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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

O.A.No.499 OF 1995.

DATED: 27-1-1998

Between:

Y. Md.Yousuf

.. Applicant

a n d

1. Union of India, Rep., by Post Master General, A.P. Southern Region, Kurnool-518 005.
2. Director of Postal Services, O/o P.M.G. Kurnool-518 005.
3. Superintendent of Post Offices, Nandyal Division, Nandyal, Kurnool District.
4. Sub-Divisional Inspector/Inquiry Officer, Banaganapalle, Kurnool.

.. Respondents

COUNSEL FOR THE APPLICANT(S): Mr.B.S.A.Satyanarayana

COUNSEL FOR THE RESPONDENT(S): Mr.N.V.Ramana

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: ORDER :

(PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Sri. B. S. A. Satyanarayana, learned Counsel for the Applicant &
None appeared ^{for} on either side. ^{Respondents} The applicant was absent

~~when this O.A. was taken up for hearing.~~ Since the O.A. was filed during the year 1995, we felt not inclined to adjourn the O.A. ~~suo-moto~~ and decided to dispose of the O.A. on the basis of the material available on record in accordance with Rule 16(2) of the CAT(Procedure) Rules, 1987.

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2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 18-4-1995.

3. The facts giving raise to this O.A. may, in brief, be stated thus:-

(a) The applicant was appointed as EDBPM, Pedda Chinta Kunta Sub Office in account with Allagadda Head Post Office in Kurnool District. He was appointed as such during July, 1985.

(b) The Superintendent of Post Office, Nandyal Division, Nandyal served Memorandum of Charges on the applicant, vide his Proceedings No.R/4-2-/91-92, dated 4-11-1991. The Memorandum of Charges were issued to the applicant under Rule 8 of the Service Rules for ED Staff in Postal Department, 1964. The applicant was charged with the following misconduct involving financial irregularity and dereliction of duty. The charges levelled against the applicant are as under:

ARTICLE-I

That the said Sri Y.Md. Yousuf while working as BPM, Pedda Chintakunta B.O. a/w Allagadda H.O. during the period from 1-7-85 to 25-7-91 did not account for an amount of Rs.1800/- in RD account no.613356 of D.Ramijabi(minor) deposited through Father and Guardian Jamelvali, Gang Mazdoor, P.C.Kunta B.O. in contravention of Rule 131 of Book of B.O. rules (Sixth Edition) read with item 20 of what the BPM should not fail to do of the said book.

It is, therefore, alleged that Sri Y.Md. Yousuf, BPM(Put off), Pedda Chintakunta B.O. failed to maintain absolute integrity and devotion to duty as required by rule 17 of EDAs(Conduct and Service) Rules, 1964.

ARTICLE-II

That the said Sri Y.Md. Yousuf while working as BPM, Pedda Chintakunta B.O. a/w Allagadda H.O. during the period from 1-7-85 to 25-7-91 did not account for an amount of Rs.3600/- (Rupees Three Thousand Six Hundred only) in the R.D. account no.613357 of Sri Jamalvali, Gang Mazdoor, P.C.Kunta B.O. deposited by Jamalvali in contravention of Rule 131 of Book of B.O. Rules (Sixth Edition) read with item 20 of what the BPM should not fail to do of the said book.

It is, therefore, alleged that Sri Y.Md. Yousuf, BPM(Put off), Pedda Chintakunta B.O. failed to maintain absolute integrity and devotion to duty as required by rule 17 of ED Agents (Conduct and Service) Rules, 1964.

(c) A detailed enquiry was conducted into the said charges. The applicant participated in the disciplinary proceedings. Three witnesses were examined. They testified as to the procedure and the amount deposited by the depositors. It appears the private witnesses who testified earlier to have made deposits to RD accounts every month resiled from their statement and stated that they made deposits into accounts in lumpsum once.

(d) On 4-3-1994, the Enquiry Officer submitted his report. The applicant was issued a Show Cause Notice dated 10-3-1994 to offer his say on the report of the Enquiry Officer.

