

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 14.9.2000

O.A. No. 150/93

Suraj Mal son of Shri Ram Pal aged 44 years working under the Senior Superintendent of Post Offices, Ajmer Division, Ajmer - resident of 1005/44, Gharu Bhawan, Boraj Road, Vikasnagar, Bari Nag Phani, Ajmer.

... Applicant.

versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communications, New Delhi - 110 001
2. Postmaster General, Rajasthan Eastern Region, Ajmer - 305 001.
3. Director Postal Services, Rajasthan Eastern Region, Ajmer - 305 001.
4. Senior Supdt. of Post Offices, Ajmer Division, Ajmer - 305 001.

... Respondents.

Mr. K.L. Tawani, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. N.P. Nawani, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the order of the disciplinary authority dated 14.11.91 vide Annexure A/2. by which the applicant was dismissed from service and also the order of appellate authority dated 10.06.92 vide Annexure A/44, by which the appeal filed by the applicant has been dismissed. The learned counsel for the applicant strenuously contended that the impugned order are illegal and contrary to the evidence on record. He stated that the order of the appellate authority

is a non-speaking order inasmuch as it simply repeats what has been stated by the order of the disciplinary authority. It is further stated that the enquiry officer and the disciplinary authority should not have relied upon the statement made by the witnesses during the preliminary enquiry. It is further stated that the hand writing expert should have been summoned alongwith the report and he should have been examined by the presenting officer in support of the charges and report of the hand writing report filed in the criminal case did not support the charges and thus, non-examination of the hand writing expert and not making the report as part of the record, has resulted in mis-carriage of justice. He further stated that the applicant's statement vide Exp-18, recorded during the enquiry, was the one taken by coercion and the same could not have been relied upon. He stated that the charges framed against the applicant have not been proved on the basis of the evidence on record. Lastly, he contended that the punishment awarded is disproportionate to the charges alleged to have been proved, and it is harsh and unconscionable. On the basis of these contentions, the learned counsel for the applicant prays for setting aside the impugned orders.

2. The respondents have filed a detailed reply denying the allegations made in the application. The learned counsel appearing for the respondents submitted that whatever the material relied upon by the presenting officer, has been made part of the record. Even the statements of the applicant recorded during the enquiry vide Exp- 18 also has been made part of the record. In Exp-18, the applicant has admitted the allegations made against him and it was a voluntary statement made before Shri P.C. Jain, who held the enquiry and recorded the statement. He also stated that the opinion of the hand writing expert was submitted in criminal case and such opinion was subsequent to framing of the charges in this case, and the said report was not made part of the record in this enquiry and not furnishing the same to the applicant and non-examination of the hand writing expert in this case

could not affect the applicant's case. He further states that if the applicant himself wanted to examine the hand writing expert alongwith his report as his witness, he could have done so. Therefore, the applicant cannot make the grievance of non-examination of the hand writing expert and not making this report as part of this enquiry. He also stated that in view of the evidence of the other witnesses examined and also his voluntary statement as per Exp. 18, admitting the allegations, the opinion of the hand writing expert, would not be relevant in this case. He also submitted that on the basis of the voluntary statement vide Exp-18, the applicant later on deposited Rs. 12.000/-, which is alleged to have been misappropriated by him. Whatever the oral statements made earlier were taken into account again. They were all the statements exhibited in this case. This Exp-18 was put to the applicant in examination, which he denied as not being taken voluntarily. But Mr. P.C. Jain, who recorded applicant's statement as per Exp-18, has been examined and stated that it was voluntary statement. Even the other witnesses acquainted with his hand writing have been examined to prove the hand writing of the applicant on the documents, on the basis of which the applicant has misappropriated the amount of Rs. 12,000/- belonging to a depositor. There is no procedural error or deficiency in the case. On the basis of the evidences, both oral and documentary, the charges have been proved and this Tribunal has only limited jurisdiction to see whether there is any error apparent on the face of the record and is not sitting as a 2nd appeal Court, to reappreciate the entire evidence, in order to come to a contrary conclusion. An amount of Rs. 12,000/- belonged to a citizen, and the applicant being a custodian of public money, could not have misappropriated it and such action on the part of the applicant would definitely shake the public trust and the confidence deposited in the Postal Department. Therefore, in this case, the dismissal awarded is quite adequate and accordingly, the applicant has been rightly dismissed from service. The order of the appellate authority being a concurring order, as per the law declared by Hon'ble the Supreme Court,

