

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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O.A. No. 29/2002
T.A. No.

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DATE OF DECISION 04.06.2003.

MAHAVEER PRASHAD JAIN Petitioner

MR. JINESH JAIN Advocate for the Petitioner(s)

Versus

UOT AND ORS. Respondent

MR. SATISH GOYAL PROXY COUNSEL FOR
MR. N.C.GOYAL Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. JUSTICE G.L. GUPTA, VICE CHAIRMAN

The Hon'ble Mr. G.C. SRIVASTAVA, ADMINISTRATIVE MEMBER

(G.C.Srivastava)
Adm. Member

(G.L.Gupta)
Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

.....

Date of Order : 04.06.2003.

O.A. NO. 29/2002

Mahaveer Prasad Jain S/o Shri Phool Chand aged about 52 years, resident of 5/111, Kala Kuan Housing Board, Alwar and working as Ex. Postal Assistant, Head Post Office, Alwar (Rajasthan) - 301 001.

.....Applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communication, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Senior Superintendent of Post Offices, Alwar Division, Alwar.

.....Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
Hon'ble Mr. G.C. Srivastava, Administrative Member

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Mr. Jinesh Jain, counsel for the applicant.

Mr. Satish Surana proxy counsel for

Mr. N.C. Goyal, counsel for the respondents.

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ORDER

[Per Mr. Justice G.L.Gupta]

The orders Annexure A/1 dated 3/4/2001 and Annexure A/2 dated 12.2.2001, are under challenge in the instant O.A.

2. The applicant was working as Postal Assistant in the Head Post Office, Alwar. Vide Memorandum dated 10.8.1994, he was served a Chargesheet under Rule 16 of the CCS Rules, 1965 for



contravening the Postal Manual by Senior Superintendent of Post Offices, Alwar. After the inquiry was completed, a penalty of recovery of Rs. 6,746/50 was imposed on him.

2.1. A police report was also lodged against the applicant for the offences under Sections 409 and 120 (B) Indian Penal Code, whereupon, a challan was filed. The learned Additional Chief Judicial Magistrate, vide judgement dated 9.11.2000 convicted the applicant under section 409 and 120 (B) Indian Penal Code and sentenced him to undergo till rising of the Court and a fine of Rs. 10,000/- under the first count and Rs. 2,000/- under the second count. In default the applicant was ordered to suffer rigorous imprisonment for one year and three months respectively.

2.2. After the Criminal Court convicted the applicant, the disciplinary authority issued a show cause notice under Rule 19 of the CCS Rules to the applicant stating that in view of the conviction of the applicant on a criminal charge, it was proposed that he would be compulsorily retired from service. The applicant submitted his representation against the show cause notice. The disciplinary authority vide order dated 12.2.2001 imposed the penalty of compulsory retirement from service on the applicant. The higher authority i.e. the Post Master General, however, issued a notice to the applicant for enhancement of the penalty. The applicant submitted his representation against the said notice.

2.3. The Chief Post Master General vide order dated 3/4.12.2001 held that keeping in view the nature of the misconduct on which the conviction of the applicant was recorded by the criminal court, a penalty of dismissal was the appropriate penalty. The applicant was punished with the said penalty.



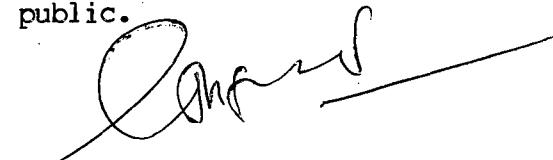
2.4. The grievance of the applicant is that he has been punished for the same offence four times first by the disciplinary authority by imposing penalty of recovery of the amount, second by the Criminal Court, the third by the disciplinary authority and now by the higher authority. According to the applicant the law does not permit such an action.

