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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1027/91

Date of Order: 30.11.94

BETWEEN:

S. Subba Rao .. Applicant.

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1. The Superintendent of Post Offices,
Adilabad Division, Adilabad.
Adilabad.
2. The Director of Postal Services,
Hyderabad Region, Hyderabad.
3. Union of India represented by
Secretary, Department of Posts,
Government of India, New Delhi. .. Respondents.

Counsel for the Applicant .. Mr. S. Ramakrishna Rao

Counsel for the Respondents .. Mr. N. V. Ramana

CORAM:

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

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

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O.A.No.1027/91

Date of Order: 30.11.94

X As per Hon'ble Shri A.V.Haridasan, Member (Judl.) X

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In this application filed under Section 19 of the Administrative Tribunals Act the applicant Ex-Postal Assistant, S.O. Sirpur-Kagaznagar has impugned the order of the first respondent dt. 21.2.91 removing him from service and has prayed for a direction to the respondents to reinstate him in service with all the consequential benefits. The applicant while working as Postal Assistant in Sirpur-Kagaznagar was served with a memo of charge dt. 23.3.87 which contained 3 articles of charges on the imputation that he credited the amounts realised on VPs not on the dates on which the amounts were realised but only after long delay. In respect of 5 items of parcels there has been a delay of about a month in bringing to account the amounts realised from the addressees. The applicant having denied the charge an enquiry was held and by order dt. 17.6.87 the applicant was removed from service. The Director of Postal Services by his order dt. 22.3.88 directed a de-nova enquiry from the stage of charge sheet, finding that the enquiry was vitiated for certain reasons. Subsequently the Superintendent of Post Offices by his memo dt. 28.3.88 set aside the order of removal from service and placed the applicant under deemed suspension and a de-nova enquiry was held. On receipt of the report of the enquiry authority the disciplinary authority

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again imposed on the applicant the same punishment of removal from service by order dt. 21.2.91. Though an appeal was filed to the Director of Postal Services the same remains not responded to. Hence the applicant filed this application. After the filing of this application the appeal has been disposed of by the Director of Postal Services rejecting the same.

2. The grounds on which the applicant assailed the impugned order are that the enquiry was not held ⁱⁿ conformity with the rules, that the enquiry authority was the immediate subordinate of the disciplinary authority which is irregular that the applicant's objections to this was not considered, the finding that the applicant is guilty is based on no evidence and that the punishment is disproportionate to the misconduct.

3. The respondents in their reply statement contend that the enquiry was held ⁱⁿ conformity with the rules, that the applicant was given fair and reasonable opportunity that there was no infirmity in the proceedings for the reason that the enquiry authority was the immediate subordinate of the disciplinary authority and that the finding is supported by evidence as also by the statement of the applicant itself.

4. We have gone through carefully the entire pleadings and documents on record as also the entire file relating to the disciplinary proceedings.

5. With a view to see whether the enquiry was held ⁱⁿ accordance with the rules, we have scrutinised the proceedings of the enquiry and we find that the applicant was given fair and reasonable opportunity to defend himself that he was given assistance of a government servant, that the

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documents were allowed to be perused by him and he was enable to forthwith an effective -- -- Therefore we do not find any infirmity in the conduct of the -- -- proceedings which was held afresh after the first enquiry was set aside. There is no legal embargo to an immediate subordinate of the disciplinary authority being appointed as enquiry authority. The important point that is urged by the applicant's counsel is that the finding that the applicant is guilty of charges is based on no evidence which is legally acceptable. In this regard the counsel for the applicant invited our attention to the fact that some of the addressees were not examined while their statements alleged to have been recorded at the preliminary enquiry was relied on by the disciplinary authority. He also referred to the fact that the addressees have in cross examination stated that they did not remember who received the parcel and on which date. The learned counsel for the applicant argues that the statement alleged to have been recorded behind the back of the applicant cannot be relied on as evidence it has to be held that the learned counsel therefore argues that in the light of the evidence of the witnesses who while examined in the learned during preliminary enquiry but have in stated that they do not remember who recorded from the addressee without examining the correctness of the statements alleged. However it is true that the enquiry authority in evidence some of the statements alleged by the learned counsel for the applicant. This is a serious flaw in the conduct of the enquiry, the result which would be that the statements would be rejected from the evidence. I

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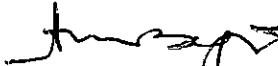
the above statements there is evidence on which a conclusion arrived at can be reached then the finding cannot be said perverse. The learned counsel for the respondents invited our attention to the Ex-P5 (statement made by the applicant during the preliminary investigation in which the applicant is said to have been admitted the allegations against him.) A reading of the P-5 clearly shows that the applicant had admitted ~~in toto~~ that in respect of the 5 VPs though he had received the money on delivery of the VPs and deposited the amounts only much later forgeing the signatures of the addressees on receipts. The applicant has got a case that the statements at the preliminary enquiry was obtained from ^{of} him under coercion PWIII, the officer who recorded Ex P5 was examined. In crossexamination of this witness there was not even a suggestion that statement was obtained by threat or coercion. Even in his statement at the enquiry the applicant has not stated so. Therefore, it has to be taken P-5 was a voluntary statement in which the applicant has in unambiguous terms admitted the allegations to be true. Coupled with this statement of the applicant there is the evidence of some of the addressee who have confirmed the statement given by them to PW III though in the cross-examination they have stated that they did not remember who had received the VP articles from the post office. We have also noted that more than once the applicant had stated in his statements given to the disciplinary authority that he committed the irregularity of accounting for the amounts realised on VPs on later dates.

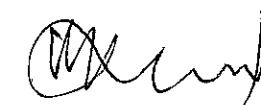
6. In the light of what is stated above on a careful scrutiny of the entire file relating to the enquiry we find

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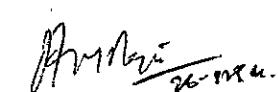
that the disciplinary authority has ~~found~~ the applicant guilty basing on sufficient materials to reach that conclusion and that the finding does not call for judicial intervention. The penalty imposed on the applicant in the circumstances as stated above is fully justified. In the ~~..... the application fails and the same is dismissed~~ leaving the parties to bear their own costs.


(A.B.GORTHI)
Member (Admn.)


(A.V.HARIDASAN)
Member (Judl.)

Dated: 30th November, 1994

(Dictated in Open Court)


26-11-94
DEPUTY REGISTRAR(J)

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TO

1. The Superintendent of Post Offices, Adilabad Division, Adilabad.
2. The Director of Postal Services, Hyderabad Region, Hyderabad.
3. The Secretary, Department of Posts, Govt. of India, Union of India, New Delhi.
4. One copy to Mr.S.Ramakrishna Rao, Advocate, Hyderabad.
5. One copy to Mr.N.V.Ramana, Addl.CGSC,CAT,Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

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Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 30/11/94.

ORDER/JUDGMENT.

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

O.A.NO. 1027/ⁱⁿ91

T.A.NO.

Admitted and Interim Directions issued.

Allowed.

Disposed of with Direction.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

No spare copy

YLRK.

