

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 26th day of March, 2002

Coram: Hon'ble Mr. B.N. Bahadur - Member (A)
Hon'ble Mr. S.L. Jain - Member (J)

O.A. 1141 OF 1997

Shaikh Dadamiya Mohammad,
aged 31 years,
R/o Post Sogras,
Tal Chandwad,
Nasik.

(By Advocate Shri S.P. Kadam) - Applicant

Versus

1. Shri B.N. Dhokle,
Enquiry Officer,
Assistant Superintendent,
Headquarters, Usmanabad,
Maharashtra.
2. Shri D.L. Dighe,
Superintendent of Post Offices,
SRMS, Dadar Post Office,
Sorting Section,
Dadar Bombay.
3. The Director,
Bombay G.P.O.,
Bombay.
4. The Union of India,
through the Secretary,
Post and Telegram Ministry,
Sansad Bhavan,
New Delhi - 110 011.
(By Shri V.S. Masurkar) - Respondents

ORAL ORDER

By Hon'ble Mr. B.N. Bahadur - Member (A) -

The applicant in this case Shri Shaikh Dadamiya Mohammad, joined as Branch Postmaster in 1982 and has been charge sheeted, and proceeded against in a departmental enquiry in September, 1993 subsequent to an inspection made in August, 1993 by officers who found irregularities like shortage of cash etc., as described.

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2. The applicant comes up to the Tribunal seeking the relief for quashing and setting aside of the report of the Enquiry Officer dated 21.6.1994 and the order of the disciplinary authority - respondent no.2, terminating his services. The applicant also prays for quashing and setting aside of the orders of respondent no.3, made in appeal.

3. The grounds taken in the OA and argued at some length by learned counsel for the applicant briefly run as follows - It is contended that a copy of the documents cited upon were asked for and that these were not provided. This point is dealt with in the minutes of the enquiry, a copy of which is available at page 53. The Enquiry Officer has recorded his decision in this that the request of the defence cannot be granted as the aforesaid documents/witnesses are not relevant. This is found at page 53-A.

4. Another point made was that the entire issue has come about because the applicant had come to be loggerheads with the Sarpanch of the village because of the latter's behaviour and demands. It is also argued that in view of the lack of safety in the office place, the applicant had kept some documents and cash at home, as allowed as per rules. It is argued that this is allowed in foot note to Rule 11 of Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 and that at the time of inspection in fact, permission was sought to bring this cash from home where it had been kept. This was not allowed. The learned counsel for the applicant also made the point that the R.D. Deposit Books which are alleged to have been kept by the applicant contrary to the rules, were, in fact,



deposited by Account Holders themselves and despite requests that these should be taken away, they were not taken away. Similarly, the stand has been taken that the coinage had not been sent in the bag as the instructions from the respondents were that the coinage should not be enclosed to avoid transit of heavy objects. Bias is alleged in arguments made and the point is also made that the penalty of removal imposed upon the applicant is grossly disproportionate.

5. The stand of the respondents and the arguments made by the learned counsel Shri V.S.Masurkar is as follows, in brief -

The learned counsel took us over the enquiry records including the original records, which were produced during arguments, as also the Enquiry Report, a copy of which is enclosed by the applicant at page 28. The fact as recorded in the enquiry report that the applicant refused to give inspection and that this point has been recorded in Panchanama was highlighted by Shri Masurkar and a point also made that the applicant also refused to sign the Panchanama/s. This conduct was in itself a proof of misdemeanour of the applicant, according to the learned counsel for the respondents.

6. In respect of the charge regarding keeping extra cash, it is stated that even earlier he was warned against this. Further regarding Charge 3 regarding behaviour of Shri Dadamiya Mohammad Shaikh in refusing to sign the Panchanama/s was again highlighted. The learned counsel for the respondents sought to

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defend the decision of the Enquiry Officer in not allowing certain documents to be provided and not allowing one witness to be examined/cross-examined. This is well within settled law, it was argued. The learned counsel for the respondents stated that it was not a case of no evidence and or of prescribed procedures had been followed.

7. We have gone through all the papers in the case including the original record brought to our notice. We have considered the arguments made by both sides. We find no infirmity in procedure or perverse appreciation of evidence. One point however needs to be gone into i.e. the footnote to Rule 11 (ibid) relating to custody of cash clearly state that the Extra-Departmental Agents are at liberty to keep the cash and valuables at another place. Footnote to Rule 11 reads as under:

"Note: All extra departmental branch postmasters whether their offices are provided with iron safes or not should make their own arrangements for the safe custody of cash and valuables on their own responsibility. They are at liberty to keep the cash and valuables wherever they like provided that they are available when required and that, when called for, they can be produced for inspection within the time required for going to and coming back from the place where the cash is kept for safe custody."

One weakness is that whatever be the allegations in behaviour of the applicant during the inspection, we find that he was not allowed an opportunity to proceed home and bring the cash. Therefore it cannot be said that this charge (no.1) has been



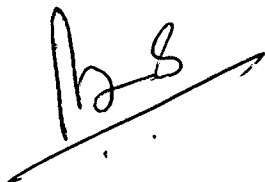
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proved. In regard to other charges we do not find any infirmity of procedure or any other point. We are conscious that we do not appreciate evidence but in the face of this weakness of non conformity of a rule of Department itself, we are arriving at the conclusion in regard to first charge. Now the above being the conclusion in this, we cannot but arrive at the conclusion that the penalty is grossly the disproportionate to the misdemeanour proved. It is therefore justifiable to direct the respondents to impose any other penalty other than removal or dismissal from service.

8. In view of the facts and circumstances of the case, and the discussions made above, we allow the OA to the extent and in terms of the orders as below -

O R D E R

The order of the disciplinary authority dated 21.6.1994 and the order in appeal dated 8.11.1994 (Exhibit - A at page 24) and the order in review dated 5.10.1995 are hereby quashed and set aside. The respondents are however at liberty to pass any order in penalty other than that of removal and dismissal. The applicant is ordered to be reinstated. However, we would not like to disturb the arrangement already made by appointing a fresh person. The respondents are at



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liberty to post the applicant even in a nearby village. Such re-appointment should be made within a period of four months from the date of receipt of copy of this order. As regarding the interim period from the date of his removal to the date of his reinstatement, the same be regulated in accordance with the rules by Respondents who shall also issue orders in this regard. The applicant shall however not be entitled to any arrears on any account for the interim period.

There shall be no order as to costs.

S.L. Jain
(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

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Order dt 26/3/92
15/4/92
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