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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 846/91.

Dt. of Decision : 2.11.94.

A. Mukteshwar Rao

.. Applicant.

Vs

1. The Superintendent of Post
Office, Nalgonda Division,
Nalgonda.
2. The Director of Postal Services,
Hyderabad Region, Hyderabad.
(A.P. Northern Region, Hyderabad).

.. Respondents.

Counsel for the Applicant : Mr. S. Ramakrishna Rao

Counsel for the Respondents : Mr. N.V. Raghava Reddy, Addl. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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

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JUDGEMENT

(As per Hon'ble Shri AV Haridasan, Member(J))

This is the second round of litigation between the applicant Sri A.Mukteshwar Rao, Ex-Postal Assistant, Nalgonda and Department of Posts, regarding the removal of the former from service.

2. Facts in brief, can be stated as follows: While the applicant was working as PA (Postal Assistant) in Nalgonda Division, he was served with a memorandum of charges issued by the Superintendent of Post Offices Nalgonda dated 6.12.84. The memorandum of charges contained articles of four charges. They read as follows:

"Article - I;

That the said Sri A.Mukteshwar Rao, while functioning as SPM, V.P.North S.O. during the period from 18.5.83 to 6.12.83 did not count for the SB deposits made by the depositors mentioned below, mis-appropriated the amounts temporarily and adjusted those amounts of loss by making deposits as noted below in contravention of Rules 424, 433 of P&T Man.Vol.VI Part II Rule 673(a), 674-B of Vol.VI Part III and Rule 103 of FHB Volume I and thereby failed to maintain absolute integrity and devotion to duty as laid down in rules 3(1)(i) and 3(1)(ii) of CCS(Conduct) Rules, 1964.

SB A/c No.	Name of the Depositor	Amt.deposited by depositor	Date of Deposit	Date on which the loss was adjusted
203101	Sri.K.Ramchandra Reddy	Rs.4,600/-	7.9.83	31.5.84
203101	Sri K.Ramachandra Reddy	Rs.4,000/-	16.11.83	31.5.84
204124	Sri P.Bixamaih	Rs.7,000/-	6.12.83	30.5.84

Article-II;

The said Sri A.Mukteshwar Rao, while functioning as SPM, V.P. North S.O. during the said period, mis-appropriated Rs.9,000/- by mis-leading the depositor of SB A/c No.203923 in filling up the application of withdrawal on 22.9.83 and adjusted the loss to the depositor subsequently in contravention of Rule 103 of FHB Vol.I and thereby failed to maintain absolute integrity and devotion to duty as required by Rules 3(1)(i) and 3(1)(ii) of CCS(Conduct) Rules 1964.

Article-III;

The said Sri M. Mukteshwar Rao, while functioning as SPB, V.P. North S.O. during the said period did not count for the amount of Rs.100/- deposited in RD A/c No.58707 by depositor on 2.6.83 and mis-appropriated the same in contravention of Rule 496(II) and 510 of P&T Man. Vol.VI, Part-I Rule 673(a) and 674-B of Vol.VI, Part III and Rule 103 of FHB Vol.I and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3(1)(i) and 3(1)(ii) of CCS(Conduct Rules, 1964.

Article-IV;

The said Sri A. Mukteshwar Rao while functioning as SPM in the aforesaid office and during the aforesaid period, did not account for the value of the NSCs(VI issue) detailed below on the date of issue, mis-appropriated the amounts temporarily and account for on the dates noted against by changing the dates of issue and dates of maturity on the certificates in contravention of Rule 539(2) & 546 of P&T Man. Vol.VI Part II Rule 673(a) and Rule 674-B Vol.VI. Part III and Rule 103 of FHB Vol.I and thereby Shri A. Mukteshwar Rao failed to maintain absolute integrity and devotion to duty as required by Rule 3(1)(i) and 3(1)(ii) of CCS(Conduct) Rules, 1964.

