the applicant admits the charges and credits the full amount and if the amount is not credited then the matter will be reported to the Police against the applicant. In view of these threats, according to the applicant, there was no other alternative <sup>but</sup> than to credit the amount of the alleged loss and admit the charges against the applicant. This statement is clearly an after thought, because it came nearly seven months after the admission of the guilt. In the representation which the applicant had made to the Disciplinary Authority ~~filed~~ on 12.1.1991, the applicant had categorically stated that he had admitted the guilt without caring for the results and with the conviction that in any event he would be punished. He further stated that though he did not deserve any lenient treatment he should be dealt with leniently and an opportunity should be given to him to improve because he had a large family to maintain. This statement gives a lie to the plea which was raised in the memo of appeal that the plea of guilty was the result of an inducement offered to the applicant. It is clear <sup>to us</sup> that the applicant's plea of guilty was voluntary and unequivocal. If this was the position, then, it was entirely unnecessary for the departmental authorities to proceed with the inquiry. Our attention was drawn to the observations of this Tribunal in K.E.Vavichi <sup>V/s.</sup> Senior Superintendent of Post Offices & Ors. (1991) 17 ATC 427), but there it has been clearly pointed out that normally when the

charge is admitted in an unqualified and unequivocal manner, there is nothing left for the Disciplinary Authority to inquire into and therefore departmental enquiry becomes an idle formality.

3. It was urged that since the amount has already been deposited by the applicant, the punishment of removal imposed on him was disproportionate and unconscionable. We do not think that in the circumstances when there were three instances of misappropriation of the government money, the punishment of removal was in any way disproportionate. We think that the punishment does commensurate with the enormity of the applicant's guilt. It was lastly submitted that since a criminal case also was pending against the applicant, the continuation of departmental proceedings was not legal. This is not the law on the subject. Both the departmental and criminal cases can proceed simultaneously.

4. In the result, we see no merit in the application. It is dismissed.

M.R.Kolhatkar

(M.R. KOLHATKAR)  
MEMBER (A)

.....  
(M.S. DESHPANDE)  
VICE-CHAIRMAN

B.