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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 779/99

Date: 17.4.2000

Between:

P. Manikya Rao

.. Applicant

A N D

1. The Superintendent of Post Offices, Karimnagar Division, Karimnagar.
2. The Director of Postal Services, Hyderabad Division, Hyderabad.

.. Respondents

Counsel for the applicant : Mr. S. Ramakrishna Rao

Counsel for the respondents: Mr. P. Phalguni Rao

Coram:

Hon. Shri R. Rangarajan, Member (A)

Hon. Shri B. S. Jai Parameshwar, Member (J)

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O R D E R

(Per Hon. Shri B.S.Jai Parameshwar, Member (J))

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Heard Mr. S. Ramakrishna Rao, learned counsel for the applicant and Mr. P. Phalguna Rao, learned standing counsel for the respondents.

2. During February, 1996 the applicant was working as ED/BOM Narmala BO a/w Gambhiraopet in Karim Nagar Division.

3. As per the directions of the Sub Divisional Inspector (Postal) Sirsilla, the Mail overseer-I Sirsilla inspected the BO. During the course of the inspection the mail overseer found certain financial irregularities and irregularities relating to delivery of VP articles.

4. The applicant was put off ~~duty~~ pending disciplinary actions.

5. With regard to the irregularities noticed during the course of inspection, the SPO Karimnagar division issued a charge memo vide his proceedings No: F/l-1/95-96 dt. 19-7-1996. The misconduct alleged against the applicant are as follows :

"Article #I

(I) That said Sri P. Manikya Rao while working as ED branch postmaster Narmala BO a/w Gambhiraopet SO during the period from 20-1-1971 to 23-2-96, failed to account for the cash & stamp balances and imprest of MO forms of Rs. 493-55ps on 16-2-1996 on verification of cash & stamp balances of Narmala B.O. by the Mail overseer-I Sirsilla. He kept the cash & stamp balances mentioned above short in his cash and stamp balances etc. and utilised the same for his personal use.

It is therefore alleged that Sri P. Manikya Rao EDBPM Narmala BO a/w Gambhiraopet SO failed to follow the Rule -136 of Rules for Branch Offices 7th edition (re-print) (corrected upto 31st March, 1986) and thereby failed to maintain absolute integrity and devotion to duty as required of him in Rule-17 of P&T Extra departmental Agents (Conduct & Service) Rules, 1964.

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Article - II

That, during the aforesaid period, while working in the aforesaid office, the said Sri P. Manikya Rao EDBPM Narmala BO received Five(5) VPLs from Gambhiraopet SO as set out in Article-II of Annexure-II and failed to account for the value alongwith commission of the said five (5) VPLs on the dates of their actual delivery to the addresses as mentioned therein but utilised the amount for his personal use. However, he credited the value alongwith commission of 5 VPLs amounting to Rs.1155/- in the presence of the Mailoverseer-I Sirsilla on 16-2-96 showing as if they were delivered on 15-2-96 and after noting date of delivery of VP articles as "15-2-1996" on the VP receipts.

It is, therefore, imputed that Sri P. Manikya Rao EDBPM Narmala BO a/w Gambhiraopet SO failed to follow the provisions of Rule-99, and 133 of Rules, for Branch offices 7th edition (Re-printed & corrected upto 31st March,1986) and thereby failed to maintain absolute integrity and devotion to duty as required of him in Rule-17 of P&T Extra Departmental Agents(Conduct & Service) Rules,1964.

Article - III

That during the aforesaid period while working in the aforesaid office the said Sri P. Manikya Rao, EDBPM Narmala received Twelve(12) VPLs from Gambhiraopet SO as set-out in Article-III of Annexure-II and failed to account for the value+commission of the said twelve(12) VPLs on the dates of their actual delivery to the addressees as mentioned therein but utilised the amount for his personal use. However, the official credited the value + commission of twelver (12) VPL's amounting to Rs.2772/- under UCR on 19-2-96 in the presence of SDI(P) Sirsilla.

