IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.951/92 Date of order: 11-7-1995

Mangal Singh : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm)

Hon'ble Mr.Ratan Prakash, Member(Judl)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Shri Mangal Singh in this application under Sec. 19 of the Administrative Tribunals Act, 1985, has prayed that the order Annx.A3 dated 23.12.88, dismissing the applicant from service, order Annx.A2 dated 7.3.89, by which the appeal of the applicant against the said order was rejected and order Annx.A1 dated 31.10.89, by which the petition preferred by the applicant against rejection of his appeal was rejected, may all be quashed and the applicant may be reinstated on the post of Extra Departmental Branch Post Master (EDBPM) with all consequential benefits.

2. The case of the applicant is that he was appointed as EDBPM on 17.5.79. While he was working on the said post at Makhupura Branch Post Office, he was put off duty and a charge sheet dated 6.10.87 (Annx.A5) was issued to him by the Sr.Superintendent Post Offices, Ajmer Division, Ajmer, in which 2 charges were framed against him. One of the charges against him was that on 14.9.85, he showed withdrawal of Rs.200 from Savings Bank Account No.1311068 but paid only a sum of Rs.100 to the account holder. The second charge was that on 9.7.86, he did not make payment of a Money Order of Rs.100 to Shri Uda Ram but himself put signature of the recepient on the form and received the said amount himself, but showed the payment in the

government records. Thereafter an enquiry was conducted and the Inquiry Officer vide his report Annx.A6 held both the charges against the applicant as proved. Thereupon the applicant was dismissed from service by order dated 23.12.88 (Annx.A3). The applicant's appeal against the order of dismissal was rejected by the Appellate Authority by order dated 7.3.89 (Annx.A2). The applicant filed a review application but it was also dismissed vide the order dated 31.10.89 (Annx.A1).

3. Further according to the applicant as regards the first charge, one Shri Kamaruddin was reported to have identified the depositor to whom the sum of Rs.200 was claimed to have been paid by the applicant. The said defence witness was produced during the enquiry. The defence witness had affirmed during the enquiry that he had filled-up the withdrawal form on behalf of the depositor, thereafter the depositor had signed it as identified by him and the amount of Rs.200 was indeed been paid to the depositor. As regards the second charge, Shri Ganpatlal, S/o Shri Udaram, whom the Money Order for Rs.100 was paid was also produced as defence witness. Shri Ganpatlal claimed during the enquiry that the amount of Rs.100 by way of Money Order had been paid to his father Shri Udaram, who had signed in token of receipt and whose signature had been identified by one Shri Nawabali. The identification by Shri Nawabali of signature of Shri Udaram, who had signed in token of having received the amount of Money Order of Rs.100 was not accepted by the disciplinary authority because he had signed as Nababali. One Shri Bhagchand Joshi, Sorting Postman, was also examined during the enquiry and he also identified the signatures of Shri Udaram on the Money Order. Therefore, on the basis of the evidence of the witnesses, the charges have not been correctly held as proved by the Inquiry Officer.

4. Further according to the applicant, if there was doubt about the genuineness of any signature, opinion of the

handwriting expert should have been obtained to find out whether the applicant had in fact put his own signature in token of receipt of the amount in question. When Shri Ganpatlal S/o Shri Udaram, who was well acquinted with the signature of his father had stated that the signature on the Money Order was that of his father, the finding that the charge that the applicant had put his own signature on the money order, was not tenable. In view of the judgment of the Hon'ble Supreme Court in Union of India Vs. H.C.Goyal, AIR 1964 SC 364, suspicion cannot take the place of proof in domestic enquiry. The relevant additional documents asked for by the applicant were not made available during the enquiry. Therefore, an appropriate opportunity to defend himself had not been granted to the applicant. When several witnesses on behalf of the disciplinary authority did not appear before the Inquiry Officer, the finding of the Inquiry Officer that the charges were proved was not sustainable. In Carrol Vs. Security Officer RPF, SP.Fly, reported in Case Book of CAT decisions by G.B.Singh 1986 Vol.1 page 105, the Madras Bench of the Tribunal held that the right to examine defence witnesses is a valuable right of a charged Govt.servant and the denial of this right vitiates the enquiry. Further Chapter 6 of the Guidelines for Branch Post Masters relating to Small Savings Schemes was not followed. Rule 15 of the Rule provides that the signature of the witnesses have to be obtained in attestation of payments of money orders in villages. The Cuttack Bench of the Tribunal in Padmanab Arukh Vs. Union of India & Ors, ATR 1987(1) CAT 129 has observed in this context that in the absence of unimpeachable documentary evidence of handwriting expert where allegation is of forging signature of a payee, the case has to be treated as that of no evidence. Therefore, none of the charges can be said to have been established in this case and therefore, the findings of the Inquiry Officer, the order of the Disciplinary

Authority, the order of the Appellate Authority and the order of the Revisionary Authority are all liable to be quashed.

