

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.132/2002.

Jaipur, this the 7<sup>th</sup> day of December, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.  
Hon'ble Mr. J. P. Shukla, Administrative Member.

Chandra Prakash Mali  
S/o Shri Poonam Chand Mali  
Aged about 35 years,  
R/o 32/29, Nagaghar Near Tejaji Ki Devli  
Gulab Bari, Ajmer.

... Applicant.

By Advocate : Mr. C. B. Sharma.

Vs.

1. Union of India  
Through the Secretary to the Govt of India,  
Department of Posts,  
Ministry of Communications,  
Dak Bhawan, Sansad Marg,  
New Delhi.
2. Post Master General,  
Rajasthan Southern Region,  
Ajmer.
3. Director Postal Services,  
Rajasthan Southern Regions,  
Ajmer.
4. Senior Superintendent of Post Office,  
Ajmer Postal Division,  
Ajmer.
5. Assistant Superintendent of Post Offices,  
South Sub Division,  
Ajmer.

... Respondent.

By Advocate : Shri S. S. Hassan.

: O R D E R (ORAL) :

The applicant has filed this OA thereby praying for  
the following reliefs :-

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- (i) That entire record relating to the case be called for and after perusing the same memo dated 2/11/2001 (Annex.A/1) with the memos dated 30/11/2000, 31/8/2000 (Annexure A/2 and A/3) be quashed and set aside with all consequential benefits.
- (ii) That the charge memo dt.20/12/1999 (Annex.A/7) be quashed with the inquiry proceedings, as the same is not justified with the order for put of from duty dated 8/12/1998 (Annexure A/4).
- (iii) That the respondents be further directed to reinstate the applicant on the post of Extra Departmental Mail Carrier with all consequential benefits.
- (iv) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (v) That the costs of this application may be awarded."

2. Briefly stated, the facts of the case are that the applicant while working as EDMC was issued charge sheet under Rule 8 of EDA (Conduct and Service) Rule 1964. The charge leveled against the applicant was that during the examination for promotion to the cadre of Postman held on 6.12.1998, he was found/caught with two papers containing five solved questions of paper 'B' in the examination hall. The preliminary enquiry was held and on the receipt of preliminary report from Central Supervisor of the applicant he was also placed under suspension vide order dated 8.12.1998. The applicant was issued a charge sheet vide Memo dated 18.12.1998 (Annexure A/5). However, subsequently, the said charge sheet was cancelled vide letter dated 18.1.1999 due to some administrative reason. It was further mentioned in the said letter that such charge sheet has been cancelled

without prejudice to further action to issue a subsequent fresh charge sheet to the applicant. Subsequently, vide memo dated 20.02.1999 (Annexure A/7) a fresh charge sheet was issued to the applicant. Pursuant to the said charge sheet, an inquiry was conducted in which the applicant was found guilty and the applicant was awarded punishment of removal from service vide ASPO(s) Ajmer Memo No. PF/Chandra Prakash/EDMC/00 dated 31.08.2000. The applicant preferred an appeal against the order passed by the Disciplinary Authority. The said appeal was also dismissed by the Senior Superintendent of Post Office, Ajmer Division vide order dated 30.11.2000 (Annexure A/2). Further petition to the Post Master General, Rajasthan, against the impugned order imposing the penalty of removal from service also met the same fate and the same was rejected vide order dated 2.11.2001 (Annexure A/1). It is these orders which are under challenge in this OA. The challenge made by the applicant in this OA for quashing the impugned orders are the same, which ground the applicant has taken before the Appellate as well as the Reivisional Authority and the Appellate and the Revisional Authority has passed the reasoned and speaking order thereby not only dealing with the contention of the applicant on merit but also giving categorical finding that it is a case where the penalty of removal from service is commensurate with the lapses committed by the petitioner.

3. We have heard the Learned Counsel for the parties and gone through the material placed on record.

4. We are of the view that the applicant has not made out any case for our interference. The charge against the applicant was that while working as EDMC, Topdara, he was caught with two papers containing five solved questions of paper 'B' in the examination hall during the examination for promotion to the post of Postman held on 6.12.1998. The said charge against the applicant stands fully proved on the basis of statement given by the various witnesses examined during the course of enquiry and the applicant was also given opportunity to cross examine those witnesses. The Inquiry Officer in his report has categorically held that the charge against the applicant stands fully proved. The only grievance which the applicant has made in order to show that inquiry was held in violation of principles of natural justice <sup>are</sup> ~~and~~ <sup>is</sup> that the Inquiry Report was submitted by the Inquiry Officer without considering his defence statement and also that the Inquiry Officer appointed in this case was a person who was subordinate to the Central Supervisor who has held preliminary inquiry, on the basis of which, he was put off from duty.