It is therefore alleged that Sri P. Manikya Rao EDBPM Narmala BO a/w Gambhiraopet SO failed to follow the provisions of Rule-99, and 133 of Rules for Branch Offices 7th edition (Re-printed & corrected upto 31st March,1986) and thereby failed to maintain absolute integrity and devotion to duty as required of him in rule-17 of P&T Extra Departmental Agents(Conduct & Service)Rules, 1964. "

6. There are three items of misconduct levelled against the applicant. A detailed enquiry was conducted into the charge by the Asstt. Supdt. of POs, Jagtial (E) Sub Division, Jagtial. The applicant participated in the disciplinary proceedings. The Inquiry Officer submitted his report dt. 5/11-6-98. The copy of the report of the Inquiry Officer is at pages 25 to 38 of the OA. The

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Inquiry Officer held the misconduct levelled against the applicant as proved. A copy of the report of the Inquiry Officer was furnished to the applicant. The applicant submitted his representation against the findings of the Inquiry Officer. A copy of his explanation is at Annexure A-IV(page 39 to 42 of the OA). The Supdt. of Post Offices in his proceedings No.F/7-1/96-97 dt. 31-8-1998 accepted the findings of the Inquiry Officer and imposed the penalty of removal of the applicant from service with immediate effect. A copy of the order passed by the disciplinary authority is at pages 43 to 54 of the OA.

7. Against the said punishment order the applicant submitted an appeal dt. 17-10-1998 to the Director of Postal Services, O/O the Postmaster General, Hyderabad Region, Hyderabad. The appellate authority by proceedings No. ST/21-4/5/98 dt. 8-4-99 rejected the appeal and confirmed the punishment imposed by the disciplinary authority.

8. The applicant has filed this OA to set aside the punishment order dt. 31-8-98 of the Supdt. of Postoffices as confirmed by respondent no.2 in his proceedings dt. 8-4-99 removing him service, declaring the same as arbitrary, illegal, unwarranted, misconceived and frivolous and in violation of Articles 14& 16 of the constitution and for a consequential direction to the respondents to reinstate the applicant into service with all consequential benefits.

9. The applicant has challenged the impugned orders on the following grounds. In a way he has given his own explanation as to the misconduct levelled against the applicant.

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10. The respondents have filed their reply. In the reply they submit that the enquiry was commenced on 23-9-96 and concluded on 22-11-97. The Inquiry Officer submitted enquiry report that the applicant submitted representation on 24-7-98; that after consideration of the representation he was removed from service w.e.f. 31-8-98; that the Inquiry Officer conducted the enquiry in accordance with the rules; that the contention of the applicant that there were many lacunae and irregularities in the enquiry is not correct ^{auch} that the applicant had not come up with any/grievance during the enquiry against the Inquiry Officer; that after the appeal of the applicant was disposed of a notification was issued on 28-4-99 for filling up the post of EDBPM Nammala on regular basis; that the VPLs bearing No. 814, 426, 208, 763, 560, 898 and 430 and VPLs 690, 813, 469, 428, 799, 114, 53, 191, 871 and 681 were correctly mentioned in the deposition of Shri V.Balakrishnan on 19-8-97 and P.Ramesh dt. 20-8-97; that the Inquiry Officer while mentioning the VPL numbers in his report inadvertently mentioned incorrectly; that the contention of the applicant that the Inquiry Officer mainly relied on the statement of witnesses recorded during preliminary enquiry is not correct; that the applicant on the date of inspection by the Mailoverseer failed to account for the value and commission of 17 VPLs that the value and commission of VPLs bearing No.469, 426, 191, 208, & 871

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mentioned in Article-II of the charge memo was credited by the applicant on 16-2-96; that it was not comprehensible how the addressee of the VPL^A 426 took delivery of the article on 18-2-96 or 19-2-96 as deposed by him during the enquiry; that likewise it was not comprehensive as to how addressees of 12 VPLs mentioned in Article-III took delivery on 19-2-96 when the VP articles were not found in deposit with the BO on 16-2-96; that the addressees viz. Shri V. Balakrishan and Shri P. Ramesh were not depositing the true fact; that the disciplinary authority did not declare them hostile considering that the articles of charge II and III can be substantiated by documentary and other oral evidence; that Shri Md. Abdul Hafeez, Mailoverseer was an eye witness in the case and his evidence was sufficient to connect the applicant with the irregularities noticed by him during the course of inspection of the BO; that ^{agreeing with} the findings of Inquiry Officer ~~By~~ R-1 on the articles of charges with reference to the representation of the applicant dt. 24-7-98 recorded in the order dt. 31-8-98; that when the applicant raised certain points in his representation the respondent no.1 recorded his own findings in the proceedings dt. 31-8-98; that the applicant was provided with D6 cash chest at the BO; the applicant should have necessarily kept the cash and stamps in the cash chest provided to him; that

