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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.2/92

Date of Order: 17.1.95

BETWEEN:

Mohd. Turab Ali

.. Applicant.

A N D

1. Superintendent of Post Offices,
Sangareddy Division, Sangareddy.
 2. Director of Postal Services,
Hyderabad Region, Hyderabad.
 3. The Member (P), Postal Services Board,
Ministry of Communications (Dept. of
Posts), Dak Bhavan, Sansad Marg,
New Delhi - 110 001
- .. Respondents.

Counsel for the Applicant

.. Mr.S.Ramakrishna Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

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

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

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X As per Hon'ble Shri A.B. Gorthi, Member (Admn.) X

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The grievance of the applicant is against the imposition of the penalty of reduction of his pay by 2 stages from Rs. 900/- to Rs. 870/- for a period of 2 years w.e.f. 1.12.89. The facts leading to the imposition of the penalty may be stated briefly.

2. The applicant while working as Post Master, Sangareddy was served with a charge memo dated 28.3.88 alleging that during the period of June-August 1987 he failed to promptly ~~to~~ pay the amounts ^{of} the money orders Nos. 2533 and 7482 for sums of Rs. 300/- and Rs. 200/- respectively to the payees and that the applicant forged the signatures of the payees to show payment on the relevant date where-as infact the payments were made subsequently.

3. The irregularity came to light when A.S.R. Murthy S.D.I(P) Sangareddy ^{visited the post office} ~~the Post Master~~ and carried out a check. Immediately the SDIP had the statements of the applicant, and the 2 payees in the money orders recorded, infact all the statements were recorded in the handwriting of the applicant himself. The gist of the statements is that the money orders were not paid on the due dates, that the applicant forged the signatures of the payees and that in actual fact the amounts were paid to the payees on later dates.

4. During the departmental enquiry that was instituted only one witness namely Sri A.S. Murthy examined for the ^{prosecution} ~~cross examination~~. He produced and identified all the 3 statements recorded during the preliminary enquiry. The applicant was given an opportunity to cross examine the witness and in the cross examination the applicant ^{attempted} admitted

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to show that the statements were recorded as dictated by the SDIP and that they were not otherwise true. The applicant did not deny that the statements were ~~in fact~~ made by the individual concerned and that he himself recorded the same.

5. At the end of the enquiry, the enquiry officer found that ~~there~~ was no evidence against the applicant as ^{it} he was not shown whether or not the statements purported to have been given by the payees of the money orders were in fact made by them. He however seem^{ed} to have gloss^{ed} over ^{the fact} that the applicant himself made a statement admitting his guilt. The disciplinary authority who having examined the enquiry officer's report came to the conclusion for reasons which he stated elaborately in his order that the enquiry officer's finding was not correct and that the applicant was guilty of the charges. He thereupon imposed the penalty of reduction of pay by 2 stages. Aggrieved by the same the applicant appealed to the Director of Postal Services, the appellate authority. The same was considered by the appellate authority and for reasons recorded in detail it was rejected. The petition submitted by the applicant to the Member (P) of the Postal Services Board was also given due consideration but was rejected.

6. Heard learned counsel for both the parties. Mr. S. Ramakrishna Rao, learned counsel for the applicant assailed the validity of the penalty essentially on the ground that the so-called enquiry that was held cannot be said to be an enquiry in the eye of law, as ^{except} ~~accepted~~ for SDIP ^{was} ~~other~~ witness was examined. The payees of the money orders, namely Sri Khurshid and Smt. Aktar Begum

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Thus [^]
were not examined as witnesses, ~~these~~ denying the applicant
^{his}
~~is~~ valuable right to cross examine the said 2 witnesses.

7. We have heard the points raised by the applicant's counsel and examined the enquiry proceedings carefully. There can be no doubt that by non examining the essential witnesses namely the payees of the money orders the applicant was denied an opportunity ^{of} ~~for~~ cross examination. At the same time, we cannot ignore the fact that the applicant gave the confessional statement in his own handwriting admitting his guilt in unmistakable terms. In view of ~~this~~, it can be held that the disciplinary authority came to a wrong conclusion in disagreeing with the enquiry officer's findings and holding that the applicant was guilty of the charges. In his order imposing the penalty the disciplinary authority gave detailed evidence as to why ~~he~~ ^{he} disagreed with the enquiry officer's findings. He also placed reliance on the confessional statement of the applicant (exhibit SD-4) which was ^{led} ~~laid~~ in evidence through A.S.R. Murthy who was examined as SW-I at the departmental enquiry.

8. In view of the afore-stated we are unable to ^{discern} ~~decide~~ any ~~such~~ illegality in the order of the disciplinary authority.

9. The next issue urged before us by the learned counsel for the applicant is ^{that} the disciplinary authority while disagreeing with the enquiry officer's findings did not give an opportunity to the applicant to oppose the same. In this context, we may observe that even if we take it that there has been thus a breach of principle of natural justice it would be futile at this belated stage to refer the matter back to the disciplinary authority ^{as} in the meantime, the applicant ^{more than} had adequate opportunity to put across his case both to the appellate authority and also

To

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Sanga Reddy Division, Sanga Reddy.
2. The Director of Postal Services, Hyderabad
Region, Hyderabad.
3. The Member (P), Postal Services Board,
Ministry of Communications, (Dept. Of Posts),
Dak Bhavan, Sansad Marg, New Delhi - 110 001.
4. One copy to Mr.S.Ramakrishna Rao, Advocate,CAT,Hyderabad.
5. One copy to Mr.N.R.Devraj,Sr.CGSC,CAT,Hyderabad.
6. One copy to Library,CAT,Hyderabad.
7. One spare copy.

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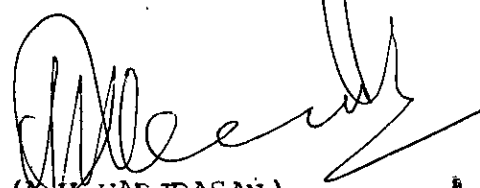
to the next higher authority i.e. Member (P) Postal Services Board. It has been held that it is not desirable that in each and every case of breach of principle of natural justice the ^{intervention} ~~intention~~ of the Tribunal is called for. Each case must be examined from the point of view whether the alleged breach of principle of natural justice has in fact resulted in prejudice to the applicant. We may also refer to the judgement of the Supreme Court in State Bank of India v. S.S. Koshal reported in 1994 SCC (L&S) 1019, where the Supreme Court had the occasion to observe as under:-

"So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India. The second contention accordingly stands rejected".

10. Keeping in view the above observations of the Supreme Court and also ^{the} peculiar circumstances of ^{this} ~~the~~ particular case, we are of the considered view that there is no justification of interfering with the penalty imposed upon the applicant.

11. In the result, the O.A. is dismissed without any order as to costs.


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


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

Dated: 17th January, 1995

(Dictated in Open Court)

sd


Deputy Registrar (J)

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR. A. V. HARIDASAN : MEMBER

AND

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

DATED : 17.1.95

ORDER/JUDGEMENT.

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

in

O.A.No. 2/92

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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