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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.24/94.

Date of Judgement : 14-12-94

Mohd. Jaffer .. Applicant

Vs.

1. Director of
Postal Services,
Hyderabad City Region,
Hyderabad.

2. The Sr. Supdt. of
Post Offices,
Hyderabad City Division,
Hyderabad. .. Respondents

Counsel for the Applicant :: Shri S.Ramakrishna Rao

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

C O R A M

Hon'ble Shri A.V.Haridasan : Member(J)

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The Applicant was dismissed after a departmental disciplinary inquiry by the order of the Sr. Supdt. of Post Offices (SSPOs for short) dt. 29.10.93. His appeal against the penalty was rejected by the Director of Postal Services on 17.12.93. Hence this O.A. with a prayer that the penalty be set aside with all consequential benefits.

2. The Applicant was served with a charge memo dt. 2.5.91. The gist of the articles of charge is as under

Article I.

During the period from 20.6.1988 to 11.10.1990 he accepted deposits and allowed withdrawals in S.B. Accounts Nos.150223, 150499, 150506, 150526 and 150215 standing open at Padmavathinaga TSO, but did not account for the amounts in Government records.

Article II.

During the period from 20.6.1988 to 11.10.1990 he accepted deposits in 38 S.O. Accounts totalling Rs.68,613.50 and allowed withdrawals in 14 accounts of Rs.37,800/- and did not account for them in Government/records. Further, the said Shri Mohd. Jaffar-I, also accepted deposits in 35 R.D. Accounts amounting to Rs.15,066.80 and an amount of Rs.5,097.20 in 9 CTD Accounts and did not account for the amounts in Government accounts/records.

Article III.

During the period from 20.6.1988 to 11.10.1990 he sold I.V.P.No.C9/696291 of denomination Rs.5,000/- on 3.9.90 and deducted the same from the stock to that effect in the stock register of IV.Ps. But Rs.2,500/- (Rupees Two thousand and five hundred only) being the sale value of the I.V.P. was not accounted for.

Article IV.

Shri Mohd. Jaffar-I, while working as Sub-Postmaster, Padmavathinagar has come for adverse notice of serious financial irregularities and was relieved on the afternoon of 11.10.1990 with a direction to join as Postal Assistant, Golconda S.O. immediately vide SSPOs, Hyderabad City Division Memo No.B2/3/1/III/90 dt. 11.10.1990. The said Shri Mohd. Jaffar-I did not join the new post but produced Medical Certificate for 20 days and stopped away from duty from 12.10.1990.

3. Learned counsel for the Applicant assailed the validity of the inquiry proceedings and the resultant penalty on several grounds. These are discussed in the succeeding paragraphs.

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4. A criminal case (C.C.No.151/91) was instituted against the Applicant on account of the very same irregularities and hence it was urged by the learned counsel for the Applicant that it was not proper for the Respondents to have carried out a parallel inquiry simultaneously. Reliance was placed on para 81 of Posts & Telegraphs Manual, Volume III. It stood deleted w.e.f. 16.7.1989 and hence to be ignored.

5. Applicant's counsel has drawn our attention to the undermentioned cases:-

(a) Jai Prakash Vs. U.O.I. & Anr. 1991(1) SLJ (CAT) 352.

(b) R.Rajamannar Vs. U.O.I. (1993) 23 ATC 131.

6. In Jai Prakash's case, the Tribunal followed the judgement of the Supreme Court in Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. & Ors. AIR 1988 SC 2118 and held that as the charge on which departmental inquiry was ordered being the same as that in the criminal case, the former should be stayed till the finalisation of the latter. Similar view was taken in R.Rajamannar's case also. In Kusheshwar Dubey's case, the Supreme Court clarified that there could be no legal bar for simultaneous proceedings but a decision should depend on the circumstances of the particular case. The Respondents have stated in their reply affidavit that the articles of charge before the departmental inquiry are not the same as those in the criminal case. The said criminal case pertained to misappropriation of money pertaining to some other Savings Accounts and not to those referred to in the articles of charge in the departmental inquiry. In view of the factual position, we find that holding of a departmental inquiry in this case is justified even when a criminal case ^{was} pending against the Applicant.

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7. It was next contended for the Applicant that the Inquiry Officer was of the same rank as that of the Applicant. The Inquiry Officer Shri A.Venkatesu was at the relevant time holding the appointment of Inspector of Post Offices and even though he was in the same grade of pay as that of the Applicant, he was holding a post carrying higher responsibility. The Respondents further clarified that the Inquiry Officer was a sufficiently senior Inspector. It was also not the contention of the Applicant that the Inquiry Officer was junior to him. It would be difficult, in these circumstances, to say that there was any irregularity in the himself never raised an objection either at the commencement or during the conduct of the inquiry.

8. An issue that was strongly pressed by the Applicant's counsel was that the Applicant was denied the opportunity to have a defence assistant of his choice. Initially Shri M.P.Sudhakar was nominated as the defence assistant, as desired by the Applicant. The said defence assistant attended the inquiry on two occasions but during the third sitting he requested to be relieved and withdrew from the inquiry. The Applicant then nominated Shri Mohd. Ameer Ali, LSG Postal Assistant of Sangareddy Division. His controlling authority did not spare him as he was under suspension. The Applicant refused to choose or nominate another person, despite opportunity given to him and decided not to participate in the inquiry thereafter.

9. The Applicant sought an adjournment of the inquiry from 1.7.92 to 4.7.92 and submitted a medical certificate, but his request was refused. Inquiry was proceeded with and witnesses were examined. When the inquiry was adjourned to 10.8.92, even then the Applicant did not attend.

