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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

: : : : :

ORIGINAL APPLICATION NO.1019/91

DATE OF JUDGEMENT: 9 - 3 1995

Between

L.Chandraiah

.. Applicant

and

1. Director of Postal Services
Andhra Pradesh Northern Region
Hyderabad.

2. Superintendant of Postoffices
Adilabad.

3. Postmaster General
Hyderabad Region,
Hyderabad

.. Respondents

Counsel for the Applicant :: Mr S.Ramakrishna Rao

Counsel for the respondents:: Mr N.R. Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.V. HARIDASAN, Member(Judl.)

HON'BLE SHRI A.B. GORTHI, Member(Admn)

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O.A.1019/91

Dt. of Judgement: _____ 95

JUDGEMENT

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

The applicant was working as LSG/Sub Postmaster Bellampalli, Adilabad District. While so, he was served with a ~~xx~~ memorandum of charges issued by the Superintendent of Postoffices, Adilabad, dated 8.2.1988 containing four heads of charges. All these articles of charges related to withdrawals from RD accounts where the applicant, as SPM, was alleged to have failed to scrutinise the correctness of the signatures of the depositors in the withdrawal forms, comparing the same with the records, as also, to see whether the correct address of witnesses, to thumb impressions have been stated in the withdrawal forms, and that the depositors disowned the receipt of the amount, of withdrawals from their respective accounts and thereby the applicant contravened the provisions of Rule 504 & 425 of P&T Manual Volume VI and also exhibited utter lack of devotion to duty and failure to maintain absolute integrity and devotion to duty as laid down in Rule 3(1)(i) and (ii) of CCS(Conduct) Rules, 1964. The applicant pleaded not guilty. An inquiry was ~~■~~ held. The inquiry officer held the applicant guilty of the charges. A copy of the enquiry report was furnished to the applicant and the applicant submitted his representation. The Director of Postal Services, Hyderabad on consideration of the enquiry report and also the representation submitted by the applicant found the applicant guilty of the charges and by the order dated 26.2.1991, dismissed the applicant from services, with immediate effect.

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The applicant preferred an appeal to the Postmaster General Hyderabad, the 3rd respondent herein. But, as the appeal was not disposed of for a period of more than six months, the applicant has filed this application under Section 19 of the Central Administrative Tribunals Act, 1985, praying that the impugned order of the first respondent dated 26.2.91, dismissing the applicant from services may be set aside and the respondents may be directed to reinstate the applicant with all consequential benefits.

2. The main grounds on which the impugned order is assailed are as under:

- i) As at the time of initiation of the disciplinary proceedings the Disciplinary authority in respect of LSG officials like the applicant was Superintendent of Postoffices, the First respondent, Director of Postal Services, Hyderabad Division was incompetent to exercise the disciplinary powers over the applicant and on that ground the impugned order is null and void;
- ii) Since, even in the chargesheet itself, a definite opinion had been expressed that the applicant had contravened the provisions contained in Rule 504 of the P&T Manual Vol VI, and had failed to maintain devotion to duty and integrity as required under Rule 3(i)(ii) of CCS CCA Rules, the charges are unsustainable;
- iii) The charges are bad because, without any mention about the lack of honesty on the part of the applicant, for mere alleged negligence, the applicant has been charge-sheeted for lack of integrity.
- iv) The applicant has been denied reasonable opportunity to defend in as much as two witnesses cited by him, namely, Sri Venkitaraman and Sri Sambamurthy were not made available for examination as defence witnesses;

- v) The evidence adduced in support of the charges, does not warrant a finding of ~~the~~ guilt and therefore, ~~the~~ the finding of the disciplinary authority that the applicant is guilty is perverse.
- vi) As the allegations against the applicant was, that he failed to exercise proper supervision, he should have been proceeded under Rule 16 only and therefore the proceedings initiated under Rule 14 for a major penalty, amounts to mis-use of power.

3. Respondents have filed a reply statement.

4. We have gone through the pleadings^{and} materials on record with great care. We have also gone through the proceedings of the inquiry report made available by the Standing Counsel for the respondents. We have heard at length the arguments of the learned counsel for both the parties also.

5. Shri Ramakrishna Rao, learned counsel for the applicant argued that the disciplinary authority in the case of LSG officials after reorganisation of the department being, Superintendent of Postoffices, the Director of Postal Services, who passed the impugned order was incompetent to pass such order and that therefore the order is without jurisdiction.

