

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 21/5/2002

OA 482/96

Ghan Shyam Gupta s/o Hazarilal r/o village Tatwara and working as Ex-Branch Postmaster, Narayanpur Tatwara Post Office, District Sawaimadhopur.

.. Applicant

Verus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Director, Postal Services, Jaipur Region, Jaipur.
4. Superintendent of Post Offices, Sawaimadhopur Division, Sawaimadhopur.

.. Respondents

Mr. K.L.Thawani - counsel for the applicant

Mr. Bhanwar Bagri - counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Member (Judicial)

Hon'ble Mr. H.O.Gupta, Member (Administrative)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the order dated 10.7.95 (Ann. Al) whereby he has been removed from service. In relief, he has prayed for quashing the said order being illegal, arbitrary, unconstitutional, capricious and violative of Articles 14, 16 and 311(2) of the Constitution of India and for appropriate directions to

reinstate him in service with all consequential benefits including back wages.

2. The case of the applicant as made out, in brief, is that:-

2.1 A chargesheet was issued to him under Rule 8 of the P & T Extra Departmental Agents (Conduct and Service) Rules, 1964 vide order dated 2.8.94 (Ann.A3). He did not admit the charges and replied to the above memo of charges and submitted that he has not made any fraud and has not misappropriated the amount and that excess cash was retained for payment of money orders, as may be seen at page 3 of the order of punishment dated 10.7.95 (Ann.A1).

2.2 He was repeatedly asked whether he will accept any punishment for the above act and ultimately the Superintendent of Post Offices deputed the Assistant Superintendent of Post Offices, Gangapur City to record his statement under allurment and duress, as may be seen from page 4 of the punishment order dated 10.7.95 (Ann.A1).

2.3 In the statement, whatever was dictated by the Assistant Superintendent of Post Offices, he admitted and signed the statement against his will. The Superintendent of Post Offices, taking the reply and the statement into consideration, stated that the charges were admitted by him and, therefore, these are proved and accordingly he was removed from service vide order dated 10.7.95 (Ann.A1).

3. The main grounds taken by the applicant are that :-



3.1 The charges have not been admitted by the applicant and, therefore, the inquiry should have been ordered under Rule 8 of the P & T Extra Departmental Agent Rules, 1964 which is mandatory under these rules.

3.2 He was not given any reasonable opportunity of being heard in respect of the charges as he has not made any unconditional confession of the charges.

4. The respondents have contested this application and have submitted that:-

4.1 The applicant was appointed as EDBPM, Narayanpur Tatwara w.e.f. 6.2.1978. He was served with a memo of charge under Rule 8 of the Extra Departmental Agents (Conduct and Service) Rules, 1964 on 2.8.94. He submitted his written statement of defence in which he categorically confessed his guilt. In view of his above confession, the respondents did not consider it necessary to hold oral inquiry in the light of the instructions contained in the DG P&T letter dated 10.10.1983.

4.2 The applicant was given an opportunity to clear whether his admittance to the charge is unconditional and if so, any statutory penalty is imposed upon him would be acceptable. In this regard, he was issued a letter dated 24.1.1995 followed by reminder dated 3.2.1995 and followed by second reminder dated 9.3.95 but the applicant failed to reply the above said communications. Finally, the Assistant Superintendent of Post Offices, Gangapur City was requested to enquire about the receipt of above references and to obtain his final reply whether his confession of charges is unconditional and penalty, if any, imposed on him would be acceptable. The Assistant

Superintendent of Post Offices under his office letter dated 20.4.1995 submitted his inquiry report alongwith the original self written confession letter dated 19.4.95 of the applicant. In this, the applicant witnessed the written confession which was attested by the Assistant of Superintendent with the word "obtained by me", as may be seen from Ann.R5 and its enclosures. On perusal of the self written unconditional confession letter and report of the Assistant Superintendent of Post Offices dated 20.4.95, the Disciplinary Authority considered and reviewed the case and decided that since the applicant nowhere desired to have oral inquiry in any of the allegations levelled against him and, therefore, the intention of the Disciplinary Authority again made known to the applicant through show-cause notice dated 5.5.95 (Ann.R6). The applicant did not respond to the said notice and, therefore, the disciplinary case was decided by the competent authority on 23.5.95 and necessary orders in this regard were issued on 10.7.95 to remove the applicant from service.

4.3 The applicant has not submitted any representation against the said order. The Director, Postal Services, Jaipur, who is the Appellate Authority in this case, has suo-moto taken up the case and finally returned with his decision dated 10.9.99 that no further action is taken in the matter at his end.

4.4 The applicant has filed this OA against the order dated 10.7.95 in the month of September, 1996 and, therefore, it is barred by limitation and is liable to be dismissed.