Nos.of NSC	Value	Name of the holder	Date of actual issue	Changed date on which the value was accounted for
6NS/F2 996554	Rs.5000/-	Smt G. Pushpamma	3.11.83	30.11.83
6NS/F2 996525	Rs.5000/-	Sri K. Ramachandra	2.6.83	9.6.83
996526	Rs.5000/-	Reddy	2.6.83	9.6.83

As the applicant denied the charges, an inquiry was held as prescribed under Rule 14 of the CCS(CCA) Rules. The inquiry officer submitted his report wherein he stated that all the Articles of charges against the applicant were proved. The disciplinary authority on the basis of the report of the enquiry officer and evidence on record at the enquiry, without giving an opportunity to the applicant to make his representation and without giving a copy of the enquiry report ~~the disciplinary authority~~ held that the applicant is guilty of the charges and by his order dated 8.8.86, imposed on the

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applicant the punishment of dismissal from service. Aggrieved by this, the applicant filed an appeal before the Director of Postal Services, North Region, Hyderabad. As the appeal was not disposed of, the applicant filed OA 366/87 before this Tribunal, challenging the order of the Disciplinary authority, dismissing him from service. Finding that the action of the disciplinary authority in not giving the applicant a copy of the report and an opportunity to make a representation, resulted in violation of principles of natural justice, following the Judgement of the Full Bench of this Tribunal in Premnath Sharma Vs Union of India (1986(6)ATC)904), this Tribunal, set aside the order of punishment giving liberty to the Disciplinary authority to re-commence and complete the disciplinary proceedings from the stage of supplying of a copy of the enquiry report to the applicant vide its Judgement dated 25.9.89 (Annexure 5 to the OA). Pursuant to the above order, the first respondent furnished a copy of the Enquiry report to the applicant to which the applicant submitted his representation against the finding of the Enquiry Officer. The Disciplinary authority on consideration of the enquiry report, evidence recorded in the inquiry and the representation of the applicant passed the impugned order dated 23.7.90 holding the applicant guilty of the charges and imposing on him a penalty of dismissal from service. Though the applicant submitted an appeal to the second respondent, the second respondent vide his order dated 5.6.91 (Annexure 8) confirmed the finding of the Disciplinary authority that the applicant was guilty of the charges, but, altered the punishment of dismissal to that of 'removal' from service. It is aggrieved by this order, that the applicant has filed this application praying that,

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the order of the first respondent dated 23.7.90 dismissing the applicant from service, which was modified by the second respondent by his order dated 5.6.91 may be set aside with consequential benefits. The applicant has alleged in the application that as he was working as SPM at the relevant time, his duty was only of a supervisory nature while the actual savings bank transactions were being held by the clerk in-charge, that ^{for} any irregularity which had accrued in the savings bank accounts and registers he would be held liable only for lack of supervision for which a minor penalty proceedings under Rule 16 of the CCS CCA Rules ^{alone} ~~could~~ have been held and that the primary offender being the Postal Assistant, ~~he~~ should have been proceeded with for a major penalty proceedings. He has further alleged that the Disciplinary authority, as well as the appellate authority have failed to perform their statutory functions because neither of them has considered the applicant's case ⁽⁴⁾ that he had only a supervisory responsibility ~~over~~ the functions of the Postal Assistants in-charge of the Savings Bank transactions and that ^{they} never applied their mind to the evidence on record as also in determining the quantum of penalty to be imposed. The applicant ~~s~~ has further contended that the orders of the disciplinary authority as well as appellate authority are perverse, non-speaking and unsustainable. It is also the contention of the applicant that since the irregularity as alleged in the memorandum of charges ~~could~~ have been committed, even according to the allegations in the statement of imputations by him in collusion with Shri Sheikh Adam, Postal Assistant, a joint enquiry ~~is~~ required under Rule 18(1) of CCS(CCA) Rules should have been held and by not doing so, the applicant has been greatly prejudiced in his defence.

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3. The respondents have filed their reply statement in which they have contended that the enquiry was held in accordance with the rules, that the applicant was given a fair and reasonable opportunity to defend his case, that the orders of the disciplinary authority and appellate authority are speaking orders which reflect full application of mind and that the applicant, having been proved to have committed a grave mis-conduct, has been rightly removed from service.

4. The file relating to the inquiry was made available for our perusal by learned counsel for the respondents. We have gone through this file, as also, the pleadings in the case with meticulous care and have also heard Shri S.Ramakrishna Rao, learned counsel for the applicant and Shri NV Raghava Reddy, Standing Counsel for the respondents.

5. Though a number of grounds have been raised in the application, Shri Ramakrishna Rao, learned counsel for the applicant, limited his arguments to the following grounds.

- i) Since the applicant at the relevant time was working as a Sub-Postmaster, his duty being only to supervise the functions of the postal assistants incharge of the Savings Bank Branch, even if there was any irregularity in the accounts, his responsibility being only of a supervisory nature, he should have been ~~proceeded~~ proceeded against only under Rule 16 of the CCS(CCA) Rules for a minor penalty and therefore, the proceedings under Rule 14 of CCS(CCA) Rules and consequential imposition of the major penalty of removal from service is unsustainable.

