

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 904/93.

Hon'ble Vice-Chairman / Member (J) / Member (A)
may kindly see the above Judgment for
approval / signature.

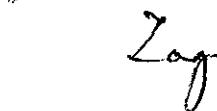

V.C. / Member (J) / Member (A) (K/S)

Hon'ble Vice-Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)




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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 904/93.

Date of Decision : 30.5.97.

Shri D. V. Kulkarni Petitioner.

Shri A. G. Deshpande Advocate for the
Petitioner.

VERSUS

Union Of India & Others Respondents.

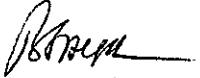
Shri S. S. Karkera for
Shri P. M. Pradhan, Advocate for the
Respondents.

CORAM :

HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

- (1) To be referred to the Report or not ? ✓
- (2) Whether it needs to be circulated to >
other Benches of the Tribunal.


(B. S. HEGDE)
MEMBER (J).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 904/93.

Dated this 30th the Friday day of May, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shri D. V. Kulkarni,
Senior Supervisor, SBCO.,
Kolhapur Head Post Office,
Kolhapur - 416 012. | ... Applicant
(By Advocate Shri A.G. Deshpande).

VERSUS

1. Sr. S.P.O.'s Sangli Division,
Sangli - 416 416.
2. DPS Goa Region,
O/o. PM.G., Goa,
Panaji - 403 001.
3. Chief Post Master General,
Maharashtra Circle,
Bombay - 400 001.
4. Director General,
Department of Posts,
New Delhi - 110 001. | ... Respondents.
5. Secretary,
Ministry of Communications,
Union Of India,
New Delhi.

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

ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

Heard Shri A. G. Deshpande for the applicant
and Shri S. S. Karkera for Shri P.M. Pradhan, Counsel for
the respondents and perused the records.

2. The short question for consideration is whether the impugned orders passed by the respondents vide dated 09.06.1992 and 27.01.1993 are sustainable in law and in the facts and circumstances of the case.

B.S.H.

The charges levelled against the applicant was - "while carrying out the agreement of MIS accounts of Sangli H.O. for the quarter ending 30.06.1991, a difference in the balances to the tune of Rs. 90,000/- was noticed by the LSG Supervisor, SBCO Sangli H.O. Further probe into the matter revealed that two fictitious MIS accounts were closed prematurely at Sangli H.O. Both the accounts were found to be fictitious ones and there were no corresponding credits against them and consequently the ledger agreement resulted in minus balance of Rs. 90,000/-" Accordingly, the respondents initiated action against the applicant under Rule 16 of C.C.S(C.C.A) Rules, 1965 and sufficient opportunity was given to the applicant to represent his case before the authority. Regarding agreement of M.I.S. work, it is not a one time job. It is a constant process to be done by each official to whom the work is assigned and it is the duty of the SBCO Supervisor to ensure that this work of agreement is carried out by the UDCs as per the time schedule fixed for the purpose. MIS agreement was not carried out by the UDCs for the period from March 1989 onwards for 7 to 8 successive quarters. It is not only the applicant, some other officials are also involved in the racket and the disciplinary authority found that the irregularities committed by the officials are of grave nature. The applicant is squarely responsible for the loss caused to the department. Accordingly, the disciplinary authority has imposed the penalty of Rs.10,000/- which should be recovered from the pay of the applicant in 20 equal instalments, against which, he preferred an appeal to the Appellate Authority vide dated 16.07.1992 stating that the penalty has been imposed not by the competent authority, thereby, the order passed

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by the Disciplinary Authority is illegal and also sought for personal hearing. The appeal has been considered by the competent authority and after considering the points raised in the appeal, the Appellate Authority agreed with the findings of the Disciplinary Authority stating that even for non-detection or delayed detection, punishment can be awarded. In this particular case, all the relevant records are missing. Even the objections raised by the S.B.C.O. were not being promptly attended to by the S.B. Branch. Therefore, the Appellate Authority was of the opinion that the order passed by the Disciplinary Authority in the case is a well balanced one and the applicant has been given all reasonable opportunities, as such, no interference is called for and he upheld the order passed by the Disciplinary Authority.

3. During the course of hearing, it is understood from the respondents' counsel that the entire amount of Rs. 90,000/- is recovered by the respective officers who are involved in the case. The learned counsel for the applicant, Shri A.G. Deshpande, urged that a fresh enquiry is required to be conducted by the Appellate Authority, since the applicant had asked for a personal hearing. As the charge levelled against the applicant is a minor one, it is not obligatory on the part of the respondents to initiate major penalty enquiry under the Rule. The said contention is not tenable and the same is rejected. The respondent no. 1 was neither the complainant nor the witness in the inquiry, therefore, the question of fresh inquiry does not arise, as the charge-sheet was issued

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under Rule 16 and not under Rule 14 of the CCS(CCA) Rules, 1965, as such, there is no bar on the disciplinary authority to pass an appropriate order as he deems fit. The applicant has not pointed out any lacunas or infirmity in the appeal, except stating that the disciplinary authority is not competent to pass the order. The Courts have held time and again that 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. 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 of 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 a matter exclusively within the jurisdiction of the competent authority, etc. In this case, since it is a fraud committed by the applicant alongwith others, it is not necessary that the onus lies on the respondents department only. It depends upon the nature of charges and the nature of explanation offered by the applicant. Where the delinquent officers are charged of making fictitious entries in the account which are based upon certain documents and records maintained by other employees, the onus to establish the case lies on the delinquent and not on the department

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to establish the converse. In the disciplinary matters, the Courts have held that unless the order passed by the competent authority is malafide or arbitrary or against the statutory rules, the Tribunal cannot interfere if the order is passed after holding an enquiry. That being the ratio of the judgement of the Apex Court, in the facts and circumstances of the case, we do not think there is any infirmity cited by the applicant's counsel insofar as the enquiry against the applicant is concerned. Therefore, we are of the view, that the punishment awarded to the applicant, in our opinion is just and proper and no interference is called for.

4. In the result, we do not find any merit in the O.A. and the same is dismissed. There will be 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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