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the version of the applicant that there was no shortage in cash and stamp balance at Narmala BO is not acceptable; that the Mailoverseer during the course of inspection noticed shortage of Rs.492.65 in cash and stamp balance and MO forms worth Rs.0.90 total shortage thus came to Rs.493.55; that the Mailoverseer recorded his remarks under his dated signature in the BO during the month of Feb.96; that the explanation of the applicant of keeping the cash in his house and the Mailoverseer allowing to get money from somewhere promising no harm to him is far from truth; that ~~as~~ regards the contention of the applicant that non charging of amount found short to UCP on 16-2-96 the EDBPM himself admitted that the BO daily account dt. 16-2-96 was prepared in the presence of Mailoverseer and despatched to Accounts Office; that the Mailoverseer visited the BO on 16-2-96 before despatch of BO bag to account office when he found shortage in cash and stamp balance the Mailoverseer directed the applicant to make good the shortage on the spot which the EDBPM did so. Keeping this in view, the Mailoverseer did not charge the amount found short to UCP on 16-2-96. As regards preparation of Panchnama by the Mailoverseer on 16-2-96 it is submitted that the particulars of cash and stamps found by the Mailoverseer on 16-2-96 cash Nil, Postage Rs.74.00, Revenue Rs.0.40 total Rs.74.40.

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The BO daily report prepared by the applicant on 16-2-96 in the presence of Mailoverseer showed postage as Rs.74.00 only and it tallied with that found by the Mailoverseer. This would only show that the applicant ^{had} no dispute about cash and postage found with the applicant on 16-2-96 keeping ^{this} in view the Mailoverseer did not prepare any Panchnama.

The addressees of VPLs No. 469, 191, 208, 871 and 426 had not put the date of delivery on the VP receipts below their signatures. As per the Mailoverseer the date of delivery of the above VPLs was noted by the applicant on 15-2-96 in the presence of Mailoverseer.

The Mailoverseer was an eyewitness in the case and credence has to be given to his evidence. It is a fact that the Mailoverseer did not contact the addressees on 16-2-96 and recorded their statements. However, he reported that matter to the SDI(P) on 17-2-96 and the SDI(P) took up detailed investigation on 19-2-96.

From the statement recorded by the SDI(P) Sirsilla it was disclosed that the VPL articles were delivered earlier to 16-2-96 and the applicant had failed to account for the same.

Thus they submit that there were no irregularities in the conduct of the enquiry and the applicant had not raised any objection in the conduct of the enquiry.

Thus they submit that there are no reasons to interfere with the impugned order.

11. The applicant has filed rejoinder reiterating the contentions raised in the OA.

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12. The applicant submits that he was not furnished with cash chest and therefore he had kept the cash in his residence under lock and key. During the course of the inspection by the Mailoverseer-I the applicant could not produce the account on the pretext that his wife was away from the village. However, the respondent authorities have rejected the contention of the applicant that he was not provided with cash chest. They have observed that he was provided with cash chest and there was no reason for him to keep the cash outside the office. Even accepting for a moment that the applicant for the security of the Govt. funds had kept the cash in his residence he should have produced the cash before the Mailoverseer. No explanation is offered for the same. It is to be noted that Mailoverseer inspected the BO on 16-2-96. The charge memo was issued on 19-7-1996. Even during this period the applicant could not offer any explanation and produce the cash.

13. The next two articles of charges relate to delivery and accounting of VP articles. The applicant submits that he had delivered the VP articles on 15-2-96 itself. After he had despatched the mail bag to the sub office. He was not expected to deliver the VP articles after despatch of the mailbag to sub office. During the course of preliminary enquiry the addressees of VP articles gave statements ⁸accusing the applicant. However, during the course of enquiry they recanted from the earlier statements and gave their version favouring the applicant.

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It is on this ground the applicant vehemently contends that the Inquiry Officer could have declared the witnesses ~~as~~ hostile and that having failed to do so the Inquiry Officer relied upon the statements of the witnesses recorded by the Mailoverseer during the preliminary enquiry. No doubt if a witness resiles from his earlier statement he has to be declared ~~as~~ hostile as per the provisions of the Indian Evidence Act. However, the witnesses examined during the enquiry admitted to have given statements before the ~~Mailoverseer~~^{SDI(r) Simila}. But for the reasons known to them, they gave a different version. In the disciplinary proceedings strict rules of evidence are not applicable. Non declaration of the witness~~as~~ hostile does not in any way affect or vitiate the proceedings conducted by the Inquiry Officer. In fact these witnesses categorically admitted to have given the statement before the ~~Mailoverseer~~^{SDI (P)} and recorded which was confronted to them. They were examined long after the ~~Mailoverseer~~^{SDI (Postal)} recorded their statements. During that interval at no point of time the witnesses reported to the higher authorities that the ~~Mailoverseer~~^{SDI (Postal)} had recorded their statements contrary to their intention or explanation. It is only to help the case of the applicant they resiled from their earlier statements and gave a different version favourable to the applicant. Therefore the Inquiry Officer was justified in relying on the earlier statements given by the witnesses before the ~~Mailoverseer~~^{SDI (Postal)}.

