

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560038.

Dated: 27 SEP 1993

APPLICATION NO(S) 332 of 1993.

APPLICANTS: A. Shivarاماiah v/s. RESPONDENTS: Secretary, Deptt. of Posts,
New Delhi & Others.

TO.

1. Sri. Sarat Chandra Bijai,
Advocate, No. 11, Ground Floor,
Jeevan Building,
Kumarapark East, Bangalore-1.
2. Sri. G. Shanthappa,
Addl. Central Govt. Stng. Counsel,
High Court Building,
Bangalore-1.
3. Assistant Post Master General (Staff),
Karnataka Circle, Bangalore-560001.

Subject:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the
above said application(s) on 24th September, 1993.

Issued
gm*

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

27/9/93

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTY FOURTH DAY OF SEPTEMBER 1993

Presents:

Hon'ble Shri S. Gurusankaran ... Member (A)

Hon'ble Shri A.N. Vujjanaradhya.. Member (J)

APPLICATION NO. 332/93

Shri A. Shiveramaiah,
Extra Departmental Postmaster
at Abalvadi, Koppa SO,
Mandya District.

... Applicant

(Shri Sarat Chandra Bijai, Advocate)

Vs.

1. Union of India, represented by the
Secretary, Ministry of Communication,
Department of Posts, Dak Bhavan,
New Delhi - 110001.
2. Postmaster General,
S.K. Region,
Bangalore - 560001.
3. Director of Postal Services,
S.K. Region,
Bangalore - 560001.
4. Senior Superintendent of Post Offices,
Mysore Division,
Mysore - 20.

... Respondents

(Shri G. Shanthappa, Advocate)

This application having come up for orders before the
Tribunal today, Hon'ble Shri A.N. Vujjanaradhya, Member (J),
made the following:

ORDER

Aggrieved by order of his dismissal, the applicant has
made this application u/s 19 Administrative Tribunal Act seeking
the following reliefs:

....2/-



- a) quash the order dated 7.5.91 (Annexure B) passed by R4 dismissing the applicant as also the orders dated 14.2.92 (Annexure C), and 6.11.91 wherein R3 and R2 have rejected the appeal and review respectively confirming the order of dismissal.
- b) exonerate the applicant of all the charges and order his reinstatement; and
- c) grant other reliefs deemed fit.

2. The facts are not in dispute and the same may be succinctly stated thus:

The applicant who was appointed as Extra Departmental Post Master during the year 1969 at Abalawadi, Mandya District, was put off duty w.e.f. 7.3.89 pending initiation of DE against him. By Memo dated 23/ 26.6.89, Superintendent of Post Offices (SPD) Mandya initiated DE against applicant under Rule 8 of EDAs (conduct and service) Rules 1964 (Rules for short) and has issued charge sheet alleging that he has failed to account for certain sums said to have been received by him in three R.D. Accounts and one S.B. Account. The applicant had denied all the four charges. On 12.7.89, Senior Superintendent of Post Offices (SSPD), Mysore came to be appointed as Ad hoc DA. But SPD, Mandya appointed enquiry officer (EO) on 13.10.89. After enquiry, E.O. made the report (Annexure-A) holding that all the four charges were proved. By his order dated 7.5.91 (Annexure-B) ad hoc disciplinary authority (DA) namely, SSPD, Mysore (R4) imposed penalty of dismissal of the applicant from service, holding that charges No.3 was partly proved and charge No.4 was proved. On appeal appellate authority, the Director of Postal Services (AA) - (R3) had rejected the appeal, by his order dated 14.2.92 (Annexure-C). The revision sought by the applicant was also rejected by the Post Master General (R2) by

.....3/-

order dated 6.11.92 (Annexure-D) confirming the order of DA.

Applicant challenges these orders on various grounds.

3. We have heard Shri Sarat Chandra Bijai, the learned counsel for the applicant and Shri G. Shantappa, the learned Additional Central Government Standing Counsel for the respondents and perused the records.