5. The respondents in their reply have taken a preliminary objection that the order on the review application was passed on 31.10.89, which is said to have been received by the applicant on 4.12.89. However, the application was filed in 1992 and therefore, it is barred by limitation. Since the charge of forging signature of the payee could be proved on the basis of the documentary evidence and the statement of witnesses, there was no necessity to obtain the opinion of the handwriting expert. The applicant could himself have obtained the opinion of the handwriting expert as his witness if he so wanted. Full opportunity of hearing was given to the applicant. Out of the additional documents which were considered as relevant by the Inquiry Officer, four were not available with the disciplinary authority and therefore, these could not be produced during the enquiry. However, the applicant did not raise any further objection regarding the non-production of such documents during the enquiry. Statements of 3 of the 5 prosecution witnesses could not be recorded as one of them Shri Udaram,to whom the money order amount was payable had expired and others were not available at the relevant time. The observations of the Hon'ble Supreme Court referred to by the applicant have been followed and the principles of natural justice have been observed. This Tribunal is not competent to act as an appellate authority on the findings of the departmental authorities.

6. During the arguments, the learned counsel for the applicant stated that this is in fact a case of no evidence. As regards the first charge, the crucial witness Shri Kamaruddin had stated that payment of Rs.200 had been made to the depositor and as regards the second charge, the son of the recipient of the amount of money order of Rs.100, had stated

that his deceased father Shri Udaram had received the payment. The crucial additional documents on which the applicant wanted to rely for defending himself were not made available during the enquiry. If the signature of any person was doubted, the matter should have been referred to the handwriting expert. He, therefore, prayed that the orders of the departmental authorities should be quashed.

7. The learned counsel for the respondents stated that on a perusal of the report of the Inquiry Officer and the orders of the Disciplinary Authority, the Appellate Authority and the Revisionary Authority, it would be clear that the charges against the applicant have been rightly held to be proved on the basis of preponderance of probability. Even if, there is some infirmity in the proceedings, it has to be seen whether such infirmity is fatal to the findings of the departmental authorities. He added that if some evidence is available to sustain the charges against the applicant, this Tribunal is not entitled to go into the question whether the evidence is adequate to prove the charges against him.

8. We have heard the learned counsel for the parties and have gone through the records. The preliminary objection of the respondents is not sustainable, because after the applicant received the order of the Reviewing Authority on 4.12.89, he filed this O.A. on 3.12.90. Undoubtedly, some prosecution witnesses could not be examined and some additional documents asked for by the applicant could also not made available to him during the enquiry. However, what we have to see is whether on the basis of the evidence led during the enquiry in which the applicant participated, the charges can be said to have been proved on the basis of preponderance of probability. It appears to in that two charges that the sum of Rs.100/- being the amount of money order had not been paid to the recepient is not correctly held as proved, because there is virtually no

evidence in support of the charge. However, even if it is accepted that the second charge regarding non-payment of amount of money order of Rs.100/- to the payee has not been rightly held as proved, the first charge can be said to have been clearly proved on the basis of preponderance of probability. The depositor had clearly and categorically stated during the enquiry that he received only an amount of Rs.100/- and not Rs.200/- and his statement shows that he could not be shaken from this testmony. Shri Kamaruddin's statement in favour of the applicant does not make any difference to the case. We, therefore, hold that the first charge has been clearly held as proved against the applicant.

9 Even the misconduct as revealed by the 1st charge is grave enough to justify the imposition of penalty of dismissal from service on the applicant. Where an authority has imposed penalty on the basis of relevant evidence - the rightly proved charge and irrelevant evidence i.e. the charge not rightly proved, what the court has to see is whether the relevant evidence alone is enough to sustain the charge. In this case we are of the view that the penalty imposed in this case can be sustained even on the basis of the first charge which has been rightly held as proved. The judgments cited by the learned counsel for the applicant are not relevant in view of what we have stated above. In these circumstances, we uphold the penalty levied on the applicant. In the result, the O.A. is dismissed with no order as to costs.

(Ratan Prakash)
Member(Judl).

(O.P.Sharma)
Member(Adm).