

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 12-12-03

OA No.51/2002

Prabhu Dayal Gupta s/o Shri Narain Gupta r/o village
Rahoria, Tehsil - Jamwaramgarh via CRPF Lalwas Jaipur
presently EDBPM (removed from service).

.. Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur-7.
3. Senior Supdt. of Post Offices, Jaipur City Dn. Jaipur.
4. Shri Vishnu Sharma, EDBPM, Rahori (CRPF Campus Lalwas).

.. Respondents

Mr. P.N.Jatti- counsel for the applicant.

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

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Phandari, Member (Administrative)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant while working as Extra Departmental Branch Post Master (EDBPM), Rahori was served with a charge memo vide order dated 30.10.98 (Ann.7). The charges against the applicant were that he left the post office on 17.11.97 (afternoon) unauthorisedly and he neither informed the competent authority nor put up any

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application in this regard. Further charge against the applicant was that the Assistant Superintendent of Post Offices (ASPO), Jaipur City Eastern Sub Division visited Rahori Branch Post Office on 21.11.97 and found that the applicant was absent from duty from 17.11.97 afternoon. Further the ASPO verified the cash ~~balance~~^{and stamp} of the Branch Post Office and found a sum of Rs. 383.30 in balance while the balance of the cash could have been Rs. 2357/- as per the Branch Office daily account. In this way a shortage of Rs. 1973.70 was found, which the applicant has alleged to have been misappropriated and thereby violated Rule 17 of the Extra Departmental Agent (Conduct and Service) Rules, 1964. The applicant further credited the said misappropriated Govt. money with penal interest on 12.8.98 under head UCR at Station Road Post Office, Jaipur. Thus he acted in such a manner that he misused/misappropriated the Govt. money for a period from 21.11.97 to 11.2.98. The third charge which was framed against the applicant was that while working as EDBPM on 15.11.97 he received a money order No. 309 dated 10.11.97 for Rs. 2000/- payable to Smt. Kamla Devi w/o Shri Mool Singh Rajput resident of Raniawas (Rahori) which he did not paid to the payee and misappropriated the amount and by doing so the applicant violated provisions under Rule 106 of the Rules for Branch Offices and also he failed to maintain contents of Rule 17 of the EDA (Conduct and Service) Rules, 1964. Fourth charge against the applicant was that the applicant while working as EDBPM, Rahori for the period from May,97 to November, 97 did not complete the entries in the Branch Office Account for the period from 27.5.97 to 26.11.97. Hence, he violated Rule 124 of the Rules of Branch Offices and failed to maintain

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absolute devotion to duty required under Rule 17 of the EDA (Conduct and Service) Rules, 1964.

1.1 On the basis of the above charges, the applicant was served with a chargesheet under Rule 8 of the EDA (Conduct and Service) Rules, 1964. After holding oral enquiry in which the applicant was held guilty, the Disciplinary Authority awarded the penalty of removal from service vide memo dated 29.9.2000 (Ann.A1). The applicant further preferred an appeal against the order of removal from service to the Appellate Authority which was finally disposed of vide order dated 19.7.2001 (Ann.A/1A). Since the applicant did not challenge this order in the Original Application, subsequently he prayed for amendment of the OA which was granted and by way of amended application, the applicant has also challenged this order which has been annexed with the amended OA as Ann.A/1A. Feeling aggrieved of the aforesaid order, the applicant has filed the present OA thereby praying for quashing and setting aside the impugned orders dated 29.9.2000 (Ann.A1) and 19.7.2001 (Ann.A/1A) with further directions that the respondents may be directed to take the applicant on duty w.e.f. 27.11.97.

