

gu

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1078/92

Date of Order : 6.9.1993

BETWEEN :

P.Duryodhana

.. Applicant.

A N D

1. The Senior Superintendent of Post Offices, Srikakulam Division at Srikakulam.
2. The Asst. Superintendent of Post Offices, Tekkali Sub-Division at Tekkali, Srikakulam District.
3. The Director of Postal Services, Office of the Post Master General, Visakhapatnam Region at Visakhapatnam.

.. Respondents.

Counsel for the Applicant

.. Mr.S.Tulasi Das,

[Signature]

Counsel for the Respondents

.. Mr.N.R.Devraj,

[Signature]

CORAM:

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

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

[Handwritten signature]

88

.. 2 ..

Order of the Division Bench delivered by
Hon'ble Shri A.B.Gorthi, Member (Admn.).

The applicant while working as Extra Departmental Delivery Agent at Sekhapapuram Branch Office was served with a charge memo dated 26.6.1990. The charges pertained to the dishonest misappropriation of a total sum of Rs.1200/- which was the amount which the applicant ^{should} ~~who~~ have paid to 10 different payees in 10 different money orders. The second charge against the applicant was ^{for his} ~~that~~ the absence without leave. A regular departmental enquiry was held at the end of which the enquiry officer found the applicant guilty of dis-honestly mis-appropriating the amounts in respect of 3 money orders only. The applicant was also found guilty of the second charge of absence without leave. The disciplinary authority however disagreed with the enquiry officer's findings and found the applicant guilty of dishonestly misappropriating the amounts in respect of all the 10 money orders. He also found the applicant guilty of the second charge of absence without leave. Vide the impugned order dated 28.9.1991 the disciplinary authority imposed the penalty of dismissal from service. This was done by the disciplinary authority after a copy of the enquiry report was given to the applicant and his representation was considered. The disciplinary authority did not indicate ^{to} ~~the~~ the applicant ~~that~~ he was likely to disagree with the enquiry officer's findings

..3

20/10/91

86

in respect of the amounts on account of the 7 money orders. The applicant submitted an appeal which was considered by the appellate authority who came to the conclusion that even on the strength of the findings of the enquiry officer, the applicant deserved the penalty of dismissal from service. The penalty was therefore upheld and the appeal of the applicant was rejected.

2. We have heard learned counsel for both the parties. Mr.S.Tulasi Das, learned counsel for the applicant firstly contended that there was no evidence to justify even the findings of the enquiry officer in respect of the 3 money orders. The next contention is that the disciplinary authority disagreed with ~~the~~ a¹ substantial portion of the findings of the enquiry officer without giving due notice to the applicant.

3. Mr.N.k.Devraj, Standing Counsel for the respondents has contended that the disagreement in respect of some of the money orders ~~only~~^L by the disciplinary authority should not make any difference to the merits of the case. The enquiry officer did find the applicant guilty of misappropriating the money on account of 3 money orders. The disciplinary authority agreed with the same. Even if the disciplinary authority disagreed in respect of the 7 remaining money orders, ^{it is} which should not make any difference because the charge of dishonest of misappropriation stands ^{proved &} ~~proof~~ even on the basis of the enquiry officer's findings in respect of the 3 money orders only. There is no doubt that the

misappropriation even in respect of a limited amount is still a misconduct of a grave nature and that there would be justification for the award of imprisonment even for misappropriating the money due on account of 3 money orders only. But that is a question which should be properly determined by the disciplinary authority/appellate authority keeping in view all the attendant¹ circumstances of the case. ~~in the determination of the penalty to be imposed.~~²

4. Admittedly the disciplinary authority disagreed with the findings of the enquiry officer in respect of the 7 money orders in respect of which the applicant is alleged to have misappropriated the money. While the enquiry officer found the applicant not guilty of misappropriation on account of the 7 money orders the disciplinary authority came to a contrary conclusion. This was done without any notice to the applicant. In this context we may refer to the judgement of the Supreme Court in the case of Narayan Misra Vs. State of Orissa 1967 SLR 657. The relevant portion of the judgement is re-produced below:-

" Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was

To

1. The Senior Superintendent of Post Offices,
Srikakulam Division at Srikakulam.
2. The Asst. Superintendent of Post Offices,
Tekkali Sub-Division at Tekkali,
Srikakulam Dist.
3. The Director of Postal Services,
O/o the Post Master General,
Visakhapatnam Region at visakhapatnam.
4. One copy to Mr. S. Tulasī Das, Advocate,
16-9-580, Old Malakpet, Hyd-36.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

pvm

*6/11/58
P.S.
7/16/58*

88

Not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them."

5. In view of the above it is obvious that the action of the disciplinary authority is not in accordance with law as it is in violation of the principles of natural justice. We accordingly set aside the impugned order of dismissal from service as also the appellate authority's order rejecting the appeal of the applicant. If the disciplinary authority wants to take into account the findings in respect of the remaining 7 money orders also he shall give proper notice to the applicant intimating to him that those aspects would also be considered by the disciplinary authority. The applicant shall have opportunity to ~~give~~ ^{prove} his explanation in respect to the remaining 7 money orders also.

6. Respondent No.2 is given one month's time from the date of communication of this order to serve ~~the~~ ^{due} notice, in the light of the observations made above, to the application.

7. O.A. is allowed in the above terms. There shall be no order as to costs.

(T. CHANDRASEKHARA REDDY)
Member (Judl.)

(A.B. GORTHY)
Member (Admn.)

Dated: 6th September, 1993

(Dictated in Open Court)

8/9/93
Deputy Registrar

STAMP

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. GORTHY : MEMBER (A)

AND

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

AND

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

Dated: 6-9 -1993

ORDER/JUDGMENT:

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

O.A.No. 1078/92.
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.