(e) On 29-4-1994 the applicant offered his explanation to the report of the Enquiry Officer.

(f) The Disciplinary Authority by his Proceedings Memo.F/4-2/91-92, dated 29-7-1994 considered the findings recorded by the Enquiry Officer and also the explanation offered by the Applicant.

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The Disciplinary Authority agreeing with the findings recorded by the Enquiry Officer imposed the punishment of dismissal of the applicant from service. The copy of the Order passed by the Disciplinary Authority is at Annexure.2 (page 15 to 21 of the OA).

(g) The applicant submitted a Memorandum of Appeal dated: 13-9-1994 against the punishment of dismissal. The copy of the Memorandum of Appeal is at Annexure.3 (page 22 to 26 of the OA).

(h) The Appellate Authority by his Proceedings No.ST-III/14-NDL/PC Kunta, dated:23-12-1994 confirmed the punishment and rejected the appeal.

(i) The respondent no.3 is the Disciplinary Authority and Respondent no.2 is the Appellate Authority.

(j) After dismissal of the appeal by the Respondent no.2, the Respondent no.3 issued an open notification dated:23-2-1995 to fill up the post of EDBPM on regular basis.

4. Now, the applicant has filed this O.A. for the following reliefs:-

- i) To call for the records relating to the impugned Orders.
- ii) To declare the action of the respondent no.3 in dismissing the applicant from his service and to declare the action of the Respondent no.2 in confirming the said punishment as illegal, arbitrary and against law.
- iii) To direct the Respondents 2 and 3 to reinstate the applicant into service with all consequential benefits.

5. The applicant has challenged the propriety of the impugned Orders on the following grounds:-

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- i) The impugned Orders are violative of Articles 14 and 16 of the Constitution of India.
 - ii) They have been passed without any reliable evidence.
 - iii) The impugned Orders have been passed in utter violation of Principles of Natural Justice.
 - iv) The authorities failed to properly analyse the evidence and reached wrong conclusion.

6. The respondents have filed their counter explaining the circumstances under which the Memorandum of Charges was served on the applicant, the circumstances under which they were forced to charge the Enquiry Officer as well as the Presenting Officer, the conduct of the applicant and his Assistant during the Disciplinary Proceedings, and further submitted that every opportunity was given to the Applicant to prove his innocence in the enquiry, that mere resiling from the earlier statements by the private witnesses had no impact on the misconduct alleged against the applicant that the records and accounts ledgers maintained by the Branch Office as well as the Head Office themselves proved the misconduct levelled and committed by the Applicant and that the respondents were justified in passing the impugned Orders.

7. Further they submit that on account of the Interim Order passed by this Tribunal, the selection process for a regular candidate to the Sub Office has been stalled. It appears the respondents have misinterpreted the Interim Order given 18-4-1995. The Interim Order passed on 18-4-1995 reads as follows:

"If any appointment is going to be made for the post of EDBPM, PC Kunta, the same is subject to the result in this OA and it has to be mentioned in the Order of appointment."

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8. From the above, it is clear that this Interim Order had not come in the way of the respondents completing the process of selection. It never stalled the process of selection by the respondents pursuant to the notification dated 23-2-1995.

9. The respondents have thus contended that the impugned Orders are not assailable, and that OA is liable to be dismissed.

10. On going through the records of the OA and also the stand taken by the respondents, it is clear that the applicant had committed financial irregularity as well as dereliction of duty. The account holders of the Recurring Deposit Accounts had deposited the amounts in monthly instalments. The applicant failed to make proper entries in their respective Branch Offices and Head Offices Journals and in the Pass Books of the Depositors. In the first instance, the depositors specifically stated that they made subscriptions to their R.D. Accounts every month regularly and that they had not deposited in one lump. However, during the enquiry in order to save the skin of the applicant, they resiled from their earlier statement and attempted to state that they had deposited sums into accounts in one lump. Normally, contributions to R.D. accounts have to be made every month within a specified date. Otherwise, they have to pay penalty for making belated deposits. The very fact that the depositors have not paid the penal interest clearly indicated that they had made earlier payments regularly as per the rules but, however, they changed their stand. This was clear from the entries made in the Pass Book. Therefore, the subsequent change in the version of the depositors did not have any impact on the misconduct alleged against the applicant.