1.2 The main grounds of challenge taken by the applicant in this OA are that the charge against the applicant has not been proved. In fact there is only one charge of non-delivery of money order of Rs. 2000/-. Even for this charge the applicant has submitted explanation to the effect that the ASFO seized the record including money order coupon which was never returned to the applicant. In the absence of money order coupon, the sum of Rs. 2000/- could not be paid to the payee concerned. The said sum was subsequently re-deposited with the Post Office alongwith

penal interest. The applicant has also alleged that he was not paid put-off allowance as such he could not engage defence counsel which has materially vitiated the enquiry proceedings. As such the enquiry proceedings alongwith the impugned order passed by the Disciplinary Authority and the Appellate Authority deserve to be quashed. He has also pleaded that the quantum of punishment is very heavy. The applicant has four daughters with lame daughter under treatment. He has also pleaded that the applicant has put in about 17 years of service.

2. Notices of this application were given to the respondents, who have filed their reply. In the reply, it has been stated that all the charges levelled against the applicant stand proved and the SSFO, Jaipur City Division, the Disciplinary Authority has made no error in removing the applicant from service. The reason for non-payment of the money order under reference for Rs. 2000/- put forth by the applicant that the ASPO carried the money order with him and, therefore, he could not paid the amount and the money was deposited by the applicant in the post office with interest on 12.8.98, are not convincing. The sufficient evidence available on record prove that the reason behind non-payment of the money order was shortage of cash which was found with the substitute EDRPM engaged by the applicant unauthorisedly upto 26.11.97. Further the applicant neither get arrangements approved from the competent authority nor submitted the charge report on making over the charge to the substitute in question. It was illegal to keep the Govt. money and misappropriating the same w.e.f. 21.11.97 to 12.8.98. The crediting of the amount does not absolve the applicant from the offence of

keeping Govt. cash short in account.

3. The applicant has filed rejoinder therby reiterating the allegations levelled in the OA.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The learned counsel for the applicant submits that the main charge against the applicant is shortage of Rs. 1973.70 when the inspection was carried out by the ASFO, Jaipur City and non-payment of Rs. 2000/- to Smt. Kamla Devi. According to the learned counsel for the applicant, it is admitted case between the parties that the sum of Rs. 2000/- was received by the applicant only on 17.11.97 and according to Rules for Branch Offices more particularly rule 114 and 115 relating to money order and postal order as contained under Chapter 6, payment of money order could have been made within a period of 7 days and it is only after of the period of 7 days, the amount was required to be redeposited in the Post Office, in case the said amount could not be paid to the payee of the money order. Since the period of 7 days has not expired and the money order coupon was seized by the ASFO on 21.11.97, as such the payment could not be made to the concerned payee ^{for} want of better particulars ^{money order coupon}. Thus, the learned counsel for the applicant argued that the applicant has not committed any offence and in any case even if it is found that the applicant has not immediately re-deposited the amount and the charge stands technically proved in that eventuality also the penalty of removal from service could not have been passed by the Disciplinary Authority, which was subsequently confirmed

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by the Appellate Authority. Regarding other charges that the applicant remained absent w.e.f. 17.11.97 to 21.11.97, the contention of the learned counsel for the applicant is that the said absence has not been proved. In fact the applicant has produced defence witnesses to the effect that on 17.11.97 the applicant was very much present in the Post Office. The ASPO concerned visited the Rahori Branch office on 21.11.97 on which date the applicant was found absent from duty. In fact the applicant has engaged his brother to perform the duty as he was to proceed in a marriage, which he could have legally engaged and even if he has not obtained prior sanction of the competent authority for that purpose, the charge cannot be so serious. Regarding fourth charge that the applicant did not complete the daily account for the period 27.5.97 to 26.11.97, the learned counsel for the applicant submits that even if this charge is proved, it is not sufficient to impose the penalty of removal from service. The learned counsel for the applicant argued that the applicant has already put in 17 years of service. He has four daughters to support and one of which is lame and as such the harsh penalty of removal from service is in the shape of death sentence for a holder of civil post which could not have been imposed as he has not caused any pecuniary loss to the respondents rather the amount was redeposited alongwith penal interest in the Post Office. Thus, the learned counsel for the applicant submits that in any case a sympathetic view is required to be taken in the matter as according to the learned counsel for the applicant, the penalty of removal from service is highly disproportionate to the gravity of the charges levelled against the applicant.