On the subsequent days of inquiry also, the Applicant was absent although day to day proceedings were being duly communicated to the Applicant.

10. Learned counsel for the Applicant urged that the Applicant was denied reasonable opportunity to present his defence on account of the arbitrary manner in which his request for a defence assistant was denied and the inquiry was proceeded with. Reference was made to C.L.Subramaniam Vs. The Collector of Customs, Cochin, AIR 1972 SC 2178. That was a case where the employee's request to engage a defence counsel was rejected, even though the presenting officer was legally trained. Consequently, the Supreme Court had the occasion to observe as under:-

"22. xxxxx Govt. servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation he cannot be expected to act calmly and with deliberation. That is why Rule 15(5) [corresponding to the present Rule 14(8)(a) of the C.C.S.(C.C.A.) Rules] has provided for representation of a Govt. servant charged with dereliction of duty or with contravention of the rule by another Govt. servant or in appropriate cases by a legal practitioner."

11. In R.Robert Vs. U.O.I. & Anr. (1991) 16 ATC 671, the Madras Bench of the Tribunal followed the judgement of the Supreme Court in C.L.Subramaniam's case (supra) and held that "refusal of permission to have a defence assistant by not passing an order on the said request and at the same time proceeding with the inquiry, placing the Applicant in a situation where he could not have the benefit of a defence assistant would vitiate the inquiry." (emphasis supplied).

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12. Facts in the present case are different. The nominated defence assistant was made available but he withdrew from the case after a few sittings. The request of the Applicant for making available Shri Mohd. Ameer Ali was considered but the latter's controlling authority did not spare him as he (Shri Mohd. Ameer Ali) himself was under suspension awaiting/facing inquiry. No doubt that an employee under suspension is not debarred from acting as a defence assistant of another employee, but here the refusal of the concerned authority to spare a particular official was justified or not. A suspended employee would be required to be available for his own inquiry and hence, if the controlling authority decided not ^{to} spare him to go as a defence assistant in another inquiry, it cannot be said to be an unreasonable or unfair decision.

13. When Shri Mohd. Ameer Ali was not spared, the Applicant was given sufficient opportunity to nominate any other Govt. servant as his defence assistant, but the Applicant, instead of doing so, refused to attend the inquiry proceedings. It would clearly show that the Applicant was more intent on delaying the inquiry proceedings than arranging for his defence. Under these circumstances, the Applicant is not justified in complaining against the Inquiry Officer on the manner in which the inquiry was held.

14. The Applicant cited Shri V.V.K.A. Mohan Rao, SSPOs, Hyderabad City Division as a defence witness, but the Inquiry Officer decided that it was not necessary to examine him. The Applicant sought to examine Shri V.V.K.A. Mohan Rao to prove letter No.SB/Verification/90-91 dt. 9.10.90 from the Sr. Postmaster, Khairatabad H.O. addressed to Shri Mohan Rao. The said document was one of the several documents listed in Annexure III to the charge memo. It means that ^{the} prosecution intended to have the document duly identified. It was exhibited as7

Ex.P.29. It was a report made by the Sr. Postmaster, Khairatabad H.O. to Shri Mohan Rao, stating that certain discrepancies were found in the deposits shown in S.B. Pass Book No.150506. Record of the inquiry proceedings would show that Ex.P.29 was identified by Shri N.Anjaiah, Inspector of Post Offices, who inspected the relevant S.B. Pass Book accounts and noted the discrepancies found therein. His evidence would further show that when he confronted the Applicant with the documents and the discrepancies found therein, he admitted his guilt and promised to make good the amount involved.

15. While on the one hand, the Applicant asserted that Shri V.V.K.A.Mohan Rao, who was ~~cited as a~~ defence witness, was not examined, on the other hand he complained that the second defence witness cited by him (Shri Hameed Bin Mohammed) was indeed examined even when the Applicant himself did not attend the inquiry. The inquiry proceedings reveal that Shri Hameed Bin Mohammed was called as a defence witness and allowed to state whatever he wanted. He, however, said that he had nothing to say and that he did not know why the Applicant referred to him as his defence witness.

16. We have heard learned counsel for both the parties and perused the entire inquiry proceedings. The Applicant time and again admitted his responsibility for the irregularities and stated that he was prepared to make good the loss. In fact, one of the grounds raised by him in this O.A. is that when he wanted to know the exact amount of loss to be made good, the Respondents did not accept

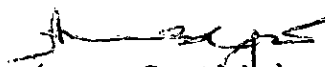
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his request but proceeded with the inquiry.

17. Thus, looking at the entire case from any angle, we cannot come to the conclusion that the inquiry is vitiated by any such irregularity as would have prejudiced the Applicant in his defence or as would have amounted to a denial of reasonable opportunity to the Applicant.

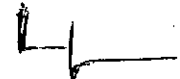
We, therefore, find no justification to interfere with the inquiry proceedings or with the penalty imposed upon the Applicant, which under the circumstances seems just and fair.

18. In the result, the O.A. is dismissed. No order as to costs.


(A.B.Gorthi)
Member(A).


(A.V.Haridasan)
Member(J).

Dated: 14-Dec., 1994.


Deputy Registrar(Judl.)
21/12/94

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Copy to:-

1. Director of Postal Services, Hyderabad city Region, Hyd.
2. The Sr. Supdt of Post Offices, Hyderabad City Division, Hyderabad.
3. One copy to Sri. S.Ramakrishna Rao, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. Copy to Reporters as per standard list of CAT, Hyd.
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