need not be elaborate. By reading both the orders of the disciplinay authority as well as the appellate authority alongwith the enquiry report, it is crystal clear that the authorities have given a clear cut finding that the charges have been proved. Therefore, this is not a fit case for interference at the hands of this Tribunal. Accordingly, the learned counsel for the respondents have prayed for dismissal of the application.

3. In order to appreciate the rival contentions, we summarily note the facts of the case. Articles of charges were framed against the applicant stating that while he was working as Postal Assistant, Ajmer H.O., during the period from 17.12.80 to 29.11.95, presented and got forwarded by the SPM, J.L.N. Hospital, Ajmer P.O., a query form for issue of duplicate pass book of J.L.N. Hospital, Ajmer, in S.B. A/c. No. 1440666 which bore not genuine signatures of depositor, for transfer to Ajmer H.O. on 8.5.85, and took the same personally and got it verified by Shri Jagdish Prasad, P.R.I. (South), Ajmer, and placed it in dak of Shri S.K. Jain, S.B. Ledger Clerk on 9.5.85. With a malafide intention, he took away the duplicate pass book of the said S.B. A/c. from S.B. cover of J.L.N. Hospital, Ajmer, on 16.5.85, scored out its entry in the S.B. slip and also changed total number of pass books from 17 to 16 in the said S.B. slip and thereafter, transferred from Ajmer H.O. to jaipur G.P.O. on the basis of the duplicate pass book and on an application for transfer, bearing not genuine signatures of the depositor. In the transferee Post Office, it was assigned A/c. No. 551211 and he withdrew Rs. 12,000/-for his personal use from the said S.B. A/c. No. 551211 on 1.8.85 by producing an application for withdrawal which was bearing non-genuine signature of depositor, i.e. by putting forged signature of Mr. R.K. Sharma and bogus designation stamp below identifier's certificate written by him, and thereby contravened the provisions of Rule 3(1)(i) and Rule 3(1)(iii) of C.C.S. (Conduct) Rules, 1964. On the basis of these charges, the matter was enquired into by the enquiry officer and on

(16)

the findings of the enquiry officer that the charges were proved, the applicant has been dismissed from service by the disciplinary authority and the same has been confirmed by the appellate authority. Number of witnesses were examined and number of documents were relied upon during the enquiry.

4. From the reading of the order of disciplinary authority and the appellate authority, we find that the findings are based on the evidences, both the oral and documentary. The applicant did not dispute that whatever documents that has been relied upon during enquiry are made part of the record and they are marked as evidence. The grievance of the applicant is that the statement recorded during enquiry, particularly Exp-18, the alleged statement made by the applicant, could not have been relied upon, since the said statement was not voluntary and it was obtained under coercion and inducement. In order to appreciate this contention of the learned counsel for the applicant, we perused the statement vide Exp-18 with reference to the oral evidence on record. In the oral statement of the applicant, a specific question was put vide question No.8 suggesting to the applicant whether the statement dated 28.11.85 made before Mr. P.C. Jain, Assistant Post Master General (C), C.O., Jaipur, was voluntary or was it under a duress, for which the reply of the applicant was that it was not voluntary and that was captivated and made to yield for writing the same at the wish of Mr. P.C. Jain. Vide question No.9, he was asked whether this fact that his statement was not voluntary, was brought to the notice of the higher authorities after the said statement made before Mr. P.C. Jain, for which the reply of the applicant was that he was immediately suspended with effect from 29.11.85 and he did not recollect anything at this belated stage. Again a question No. 10 was put to him stating that he has corroborated in his self-written statement dated 28.11.85 (Exp-18), the charges framed against him in toto and the applicant could explain the circumstances appearing in Exp-18. For that, the reply of the applicant was that when

