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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

CA No.270/90.

Dt. of Order:15-6-93.

K.Somaiah

Vs.

....Applicant

Union of India represented by:

1. The Secretary to Government
Department of Posts, New Delhi.
2. Director of Postal Services,
Northern Region, Hyderabad, A.P.
3. The Superintendent of Post Offices,
Hanamkonda, Division Subedari,
Hanamkonda.

....Respondents

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Counsel for the Applicant : Shri K.S.R.Anjaneyulu

Counsel for the Respondents : Shri N.V.Ramana

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CORAM:

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

(Order of the Division Bench passed by
Hon'ble Sri A.B.Gorthi, Member (A)).

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The applicant while working as E.D.B.P.M., Mupparam Branch Post Office was served with a charge memo dt.17-11-86. The charge against him was that he showed two money orders as paid to the payees without actually making the said payment. After the enquiry, he was awarded the penalty of dismissal from service. He preferred an appeal to the Director of Postal Services, but the same was rejected on 31.8.89. In the O.A.

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now before us, his prayer is that the punishment order and also the order of the Appellate Authority rejecting his appeal be set aside and he be reinstated into service with all consequential benefits.

2. Sri K.S.R. Anjaneyulu, learned counsel for the applicant assailed ^{the} the validity of ^{the} penalty, mainly on the ground that the enquiry was not conducted properly and that the applicant was not guilty of any temporary misappropriation of the money order amounts. His contention is that the enquiry officer heavily relied on certain statements given to him by the payees of the money orders viz., Sri Modem Srihari and Sri Modem Sadanandam on 9-9-86 but copies of the said statements were not furnished to the applicant. The second contention raised by Sri K.S.R. Anjaneyulu is that the so called confessional statements of the applicant was procured by the officials concerned under duress and that the applicant having ^{retracted} ~~rejected~~ the same at the departmental enquiry, the authorities concerned ^{ed} are not justified in basing their findings on the said confessional statements.

3. Sri N.V. Ramana, learned counsel for the Respondents has shown us the record, including the enquiry proceedings. The fact that the statements made by Sri Modem Srihari and Sri Modem Sadanandam on 9-9-86 were not given to the applicant ^{is admitted} is admitted. A careful examination of the enquiry report shows that Sri B. Narsaiah, A.S.P.D.S., who was examined as PW-I made a detailed statement as to how he enquired into the nonpayment of the

22/10/86

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//that the M.O.s were paid on 16/18-8-86.

money orders in question. During the process of his enquiry he contacted both Sri Modem Srihari and Sri Modem Sadanandam on 9-9-86. They told him that they had not received the money order amounts prior to 26-8-86. It was on that day that the applicant paid the money to Smt. Modem Viramma W/o ~~Srihari~~ but in the relevant record entries were made to the effect// Modem Srihari together with interest of Rs.14/-~~1~~ It was this

statement of P.W.-I during the departmental enquiry, the Enquiry Officer seems to have heavily relied upon. This witness (P.W.-I) and also the other witness of the prosecution were examined in the presence of the applicant and his defence assistant and as can be seen from the Enquiry Proceedings they were given full opportunity ^{to cross examine him,} which was done also.

The Enquiry Proceedings ~~show~~ ^{no} show that at ~~any~~ ^{no} stage, either the applicant or his defence assistant, insisted on the production of ^{the} written statements made by Sri Modem Srihari and Sri Modem Sadanandam on 9-9-86. ~~There was no view of these circumstances~~

~~we are of the view that it cannot be said that merely because the written statements of Sri Modem Srihari and Sri Modem Sadanandam were not furnished to the applicant, there has been any violation of principles of natural justice. The applicant had though ample information of the evidence ^{led} ~~led~~ against him and sufficient opportunity to cross examine the witnesses.~~

As regards the confessional statement made by the applicant on 10-9-86, it clearly indicates ~~that~~ that the applicant had in clear and cogent terms admitted his guilt. He stated that the first money order came on 16-8-86 and the second one on

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18-8-86, each for a sum of Rs.1000/-. He did not however make the payment to the payees on the said dates. On 26-8-86 he paid the ~~same~~ sum of Rs.2,000/- together with Rs.14/- as interest to Smt. Modem Viramma W/o Sri Modem Srihari. Concluding portion of the written statement is to the effect that it was a mistake on his part and that he had not committed such a mistake in the past.

