

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

24/10/07

Mr. C. B. Sharma counsel for applicant
Mr. Dilshad Khan proxy counsel for
Mr. S. S. Hassan counsel for respn.
Arguments heard

Order reserved

Mr. S. P. Sharma
(S. P. Sharma)

Administrative Member (M. L. Chauhan)
Judicial Member

31/10/07

The order pronounced today
In the open court by the
aforesaid Bench

S. P. Sharma
31/10/2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 3rd day of October, 2007

ORIGINAL APPLICATION No.23/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Vijay Singh Raghav,
Shri Ram Kumar Singh,
aged about 51 years,
r/o Village and post Khohar,
Tehsil Behror,
Distt. Alwar, last employed
as EDBPM Khohar, EDBO (Gandala),
District Alwar.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to Govt. of India,
Department of Posts,
Ministry of Communications,
Dak Bhawan,
New Delhi.
2. The Director Postal Services,
Rajasthan Jaipur Region,
Jaipur
3. Senior Superintendent of Post Offices,
Alwar Postal Division,
Alwar

.. Respondents

(By Advocate: Ms Dilshad Khan, proxy counsel to Mr.
S.S.Hasan)

O R D E R

Per M.L.Chauhan, Member (J)

In this case the applicant has challenged the various orders dated 28.10.2002 (Ann.A1), dated 19.8.96 (Ann.A3) and dated 25.7.2002 (Ann.A10). The order dated 19.8.96 is the order passed by the disciplinary authority whereby the applicant was removed from service. Order dated 25.7.2002 is the show-cause notice whereby the appellate authority has issued show cause to the applicant. The order dated 28.10.2002 has been passed by the appellate authority after considering reply of the show cause notice by the applicant and the punishment of removal from service as imposed by the disciplinary authority was affirmed.

2. Briefly stated, facts of the case, are that the applicant while working as Extra Departmental Branch Post Master (EDBPM), Khohar, EDBO Gandala, Distt. Alwar was departmental proceeded against under Rule 8 of the EDA (Conduct) Rules, 1964. Following 5 charges were framed against him:-

"(1) During the visit of ASPOS Behror Sub Division to the B.O. on 27.2.92, he found a shortage of cash and stamps to the tune of Rs. 638.60 (Rupees six hundred thirty eight and paise sixty only). It was alleged that the official Shri Vijay Singh Raghav violated the provisions of Rule 11 of B.O. Rules.

(2) That one Shri Phool Chand, holder of the S.B.Account N. 791066 standing open at Khohar B.O. handed over Rs. 1500/- to Shri Vijay Singh, the then B.P.M. Khohar on 10.6.91 for depositing

in his account. But Shri Vijay Singh did not credit this amount into the Government account, thereby violating the provisions of Rule 131 and 165 of the Branch office rules.

(3) Shri Phool Chand, the holder of the SB A/c no. 791066 did not withdraw the amount of Rs.900/- from the his account on 22.4.91 but Shri Vijay Singh Raghav, the then B.P.M. Khohar showed a withdrawal of Rs. 100/- from the aforesaid account on 22.4.91 and therefore, violated the provision of rule 134, 185 and 165 of the B.O. rules.

(4) Shri Jale Singh s/o Shri Narayan Prajapat, holder of R.D. Account no. 513722 handed over cash of Rs. 100 to Shri Vijay Singh, the then B.P.M. on 1.5.91 for depositing the monthly instalments from May, 1991 to Sept. 1991 at the rate of Rs. 20/- p.m. But Shri Vijay Singh did not credit the amount in government account and thereby violated the provisions of Rule 131 of Branch Office rules.

(5) That Shri Laxmi Narain and Shri Kalu Ram, handed over Rs. 5000/- (Rupee five thousand only) to Shri Vijay Singh, the then B.P.M. Khohar B.O. alongwith SB-3 and SB-103 (pay-in-slip) for opening of an S.B. Account (Joint-B). But Shri Vijay Singh, the then B.P.M. opened the account for Rs. 500/- only and defalcated Rs. 4500/-. Moreover, the hade the entry of the interest in the pass book of the account himself instead of sending it to its account office, thereby violating Rule 129, 130, 144 and 165 of the Branch Office rules."