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- ii) As the allegations of mal-practice with the savings bank transactions against the applicant is closely inter-linked with the actual commissions and omissions by Shri Sheikh Adam, The Postal Assistants incharge of the SB transactions, the first respondent should have conducted a common proceeding against the applicant and the said Shri Sheikh Adam as required under Rule 18 of the CCS(CCA) Rules; since it has not been done, great prejudice has been caused to the applicant and for that reason the impugned proceedings and the final orders are unsustainable.
- iii) The charge sheet contains allegations which would constitute criminal offences which is impermissible in a departmental proceeding and a reading of the charge sheet would indicate that the disciplinary authority has already concluded that the applicant was guilty and therefore, the charge itself is vitiated.
- iv) The conclusion that the applicant is guilty of the charges is per se and not supported by evidence on record.
- v) Shri Sheikh Adam, who was in fact, the principal offender has been let off with a minor penalty while the applicant has been awarded the maximum punishment of removal from service. The action of the respondents is discriminatory, unduly harsh and the punishment imposed on him is disproportionate to the alleged misconduct.
- vi) The disciplinary authority, as well as the appellate authority have not performed their statutory functions of due application of mind to the facts of the case and the case put forward by the applicant.

We shall consider these arguments one by one.

6. Shri S. Ramakrishna Rao while elaborating the first point, argued that, as a Postal Assistant, the applicant was not concerned with the receipt and payment of money in regard to Savings Bank Transactions, which was the functions of the Postal Assistant Shri Sheikh Adam at the relevant time, and therefore, even if there has been any irregularity in the maintenance of the accounts or any short accounting, the applicant cannot be said to be primarily responsible for that and his responsibility being only supervisory in nature, the respondents should have proceeded against the applicant only under Rule 16 for a minor penalty.

7. First of all, Shri Ramakrishna Rao, did not bring to our notice any provision~~s~~ under the CCS(CCA) Rules or any other statute which provided that for a mis-conduct of failure to perform supervisory duties only a minor penalty can be imposed and that the action taken in such cases should be only under Rule 16 of the CCS(CCA) Rules. Further, a reading of the charge sheet itself would disclose that it was ~~only~~^U failure to ~~account~~^{rin} for the amount ~~received~~^{on} by him and for ~~the~~ misappropriation of the funds, that the applicant was charge-sheeted. This cannot be said to be a failure to perform supervisory functions. It has also come out in evidence ~~xxxx~~ⁱⁿ the inquiry that, ~~on~~^{on} the relevant ~~xxxx~~ date mentioned in the charge sheet, the applicant was actually in charge of the savings bank transactions. Therefore, there is no merit in the argument of the learned counsel for the applicant that the applicant should not have been proceeded under Rule 14 of the CCS(CCA) Rules.

8. Shri S. Ramakrishna Rao argued that as is evident from the record, the mis-conduct for which the applicant was charge-sheeted and proceeded against cannot be considered in isolation from the commissions and omissions of Shri Sheikh Adam. In fairness, the first respondent should have held a

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common enquiry under Rule 18 of the CCS(CCA) Rules and failure to do so has caused prejudice to the applicant's defence. We have considered this argument. Rule 18 of the CCS(CCA) Rules enables the disciplinary authority to hold a common proceeding against several government servants facing a common charge. But, according to the Government of India instructions, ~~xxxxxx~~ 1 under Rule 18(2) of CCS(CCA) Rules, it has been prescribed that in a case where different government servants concerned with a transaction which forms the basis of charges against them accuse each other, it is not feasible to hold a common proceedings against them and in such cases, separate proceedings can be held. The file relating to the inquiry reveals that the applicant accused Shri Sheikh Adam to be guilty of the mis-conduct of falsification of the accounts, while Shri Sheikh Adam has contended that the applicant was guilty for temporary mis-appropriation of funds and he had only helped the applicant in subsequently making the ^{good} loss ~~at~~ ^(the) at the behest of the applicant, who provided funds. Therefore, it is evident that this is a case where a common proceeding could not have been held at all. Therefore, this argument also has no force.

9. The next argument of the learned counsel for the applicant is that ^{since} the charge sheet contains allegations of mis-appropriation, which would constitute a criminal offence; ~~the~~ proper course would have been to initiate criminal proceedings against the applicant, and therefore holding the departmental proceedings was not proper. We are not at all impressed by this argument. The learned counsel for the applicant was also not in a position to bring to our notice any rule or a binding precedent wherein it is stated that a departmental charge sheet would be bad if it contains imputations which would also constitute a criminal offence.