It is not disputed that the applicant was appointed by the Director of Postal Services. The fact that on account of the re-organisation of the Department, the Disciplinary authority in respect of LSG officials happened to be mentioned in the Schedule as Superintendent of Postoffices, it cannot be said that the applicant has gone out of the disciplinary control of the Director of postal services. The superintendant of Postoffices in the case of the applicant, would not be competent to impose

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a penalty of removal from service in the case of the applicant; ~~because~~ because, the Director of Postal Services who appointed him is higher in rank than the Superintendent of Postoffices. If the Superintendent of Postoffices had imposed on the applicant a penalty of removal from service, that would amount to violation of the provisions contained in Art.311(1) of the Constitution. Therefore, there is no legal basis for the contention that the Director of Postal Services, who passed the impugned ~~in~~ order is incompetent to do so.

6. The second contention of the learned counsel for the applicant is, that a reading of the Memorandum of charges, would show that a definite opinion had been expressed that the applicant was guilty of misconduct and therefore the whole proceedings appear to be only farce and hence, ~~the~~ the impugned order and the proceedings which led to the order have to be held vitiated.

A careful scrutiny of the memorandum of charges issued to the applicant proposing to hold an inquiry on certain charges on the basis of imputations mentioned in the annexure to the memorandum of charge, shows that the misconduct alleged against the applicant was sought to be established in a regular inquiry on the basis of the exhibits mentioned in the annexures, as also, on the basis of the witnesses sought to be examined in support thereof. It is not possible to conclude that merely by making specific allegations in the Articles of Charge, the disciplinary authority had already reached any conclusion. Even in the chargesheet filed before

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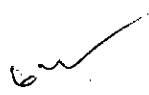


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a criminal court where the accused is presumed to be innocent, until his guilt is established beyond reasonable doubt, the accusations are specific. Therefore, to say that because specific imputations of misconducts are alleged and violations of provisions of the conduct rules are stated, the disciplinary authority has already concluded the issue and that the proceedings was reduced only to a : \longleftrightarrow ritual is absolutely meaningless. If the imputations are not specific, the charge would be termed as vague. Therefore, it is necessary in a chargesheet that specific and definite imputations of misconduct and the provisions of the rule \longleftrightarrow which are allegedly violated are \longleftrightarrow mentioned. The argument of the learned counsel for the applicant that for this reason, the chargesheet is unsustainable cannot be accepted.

7. The third contention of the learned counsel for the applicant is, that the imputations contained in Annexure to the memorandum of charge relate only to contributory negligence on the part of the applicant to effect proper supervisory function whereas, in the charge sheet, it is alleged that the applicant exhibited lack of integrity and devotion to duty which is unsustainable and therefore, the proceedings are vitiated. The applicant was working as Sub Postmaster and the imputations against him was, that his failure to check the signatures of the depositors in the withdrawal forms with the specimen signatures contained in the specimen signature register, \longleftrightarrow resulted in the fraudulent withdrawal of amounts from the depositors' accounts resulting in a loss to the government. Bestowing

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careful attention and observing strict propriety in matters touching financial transactions are attributes of integrity and devotion to duty. The very substance of the allegation was that the applicant failed to bestow proper supervision in the matter of withdrawals from RD accounts. Therefore, it cannot be said that there is no element of lack of integrity or devotion to duty involved in the statement of imputations. This argument^{also} has no force at all.

8. Two of the witnesses cited by the applicant could not be examined as defence witnesses. One was Mr Venkitaraman who conducted the preliminary investigation and the second was Mr Sambamurthy, the Accounts Clerk, who effected the payments on the withdrawal forms in question in this case. The Enquiry authority has issued notice to these witnesses also. But, though several adjournments were granted, the witnesses did not turn up and the applicant also did not produce them. The only omission on the part of the enquiry authority was to initiate action against these witnesses for non-appearance despite service of notices. On a careful consideration of the entire evidence on record, we are convinced that the non-examination of these witnesses while seven other witnesses were examined on the side of the defence, did not result in any prejudice to the applicant. Shri Venkitaraman, who conducted a part of the preliminary enquiry could not be expected to testify against what was done by him. Further, the investigation report submitted by him did not form part of evidence in the disciplinary proceedings. Therefore, his testimony would not be of much consequence. The applicant had also not indicated as to on what point, the evidence of Sri Venkitaraman was relevant. Sri Sambamurthy is the Accounts Clerk who effected ^{the payment.} The

charges against the applicant are that he failed to properly verify the specimen signatures of the depositors in the withdrawal forms with the specimen signatures contained in the specimen signature register.

Sri Sambamurthy could not ^{have} given any evidence in regard to this aspect. Further, when the applicant was questioned as required under Rule ¹⁴⁽¹⁸⁾ of the CCS(CCA) Rules, he has admitted that there had been difference in the signatures of the depositors as seen in the specimen signature register, and the withdrawal forms. But the applicant endorsed on the withdrawal forms that he verified them for the reason that the responsibility in regard to the payments made were only on the counter-clerk and not on him. This clearly establishes that the testimony of Sri Sambamurthy could not have had any effect in coming to the decision as to whether the applicant had been negligent in the discharge of his duties or not. Therefore, we are of the considered view that merely because two of the witnesses cited by the applicant could not be examined for their non-appearance it cannot be said that the applicant was not afforded reasonable opportunity to ~~xxx~~ defend himself.