5. We have given due consideration to the submissions made by the Learned Counsel for the applicant. We are of the view that the applicant has not made out any case as

to how he has been prejudiced on account of these two facts. Further, from the material placed on record, it is evident that the applicant was given time to submit his defence statement by the Inquiry Officer up to 1.5.2000, which time was again extended up to 9.5.2000. His application for extension of time to submit defence statement was rejected by the Inquiry Officer. Accordingly, the Inquiry Officer submitted his report on 10/11.05.2000. Admittedly, the applicant submitted his defence statement directly to the Inquiry Officer after submission of report on 15.5.2000. It has also come on record, as is clear from the Appellate Order, Annexure A/2, that the Disciplinary Authority by passing the impugned order has also taken into consideration the defence extracts/ defence statement along with other things. As such, we are of the view that no prejudice has been caused to the applicant on this ~~acc~~count.

6. At this stage, it will be useful to quote the decision of the Apex Court in the case of U.P. State Spinning Co. Ltd. Vs. R. S. Pandey, 2006 SCC (L&S) 78, whereby the Apex Court has held that, in order to, establish that there is no compliance of the principles of natural justice in Domestic/Departmental Inquiry, the delinquent employee has to show prejudice. That was a case where the copy of the Inquiry Report was not supplied to the applicant. In that context, the Apex court has held that in all cases where said report is

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not furnished, the Courts and Tribunals should not mechanically set aside punishment order. It is only if court/tribunal finds that furnishing of report would have made a difference to result in the case that it should set aside punishment order. As already stated above, the applicant has not been able to show the prejudice caused to him on account of non furnishing of inquiry report without taking into considering the defence witness statement, rather the material on record suggests that his defence statement was taken into account by the Disciplinary Authority while passing the punishment order. Thus, it is not a case where prejudice has been caused to the applicant on this account. Further the fact that regular inquiry conducted by a person who was subordinate to the Central Supervisor submitted a preliminary report is also of no consequence.

7. Learned Counsel for the applicant while drawing our attention to the defence statement submitted by the applicant during the course of inquiry argued that no objectionable piece of paper was found from his possession and it was simply an incident to lift a piece of paper from floor and curious try to see the contents in it and it was at that moment that piece of paper was recovered from the applicant. This incident of recovering of piece of paper has been treated as copying whereas the copying has never taken place as the answer book was found blank. We have given due consideration

to the submission made by the Learned Counsel for the applicant and we are not at all impressed with the submissions so made. Even as per own admission of the applicant, the paper was recovered from him and it has come on record that the paper so recovered from the applicant contained fully solved all questions. Thus, factum of recovery of incriminatory material from the applicant is fully proved. It is not a case of no evidence. The authorities have given cogent reasons to dis believe this version of the applicant and categorically recorded the fact that the applicant lift the piece of paper and beyond any shadow of doubt the paper was in his custody when he was caught by the Invigilator. It has also been recorded that the papers contained solved answers to five questions and those questions appeared in the Question Paper all five of them is too incriminating itself. Right from the beginning of the paper the particular piece of paper with 5 solved relevant questions being found with one example is too much of a coincidence. There cannot be any motive other than what is frequently outlined in the report of the enquiry officer, presenting officer and the disciplinary authority. Thus, in view of this categorical finding given by the Appellate Authority which has been affirmed by the Revisional Authority, it is not permissible for us to interfere with such finding while exercising the powers of judicial review. As already stated above, it cannot be said to be a case of no evidence. Rather,

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there are sufficient evidence on record to implicate the applicant for the charged leveled against him. Thus, it is not a case where judicial interference is required.

8. Learned Counsel for the applicant has also argued that the punishment imposed against the applicant is shockingly disproportionate. The Revisional Authority has categorically held that the penalty awarded to the petitioner by the Disciplinary Authority is found become commensurate with the lapses committed by the petitioner. In order to give this finding, the reasons have been given in the penultimate para of the order Annexure A/1, which thus reads as under :-

" I have gone through the Petition, the punishment orders and all the relevant records of the case very carefully and dispassionately. As the officials has not revealed the facts during the course of inquiry as well as in his representation. He has only submitted stereo type representation saying that it was simply on incident to lift a piece of paper from floor and out of curiosity try to see the contents which was totally fabricated story. This paper was recovered from him with fully solved all questions which clearly shows that he was aware of key of the paper. Such type of misdeed on the part of the petitioner is a serious one. He has not revealed the truth in the presence of enquiry officer or disciplinary authority/appellate authority and due to this attitude of petitioner main culprit could not be searched out who were actually involved in this racket. Hence he has no right to remain in government service."


9. Thus, in view of the reasons recorded by the Revisional Authority, we are of the view that it cannot be said to be a case where the punishment awarded to the applicant is shockingly disproportionate to the gravity

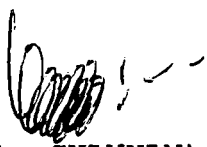


of the evidence. Further law on this point is well settled. At this stage, it will be useful to quote the decision of the Apex Court in the case of B. C. Chaturvedi v. Union of India and Ors., 1995 (6) SCC 749, whereby the Apex Court observed as under :-

" A review of the above legal position would establish that the Disciplinary Authority and on appeal the Appellate Authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the Disciplinary/Appellate Authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

10. Thus, for the foregoing reasons, we are of the view that the applicant has not made out any case for our interference. Accordingly, the OA is dismissed with no order as to costs.

  
J. P. SHUKLA)  
ADMINISTRATIVE MEMBER

  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

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