4.5 The applicant in his reply to the chargesheet



had stated that the amount of Rs. 63/- of VP letter No.40126 was recovered from the addressee on 15.3.93, but was counted in account of Narayanpur Tatwara EDBO on 16.2.93 when the Inspector of Post Offices, Karauli pointed out the intention of the misappropriation of Rs. 63/- during the annual inspection of Narayanpur Tatwara BO on 16.2.93. From the above, it is obvious that had the Inspector not pointed out the intention of non-accounting of Rs. 63/- kept by the applicant from 15.2.93 to 16.2.93, the applicant would have misappropriated the Government money. It is, therefore, prima facie proved that the applicant has misappropriated the Government money to the tune of Rs. 63/- on 15.2.93 and it cannot be termed that the applicant made no fraud nor he had any intention to misappropriate the amount. Besides above, the applicant did not account for Rs. 100/- realised from the depositor of the Narayanpur Tatwara BO towards five years Recurring Deposit from 13.2.93 to 15.2.93 and this amount was also got accounted on 16.2.93 during the period of inspection of Narayanpur Tatwara BO. It is submitted that the applicant whose main and important duty is to account for the Government money properly, failed to do so and, therefore, it is also a prima-facie instance of his malafide intention to misappropriate the Government money.

4.6 It is denied that the applicant had made any appeal to the Director Postal Service, Jaipur on 11.8.95. In order to make out his case, he falsely and as a after-thought made an appeal at Ann.A4 whereas, as already submitted, the applicant did not submit any appeal till today against the order of removal to any authority of the answering respondents. Therefore, there was no question of

deciding his appeal. On perusal of the appeal alleged to have been preferred by the applicant and attached to this application as Ann.A4, it may be seen that the same is typed at the time of submission of the OA to take an advantage in the OA admitted by this Tribunal that the applicant has exhausted all the departmental prescribed channels. The applicant was given several opportunities time and again to make his representation against the order of punishment, but the applicant has failed to avail the same and filed this OA.

4.7 As may be seen from the DG, P&T letter dated 10.10.83 (Ann.R7), it is not mandatory to hold the oral inquiry in case charges are accepted unconditionally before removing the applicant from service. He was informed about the allegation and action which were proposed to be taken after giving him opportunity to represent. The written representation of the applicant was taken into consideration and being confession of all the charges unconditionally, it was decided not to hold oral inquiry.

4.8 The applicant has also failed to exhaust the departmental remedies available to him under the rules and straightaway approached the Tribunal by filing this OA.

5. The applicant has not filed rejoinder.

6. Heard the learned counsel for the parties and perused the record.

6.1 The learned counsel for the respondents took the plea of limitation submitting that the impugned order was passed on 10.7.95 and charge from the applicant was taken on 1.8.95 whereas this application has been filed on

deciding his appeal. On perusal of the appeal alleged to have been preferred by the applicant and attached to this application as Ann.A4, it may be seen that the same is typed at the time of submission of the OA to take an advantage in the OA admitted by this Tribunal that the applicant has exhausted all the departmental prescribed channels. The applicant was given several opportunities time and again to make his representation against the order of punishment, but the applicant has failed to avail the same and filed this OA.

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6. Heard the learned counsel for the parties and perused the record.

6.1 The learned counsel for the respondents took the plea of limitation submitting that the impugned order was passed on 10.7.95 and charge from the applicant was taken on 1.8.95 whereas this application has been filed on

4.9.96 and, therefore, it is barred by limitation. The contention of the learned counsel for the applicant is that he filed an appeal dated 11.8.95, as may be seen from Ann.A4 and, therefore, it is under limitation. The argument of the learned counsel for the respondents is that the so called appeal was never received and it is an after thought of the applicant. He has failed to prove by any document, by which receipt of the appeal said to have been sent, can be established.

6.2 During the course of arguments, the learned counsel for the applicant fairly conceded that as per DG P&T letter dated 10.10.83 (Ann.R7), it is not necessary to hold the oral inquiry, if the applicant admits the charges unconditionally. However, his contention is that the reply of the applicant to the chargesheet cannot be taken as unconditional acceptance of the charges. In support of his contentions, he relied upon the order of this Bench in OA No.33/98 (Suraj Bhan v. UOI and Anr.) decided on 23.4.2001 and the case laws referred therein. On the other hand, the contention of the learned counsel for the respondents is that the applicant has unconditionally accepted the charges and, therefore, according to the DG, P&T letter at Ann.A7, the Disciplinary Authority was competent to issue the impugned order.