14. Further the applicant had given statement before the Mailoverseer admitting the irregularities noticed by

the Mailoverseer during the inspection. Now he submits that the Mailoverseer as well as the SDI(P) Sirsilla have foisted a false case against him. It is not made clear what kind of animosity the said two officials had against the applicant. Further as noticed the Mailoverseer inspected the BO on 16-2-96, the enquiry was conducted nearly 18 months thereafter. If really he felt that the SDI(P) and the Mailoverseer had falsely implicated the applicant and he had discharged the duties as a dedicated employee the applicant could have brought to the notice of the higher authorities the irregularities noticed by the Mailoverseer were not infact correct.

15. As already observed the applicant had short of cash and MO forms etc. His explanation was that he was not provided with cash chest. In order to keep safely the government fund^g he had kept the same in the almirah in his residence. The applicant could have produced the cash. The explanation offered by him is that his wife was away from the village. Atleast when the Mailoverseer started the inspection of BO on 16-2-96 he should have brought the cash to the office ^{and} kept in the safe custody in the office. It is seen from the averments made in the application that the applicant had put in more than 17 years of service and he must be knowing the departmental rules and regulations of the branch office. Accepting for a moment that he had done so with good intention he should have brought the cash to the office on the commencement of BO and produced the cash when the Mailoverseer inspected the BO. He cannot shirk his

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responsibility by saying that his wife was away from the village. Further there was no proof that the applicant brought these facts to the higher authorities even before the issue of the charge memo.

16. The learned counsel for the respondents have produced the enquiry records.

17. The applicant attempted to state that there were no complaints from the public in the manner of EDBPM, Narmala his functioning as Branch Officer. Merely because no villager had come forward to lodge a complaint against the applicant regarding functioning of the BO the Mailoverseer had noticed certain irregularities in the cash of the BO and in the manner of distributing and accounting the VP articles. The Mailoverseer being the official superior was expected to conduct the inspection of the BO. We cannot find fault with the Mailoverseer or with the SDI(P) Sirsilla. The contention of the applicant that the SDI(P) and the Mailoverseer had falsely implicated him cannot be accepted.

18. The next contention of the applicant is that the Mailoverseer had not prepared the panchnama. The amount found short should have been charged to VCP and when made good credited to UCR. This aspect has been considered by the appellate authority and observed that the shortage of amount had to be credited. Failure to do so the Mailoverseer does not legally absolve the applicant from the allegation. Further the appellate authority

had taken into consideration that the applicant failed to produce the cash before the Mailoverseer.

19. The addressees of the VP articles though gave statements before the SDI(P) against the applicant, resiled thereafter and gave evidence supporting the case of the applicant. The Inquiry Officer rightly taken into consideration the statements made by them before the Inquiry Officer. As already observed strict rules of evidence is not applicable in disciplinary proceedings.

20. Considering all these factors we are of the opinion that there are no grounds to interfere with the impugned orders.

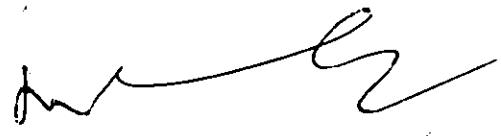
21. Hence for the reasons stated above we find no merit in the OA and the same ^{is liable} ~~has~~ to be dismissed. Accordingly OA is dismissed with no order as to costs.

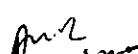
22. Enquiry proceedings produced by the respondents are perused and returned.


 (B.S.JAI PARAMESHWAR)
 Member (J)

MD

17-4-00


 (R.RANGAPAJAN)
 Member (A)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

COPY TO:

THE HON'BLE MR. JUSTICE O.H. NASIR
VICE-CHAIRMAN

1. HDHNJ

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

2. HRRN(ADMN) MEMBER

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

3. HBSJP(JUDL) MEMBER

4. D.R. (ADMN)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER

17/4/00

MA/RA/CP.NO.

IN

CA.NO.

779/09
2000/09

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
सुविधापूर्वक स्वतंत्रता
HYDERABAD BENCH

28 APR 2000
Despatch *mp*
RECORDED
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