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the said statement was recorded by Mr. P.C. Jain, APMG (C), Jaipur "it was shock of mind and tung of the officer before whom, I remained captivated for hours together, which I deny totally". To prove Exp-18, the said Mr. P.C. Jain has been examined. In question No. 1, Mr. P.C. Jain was asked whether the statement of the applicant was obtained under coercion. For that, the reply of Mr. P.C. Jain was that "there was no question of coercion. The statement was voluntary & without any coercion". Again in question No.10,, Mr. P.C. Jain was asked whether the applicant's statement recorded in Exp-18 was at his own accord as a self statement. For that, his reply was that "whatever he stated in his self written statement was in reply to interrogation by me". The enquiry officer and the disciplinary authority and the appellate authority have accepted it as a voluntary statement of the applicant, in addition to other evidence on record supporting the charges. In our opinion, we do not find any reason to differ with those findings in view of the fact that admittedly, the applicant did not complain to the higher authorities against Mr. P.C. Jain, stating that he has recorded the Exp-18 under coercion or under threat, nor he filed any police complaint against him for obtaining such statement under coercion. The fact that the applicant himself voluntarily deposited Rs. 12,000/- during enquiry, as per his statement at Exp-18, would show that the said statement at Exp-18 was a voluntary statement. Therefore, we do not find fault with the assessment made by the enquiry officer and disciplinary authority, taking Exp-18 as corroborating evidence in addition to other evidences on record, both the oral and documentary. We do not find any procedural error or deficiency in this case.

5. The other contention of the learned counsel for the applicant is that the hand writing expert should have been examined in this case alongwith the report that he has submitted in the criminal case and his non-examination has prejudiced the case of the applicant. On the other hand, the learned counsel for the respondents contended that the said

report of the hand writing expert was prepared subsequently after the charge-sheet was filed in this case and it was filed in criminal case. It was not made part of this record, nor hand writing expert has been made as one of the witnesses in the Article of charges framed against the applicant. Therefore, when the report was not made part of the record and non-examination of the hand writing expert, would not be relevant for the purpose of disciplinary proceedings. In our opinion, if the applicant thought that such evidence of the hand writing expert was necessary in this case, nothing prevented him to examine the hand writing expert as his witness. In fact, during enquiry, opportunity was given to the applicant to furnish list of witnesses to be examined in support of his case, but the applicant has not chosen to examine the hand writing expert in support of his case. Even otherwise, non-examination of hand writing expert would not be material in this case, since Mr. Jagdish Prasad, the person who worked alongwith the applicant in the same section, has been examined as a witness and he has identified the hand writing of the applicant. Therefore, we do not find any substance in this contention. Having read the entire evidences on record, we find that this is not a case, there has been any error on the face of the record, calling for our interference.

6. Lastly, the learned counsel for the applicant contended that the punishment awarded is unnecessarily harsh, disproportionate to the charges and unconscionable and, therefore, the punishment requires to be modified by the Tribunal. He relied upon the judgements of Hon'ble the Supreme Court in AIR 1991 SC 1067 [Kartar Singh Gerwal vs. State of Punjab], 1992 (21) ATC 435 [State of Punjab & Ors. vs. Ram Singh Ex-Constable], AIR 1990 SC 01 [B.R. Singh and Others etc. etc. vs. Union of India & Ors.], and AIR 1985 SC 75 [Hussaini vs. Hon'ble Chief Justice of High Court of Judicature at Allahabad and Ors.]. On the other hand, the learned counsel appearing for the respondents supported the quantum of punishment awarded, stating that the applicant has misappropriated the

