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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD
D.A. NO. 269 of 1995

Between:

K. Sobha Prasad

... Applicant

vs.

Supdt. of Post Offices,
Adilabad and another

... Respondents.

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENT

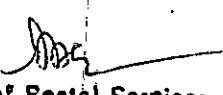
I, V.S. Krishna Murthy, S/o V. Satyam aged 55 years
Occupation: Govt. Servant resident of Hyderabad do hereby
solemnly affirm and state as follows:

1. I am the Asst. Director in the O/o the PMG Hyd.
Region and as such I am fully acquainted with all facts
of the case. I am filing this Reply Statement on behalf
of all the Respondents as I have been authorised to do so.
The material averments in the D.A. are denied save those
that are specifically admitted hereunder. The applicant
is put to strict proof of all such averments except those
that are specifically admitted hereunder.

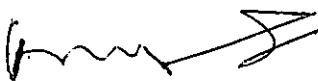
The respondents submit the Brief history of the
case as follows:

The applicant while working as a Postal Assistant
at Asifabad Sub Post Office in Adilabad Division committed
SB/RD/CTD frauds and misappropriated Govt. money to the
tune of Rs. 9124.50. The modus operandi adopted by him
was that he used to accept SB/RD/CTD deposits from the
depositors and utilise the amount by himself and did not
bring the amount into Govt. accounts on the dates of
acceptance. He has voluntarily credited a sum of Rs. 3200/-
on 2.9.86 314/50 on 27.1.1987, Rs. 618/- on 18.2.87 and
Rs. 5758/- on 22.1.1988 accepting his guilt. He was
placed under suspension on 5.9.1986. While under suspen-
sion he did not adhere to the instructions of the
respondent 1, and left his headquarters without permission
without furnishing his address etc. But he drew the
subsistence allowance regularly upto June 1988. There-
after on 2.3.1989 he represented for payment of his
subsistence allowance from July, 1988 onwards through the

ATTESTOR


Assistant Director of Postal Services
O/o. The Postmaster-General
Hyderabad Region, Hyderabad - 500 001

DEPONENT


Assistant Director of Postal Services
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Postmaster, Mancherial HO. He took payment of the subsistence allowance from 7/88 to 22.9.1988 (till the date of dismissal) on 11.9.1989. Thus the applicant knew his dismissal from service w.e.f. 23.9.1988, way back in March '89/or after 11.9.1989. It is also on record that the applicant collected the acquittance roll of his subsistence allowance for the month of Feb.1988, personally at Mancherial HO altered the office of payment from Asifabad S.O. to Sirpurkagaz Nagar and took payment at Sirpurkagaz Nagar S.O. unauthorisedly.

A charge memo under Rule 14 of the CCS (CCA) Rules 1965 dated 4.11.1987 was sent to him by the Respondent No.1 through Registered letter 1699 dated 6.11.1987 of Adilabad Head Post Office NPO at his Asifabad Address where he is expected to reside. But the Registered letter "Addressee Left without intimation and returned to sender". There was no other course of action left, to be taken except proceeding ahead with the enquiry. The inquiry officer was appointed on 13.11.87 to enquire into the articles of charges levelled against the applicant. The Enquiry Officer commenced the enquiry on 27.11.1987 and held sittings on 28.1.88, 8.3.88 to 11.3.88, 20.4.88 to 22.4.88, 25.5.88 and 14.6.88. The notices sent on each occasion to the applicant by the enquiry officer were returned back undelivered with the remarks "that the addressee left without instructions". Therefore the I.O. was compelled to proceed to the next stage of enquiry on each occasion conducting the enquiry ex parte. The Inquiry Officer in his report dated: 29.7.1988 held all the articles of charge levelled against the applicant as proved. Final proceedings dismissing the applicant from service were issued by the respondent No.1 on 23.9.1988. The proceedings were sent to the applicant on 26.9.1988 through Registered letter No. 1959 booked at Adilabad NPO. The Registered letter was not received back by the Respondent No.1.

