

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1002/99

Date: 13.4.00

Between:

B. Babu

.. Applicant

AND

1. The Union of India
through
Secretary to Govt.,
Ministry of Posts &
Telecommunications,
New Delhi.

2. The Superintendent of Post Offices,
Proddatur Division,
Proddatur - 516361.

3. The Post Master,
Pulivendala,
Cuddapah Dist.

.. Respondents

Counsel for the applicant : Mr. Siva

Counsel for the respondents: Mr. V. Rajeshwara Rao

Coram:

Hon. Shri R. Rangarajan, Member (A)

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



O.A. 1002/99

Date:

O R D E R

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

Heard Mr. Siva for the applicant and Mr. V. Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant herein was working as Extra Departmental Mail Peon in the head office Pulivendala. On 5-2-1992 Mail "D" bag from Talapalle sub post office was received and the cash found in it was short ^{by} Rs.4,055/-. The A.S.P. Wanaparthi was directed to investigate into the shortage of said cash amount. The ASP made enquiries and recorded the statements. The ASP found the applicant involved in the said shortage of amount.

3. Hence he was served with a charge memo bearing no.PF/B/Babu dt. 28-5-1992 under Rule 8 of the P&T Extra Departmental Agents Rules, 1964.

4. An enquiry was conducted into the charges. The applicant participated in the enquiry. The applicant remitted the said cash of Rs.4,055/- to the department. The Inquiry Officer submitted his report holding that the misconduct alleged against the applicant has been proved.

5. A copy of the report of the Inquiry Officer was furnished to the applicant and the applicant submitted his explanation.

6. The disciplinary authority vide his proceedings dt. 25-3-94 agreed with the findings of the Inquiry Officer and imposed the penalty of removal of the applicant from service. The applicant submitted an appeal to the respondent no.3. In the first instance the appellate authority rejected the appeal and confirmed the punishment by his proceedings dt. 28-9-1994.

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7. The applicant challenged the said proceedings in OA 469/96. On 30-9-98 the said OA was decided by remitting the matter to the appellate authority to consider afresh the appeal of the applicant. In that proceedings the tribunal felt that the punishment imposed on the applicant was somewhat excessive having regard to the fact that the applicant had made good the loss to the department.

8. Accordingly the appellate authority by his proceedings no. B3/F/ED/92-93 dt. 16-2-99 (Annexure A-5 page 22 to the OA) again confirmed the punishment and rejected the appeal.

9. The applicant has filed this application challenging the proceedings dt. 25-3-94 passed by the disciplinary authority and proceedings dt. 16-2-99 passed by the appellate authority and ^{praying to} quash or set aside the same holding the same as illegal, unsustainable and arbitrary and for a consequential direction to the respondents to reinstate the applicant ^{into service} with all consequential benefits.

10. The applicant has challenged the impugned orders on the following grounds:

(a) The Inquiry Officer has not properly appreciated the evidence and the conclusion arrived at based on such appreciation is perverse;

(b) The Inquiry Officer has relied on the statements of the witnesses examined during the course of enquiry. The witnesses only deposed to the effect that the bag was received at a particular time and upon being opened they found that the amount was short received. Thus their statements do not in any way implicate the applicant.

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(c) The Inquiry Officer has totally glossed over the facts that the applicant could not have opened the lock and he could not have done so at his house.

The safety of locking itself would be vitiated if it could be opened by any individual more so by a Mail Peon at his residence.

(d) The allegation was that he had relocked it and sealed it and brought the bag and placed it in the Treasury Branch at HQ Pulivendala.

(e) The Inquiry Officer in the report stated that the applicant had admitted in his statement dt. 7-2-1992 and stated that he had abstracted the money from the bag. Further the Inquiry Officer took note of the fact that the applicant repaid the money by crediting to UCR vide receipt no.34 dt. 10-2-1992. The applicant submits that these documents were not marked in the enquiry. That and these documents ought to have marked in the enquiry; that there was no mention regarding the reason as to why they were not marked in the enquiry proceedings. The documents not marked in the enquiry cannot be relied upon and thus the Inquiry Officer came to the conclusion relying upon his personal knowledge.

(f) The applicant further submits that once the disciplinary authority felt it appropriate to conduct an enquiry into the charges against the delinquent employee the same has to be proved or disproved by way of proper evidence adduced during the enquiry. The admission allegedly made by the applicant cannot form the basis for returning a finding of guilt against him.