5. We have given thoughtful consideration to the contentions raised by the learned counsel for the applicant.

5.1 So far as the charges levelled against the applicant are concerned, we are of the view that the matter has been exhaustively dealt with by the Disciplinary Authority in his order dated 29.9.2000 (Ann.A1) and we agree with the findings arrived at by the Disciplinary Authority. The Disciplinary Authority in this impugned order has not only dealt with the contention raised by the applicant but has also discussed the evidences relying upon the documents/statements which have been duly proved by the prosecution witnesses during the course of enquiry and has given its findings charge-wise. In order to prove the charge of absence from duty and proceeding on leave without prior permission, it has been stated that the applicant did not exchange the mail of Rahori Post Office from 17.11.97 to 26.11.97 by relying upon the document Exhibit -7 which document shows that from 17.11.97 to 27.11.97 no Dak was received in Rahori post office. Similarly, the applicant failed to fill in the Branch Office Account from 27.5.97 to 26.11.97 has also been proved by relying upon document Exhibit-10 which is Branch Office Account book where no entry has been made from a month preceding May, 97 whereas the entry has to be made month-wise but entry from 27.5.97 onwards has not been made. Similarly the fact that on inspection by ASPO shortage of cash to the tune of Rs. 1973.70 was found and which amount was paid by the applicant on 12.8.98 alongwith penal interest (Rs. 2000/-) ^{and its} ~~as~~ shortage ^{was} on account of non-payment of Rs. 2000/- which the applicant

has received in the forenoon of 17.11.97 and the said ^{wallet and fully established} amount was to be paid to Smt. Kamla Devi. Now the matter which requires our consideration is whether the ~~explanation~~ explanation given by the applicant that as per rules, the said amount could have been paid within 7 days and the said period has not expired on 21.11.97 on which date the money order coupon was seized by the concerned ASFO, as such he could not make payment to the original claimant has to be accepted as contended by the learned counsel for the applicant. During the course of arguments, the learned counsel for the applicant has also submitted that the said amount could not be paid to Smt. Kamla Devi as the amount was not received by him in sealed bag and as the bag was open, as such he was verifying about the correctness of the amount from the higher authorities. For this purpose the learned counsel for the applicant has drawn our attention to the statement of defence witness namely Shri Jagdish Khati whereby he has deposed that on 17.11.97 Shri Kana Ram Khati has delivered one open money order alongwith money which he took from his pocket. On the contrary Shri Kana Ram Khati, SW-3 in his statement dated 19.11.99 which has been proved during the course of enquiry has stated that the applicant did not come to receive the dak on 15.11.97 and the said dak was received by him on 17.11.97 at 9 AM. It is further stated by him that the applicant promised to come again at 12 noon to receive the dak on 17.11.97 but he did not turn up. The applicant opened the dak bag dated 15.11.97 at Roopwas Dak Ghar. He took over the money order amounting to Rs. 2000 and dak alongwith dak bag and cash bag. Thus, from the statement of this witness it is clear that the cash bag containing the money order was intact and it was opened by ⁴⁶

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the applicant himself at post office Roopwas. Thus, the contention of the applicant that he was verifying the cash bag containing money order received by him in open ^{Similarly} condition cannot be accepted. ^{Similarly} the contention of the learned counsel for the applicant that as per rule 114 and 115 of Rules of Branch Office as contained in Chapter-VI, the money order was required to be delivered within a period of 7 days and that this period has not expired, can also not be accepted. Rule 114 deals with instructions for disposal of money orders whereas rule 115, which will have bearing in the matter, deals with redirected, unclaimed and refused money orders. Rule 115, inter-alia, provides that if the payee of a money order is not found at the address given in the money order, the money order will be detained/retained in the post office for a period not exceeding seven days from the date of its presentation to the payee or from the date it is sent out for payment as the case may be. If the payee fails to take payment of money order from the post office within the said period of 7 days the money order will be returned to the remitter on the first working day immediately following the expiry of said 7 days. In the instant case, it has come on record in the statement of Smt. Kamla Devi that during the relevant period she alongwith her daughter-in-law were present in the house and the applicant never came to their house to deliver the money order whereas the case of the applicant before the Enquiry Officer was that the money order could not be paid to the payee as the payee was not found at the given address. On the face of this evidence, the contention of the applicant cannot be accepted. Thus from the narration of the facts as above, the charges against the applicant are fully proved.