public money and if such persons are allowed to go free with minor penalties, the public confidence in the Postal Department would be effected and shaken and the applicant was also a custodian of the public money and in these circumstances, the punishment awarded is quite adequate. He also relied upon the judgement of Hon'ble the Supreme Court in 1997 SCC (L&S) 1132. Hon'ble the Supreme Court in 1992 (21) ATC 435, held that in case of gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness, can justify dismissal. In that case, the allegation against the delinquent officer was that while he was on duty as Gunman of Dy. Commissioner of Police, was wandering near bus stand with service revolver in a heavily drunk condition and when he was brought to the hospital, he even abused the doctor on duty and in those circumstances, Hon'ble the Supreme Court held that the case warranted dismissal and the order of dismissal was not interfered with. In the instant case, the conduct of the applicant is more grave than the conduct of the delinquent in that case. The applicant has got issued a duplicate pass book on the basis of a requisition under the signature, which was not genuine and he got transferred that account to another post office by illegally taking the pass book from its cover and on the basis of the signature, which was not genuine, withdrew the amount as if it has been done by the depositor. Accordingly, he has misappropriated the amount of Rs. 12,000/-. A citizen deposits certain amount with the post office, thinking that his money would be safe in the post office, earning interest though at a lesser rate and in such circumstances, if an official of the postal department under the forged signature withdraws the amount and utilises it, the entire confidence of the public in the Institution would be effected or shaken. In these circumstances, we are of the opinion that the charges levelled against the applicant are very grave and the case on hand, therefore, also warranted dismissal and the applicant has rightly been dismissed from service. This is not one of the cases in which a lenient view could be taken, therefore, the judgements of Hon'ble Supreme

Court in AIR 1991 SC 1067, AIR 1990 SC 01 and AIR 1985 SC 75, do not support the contention of the applicant. Hon'ble Supreme Court in those cases, taking a lenient view, held that in the facts and circumstances of those cases, the punishment awarded was harsh. But the facts and circumstances of the case on hand is distinguishable from the facts and circumstances of those cases decided by Hon'ble the Supreme Court. In 1997 SCC (L&S) 1132 [High Court of Judicature at Bombay vs. Uday Singh & Ors.], Hon'ble the Supreme Court held that the petitioner therein deserved the punishment of dismissal and accordingly, their Lordships set aside the order ~~of~~ of the Division Bench of the High Court. Hon'ble Supreme Court in that case pointed out that the respondents being a judicial officer, should see that the maintenance of discipline in the judicial service is a paramount matter and acceptability of judgement depends upon the credibility of the conduct, honesty, integrity and character of the officer, since the confidence of the litigating public gets effected or shaken by lack of integrity and character of judicial officer. Hon'ble the Supreme Court further laid down that the standard of proof in criminal trial and departmental enquiry would differ and the technical rules of evidence have no application in departmental proceedings. The principles of "proof beyond doubt" would also not be applicable to departmental enquiry and what is required to be seen is whether there is evidence on record to reach the conclusion that the delinquent committed misconduct; as a reasonable man, in the circumstances, would have reached that conclusion. Accordingly, it was held that the procedure followed and the punishment imposed, i.e. dismissal from service, was justified. The principles laid down by Hon'ble the Supreme Court in that case is fully applicable to the facts of the present case. If the amount deposited by the citizens are misappropriated by the officials of the Post Office, the very credibility of the Institution would be effected and, therefore, the case on hand, also warrants dismissal. However, the learned counsel for the applicant also relied upon another case of Hon'ble the Supreme Court, reported in AIR

1990 SC 01 [B.R. Singh and Ors. v. Union of India and Ors.]. That was a case of dismissal of casual worker for signing attendance register for some dates though he was absent on those dates. In those circumstances, Hon'ble the Supreme Court held that the dismissal from service was not justified, since the petitioner therein was a poor casual worker. From these facts, it is clear that the said case of Hon'ble the Supreme Court also does not apply to the facts of the present case.

7. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances,
without costs."


(N.P. NAWANI)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

CVR.