(g) The Inquiry Officer mainly relied upon the alleged statement made by him and the fact that he made good the loss to the department.

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(h) The applicant submits that this is a case of no evidence and this Tribunal has power to intervene with the findings recorded by the respondent authorities.

(i) The appellate authority has not followed the directions given by this Tribunal in OA 469/96 decided on 30-9-98. The appellate authority has not found to reduce the punishment as observed by the Tribunal. The punishment imposed on the applicant is shockingly disproportionate to the gravity of the misconduct.

11. The respondents have filed a reply stating that the applicant had abstracted a sum of Rs.4,055/- from the mail bag relating to Tallapalle branch office. During the preliminary enquiry the applicant admitted that on 5-2-92 he abstracted the cash and utilised to clear the debts. The Inquiry Officer enquired into the matter and held the charges are proved. The appellate authority considered the quantum of punishment and found that the involvement of the applicant in abstraction of cash had to be termed as theft apart from disciplinary action. Thus they submit that there are no reasons to interfere with the impugned order.

12. The applicant while working as ED Mail Peon at Pulivendla had unauthorisedly abstracted an amount of Rs.4055/- from the mail bag pertaining to Tallapalle post office. Infact during the preliminary enquiry he admitted the said fact and remitted the said amount to the department.

13. During the course of the arguments the learned counsel for the applicant strongly criticised the enquiry report submitted by the Inquiry Officer. He submitted that the Inquiry Officer relied upon the statements of certain witnesses conducted during the preliminary enquiry. In fact during the enquiry 8 witnesses were examined on behalf of the disciplinary authority. The applicant had not produced any single witness in his

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defence. In fact the mail bag was in his residence prior to 5-2-92. Though he submits that it was not possible for him to open the lock and reseal it the very fact that he had tampered ^{off} with the mail bag established with his own conduct.

14. The learned counsel for the applicant during the course of the arguments attempted to make out a case that the statement of the applicant during the preliminary enquiry and his alleged statement while remitting the cash to the department were not marked during the enquiry. Strict rules of evidence are not applicable to the disciplinary proceedings. Probably the Inquiry Officer by oversight might have left ^{out} marking the documents. If the applicant was not convinced nothing prevented him to produce the evidence in support of his defence. It is not as if the Inquiry Officer had prevailed upon the personal knowledge he had during the enquiry. In fact the applicant himself had given statement before the respondent authorities that he had abstracted the cash from the mail bag as he was in debts. This fact was further corroborated by the applicant himself by remitting the cash to the department. These ^{the} are the circumstances that prevailed upon with the Inquiry Officer coupled with the evidence of 8 witnesses examined on behalf of the disciplinary authority. The appreciation or analysis of the evidence by the Inquiry Officer has been accepted by the disciplinary authority as well as by the appellate authority. When that is so this Tribunal having very limited scope of judicial review cannot reappraise the evidence and come to the conclusion that their appreciation of evidence is either perverse or not proper. We have considered all the facts advanced by the learned counsel for the applicant. Non marking of the material documents may not be fatal to the enquiry. The applicant admitted during the preliminary enquiry and also the very fact that he made good the loss to the department is the clinching circumstance to establish ^{the} the misconduct levelled against him. No doubt on an earlier


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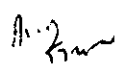
occasion this Tribunal expressed the view that the punishment of removal may be harsh. The authorities after reconsidering all the facts and circumstances have formed an opinion that removal is the proper punishment. When that is so we cannot interfere with the matter of punishment. As the observed by the Hon. Supreme Court in the case of UPSRTC vs. A.K. Parul / Courts or Tribunal have no power to interfere with the punishment imposed by the disciplinary authority. They are the proper judges to impose proper punishment. In that view of the matter we find no merit in the OA and the OA is liable to be dismissed.

15. Accordingly OA is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J) 13.4.08

MD


(R. RANGARAJAN)
Member (A)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD

1ST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

A

COPY TO:

1. HOHNJ

2. HRRN(ADMN) MEMBER

3. HBSJP(JUDL)MEMBER

4. D.R. (ADMN)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL

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

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

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

DATE OF ORDER

13/4/00

MA/RA/CP.NO.

IN

CA.NO.

1002/99

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

8 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

27 APR 2000

Despatch NRP
[Signature]

न्यायिक/अपा-SECTION