

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:1146/1997

Dated this the 16th day of October, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN, - VICE CHAIRMAN
HON'BLE SMT. SHANTA SHAstry - MEMBER(A)

R.S.Honnurage,
Ex.E.D.C.A., Sulkud B.O.,
Tal. Kagal, S.O.,
Kolhapur Head Post Office. ... Applicant

By Advocate Shri A.G.Deshpande

V/s.

1. Union of India,
through Director General
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
2. Post Master General,
Goa Region,
Panaji, Goa 103 001. ... Respondents

By Advocate Shri V.S.Masurkar

ORAL ORDER

Per Smt. Shanta Shastry, Member(A)

The applicant in this case was proceeded against departmentally by issuing a charge memo to him on 7/12/92. The charge against the applicant was as follows:-

Shri Ramchandra Shankar Hunnurge while working as EDCA Sulkud encashed five 6 NSC certificates shown in annexure A1 on 5/7/88 each Rs.132/- and one 6 NSC of Rs.660/- Total Six amounting Rs.1320/- From Kasba Sagaon post Office and used for self instead of giving to Shri Ravsaheb Balku Kore.

Also 6 NSC shown in annexure 1A' in the name of Shri Ravsaheb Balku Kore of Sulkud B.O. for Rs.6600/- on 20/7/1988 and used for self instead of giving to Shri Ravsaheb Balku Kore/ It is alleged that - said Shri Ramchandra Shankar Hunnurge while working as EDCA Sulkud B.O. (Kagal s.o.) violated the provision of No.17 of E.D.C.C.S Rule 1964.

2. The applicant denied the charges. It was therefore decided to hold a regular enquiry. An enquiry officer was

appointed alongwith the presenting officer for the same. The enquiry officer after conducting the enquiry submitted his report on 9/4/92 giving finding that the charges levelled against the applicant were proved beyond doubt. A copy of the enquiry report was made available to the applicant and he was given time to submit his representation if any in the matter. The applicant submitted the same on 28/4/94. After going through his representation and based on the enquiry report, the disciplinary authority imposed the penalty of removal from service on the applicant vide his order dated 29/4/94. The applicant carried the matter in appeal to the Appellate Authority. The same was rejected on 29/9/94. The applicant further preferred a revision petition to the Post Master General, Goa Region, Panaji. the revisionary authority also did not find any justification to intercede on behalf of the petitioner and rejected the petition. Being aggrieved the applicant has now approached this Tribunal with a preayer to quash the entire disciplinary proceedings against the applicant as being illegal and void and to direct the respondents to reinstate the applicant as E.D.C.A Sulkad B.O. with all the benefits of the period from putting off duty till reinstatement. 3. The applicant has contended that the disciplinary authority's order as well as the orders of appellate authority and the revisionary authority have been passed without proper application of mind. The disciplinary authority had already made up his mind even before passing the penalty order. The respondents should have filed a criminal case against the applicant instead they have proceeded departmentaly against the applicant. This is against the service Rules for the Postal ED

staff. According to the applicant neither the appellate authority nor the revisionary authority has taken into consideration the fact that the allegation of illegal retention of the money on discharge of the certificate of the complainant is not proved on the basis of legal evidence. An amount of Rs.9000/- was recovered from the applicant under threat of loss of job as well as criminal prosecution on 9/3/1992 by S.D.I.Kagal who described it as recovery "for misappropriation etc." The applicant also submits that the principles prescribed in Rule 15 of the Service Rules for ED Staff have not been followed. The learned counsel for the applicant also has pleaded that the complainant had not bothered to encash his certificates and he came up with a complaint after four years of the encashment of the certificates by the applicant.

4. The respondents submit that they have followed the prescribed procedure and Rules while conducting the enquiry and passing the penalty order. Further, the respondents have stated that the applicant has not been able to show any flaw in the entire proceedings. The applicant was given full opportunity to defend his case. The learned counsel for the respondents has drawn our attention to the Annexures R-1 and R-2 which are the confessional statements of the applicant wherein the applicant has admitted that he used the money after encashing the certificates which were in the name of one Shri Kore. He infact, asked the respondents to consider his request sympathetically and to forgive him for the mistake. In both the statements he has categorically stated that the statement is written by him in his own hand and as per his knowledge and it is not given under any

type of duress. Also the confessional statement dated 5/3/92 as well as the statement dated 6/3/92 were made in the presence of two witnesses.

5. As regards the non prosecution of the applicant by way of criminal proceedings, the learned counsel for the respondents submits that the respondents were able to recover the money from the applicant and therefore they decided to proceed departmentally. According to the respondents, therefore in the absence of any infirmity in the disciplinary proceedings and having given the applicant full opportunity, the OA deserves to be dismissed.

6. The learned counsel for the applicant has again drawn our attention to a statement made by the applicant on 20/7/92 retracting his earlier statement dated 6/3/92. The learned counsel repeated that the applicant was made to give the confessional statement dated 6/3/92 under duress and he had not given it voluntarily. The learned counsel for the respondents immediately refuted this by showing that the applicant has not filed any rejoinder either in this matter even though the confessional statements had been enclosed with the reply filed as long back as 19/1/99.

7. The learned counsel for the applicant also mentions about his being put off duty for long period without any proper review or without it being brought to the notice of higher authorities as per the instructions in the Service Rules for Postal ED Staff,. However, there is no prayer in regard to this particular point in the OA. Also the learned counsel for the respondents informs that the applicant was being paid subsistence allowance @ 25% in accordance with rules.

8. We have heard the learned counsel for both the sides and have given careful consideration to the pleadings and available material. On perusal of the orders of the disciplinary authority, we find that the disciplinary authority has applied his mind to the enquiry report and has also replied on each point raised by the applicant in his representation submitted on the enquiry report. The original order is in Marathi and the translation though not quite up to the mark, we are able to get the substance of the order. Further, we find that the appellate authority has also gone into the details and has answered every objection taken parawise by the applicant. So also the revision order. In all the three penalty orders, detailed speaking well reasoned orders have been passed. The learned counsel for the applicant referred to the judgement of Union of India V/s. Parma Nanda AIR 1989 SC 1185. Even in this judgement, the Supreme Court has held that if there has been an eqnuiry which is consistent with the rules, what punishment would meet the ends of justice is a matter exclusively to be decided by the competent authority. It is well settled that it is not for the Tribunal to sit in appeal over the orders of the disciplinary authority. It is not for the Tribunal to re-assess or re-appreciate the evidence. It is enough to see if the prescribed procedure and Rules have been followed and no principles of natural justice have been violated. We are also satisfied that this is not the case of no evidence as claimed by the applicant. Witnesses were examined duly in this case and even though the applicant has retracted one of his confessions by subsequent statement of 20/7/92 i.e. after several months of making earlier statement,

there is also the statement of 5/8/92 which has not been retracted.

9. We are therefore satisfied that there was enough evidence before the disciplinary authority to find the charges as established and to impose the necessary penalty. We do not find any malafide or arbitrariness in the orders passed by the disciplinary authority, appellate authority and revisionary authority.

10. The learned counsel for the applicant has also raised issues regarding his being kept off duty for a prolonged period and the failure on the part of the respondents in not reviewing the case of the applicant as per the prescribed procedure. So also he has raised the point regarding criminal prosecution.

In our considered view these are not relevant as far as the present OA is concerned. The applicant has not made any mention in the prayer clause about these. Therefore these arguments are rejected.

11. In the facts and circumstances of the case we do not find any good grounds justifying interfance or exercise of judicial power by the Tribunal in the matter. Accordingly, the OA fails and is dismissed. No costs.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER(A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN