

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 568/92.

Dt. of Decision : 29.11.94.

J.V. Rami Reddy

.. Applicant.

Vs

1. Union of India rep. by
the Secretary to Government,
Department of Posts,
New Delhi.
2. The Director of Postal Services,
O/o the Post Master General,
Kurnool.
3. The Superintendent of Post Offices,
Kurnool.

.. Respondents.

Counsel for the Applicant : Mr. K.S.R. Anjaneyulu

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

CORAM:

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

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

O.A. 568/92.

Dt. of Decision : 29.11.94.

ORDER

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

The applicant commenced service as Extra Departmental Branch Post Master in the year 1970. He was proceeded against under Rule 8 of the ED agent (Conduct and service) rules 1964 vide memorandum of charge dated 18.12.1989, on the allegation that while functioning as EDBPM during the period 31.5.1989 to 14.6.1989 he did not promptly bring in the value and commission of money orders in the government accounts in respect of MO's 74 to 76, 78 to 81. In case of three money orders there was 2 days delay and in case one money order there was 7 days delay and in case of the remaining 2 money orders there was 12 days delay. The applicant in his explanation to the memorandum of charges, did not dispute the fact that there was delay, but stated that the delay was not account of his lack of integrity and devotion to duty, but had occurred under compelling circumstances, that on getting information of serious illness of his father-in-law he had to leave station. However not being satisfied with the explanation submitted by the applicant an enquiry was held. The enquiry authority finding the applicant guilty, submitted his report. The disciplinary authority accepting the findings of the enquiry authority, found that the applicant was guilty and imposed on him a penalty of removal from service by the impugned order dated 13th December 1991. Aggrieved by that, the applicant filed an appeal. The appellate authority vide his order dated 11.3.1992 Annexure-6 confirmed the penalty of removal from service. It is under these circumstances that the applicant has filed this application

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praying that the impugned order may be quashed and the respondents be directed to reinstate the applicant in service with all consequential benefits. The applicant has taken various grounds against the impugned order namely that the finding is not warranted by the evidence, that the appellate authority has erroneously considered the case as one of temporary misappropriation, in the absence of any such evidence that the circumstances under which the lapse happened on the part of the applicant has not been properly appreciated by the disciplinary authority, as well as, appellate authority, and that the penalty of removal from service was imposed without considering the effect of the direction of the judgement of the Cuttack Bench in Sachitananda Parija Vs Union of India reported in 1987 (2) ATC 813.

2. The respondents contended that as the misconduct committed by the applicant was proved at the regular enquiry the punishment of removal from service was awarded on the applicant and that the case does not require any judicial intervention.

3. We have perused the records and we have heard Shri K.S.R. Anjaneyulu, learned counsel for the applicant and N.V. Ramana, learned counsel for the respondents.

4. The fact that the applicant has committed the mis-conduct of not bringing into account the amount of money orders in 7 cases on the very same day of the booking, is not in dispute. The applicant's case was that the short delay in doing so happened to be caused as he, having received information about serious illness of his father-in-law, had to leave the station and as in the haste the money order

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forms ~~were~~ misplaced. However, we notice that even in the memorandum of charges there was no imputation that the applicant had any dis-honest intention in not bringing into account the cash on the relevant date itself and doing so only after short delay. The applicant has clearly admitted this, ⁱⁿ his explanation. Therefore the finding of the disciplinary authority that the applicant was guilty of the misconduct for which he was charge sheeted cannot be held to be perverse. The disciplinary authority on finding that a charge against an ED agent is established has got a duty to consider the gravity of the misconduct antecedents of the employee, the circumstances under which the misconduct happened to be committed and then decide the quantum of punishment. In this case we are of the considered view that the disciplinary authority did not give adequate consideration to the gravity of the misconduct, the circumstances under which the misconduct was committed as also the antecedents of the applicant. Though in the brief the applicant had invited attention of the concerned authorities that penalty other than removal from services have been provided in the rules, but still the disciplinary authority did not consider the question adequacy of awarding one of the other penalties to the applicant than removal from service. In the appeal memorandum also the applicant had projected the grievance that the penalty has been unduly harsh. The appellate authority in his order not only give proper and adequate consideration to this aspect but has also taken a more serious view of the matter. It appears that the disciplinary was influenced by a ^{not} thought that the lapse on the part of the applicant in bringing on account the cash for a short period amounted to temporary misappropriation.

In the last paragraph of the appellate order the appellate authority has stated as follows:-

"The late credits amount to temporary misappropriation. The punishment is fully commensurate with the gravity of offence".

5. It is evident that the appellate authority was of the view that the late credits in this case amounted to temporary misappropriation and therefore the punishment of removal was well merited in this case. But the appellate authority has failed to consider the fact that even in the memorandum of charge there was not even mention that the action of the applicant ⁱⁿ ~~not~~ bringing on account the money for a short period was motivated by a dis-honest intention and that his action amounted to temporary misappropriation.

6. On a careful scrutiny of the application and circumstances of the case, we have no doubt left in our mind of the fact that there was no element of dishonesty in the action of the applicant and the lapse on his part was probably owing to adverse circumstances especially in view of the fact that the applicant had 21 years ^{of} ~~years~~ service without any blemish. Under these circumstances we are of the considered view that the penalty of removal from service was imposed without due consideration to the relevant facts and circumstances and has therefore resulted in miscarriage of justice.

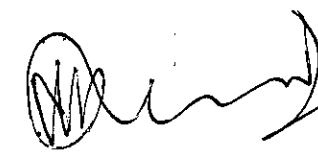
7. In the light of what is stated in the foregoing paragraphs we are of the view this is a fit case where the appellate authority has to be asked to reconsider the question of penalty and consider awarding a penalty other than ^{of} removal from service.

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8. In the result, we dispose of this application directing the appellate authority to reconsider the appeal of the applicant on the quantum of penalty and to consider award of lesser penalty than removal from service. A final order on the appeal as directed above should be passed within a period of one month from the date of communication of this order. It is made clear that in case, as a result of the appellate authority's orders, the applicant is to be reinstated, he shall not be entitled to any backwages. There is no order as to costs.


(A.B. GORTHI)
MEMBER (ADMN.)


(A.V. HARIDASAN)
MEMBER (JUDL.)

Dated : The 29th November 1994.
(Dictated in Open Court)


Deputy Registrar (Judl.)

Copy to:-

1. Secretary to Government, Department of Posts, Union of India, New Delhi.
2. The Director of Postal Services, O/O Post Master General, Kurnool.
3. The Superintendent of Post Offices, Kurnool.
4. One copy to Sri. K.S.R. Anjanayulu, addocate, CAT, Hyd.
5. One copy to Sri. N. Ramana, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 29/11/94

ORDER/JUDGMENT.

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

O.A.NO.

56842

T.A.NO.

Admitted and Interim Directions
issued.

Allowed.

Disposed of with Direction.

Dismissed.

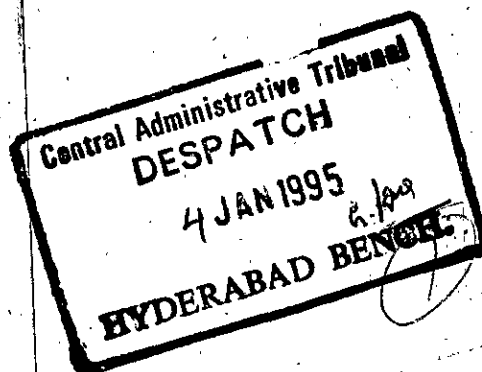
Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

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YLKR