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5.2 The question which also require our consideration is whether the penalty imposed by the Disciplinary Authority and as confirmed by the Appellate Authority is in commensurate with the gravity of the charge levelled against the applicant. It has come on record that the applicant has put in 17 years of service with the respondents. The applicant has also placed on record that he is a poor person having 4 daughters and a lame daughter under treatment. It has also come on record that the amount of Rs. 1973.70 which was found short was redeposited by the applicant alongwith penal interest on 12.8.98 almost after a lapse of 9 months. In fact the said amount could not have been kept in the post office by the applicant while proceeding on leave as per Rule 11 of the Rules of Branch Offices, which stipulates that it may not be necessary to supply a safe to every extra departmental branch office but when the safe is supplied to a Branch Office, the cash, postage stamps, articles on deposit, stamps and seal, and in short, all articles of value including money order forms should be locked up in it. Below Rule 11 there is a note appended which is in the similar terms and stipulates that all EDBFMs whether their offices are provided with iron safes or not should make their own arrangement for the safe custody of cash and valuables on their own responsibility. It is also provided in this note that they are at liberty to keep the cash and valuables wherever they like provided that they are available when required and that, when called for, they can be produced for inspection within the time required for going to and coming back from the place where the cash is kept for safe custody. ^{In the instant case} no opportunity was afforded to the applicant who was admittedly not present when the inspection was carried out by the ASFO and cash

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which was found short for inspection. The Disciplinary Authority as well as the Appellate Authority have lost sight of the aforesaid rule as well as the note appended below that rule while awarding harsh punishment of removal from service. It is admitted case between the parties that no such safe was provided in the concerned branch office. As such the money could not be kept by the applicant in the safe, obviously there ought to be shortage of amount when the inspection was carried out by the ASPO concerned. *in the absence of the applicant who has deposited substitute in his place.* The fact that the applicant is already out of job for about 5 years and practically he has no means of livelihood to support his family, cannot be lost sight of. Admittedly, no financial loss has been caused by the act of the applicant and the shortage of amount which was found has been redeposited with penal interest by the applicant, is one of the mitigating circumstance which according to us do not warrant imposition of severe penalty of removal from service.

5.3 Under these circumstances and taking into totality of all the facts into consideration, we are of the view that the penalty of removal from service is *prima-facie* disproportionate to the gravity of the misconduct and we are also aware of the law that normally the courts/tribunals should not interfere with the order of the Disciplinary Authority on punishment. It is for the competent authority to impose appropriate punishment having regard to the misconduct committed by the applicant. From perusal of Rule 16 of the EDA (Conduct and Service) Rules, 1964, there is a provision to review the orders passed under these rules which is equally effective and efficacious remedy for such cases. Therefore, it will be in the ends of justice if direction is given to the

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reviewing authority to invoke rule 16 of the EDA (Conduct and Service) Rules, 1964 and entertain the review petition of the applicant and pass appropriate orders regarding quantum of penalty to be imposed on the applicant keeping in view the gravity of the charges and the observations made hereinabove.

6. We, therefore, direct the applicant to make review petition to the reviewing authority within a period of 15 days from the date of receipt of a copy of this order and the reviewing authority shall dispose of the same within 2 months from the date of receipt of such petition and communicate the same to the applicant within 10 days thereafter.

7. With these directions, the OA is disposed of with no order as to costs.


(A.K.BHANPURI)

Member (A)


(M.L.CHAUHAN)

Member (J)