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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.231/95.

S.K.Gurav.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Applicant by Shri S.A.Samant.

Respondents by Shri E.P.Badrinarayanan.

JUDGMENT :-

(Per Shri B.S.Hegde, Member(J)) Dt. 31.10.95

In this Original Application the applicant has challenged the order of compulsory retirement issued by the Respondents on 2.5.1994 on the ground that the findings of the Enquiry Proceedings is based on no evidence and perverse. The brief facts of the case are that the applicant had joined the department of Posts w.e.f. 30.10.1973 and worked as Stamp Vendor at Panaji, since 1987 and he completed 20 years of service in the department. In the course of his duties he was given a stamp advance of Rs.4,300/- and as per the procedure he was required to replenish the same amount of fresh stock of stamps and postal stationary from the treasury of the Post Office to make up the stamps sold. The duty hours of the applicant was to start from 9.00 a.m. and used to end at 6.00 p.m. The Respondents department made a surprise check on 7.1.1993 and found that the cash amount and the stamp to be sold found to be Rs.5358.40 as against the sanctioned amount of Rs.4,300/- and excess amount of Rs.1058.40 was found out from his cash box. When the explanation was sought from the applicant he stated that the excess amount

was his personal amount which he could not keep it separately. Accordingly he was kept under suspension and was charge sheeted. The respondents issued the charge sheet on 2.2.1993 levelling the following charges :

"Article No.1

During the course of inspection of Panaji HO by the SSPOs Goa Division on 7.1.1993, it is found that in the stamp advance of Shri S.K.Gurao, Stamp Vendor, Panaji H.O. Rs.1058.40 found excess in the stamp advance and thus violated the provisions of Rule 4(1) of F.H. B.Vol.I corrected upto 1.4.1968, Rule 3(1)(ii)(iii) of C.C.S. Conduct Rules, 1964.

Article No.2

Shri S.K.Gurao, Stamp Vendor, entrusted with work of operating Franking Machine of Panaji H.O. while discharging the duties during 1.1.1993 to 6.1.1993 not credited the amount of Rs.2800/- received through franking machine collection and thereby violated the provisions of Rule 14 of Appendix B(c) referred to in Rule 30(iii) of Instruction for use of Postal Franking Machine in IPOs, Rule 4(i) of F.H.B. Vol.I and Rule 3(1)(ii)(iii) of C.C.S. Conduct Rules, 1964.

Article No.3

Blm The Franking Machine operated by Shri S.K.Gurao, Stamp Vendor, Panaji HO was got repaired in the month of December, 1992. Shri S.K.Gurao noticed that the F.M. meter is not showing proper reading of the franked impressions. Still he did not bring it to the notice of the Senior Postmaster, Panaji and continued to operate the machine to his self benefit, did not credit the cash collected of F.N. to Government. It is, therefore, imputed that Shri S.K.Gurao violated the provisions of Rule 30 of Instructions for use of Post F.M. in Indian Post Offices, 1989 edition and Rule 3(1)(ii) and (iii) of C.C.S. (Conduct) Rules, 1964."

Against the above charges, he gave his defence vide letter dt. nil denying the charges. Accordingly inquiry had been initiated against him and he was given an opportunity to engage a Defence Assistant and after considering the various contentions of the parties the Enquiry Officer came to the conclusion that the charges are proved. The applicant

was given full opportunities and his Defence Assistant to help him to defend the case fully. In the defence statement the officer has stated that whatever F.M. credits according to the reading from 1.1.1993 to 7.1.1993 were credited to the Government, but he failed to credit the amount of Franking Machine received by him in addition to the meter reading. The Disciplinary Authority agreed with the findings of the Enquiry Officer and he had observed that the applicant as on 7.1.1993 had admitted that the Franking Machine was defective and excess amount was on account of its defect only. During the oral inquiry also this fact was corroborated. Further the applicant has not denied specifically the contents of any charge. Even in the written statement given by the applicant he has not denied the contents of the statements nor expressed any duress or pressure while it is recorded. Accordingly, the Disciplinary Authority came to the conclusion that charges levelled against the applicant is proved because the amount involved in this case the nature of the irregularity is quite serious, it relates to the leakage of revenue. Accordingly, he passed the order of compulsory retirement against which he preferred an appeal dt. 10.6.1994 in which he has not stated that a personal hearing is required nor has he stated that he has not been given sufficient opportunity to defend himself. The Appellate Authority vide its order dt. 23.12.1994 while agreeing with the Disciplinary Authority stated that the statement recorded during the preliminary inquiry indicate that the substance of charge is mainly based on the evidence recorded in January, 1993.

It is admitted therein that the excess amount was on account of the defective working of the F.M. The Panchanama drawn on 7.1.1993 is a sufficient proof about excess cash of Rs.1058.40. No body should mix up personal cash with official cash. Accordingly, the appeal has been rejected.

2. The respondents in their reply controverted various contentions raised by the applicant and stated that the findings has been arrived on the basis of his own admission that he has not credited the required amount in time. Insofar as, the facts are concerned there is no dispute that the applicant has not debited the amount of Rs.1058.40 insofar as Charge No.1 is concerned and it does not require any clarification that the applicant is not supposed to mix his private money with government money. If the applicant is having private money in his box he should have given which he did not do so in the instant case. Insofar as, Charge No.2 is concerned admittedly the applicant has not credited the amount collected from F.M. operation from 1.1.1973 to 6.1.1973 to the treasury. He voluntarily credited the amount of Rs.2,800/- on 7.1.1993. Thereby not crediting the entire amount received through Franking Machine Operation as per the procedure invoked. He has also violated Rule 30 and 33 of Instructions for use Rule 4(1) of F.H.B. Volume - I and Rule 3 of the C.C.S. (Conduct) Rules, displaying his doubtful integrity, not maintaining devotion to duty etc.

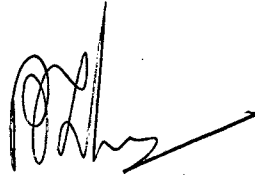
3. We have heard the learned counsel for the

...4.

parties and perused the records. The only contention raised by the applicant in this O.A. is that the absence of the Enquiry Proceedings and the Disciplinary Authority has not based any no evidence and is perverse and the said statement is not borne out of any documentary proof nor has he raised such a plea before the Enquiry Authority nor the Appellate Authority. The mere fact that the finding is not based on no evidence by itself does not dis-entitle the competent authority to take appropriate action in accordance with the law. Considering the gravity of the situation, the respondents have taken steps to compulsorily retire him which does not dis-entitle the employee to get the pensionary benefits as is permissible under law. It is not the case of the applicant that the findings of the various authorities are not in consistent and differed with the findings of the Enquiry Officer. On a perusal of the same we find that since the applicant has admitted that the excess amount was found out on the day of inspection and he did remitted the amount as per the procedure, the Respondents are right in taking necessary disciplinary action which is in accordance with law and it is incorrect to state that the findings of the inquiry proceedings is not based on the evidence neither it is perverse. Shri Badrinarayanan in support of his contention stated that there is no infirmity in the enquiry proceedings nor the findings made by the respective authorities he has cited a decision of the Supreme Court in Union of India V/s. Parma Nanda (A.I.R. 1989 SC 1185)

10

should substitute the findings of the Competent Authority. In the result, we find no merit in the O.A., the same is dismissed. No order as to costs.



(F.P. SRIVASTAVA)
MEMBER (A)



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

B.