The enquiry officer found the applicant guilty only with regard to the allegations contained in charge No.1 and that too partially. The disciplinary authority passed an order of punishment dated 19.8.1996 removing the applicant from service. The applicant preferred an appeal against the said order which was finally decided by the competent authority by order dated 15.1.1997, affirming the order passed by the disciplinary authority, in so far as, it related to the punishment inflicted upon the the applicant. The applicant challenged the order of

punishment passed by the disciplinary authority and also the order of the appellate authority rejecting the appeal of the applicant by filing OA No. 255/97. The said OA was partly allowed vide order dated 29.4.2002, operating portion of which thus reads:-

"8. In view of above, we partly allow this Original Application to the extent that the order passed by the Appellate Authority dated 15.01.1997 (Annexure A-2) shall stand quashed. The Appellate Authority is directed to decide the appeal filed by the applicant afresh. If the Appellate Authority disagrees with the findings recorded by the Disciplinary Authority, he shall give a notice in writing to the applicant to make a proper representation. The appeal shall thereafter be decided after taking into consideration the representation which may be made by the applicant and giving him an opportunity of personal hearing within a period of six months from the date, this order is produced before the Appellate Authority. "

Pursuant to the aforesaid order passed by the Tribunal, the appellate authority issued a impugned show-cause notice dated 25.7.2002 (Ann.A10) thereby disagreeing with the finding recorded by the disciplinary authority on each of the charges. It was tentatively recorded that all 5 charges levelled against the applicant stood proved and it was further proposed to uphold the punishment of removal from service given by the disciplinary authority upon the applicant. The applicant has placed on record reply to the show cause notice which has been placed on record as Ann.A11. Thereafter the appellate authority by reasoned and speaking order affirmed the punishment of

removal from service as imposed by the disciplinary authority vide order dated 19.8.1996. As already stated above, it is these orders which are under challenge before this Tribunal.

3. The respondents have filed detailed reply contesting the OA.

4. We have heard the learned counsel for the parties and gone through the material placed on record. The learned counsel for the applicant has raised almost same contentions which were raised by him in the reply to the show cause notice and which were elaborately dealt with by the appellate authority for which we will refer to in the later part of the judgment. Besides this, the learned counsel for the applicant has also raised following two contentions which appear to have not been raised before the appellate authority as well as before this Tribunal in earlier OA. The learned counsel for the applicant has argued that enquiry officer found the applicant guilty only with regard to the allegation contained in charge No.1 and that too partially. The disciplinary authority has imposed the punishment of removal from service only on the basis of that charge. The disciplinary authority has not recorded any tentative conclusion thereby disagreeing with the findings of the enquiry officer regarding other four charges, which were not proved

during the enquiry proceedings. According to law, unless findings of disagreement of charges not proved by the enquiry officer is not given, penalty against the delinquent official cannot be imposed on such charges which has not been proved during the course of enquiry proceedings. Such a course was available to the disciplinary authority and not to the appellate authority, as such, it was not legally permissible for the appellate authority to issue a show cause notice thereby disagreeing with the finding of the enquiry officer on all four charges and then impose the penalty of removal from service. Though, the submission made by the learned counsel for the applicant is attractive, but the same cannot be accepted in view of the finding recorded by this Tribunal in the earlier OA, relevant portion of which has been extracted hereinabove. This Tribunal in earlier OA has directed the appellate authority to give show-cause notice to the applicant if the appellate authority disagree with the findings given by the disciplinary authority and thereby giving opportunity to the applicant to make proper representation and decide the appeal after taking into consideration the representation which may be given by the applicant giving him opportunity of personal hearing. The appellate authority has given the show cause notices to the applicant in conformity with the observations made by this Tribunal in the earlier OA.