He further recorded in his ~~own~~ statement that the entire statement was recorded in his hand writing ^{and} ~~which concludes~~ that the statement was true and voluntary. However, during the enquiry when he was shown this statement, he alleged that he had written it because the A.S.P.O. and some other officials told him that in case he did not make such a statement, the case would be handed over to the police.

4. The manner in which the statement was recorded and the same was witnessed and counter signed by some ~~brother~~ other officials, gives ~~us~~ a clear indication that it was a voluntary statement.

The evidence of P.W.-I categorically states as to how he brought out the facts while questioning Sri Modem Srihari and Sri Modem Sadanandam as also the applicant. The M.O. Receipts did not show the date ~~of actual payment.~~ ~~The date~~ on which the payees received the amount, ~~viz.~~ Both Sri Modem Srihari and Sri Modem Sadanandam

further stated that they always sign ^{ed} and ^{did not affix} ~~not effect~~ thumb impressions as was done in the two instances. These circumstances ~~may~~ ^{lead} sufficient credence to not only to the truth but also to the ^{nature of the} voluntary statement made by the applicant. So long there is

To

1. The Secretary to Govt. Union of India,
Dept.of Posts, New Delhi.
2. The Director of Postal Services,
Northern Region, Hyderabad.A.P.
3. The Superintendent of Post Offices,
Hanamkonda, Division Subedari, Hanamkonda.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
5. One copy to Mr.N.v.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

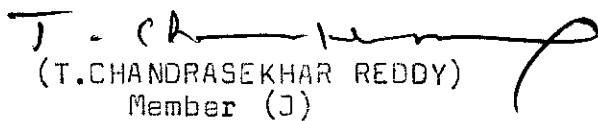
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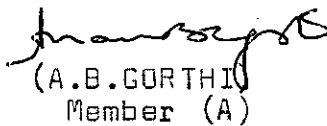
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some evidence and that was relied upon in the finding the delinquent employees as guilty of the charge, it will not be proper for the Tribunal to interfere with such finding. It is only where there is absolutely no evidence that the finding arrived at by the disciplinary authority can be interfered with.

5. Sri K.S.R. Anjaneyulu, learned counsel for the applicant further vehemently contended that the applicant had not mis-appropriated the money even temporarily. The Enquiry Report shows that the money orders were received on 16th and 18th August, 1986, and that they ought to have been paid to the payees on the same dates. The applicant however paid the sums on 26-8-86 with an interest of Rs.14/-. These facts clearly indicate that between the period 16/18-8-86 and 26-8-86 the M.O. amounts unlawfully remained with the applicant. On these facts the competent Disciplinary Authority came to the conclusion that the applicant had temporarily mis-appropriated the M.O. amounts. We are not inclined to interfere with the said finding.

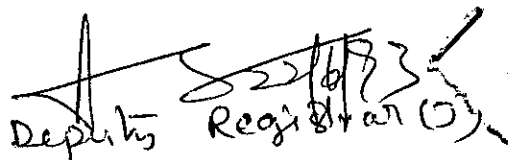
6. In the result we find no merit in the application, hence the same is dismissed with no order as to costs.


(T. CHANDRASEKHAR REDDY)
Member (J)


(A.B. GORTHIL)
Member (A)

Dated: 15th June, 1993.
Dictated in Open Court.

avl/


Deputy Registrar (O)



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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 15-6-1993

~~ORDER~~/JUDGMENT:

M.A. /R.A./ C.A. No.

in

O.A.No. 270/90

T.A.No. (w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

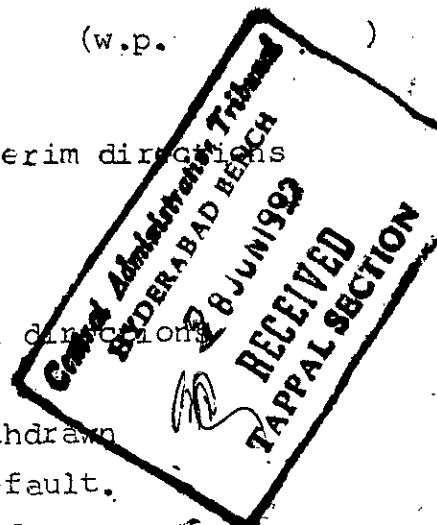
Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.



pvm