As criminal breach of trust was committed by the applicant the case relating to Article V of charge I alleging non credit of SB/RD/CTD deposits amounting to

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S. B.
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DEPONENT

G. M. S.
G. M. S.
Assistant Director of Postal Services
O/o: The Postmaster-General
Hyderabad Region, Hyderabad-4-500 001

Rs.9124.50 into Govt. Accounts was reported to police on 9.2.1988. The charge sheet filed by the police in the Munsif Magistrate Court, Asifabad under Crime No. 17/88, ended in the acquittal of the applicant on 28.8.91 because of the failure of the prosecution to prove its case.

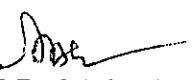
Thereafter the applicant submitted a representation dated 12.12.91 to the Respondent No.1, maintaining that he was under suspension w.e.f. 5.9.86 and as he was acquitted in the police cases on 28.8.1991, he requested the Respondent No.1 to reinstate him into service. The applicant was dismissed from service as a result of the departmental enquiry held under Rule 14 of the CCS (CCA) Rules 1965. He was dismissed from service on 23.9.1988, much prior to the commencement of trial in the criminal case. He was not reinstated into service because there was no such direction in the Judgement of the MM Court Asifabad.

The applicant filed OA 12/92 in this honourable Tribunal praying for a direction to reinstate him into service, as he was acquitted in the criminal case. The OA was dismissed on 2.9.1993, observing that the applicant has a right to appeal against the order of dismissal. His revised petition No.111/93 in OA 121/93 was disposed on 21.1.1994 with a direction to the R-1, supplied on 22.2.1994, a copy of the dismissal order in pursuance of the Tribunal Judgement. The copy was received by the applicant on 23.2.1994.

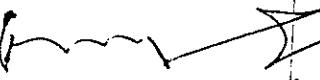
Prior to the communication of the copy of dismissal order on 23.2.1994, the applicant preferred an appeal dated 28.1.1994 to the appellate authority against the order of dismissal from service dated 23.9.1988. The applicant, even before disposal of his appeal, filed OA 1359/94 in this hon'ble Tribunal, challenging the dismissal order dated 23.9.1988. The OA was disposed of on 8.11.94 with a direction to the appellate authority to dispense of the appeal before 31.1.1995. The appellate authority disposed of the appeal on 24.11.94. The present OA is against the order of the appellate authority.

In reply to the contents of para 6 of the O.A. the respondents submit as under:

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O/o. The Postmaster-General,
Hyderabad, Hyderabad-500001

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Assistant Director of Postal Services
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i) It is submitted that the applicant was working as a Postal Assistant in Asifabad Post Office under the supervision of a Sub Postmaster. The establishment of the Post Office was sanctioned according to the standards prescribed.

While working at Asifabad he committed frauds in SB/RD/TD accounts to the tune of Rs.9124.58. The modus operandi was that he accepted deposits in the accounts from the depositors and utilised the amount for himself without crediting into Govt. account pending further investigation he was placed under suspension w.e.f.5.9.86. He voluntarily credited Rs.3200/- on 2.9.86, Rs.314.50 on 27.1.86, Rs.618/- on 18.2.87 and Rs.5750/- on 22.1.88. The amount credited by him include the penal interest. While under suspension, he did not adhere to the instructions of R-1, and left his headquarters without permission and without furnishing his address. A charge sheet under Rule 14 of the CCS(CCA) Rules 1965 was issued to the applicant on 4.11.1987. The Registered letter containing the charge sheet was received back with the remarks "Addressee left without intimation, return to sender". A departmental enquiry was conducted on 27.11.87, 28.1.88, 8.3.88 to 11.3.88, 20.4.88 to 22.4.88, 25.5.88 and 14.6.88. The Enquiry Officer in his report dated 29.7.88 held the article of charges I to IV as proved. Final proceedings were issued on 23.9.88 imposing the penalty of "Dismissal from service".