6.3 The charges against the applicant relates to misuse of the Government money which is a grave allegation based on which penalty of removal was imposed on the applicant. The respondents in their reply have stated that prima-facie it is proved that the applicant misappropriated the Government money and it cannot be termed that the applicant had never any intention to misappropriate the money to the tune of Rs. 63/- for

15.2.93. It is further submitted that the applicant has not accounted Rs. 100/- relating to the depositor of Narayanpur Tatwara which was lying from 13.2.1993 to 15.2.93 but accounted the said amount only on 16.2.93. Therefore, it is prima-facie instance of his malafide intention to misappropriate the Government money.

6.4 In his reply to the chargesheet, which was received by the respondents on 7.9.94, the applicant has stated that the mistake with regard to the amount of Rs. 63/- relating to M.O.40126 dated 15.2.93 was not ^{with} the intention of misappropriation or embezzlement and that the ^{way} ² said amount ^{was} accounted for on 16.2.93. Regarding R.D. No.20105 dated 13.2.93 amounting to Rs. 100/-, the same was taken on RD Journal, but was not accounted for since the vouchers were elsewhere and the same was taken into account by the Inspector and the excess cash was retained for payment of money orders. He has further stated in his reply that he is a poor person working for the last 16 years and this is the first occasion that such mistake has been committed and, therefore, on consideration for his children, he be pardoned and that he will not do the said mistake in future. Thereafter, the Superintendent Post Offices repeatedly wrote to the applicant stating that he has accepted the charge but not exhibited that if any type of penalty is given, the same will be unconditionally accepted to him and finally he deputed the Assistant Superintendent of Post Offices to obtain the reply from the applicant. The applicant gave the statement on 19.4.95 before the Asstt. Superintendent stating that he had received the letters sent by the Superintendent of Post Offices but did not send the reply as was wanted and further that he is prepared to accept whatever penalty is

given by the Superintendent of Post Offices without any condition. Even if he is removed from service, he would accept it unconditional. In future, he will not give any chance for any type of complaint and this time decision may please be taken sympathetically.

6.5 Concluding his arguments, the learned counsel for the applicant submitted that the reply of the applicant to the chargesheet cannot be taken as unconditional acceptance of the grave charge of misusing the Govt. money. He also submitted that the Disciplinary Authority has adopted a strange method of asking the applicant to give in writing that whatever penalty is imposed on him will be unconditionally acceptable. A number of letters were written to him to give such a statement. Finally, the Assistant Superintendent was sent who got the statement recorded under allurement and duress. We find considerable force in the argument of the learned counsel for the applicant. As per the rules of the respondents and clarification thereof, the inquiry is not necessary if the charged officer accepts the charge unconditionally. The reply to the chargesheet given by the applicant is not an unconditional acceptance of the charge. He never pleaded the guilt. He gave reasons for the mistake which was committed. He did not accept the charge of misusing the Govt. money. The so called admission is also not an admission as defined under Section 17 of the Indian Evidence Act. The Disciplinary Authority without conducting the inquiry went ahead to impose the penalty. The Disciplinary Authority also followed a peculiar procedure of his own by asking the applicant to give a statement that whatever penalty is awarded, will be unconditionally acceptable to him.

Finally, the Assistant Superintendent of Post Offices was personally deputed to obtain such statement. The applicant gave statement that even penalty of removal from service will be unconditionally acceptable to him. No one will give such a statement unless lured for exoneration or for a minor penalty. It was only proper for the Disciplinary Authority to hold an inquiry and then pass the appropriate order. In the facts and circumstances of the case, we hold that by not holding an inquiry as provided in the rules, the applicant has been seriously prejudiced and, therefore, the order of the Disciplinary Authority imposing a penalty of removal from service can not sustain.

6.6 Regarding the limitation, if the applicant had sent the appeal, this application is admittedly under limitation. The respondents have stated that he never sent an appeal and that he has not produced any document from where it can be seen that he has sent any appeal. The contention of the learned counsel for the respondents is that it is an afterthought to bring the case under limitation. To us, it appears that whether the applicant has filed an appeal or not, is a disputed fact. The charge was taken over from the applicant on 1.8.95 and this application was presented on 4.9.96. Even if the appeal was not filed, the delay would be for 5 weeks only. Keeping in view the material before us and in the interest of justice, we do not think that the application should be dismissed because of limitation, if any.

7. In view of above discussions, the order of the Disciplinary Authority is quashed. The applicant shall be reinstated in service within a period of 15 days from the

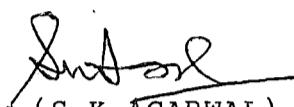
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date of receipt of this order. He shall be entitled for all consequential benefits as per rules. We may, however, observe that the respondents will be at liberty to proceed in the case from the stage of appointing the Inquiry Officer and Presenting Officer and thereafter to finalise the proceedings as per rules. No order as to costs.



(H.O. GUPTA)

Member (Administrative)



(S.K. AGARWAL)

Member (Judicial)