The appellate authority has also given an opportunity of personal hearing to the applicant, as can be seen from the appellate order Ann.A1. The said judgment has not been challenged by the applicant and, as such, it has attained finality. Thus, in view of the findings recorded by this Tribunal in the earlier OA, it is not legally permissible for the applicant to adjudicate this matter.

Similarly, the contention of the applicant that once this Tribunal in earlier OA has quashed the appellate authority order, the order of removal from service passed by the disciplinary authority also stands quashed, cannot be accepted for the aforesaid reasons.

Besides it, from perusal of the operative para of the judgment in the earlier OA, it is clear that the OA was partly allowed and the case was remitted to the extent of quashing the appellate order dated 15.1.97. This Tribunal has not quashed the order passed by the disciplinary authority, though, the applicant has also prayed for quashing the same. Thus, this contention of the learned counsel for the applicant also deserves out right rejection.

Now let us consider the submissions made by the learned counsel for the applicant on the merits of the case. Five charges were framed against the applicant, which have been reproduced in the earlier part of the *LC* judgment. The findings records by the appellate

authority on these charges find mention in para 4 and 5 of the order dated dated 28.10.2002, which thus reads:-

"(i) Contention of the appellant that he had been entitled for reinstatement and further benefits, in wake of provisions of Rule 129 of Postal Manual Vol.III, is rejected being unmerited. Rule 129 ibid deals with the cases which are remitted back for denovo proceedings by the resisionary authorities after quashing the appellate order for procedural defect left in the inquiry proceedings, hence it is not applicable in the instant case of the appellant. Hon'ble CAT Jaipur too issued directions for his reinstatement but maintained the punishment order unabated, directing the appellate authority to communicate (in the shape of the notice) the points of disagreement, if any, with the findings recorded by the disciplinary authority in the punishment order. Hence, order dt. 29.4.2002 passed by the Hon'ble CAT Jaipur itself, all over sliminated the chances of reinstatement of the appellate. Contention of the appellant that present show cause notice is not as per direction of the Hon'ble Tribunal, being putforth without support of any logic, and basis is being rejected.

(ii) In respect of charge No. (i), appellant was to counter the point viz. record did not show that he had been any way forbidden by the inspecting authority from bringing the cash from his house on 27.2.92. But he could not prove this in his representation dt. 14.8.2002. Under the provisions of rule 11 of B.O. Rules he was duty bound to present exact cash and stamp balance before the inspecting authority within reasonable time. By handing over the cash to the Mailoverseer on the next day of vist, appellant can not claim to have present the cash within the reasonable time. DW-1, DW-3 and DW-4 were present on the spot when SW-5 (inspecting authority) conducted the verification of balances of B.O. held with the appellant on 27.2.92 which could not be got corroborated by the defence side at the proper and initial stage i.e. during the course of examination of SW-5. Hence rather than being real eye witnesss, DW-1, DW-3 and DW-4 are taken to be a short of unreliable defence managed by the appellant. Moreover, evidence of these managed defence witnesses too could not categorically establish that SW-5 had forbidden

the appellant from his duty for presenting the cash balance before inspecting authority within reasonable time. Whereas documentary evidence of Ex. S.15, the application of the appellant himself dt. 29.2.92, all duly testified by SW-4 before I.O. on 24.6.94 during the course of inquiry, abundantly substantiate the fact that B.O.'s cash balance worth Rs. 638.60 was short with the appellant, it was charged to UCP on account of not being presented to the inspecting authority (SW-4) within reasonable time and not handing over while transferring the charge to Shri Birbal M.O. Behror on 27.2.92. It was also established well that such a shortage was made good by the appellant only on 28.2.2002, the next day of visit. All this goes to hold the charge No.(i) fully proved.