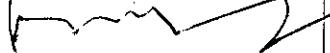
ii) As amount (public money) in the fraud committed by the applicant was heavy, the case relating to article of charge of the charge sheet dated 4.11.1987 alleging non credit of Rs.9124.50 into Govt. account, only was reported to police on 9.2.1988. The police filed a charge sheet in the M&M Court Asifabad, under section 409 of IPC. The criminal case ended on 20.3.1991, in the acquittal of the applicant, because of the failure of the prosecution to prove it's case.

iii) The applicant submitted a representation dated 12.12.91 requesting for reinstatement into service as he was acquitted in the police case. The applicant was dismissed from service on 23.9.88 as a result of the departmental enquiry, much prior to the commencement of

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Assistant Director of Postal Services
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Hyderabad Region, Hyderabad-500 001

the trial in the criminal case. He was not reinstated because there was no such direction in the judgement in the criminal case. His OA 121/92 filed in this honourable tribunal praying for a direction to reinstate him into service on his acquittal in the criminal case, was dismissed on 2.9.93, giving him the liberty to appeal against the order of dismissal. His review petition No.1,111/93 in OA 121/92 was also dismissed on 21.1.94 with a direction to ~~XXXXXX~~ communicate a copy of the order of dismissal to the applicant.

The averment of the applicant that "he came to know of his dismissal" only after reading reply counter filed by the respondent in OA 121/92 is not at all true. On 2.3.89 he applied to the R-1, through the Postmaster, Mancherial HO for payment of the subsistence allowance from July 1988 onwards "since he did not take payment". He took payment of the subsistence allowance from July 1988 to 23.9.1988. (upto the date of dismissal) on 11.9.1989. Thereafter he never represented for payment of subsistence allowance beyond 23.9.88. Had he really not been aware of his dismissal from service as stated in this OA., he would have agitated against the non payment of subsistence allowance beyond 23.9.1988. Thus it clearly establishes the fact that the applicant was well aware of his dismissal from service atleast by 2.3.89 or 11.9.1989. A copy of the representation of the applicant dated 2.3.1989 is enclosed as Annexure.1. The applicant himself admitted of "receipt of the balance of subsistence allowance on 11.9.1989 (para 2 of Judgement dated 2.9.93 in OA 121) /92, enclosed as Annexure-VI to the OA). Sri S.Venkatraman, who worked as Supdt.of Post Office, Adilabad (R-1) from 6.11.1986 to 13.10.1988, was examined as a PW-1 in the criminal case on 25.7.1990. In his deposition he stated that he dismissed the applicant from service (Para 6 in page 9 of the Judgement dated 25.8.91 annexed as "Annexure IV to the OA). Thus though he was aware of his dismissal from service way back in March/Sept.'89 he had deliberately chosen to keep them, without preferring an appeal against the order of dismissal from service.

Therefore the applicant's appeal dated 20.1.1994,

ATTESTOR

DE POENNT

[Signature]
Assistant Director of Postal Services
O/o. The Postmaster-General
Hyderabad Region, Hyderabad-500001

[Signature]
Assistant Director of Postal Services
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Hyderabad Region, Hyderabad-500001

against the order dated 23.9.88, dismissing him from service, was rightly rejected by the appellate/authority as time barred, as reasons advanced in support of the delay were found to be not convincing.

It is further submitted that in accordance with the orders ^{of the Tribunal dated 21.1.94 in RP} 111/93 in OA 126/92, (copy made available ^{in R-1, made available a copy of the dismissal order to the applicant on 23.2.94. Thereafter the applicant did not prefer any appeal to the appellate authority.}

In reply to the grounds taken by the applicant in para 7 of the OA the respondents submit as follows:

a) It is submitted that the applicant was proceeded against under Rule 14 of the CCS(CCA) Rules 1965, for the following misconduct/misbehaving i.e. failure.