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10. Shri Ramakrishna Rao, with considerable vehemence, argued that a mere reading of the charge sheet would expose the bias^{ed} mind of the disciplinary authority because the allegations contained^{ed} in the charge sheet are that the applicant had committed mis-conduct. After having concluded that the applicant is guilty of the mis-conduct

~~(the case of the State)~~
~~the counsel argues that the inquiry held can only be a~~

~~(farce)~~ and therefore the whole disciplinary proceedings against the applicant based on the charge sheet according to the learned counsel for the applicant is biased and vitiated. On this point, the learned counsel for the

applicant sought support from the ruling of the Calcutta High Court in Surendra Chandra Das Vs State of West Bengal reported in 1982 Lab.I.C.574. In that case a charge sheet was issued against the petitioner therein, for mis-appropriation of Government money. After a detailed inquiry by the Vigilance Department, which found the applicant guilty recommended departmental proceedings against him. The

Petitioner challenged his suspension and the charge sheet on the grounds that the charge sheet has been issued with closed and biased mind. Discussing the facts of the case, His Lordships Justice G.N.Ray observed as follows:

".....In the instant case, it appears that the Petitioner had repeatedly asked to withdraw the order of suspension and to exonerate the petitioner from the charges since enquired by the police at the instance of the department, but neither the suspension order ~~was~~ was revoked nor any disciplinary proceeding was started. The petitioner had to move this court under Art.226 of the Constitution and obtain a Civil rule wherein he had also pressed for an interim order. It was only at that stage on the prayer of the learned counsel for the State, liberty was given by the Court to the respondents to start the disciplinary proceeding and to issue a charge sheet. It also appears that in the instant case further investigation was made

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by the Vigilance Department, and afterscrutinising the records, the petitioner's complicity was found by the Vigilance Department and on such finding and recommendation of the Vigilance Department the charge sheet was issued clearly alleging that the petitioner was guilty of the offences. It is therefore, evident that the disciplinary authority in reality did not form its own prima facie opinion, but was influenced by the finding of the vigilance department and having accepted such finding issued the said charge sheet clearly indicating that the petitioner was guilty of the alleged mis-conduct. In the circumstances, it cannot be contended that the charge sheet read with the attending circumstances really indicate that a tentative finding was made against the petitioner and the disciplinary authority has not formed any definite view against the petitioner. In my view, in the facts of this case, the decision made in the case of Sunil Kumar Mukherjee (1977) 4 Cal.H.C(N) 1014 squarely applies and the charge sheet must fail on the ground that the same was issued with a closed mind and it depicts bias against the petitioner. The chargesheet and the disciplinary proceedings initiated thereon are, therefore, quashed....."

The facts of the case cited above and the facts of the case before us are entirely different. In that case Before the Calcutta High Court, a vigilance inquiry was held and a conclusion was arrived at ^{that} the petitioner therein ~~was~~ was guilty of mis-conduct. Noting the entire facts and circumstances of the case, the Calcutta High Court came to the conclusion that the charge sheet and attendant ~~circumstances~~ of the case disclosed that the disciplinary authority had already concluded that the applicant was guilty and ^{that} the proceedings were initiated with a closed and biased mind. In this case, the circumstances of the case, do not disclose that the inquiry was held with closed ~~and~~ mind or in a biased manner. It is

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settled now that a charge ~~in~~ⁱⁿ a disciplinary proceeding should be specific and not vague.~~of~~ All the necessary ingredients of the mis-conduct should be mentioned in the charge-sheet; Otherwise, the Government servant facing the charge would not be in a position to know as to what accusation he has to meet. Therefore, it is necessary that ~~in~~^{should be} every charge sheet ~~it~~^{it} mention clearly the acts of mis-conduct which the disciplinary authority intends to establish by the evidence mentioned in the annexure ~~in~~ⁱⁿ the charge-sheet. In this case, the first respondent has only done that. Even in the ~~xxx~~ ruling relied on by the learned counsel for the applicant, the learned Judge in paragraph 5 of the Judgement has observed as follows:

"5. After giving my anxious consideration to the submissions of the respective counsel on this aspect, it appears to me that whether a charge-sheet has been issued with a closed mind or not cannot always be decided by mere reference to the charge-sheet itself. The language used in the charge-sheet certainly renders a very important indication in the matter but other attending circumstances may, at times, throw light on the real intent and import of the charge-sheet. It is true that the charges levelled against a delinquent officer must be clear and unambiguous, but at the same time, the charge-sheet should not be issued with a biased and closed mind."....."