(iii) Arguments of the appellant that ASPOS remained in search of minor irregularities, that No. (ii) to (v) which pertained to the dates fallen during the year of 1989, 1991 were framed against him years after (on 26.10.93) to justify his placement under put off duty (on 27.2.92) that too without any complaint from any corner, and that no such irregularities were found by any authority during verification/inspection since 1989 to 1993 provide no relief in his favour and do not in any way dilute the gravity of misconduct proved on his part in the case in as much as verification of past work could take some time. Receipt of complaint is not to be taken as an essential factor, while framing the charges against the officials whose performance is exposed with delinquencies during the course of verification of balances of P.O/past work. Fact remains that appellant was proceeded against on the basis of certain charges and he can not claim absolvment on the score that delinquencies, similar to those levelled in the charge sheet had not been noticed against him during other routine visits/inspections.

iv) Appellant has pleaded that natural justice had not been provided to him while proving charge No. (ii) on imaginary fact, without a witness and without supplementing documents during the course of inquiry proceedings. He added that Shri Phool Chand, the depositor had been dropped as prosecution witness and documents related to him being not testifies during the inquiry proceedings could not be taken into account for punishment the appellant. These contentions are

evasive to the points of disagreement, in respect of this charge communicated to him vide para (2) of notice dt. 25.7.2002. Proval of this charge was proposed on the basis of documentary support of not only the statement of Shri Phool Chand but also of pass book Ex. S-9 B.O. daily A/c dt. 11.6.91 Ex.S.11 etc. Evidentiary value of what was stated by Shri Phool Chand at different moments, including those pertaining to his denial for payment of cash to the appellant on the date of deposit entered in the pass book was already discarded vide para 2 of notice dt. 25.7.2002 itself. However, on the basis of documentary evidence produced in support viz Ex. S-9, Ex. S-10, Ex. S-11 which were testified as prosecution documents during the course of examination of SW-4 on 11.5.94 as also on the basis of oral evidence of SW-4, the charge stands proved beyond doubt.

v) Contention of the appellant that amount of Rs. 638.60⁰ was never deposited by him but another person had deposited it in UCR on 28.2.92 does not stand scrutiny of the record, hence is being turned down. Fact remains that Ex. S.15 substantiate the fact of payment of this sum to Shri Birbal, M.O. by the appellant on 28.2.92 the admitted plea of shortage while handing over the charge of B.O. by the appellant to Shri Birbal on 27.2.92 which was ultimately charged in UCR.

vi) Appellant's pleading that view as taken while rejecting his earlier appeal vide memo dt. 16.1.97 was repeated in the instant notice (dt. 25.7.2002) affords no help to him so far as proval of the charges leveled against him and imposition of penalty consequent to it is concerned. However, mention of 'Dismissal' as against "Removal" penalty to be upheld in the notice dt. 25.7.2002 was in unintentional clerical slipshod and the punishment to be accorded is based on a judicious and unbiased analysis of the case.

(vii) Except routine and formal refutal, nothing concrete has come forth from the appellant in representation dt. 14.8.2002, in counter to the categorical points of disagreement, with regard to charges No. (iii) and (iv) communicated to him vide paras No. (3) and (4) of notice dt. 25.7.2002. As such charge No. (iii) is held proved by the undersigned on the basis of documentary evidence viz. Ex. S.13, Ex.S12, Ex. S.9 whereas charge No. (iv) is held substantiated

on the basis of Ex. S.8 and B.O. Account, B.O. R.D.Journal dt. 1.5.91 H.O. RD ledger Card of A/c No. 513722 (enlisted in Annexure III of the charge sheet and duly inspected by the appellant during the course of inquiry proceedings and pointed out as basis of proposed proval of charge in para 4 of notice dt. 25.7.2002).

vi) On the basis of documentary and oral evidence produced during the course of inquiry it can be held that interpolation of zero to raise the amount of deposit from Rs. 500/0 to Rs. 5000/0 and recording false entries of interest in the pass book of SB S/c No.790854 has been committed but the prosecution side has been unable to categorically pinpoint it on the appellant. Benefit of doubt is hence goes in favour of the appellant so far as proval of charge No.V is concerned.