4. According to the learned counsel for the applicant only appointing authority can issue charge sheet, but not SPD, Mandya who is lower in rank than appointing authority. Developing the similar argument further, the learned counsel also contended that in any case, the SPD Mandya has become functus officio and ceased to have jurisdiction as ad hoc DA was appointed on 12.7.89 and as such SPD, Mandya could not have appointed EO on 13.10.89 and as such the entire proceeding is vitiated. Such contentions were not taken by the applicant during enquiry and therefore the applicant is estopped from raising those contentions at this stage. Applicant had clearly acquiesced to the jurisdiction and had never questioned either issuance of charge sheet or appointment of EO by SPD, Mandya earlier. Thus, we find no merit in these contentions and the same are barred by principles of estoppel and acquiescence. The action of SPD, Mandya cannot be said have resulted in violation of any principle of natural justice, particularly when no mala fides are attributed to him. As rightly contended by the learned counsel for the respondents, even if SPD, Mandya had committed some mistake in issuing charge sheet and appointing E.O., it does not vitiate the enquiry in as much as, no prejudice is shown to have been caused to the applicant. Even the learned counsel for the applicant, on our questioning specifically, could not point out if any prejudice was caused to the applicant by the action of SPD, Mandya.



In the absence of any particular rule in the Rules which is shown to have been violated, the contention of the learned counsel for the applicant cannot be said to be ~~taxable~~^L. In PVS Sastry vs. Controller and Auditor General reported in 1993 (1) SLR 25, Supreme Court did rule that initiation of disciplinary proceedings by an authority who was not the appointing authority is not violative of Art. 311 of the Constitution in the absence of any rules to the contrary. For the reasons discussed above, we are unable to uphold the contentions of the learned counsel for the applicant,

5. While reviewing judicially the findings and conclusions of DA, we are not required to reappreciate the evidence. It is not the function of this Tribunal to sit in judgement about the sufficiency or otherwise of the evidence. What we are required to examine is if this is a case of there being no evidence and consequent miscarriage of justice. For this purpose we have to necessarily scan the evidence on record briefly and find out if the conclusions reached at and the orders passed by DA, AA and RA, are perverse calling for our interference. We find such is not the case herein.

6. In respect of charge No.3, the DA relying on the entries in R.D. pass book A/c No. 20533 (Exp. 28) relating to one Shri Thimmegowda for three months from July 1986 to September 1986, statement of applicant at Exp 30 as well as statement ⁹² depositor _A at Exp 29, arrived at the conclusion that applicant had not accounted for the said sum of Rs.30/- in R.D. Journal (Exp 26) and B.O. A/c (Exp 24). Challenging the same, the learned counsel for the applicant contended that the depositor himself is not examined, even though he is cited as a witness and therefore, deposit is not proved. In our view, the non-

examination of depositor is not fatal in as much as the entries in the pass book which are stamped by the applicant prove the deposit, and the case sought to be made out by the applicant in defence, was not made out. Even the applicant did not get himself examined as a defence witness and his non-examination is eloquent in the sense that the case of the applicant, that depositor took back the amount, and that applicant had forgotten to cancel the entries is so artificial that it is untenable. Thus, we are satisfied that finding on charge No.3 is justified.

7. Coming to charge No.4, the DA relied on the entry in the SB A/c Pass Book (Exp 19) No. 833 262, coupled with the evidence of PW3 Thimmaiah, the husband of depositor Jayalaxmi for the deposit of Rs. 150/- on 26.12.88 into the said account. The defence version that applicant had repaid the money to Thimmaiah, is not proved and as such the conclusion reached by DA cannot be faulted. The non-examination of Smt. Jayalaxmi is of no consequence, because it is nobody's case that she had made the deposit personally. DW2 Thimmaiah, not the husband of the Account holder, though tried to support the applicant, had ultimately admitted the deposit made. Applicant never got himself examined as a defence witness. On the other hand in his statement (Exp 30) in answer to question No.25, applicant had virtually admitted the deposit made, and he having not accounted for the same. The relevant entry in the pass book (Exp 19) and its non-cancellation itself besides failure on the part of the applicant to account for the same in the relevant registers justify the finding of DA and the same is therefore not open to challenge.

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8. Thus in our considered view, this is not a case of there being no evidence nor is it a case of violation of any principle of natural justice calling for our interference. Consequently the application has to fail and we hereby dismiss the same with no order as to costs.

Sd-

Member (J)

Sd-

Member (A)



TRUE COPY

M. J. S.

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

27/9/93