9. The fourth contention of the learned counsel for the applicant is that the evidence on record is not sufficient to reach a conclusion of guilty. He further argued that the reliance placed by the disciplinary authority on the specimen signatures of the depositors contained in the specimen signature register was misplaced because, the register produced was not a genuine one; but a ~~xx~~ fabricated one. Further, he argued that this register was not proved by any witness; and that the identity of the depositors were not established by examination of any independent witness. We find that

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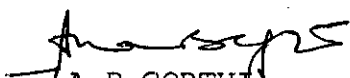
these arguments also have no force at all. Along with the memorandum of charges, an extract from the specimen signature register along with the specimen signatures of the four depositors was also attached as documents relied on by the disciplinary authority for establishing the guilt against the applicant. While the applicant, along with his assisting government servant examined these documents, he did not raise any objection regarding the genuineness of these documents. During the course of the inquiry, when the 4 depositors who were PW1, 4, 6 & 8 were examined they proved their signature in the specimen signature register and stated that the signatures found in the withdrawal forms were not theirs. These witnesses were not cross-examined. Neither was there any challenge to the authenticity of the specimen signature found in the register. Therefore, the argument that the authenticity of the specimen signatures was not established is absolutely baseless. There was no challenge against the identity of the depositors also. On a scrutiny of the evidence adduced in the inquiry, we find that the disciplinary authority ~~has~~ has reached a correct conclusion on the basis of cogent and convincing evidence. In spite of the fact that seven witnesses were examined on the side of defence, the applicant could not advance his case. Even in his statement while he was questioned under Rule 14(18) of the CCS(CCA) Rules, after the conclusion of the evidence in support of the charge, the applicant has admitted that there was difference in the signatures of the depositors when compared with the signatures in the ~~xxxxxx~~ withdrawal forms, though he would say that thinking that actual payment was on the responsibility of the counter-clerk, he (the applicant) has endorsed

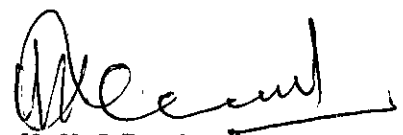
the withdrawal forms as 'SS Verified'. The charge that the applicant did not take proper care to verify the specimen signature of the depositors with the specimen signature register and withdrawal forms as also, that he did not take care to see whether the addresses of witnesses attesting the thumb impressions have been correctly recorded, stand fully established by the evidence on record. Therefore, it cannot be argued seriously that the finding is perverse.

10. The learned counsel for the applicant finally argued that though there has been lapse on the part of the applicant in discharging his supervisory functions properly, the proper course that should have been adopted by the respondents is to proceed against him under Rule 16 of the CCS(CCA) Rules and a proceeding under Rule 14 of the CCS(CCA) Rules and the consequent punishment of removal from service are not justified. We are not able to persuade ourselves to agree with this argument. As a Sub Postmaster, the applicant was duty bound to satisfy himself that the signatures found on the withdrawal forms were that of the depositors by comparing the same with the specimen signatures of the depositors available in the specimen signature register. The duty is cast on the Sub-postmaster to ensure fraudulent withdrawals are not made possible by dishonest counter clerks. It is in this duty that the applicant had been negligent which obviously resulted in fraudulent withdrawals. This cannot be considered as a mere lapse, but is a very serious negligence. The argument of the learned counsel for the applicant that the lapse on the part of the applicant should have been treated as a minor lapse and that, he should have been proceeded under Rule 16 of CCS(CCA) Rules is therefore unsustainable.

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11. In the light of the above discussions, we find that the penalty of removal from service imposed on the applicant after a duly held disciplinary proceedings is properly justified and that there is no justification for any intervention by this Tribunal in the matter. Therefore, the application fails and the same is dismissed leaving the parties to bear their own costs.


(A.B. GORTHI)
Member (Admn)


(A.V. HARIDASAN)
Member (udl.)

Dated: 9. 3 1995

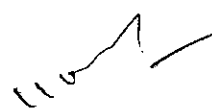
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Deputy Registrar (Judl.)

Copy to:-

1. Director of Postal Services Andhra Pradesh Northern Region, Hyderabad.
2. Superintendent of Post Offices, Adilabad.
3. Postmaster General, Hyderabad Region, Hyderabad.
4. One copy to Sri. S. Ramakrishna Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(J)

AND

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

DATED :

9/3/95

ORDER/JUDGEMENT.

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

D.A.No.

in
10/9/95

Admitted and Interim directions
issued

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered

No order as to costs.

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