(1) to credit the deposits collected from 14 SB/RD/CTD depositors amounting to Rs.9124.50, into Govt. account (subsequent to detecting the non credits, he voluntarily credited the amount including penal interest).

(2) to account for the deposits of Rs.900/- in 7 CTD/RD ^{Account} _{day of acceptance.}

(3) to account for a deposit of Rs.450/- ^{Account} _{of Rs.400/- on 11.6.86 in the} and for allowing a withdrawal reflecting the transaction in the official records.

(4) to stay at the headquarters as specified in the suspension order dated 3.9.86.

before the commencement of the ^{inquiry} was concluded in 11.6.88 much case. Therefore the averment made "that the departmental authorities cannot appreciate the evidence already apprised by the judicial authorities" is not at all relevant here in as much as the evidence of witness was assessed in the departmental enquiry in March 88 long before the trial of the criminal case. Further the criminal case was lost because of the failure of the, prosecution (Police) to examine six of 14 depositors referred to in the police case.

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Hyderabad Region, Hyderabad-500 001

b) It is submitted that the departmental proceedings were concluded on 23.9.88, whereas the case-law cited by the applicant is of 1993. Further it is submitted that there is no bar to conduct departmental proceedings simultaneously with criminal proceedings. This honourable Tribunal held in para 4 of its judgement dated 2.9.1993 in O.A.121/92, ^{Official paper} that "It is well established that there can be disciplinary inquiry in regard to the very misconduct in regard to which a charge sheet is filed in the criminal case".

c) It is submitted that the ~~departmental~~ proceedings were conducted in accordance with the rules. copies of the order of the R-1, Memo No.F4-3/86-87 dated 13.11.1987 appointing ^{into charges} the Enquiry Officer were sent to the applicant to his Secunderabad address through RL No.1036 dated 18.11.87. It was received by him on 20.11.87. The enquiry officer commenced the enquiry on 27.11.87 continued it on 28.1.88 ^{"13-88} 8.3.88, 9.3.88, 10.3.88, 20.4.88, 21.4.88, 22.4.88, ^{25.5.88} and concluded ^{on} 14.6.88. Registered notices issued to the applicant ^{to} him to attend the inquiry were received back by the Enquiry Officer, undelivered with remarks "addressee left without instructions, from Asifabad". The copies of the notices issued by the Enquiry Officer were also posted to the applicant's last known address at Secunderabad. The applicant deliberately avoided receiving the notices sent by the Enquiry Officer. As the applicant did not attend the sittings the Enquiry Officer held the enquiry ^{ex parte}. All the sittings were held at Asifabad Post Office. According to the judgement dated 2.9.93 of this Honourable Tribunal in O.A.121/92, the applicant himself admitted that he could not participate in the Departmental Enquiry as NBW was pending against him. Thus knowing fully well of the departmental enquiry being conducted

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against him at Asifabad. He deliberately did not attend the enquiry. It is further submitted that as on the date of commencement of the trial, no disciplinary proceeding were pending as he was already dismissed by that time and hence question of informing of pendency of disc. proceedings, when the applicant was in attendance during the trial, does not arise. The averment that right from the receipt of the report against him in the police station, several times to assist the investigation and he was therefore, could have been informed of the pendency of disc. proceedings is contrary to facts in as much as ~~the Court had to issue an arrest warrant to enforce his attendance when the C.J. was~~ and he surrendered before the Court consequently.