11. In the Disciplinary Proceedings preponderance of probability is the guiding factor. The Disciplinary Proceedings is neither a Civil trial nor a Criminal trial. Strict Rules of evidence are not applicable to the Disciplinary Proceedings. The only thing is that the Enquiry Officer must provide sufficient and adequate opportunity to the delinquent employee to establish his innocence.

12. In the case of N.RAJA RATINAM Vs STATE OF TAMILNADU & ANOTHER, the Hon'ble Supreme Court of India has observed as follows:-

"It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each

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case. No doubt, there is no allegation of misconduct against the officer during his earlier career. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal for service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference."

13. The applicant contended that the Impugned Orders are violative of Articles 14 and 16 of the Constitution of India. We feel these two Articles are not at all attracted. The Article that is applicable is Article 311 of the Constitution of India. From the material placed on record, we are convinced that the respondents have complied with the Article 311 before imposing the punishment of dismissal on the applicant.

14. The next contention of the applicant is that the impugned Orders have been passed in violation of the Principles of Natural Justice. On the otherhand, the respondents denied the very contention and explained in their reply the various circumstances under which the enquiry was conducted and dilatory tactics adopted by the applicant and his Defence Assistant. From the reply it is clear that the Enquiry Officer had given sufficient opportunity for the applicant to inspect and verify the documents and records of the enquiry and also had given opportunity to cross examine the witnesses, who examined on behalf of the Disciplinary Authority. When that is the case, we fail to understand how the Impugned Orders are violative of the Principles of Natural Justice. Therefore, we have no other alternative but to come to the conclusion that his contention is not acceptable.

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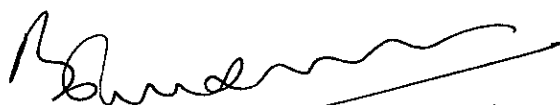
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15. As regards the analysis of the evidence, we feel that the authorities have analysed the evidence placed on record during the enquiry in proper perspective. As already stated the depositors though in their preliminary enquiry made statements against the applicant but subsequently resiled from their earlier statement and gave different version. Their version could not be supported by the entries made in the Ledgers, Pass Books and Head Office Acquittances. In that view of the matter the authorities have rightly considered the changed stand of the depositors and took a proper decision in imposing the penalty.

16. The Charges levelled against the applicant involve the financial irregularity. Hence the authorities have taken proper decision and have imposed the punishment of dismissal.

17. In that view of the matter, we find no merits in this O.A. The OA is liable to be dismissed.

18. Accordingly, the O.A. is dismissed leaving the parties to bear their own costs.



(B.S.JAI PARAMESHWAR)

MEMBER(JUDL)

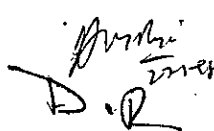
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(R. RANGARAJAN)

MEMBER(ADMN)

Dated: 27th January 1998



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Copy to:

1. The Postmaster General, A.P.Southern Region, Kurnool.
2. Director of Postal Services, O/O PMG, Kurnool.
3. Superintendent of Post Offices, Nandyal Division,
Nandyal, Kurnool District.
4. Sub Divisional Inspector/Inquiry Officer,
Banaganapalle, Kurnool.
5. One copy to Mr.B.S.A.Satyanarayana, Advocate, CAT, Hyderabad.
6. One copy to Mr.N.V.Ramana, Addl.CGSC, CAT, Hyderabad.
7. One copy to HBSJP, M(J), CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

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4/27/98
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR:
M(J)

DATED: 27/1/98

ORDER/JUDGMENT

~~M.A./B.A./C.A. NO.~~

in

B.A. NO.

499/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II. COURT

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केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal ऑर्डर/DESPATCH - 2 FEB 1998 हदसबाद न्यायपीठ HYDERABAD BENCH