(ix) Charges No. (i) to (iv) involving misappropriation of public money and abdication from his legitimate duties concerning proper maintenance of cash balance and account books/papers of the B.O. and thereby exhibition of disintegrity and non devition to duty, against the appellant, have been proved beyond doubt in the caase. Obviously, appellant kept himself included in fraudulent activities and has failed to display total devotion to duty. Service and interest of public as well as image of the Departmenta was not safe in the hands of appellant. As such penalty of "Removal form service" imposed by the disciplinary authority is justified and commensurate to the gravity of proven serious misconduct on his part.

In view of above discussions and in exercise of powers conferred vide rule 18 of Department of Posts Gramin Dak Sewak (Conduct and Employment) Rules, 2001 (substituting rule 15 of erstwhile EDAs- Conduct and Srvice Rules,1964), hereby confirm the punishment of 'removal from service' as imposed on the appellant on the said Shri Vijay Singh Raghav, vide aforesaid punishment order dt. 19.8.96 of SSPOS Alwar."

We find ourselves in agreement ^{with} ~~of~~ the findings recorded by the appellate authority as reproduced

above. We do not agree with the contention raised by the applicant that the person in whose case so called irregularities were stated to have been committed, has not filed complaint and, as such, charge Nos. 2 to 4 could not have been framed against him. The learned counsel for the applicant further submits that penalty imposed upon the applicant is very harsh and at the most it is a case of violation of departmental instructions/rules and not a case of embezzlement. We do not agree with this submission so raised by the applicant. The Apex court in number of cases has held that if the charged official hold a position of trust where honesty and integrity are inbuilt requirements of function, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the persons deals with public money or is engaged in financial transactions or it a fiduciary capacity, the highest degree of integrity and trustworthiness is must and unexceptionable. The Apex court has further held that Tribunal or Court while exercising the power of judicial review, cannot normally substitute its own conclusion on the penalty imposed by the authority. At this stage it will be useful to quota decision of the Apex Court in the case of Ganesh Santa Ram Sirur vs. State Bank of India, 2005 (2) ATJ 359. It was a case where out of 7 charges the enquiry officer found the appellant guilty of charge No.5 relating to sanction

of advance by the appellant to his wife in violation of Rule 69(e) imposed punishment of reduction of his pay. However, the appellate authority issued a show cause notice for enhancement of proposed penalty and ultimately the appellate authority passed the order of removal from service inspite of dismissal from service. The plea taken by the delinquent official before the appellate authority was that no doubt he has sanctioned advance in favour of his wife but the draft issued in maiden name of his wife has not been encashed by her. Feeling aggrieved by the imposition of penalty, Writ Petition was filed before the Hon'ble High Court and the High Court dismissed the Writ Petition. Accordingly, the matter was carried to the Apex Court by filing SLP. The Hon'ble Apex Court after considering the number of decisions and also decision rendered by the Apex Court in the case of Regional Manager, UPSRT Vs. Hoti Lal, 2003(3) SCC 605 dismissed the appeal filed by the appellant and it was held that going beyond once authority by itself is breach and misconduct and punishment of removal awarded by the appellate authority is just and proper. The Apex Court has relied upon the observation made by the Apex Court in the case of Regional Manager, UPSRT (supra) to the effect that where a persons deals with public money or is engaged in financial transaction or it is a fiduciary capacity, the highest degree and integrity and trustworthiness is must and unexceptionable and

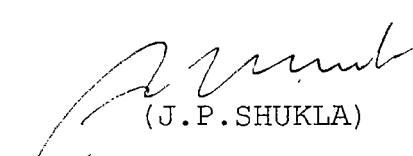
the matter is required to be judged in that background.

Further, the apex Court in the case of APSRTC vs. Raghuda Siva Sankar P (2007) 1 SCC (L&S) 151 in para 22 and 23 has held as under:-

"22. It is also not open to the tribunal and courts to substitute their subjective opinion in place of one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment or removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. Interfering therefore, with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factory and not the amount of money and that sympathy and generosity cannot be a factory which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment."

5. Thus viewing the matter on the basis of the law laid down by the Apex Court, we see no infirmity in the order passed by the appellate authority. Accordingly, the OA is bereft of merit, which shall stand dismissed with no order as to costs.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

R/