3. In the counter, the respondents' case is that the disciplinary authority vide order Annexure A/3, had imposed the penalty of recovery for the misconduct alleged in the chargesheet that he had failed to carry out the provisions of the Post and Telegraph Manual and the Criminal Court convicted him for the criminal charge. It is stated that the disciplinary authority had a right to act under Rule 19 of the OCS (CCA) Rules and there is no illegality when the higher authority has converted the punishment of compulsory retirement into the dismissal.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The contention of the learned counsel for the applicant was that the criminal court has taken a lenient view in the matter and, therefore, the disciplinary authority also had rightly taken a lenient view when it punished the applicant with a penalty of compulsory retirement. According to him, the revisional authority has erred when it enhanced the penalty to the penalty of dismissal.

6. On the other hand, the learned counsel for the respondents contended that the applicant has been convicted of a criminal charge of embezzlement which is of serious nature for the postal employees in whom the utmost confidence is reposed by the public.

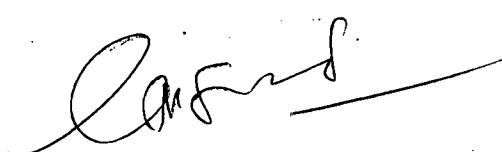


7. We have given the matter our thoughtful consideration.

8. It is evident that when the applicant was punished vide order Annexure A/3, it was for the violation of the various provisions of the Postal Manual. In the chargesheet issued at that time, it was not alleged that the applicant had committed criminal breach of trust of the amount, therefore, it cannot be said that when the disciplinary authority initiated afresh inquiry as per the provisions of Rule 19 of the CCS (CCA) Rules, any mistake was committed.

9. It is seen that the disciplinary authority had issued a show cause notice and the order Annexure A/2 was passed after considering all the points raised in the reply to the show cause notice. As a matter of fact, during the course of arguments, the learned counsel for the applicant did not seriously challenge the order of penalty of compulsory retirement imposed by the disciplinary authority.

10. The challenge of the learned counsel for the applicant was that the dismissal order ought not to have been passed by the higher authority. Rule 29 of the CCS Rules provides that the appellate authority within six months of the date of the order proposed to be revised, may at its own motion call for the record of any inquiry in case in which no appeal was preferred and pass appropriate order as he deems fit. Under Rule 27, the appellate authority can pass an order enhancing the penalty. It is manifest that the higher authority has always a power to review the penalty and enhance the same. Ofcourse, it can be done within six months from the date of the order.



10.1. It is seen that the Chief Post Master General, vide Memorandum dated 11.5.2001 called upon the applicant as to why the penalty should not be enhanced to the dismissal. The disciplinary authority had passed the order on 12.2.2001. It is evident that the Post Master General had issued the memorandum within six months of the order dated 12.2.2001.

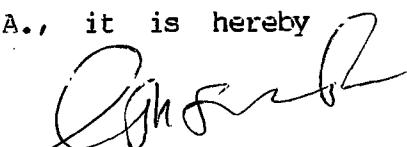
10.2. Now, the question for consideration is whether, the Post Master General, has erred in enhancing the penalty. It is seen that the applicant has been convicted by the Criminal Court for the offences under section 409 and 120 (B) Indian Penal Code. The offence under section 409 Indian Penal Code, cannot be said to be an offence of minor nature. The charge against the applicant was that he had embezzled the amount of the three insured letters No. 561, 26737/3/94 and 26751/3/94 to the tune of Rs. 13,493/-. Where a public servant commits embezzlement of the amount and more so, when he is a postal employee, there cannot be sympathy of the Court. The postal employees deal with the money which is sent through them by way of Money Orders or Insured letters. The applicant instead of making entry of the insured letters in the books of accounts, misappropriated the sum of the insured letters. In our opinion, the higher authority has rightly held that the punishment of dismissal was an appropriate penalty in this case.

11. Apart from that, it is settled legal position that the Court should not interfere in the matter of penalty imposed by the competent authority unless, it is shown to be shockingly disproportionate to the misconduct proved. This cannot be said to be the case of shockingly dis-proportionate penalty looking to the nature of the mis-conduct committed by the applicant.

12. There being no merit in this O.A., it is hereby dismissed. No order as to costs.


(G.C. Srivastava)
Adm. Member

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(G.L. Gupta)
Vice Chairman