A perusal of the entire file relating to the disciplinary proceedings held against the applicant clearly indicates that the charges were drawn up after preliminary inquiry and that, a regular departmental inquiry was held observing all the formalities prescribed in the rules and that the applicant was given adequate opportunity to defend himself. We do not find anything in the proceedings which is even sufficient to create a ~~suspension~~ suspicion that the disciplinary authority had a pre-conceived ~~view~~^{view} in the matter or that, he exhibited any bias against the applicant.

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Therefore, we are of the considered view that the argument of the learned counsel for the applicant that the language of the charge-sheet itself disclosed that the inquiry was held with a closed and biased mind has no force at all.

10. Coming to the next argument of the learned counsel for the applicant that the finding that the applicant is guilty of the charge is perverse and not supported by evidence, we have only to say that the file relating to departmental proceedings disclose that this argument is de-void of any merit. Cogent and convincing evidence ~~xxxxxx~~ tendered by witnesses who had no axe to grind against the applicant and the attendant circumstances of the case have led the enquiry authority to the irresistible conclusion that the applicant is guilty of the charges. The enquiry authority has discussed the evidence ~~xxxxx~~ on each charges with fairly good details and has given reasons for his finding. The disciplinary authority has also applied its mind to the facts brought out in evidence in the inquiry and has held the charges proved on unimpeachable evidence. We therefore find no reason to interfere with the findings of the disciplinary authority that the applicant is guilty of the charges.

11. Shri Ramakrishna Rao next argued that as Shri Sheikh Adam, the Postal Assistant, who was primarily responsible for accounting the money on the savings bank transactions has been awarded only minor penalty, the action of the respondents in imposing on the applicant, whose complicity in the transaction can be said to be only supplementary is discriminatory and unreasonable. We do not find any force in this argument also. A perusal of the inquiry proceedings would reveal that all the articles of the charges against the applicant of mis-appropriation of money has been established.

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by unquestionable evidence. There was no charge of mis-appropriation ^{against} Shri Sheikh Adam. The mis-conduct, if at all, which ^{could} be alleged against Shri Sheikh Adam ^{helped} was that he has ~~helped~~ the applicant in later adjusting the accounts by making payment with the funds supplied by the applicant. There is no comparison between the mis-conduct committed by the applicant and that by Shri Sheikh Adam. Therefore, even if the penalty imposed on Sheikh Adam is minor one, it cannot be ^{successfully} argued that the applicant should also be let off with a minor penalty.

12. The last argument advanced by the learned counsel for the applicant is that even if the evidence on record established the charge against the applicant, the disciplinary authority should have taken into account all the circumstances of the case and taken a decision as to what should be the penalty to be imposed. According to the learned counsel for the applicant, the punishment of dismissal was imposed on the applicant by the disciplinary authority without due application of mind in this regard. He argued that the appellate authority has also committed the very same error. We do not find any force at all in this argument of the learned counsel for the applicant. The misconduct ^{proved} to have been committed by the applicant is mis-appropriation of money, which was later recouped by him, ^{probably} coming to know that it would later be detected. A person ^{who} commits such a grave mis-conduct is not worthy of being retained in Government service. The decision of the disciplinary authority that the applicant should be dismissed from service cannot be faulted. However, we find

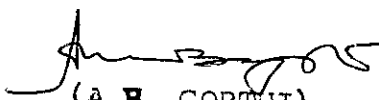
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that the appellate authority on considering the fact that the applicant had rendered service for fairly a long period decided, to alter the penalty to one of removal from service. We are of the view that the appellate authority has also applied its mind and has taken a more lenient view in the matter than the disciplinary authority. Hence, the argument that the disciplinary authority and appellate authority have failed in their statutory duties to determine the adequacy of penalty is de-void of merit.

13. In the result, in the light of what is stated on the fore-going paragraphs, we find no merit in this application, and therefore, we dismiss the same, leaving the parties to bear their own costs.


(A.B. GORTHI)
Member (Admn)


(A.V. HARIDASAN)
Member (Judicial)

Dated: 2-11-94

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10/11/94
DEPUTY REGISTRAR (J)

Copy to:

1. The Superintendent of Post Offices, Nalgonda Division, Nalgonda.
2. The Director of Postal Services, Hyderabad Region, Hyderabad (A.P. Northern Region, Hyderabad)
3. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr. N.V. Raghava Reddy, Addl. CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.

~~6. Spare copy~~
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