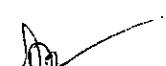
d) It is submitted that, the notices about holdings of inquiry were sent to the applicant by registered post. All such Registered letters were returned back with remarks "Addressee left without instruction from Asifabad". Knowing fully well of the holding the departmental enquiry the applicant deliberately did not receive the registered letters addressed to him.

e) As already submitted in reply to para 6, the applicant was aware of his dismissal from service by 2.3.88/ 11.9.89. Sri S. Venkataaraman the then Supdt. of Post Offices, Adilabad in his deposition given before the Hon'ble Judicial First Class Magistrate, Asifabad on 25.7.1990, deposed that he dismissed the applicant from service. The final proceedings of the R-1 dated 23.9.1988 dismissing the applicant from service was sent to the applicant by Registered post through Adilabad NPO RL No.1959 dtd. 26.9.1988.

f) It is submitted that the applicant was well aware of the holding the departmental enquiry against him, way back on 20.11.87. He was charged for non accounting of deposits collected from depositors in Govt. accounts. Knowing that he has no case, to defend himself in the departmental enquiry, he deliberately managed not to receive the notices sent by the Enquiry Officer. For the same reasons even though he was aware of his dismissal from service, by 2.3.89/11.9.89 he maintained silence without preferring an appeal against the order of dismissal from service. His silence from 2.3.89 to 20.1.94 (the day on which he preferred an appeal) itself speaks of his guilt.

ATTESTOR

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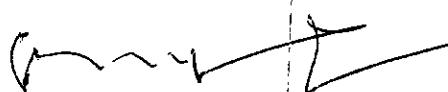
Assistant Director of Postal Services
O/o. The Postmaster-General,
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g) It is submitted that the appellate authority rightly rejected the appeal dated 20.1.94 of the applicant as time barred in as much as, no valid reasons for the delay were furnished. As the applicant preferred to maintain silence even after knowing of his dismissal, all the reasons advanced in support of delay, pale into insignificance as ~~rules~~ rather than reasons. The applicant in his RP No.112/93 in OA 121/92 prayed this honourable tribunal to direct the R-1 to supply copies of all documents from charge sheet to dismissal order. This Honourable Tribunal in its' order dated 21.1.94 directed the R-1 to communicate a copy of the order of the dismissal to the applicant. Accordingly a copy of the order of dismissal was communicated to him on 23.2.94. Therefore the prayer of the applicant for a direction again to supply copies of the other documents is not maintainable now.

In reply to para 8 of the O.A., it is submitted that the applicant has no remedies available. He could have preferred a petition against the order of the appellate authority.

Further reasons stated above, the applicant has not made out any case either on fact or on law and there is no merit in the O.A. It is, therefore prayed that this Honourable Court may be pleased to dismiss the O.A. with costs and pass such further and other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

DEPONENT


 Assistant Director of Postal Services
 O/o. The Postmaster-General
 Hyderabad Region, Hyderabad - 500 001

Solemnly and sincerely affirmed
 this 17th day of April 1995
 and he signed his name in my presence.

Before me

ATTESTOR

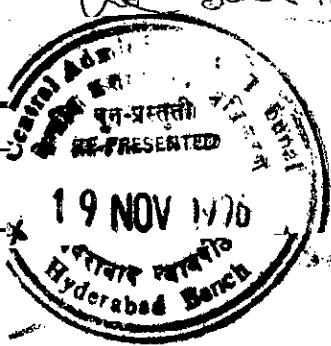

 Assistant Director of Postal Services
 O/o. The Postmaster-General
 Hyderabad Region, Hyderabad - 500 001

Returned

Copy to be enclosed

in the other file. 10

B. Balaji



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT HYDERABAD

D.A. NO. 269 of 1995.

Between:

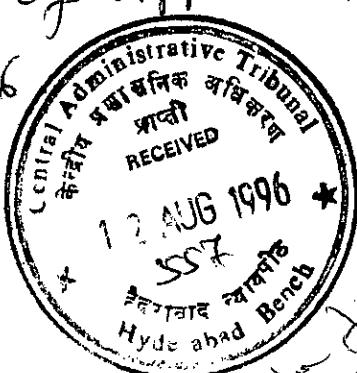
K. Sobha Prasad .. applicant

Vs.

Supdt. of Post Offices,
Adilabad and
another. .. respondents

Reply Statement

Memo of APP. Filed via
2657/96



Filed by:-
N. R. Devanay
or

Received
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12/11/96