

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 9-11-04

ORIGINAL APPLICATION NO. 99/2003

Baliuram Gurjar son of Shri Giriraj aged about 46 years resident of Village and Post office Salempur Chowki via kherla District Dausa and working as Ex. EDBPM Salempur Chowki Via kherla District Dausa (Rajasthan).

....Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communication, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Superintendent of Post offices, Jaipur Mofussil Division, Jaipur.
5. B.P. Gaur, Enquiry officer and Asstt. Supdt. of Post Offices, Sambher Lake, Jaipur.

....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 (J)  
Hon'ble Mr. A.K. Bhandari, Member (A)

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA u/s 19 of the AT Act has been filed to seek the following reliefs:-


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(i) That the impugned orders Annexure A/1 and A/2 be quashed being illegal, unconstitutional and capricious and violative of the CCS(CCA) Rules 1965 and article 311(2) of the Constitution of India.

(ii) That the respondents be directed by issuance of an appropriate order or direction to reinstate the applicant in service with all consequential benefits including back wages.

(iii) Any other relief which this Hon'ble Tribunal thinks just and proper in favour of the applicant including costs.

2. The facts of the case as narrated in the OA are that the applicant working as EDBPM Salempur Chowki (Kherla) was issued charge sheet under Rule 8 of the ED Agents (Conduct & Service) Rules, 1964 on dated 10.7.2000 (Annexure A/3) in which allegations are raised that three depositors had deposited certain amount of money in proof of which stamp was imposed in the Pass Books of the depositors but the respective amount were not credited to the Post office account and thereby he misappropriated the sum of money deposited by the depositors thereby violating Rules 131, 143, 144 and 174 of the Branch Post Offices Rules and Rule 17 of the ED Agents (Conduct & Service) Rules, 1964. The charge was denied and oral inquiry was conducted by Shri S.K. Jain, Assistant Superintendent of Post Office. While prosecution evidence was coming to closure, the Inquiry Officer was canged without any reason and Shri B.P. Gaur, Assistant Superintendent of Post Office was appointed as Inquiry Officer who only submit the Inquiry report on 19.6.2001 (Annexure A/5) which was sent to the applicant by the Superintendent of Post Offices, Jaipur Muffassil Divison on 21.6.2001 (Annexure A/6). It is stated that Inquiry Officer, Shri B.P. Gaur, had not conducted the inquiry in accordance with rules like (i) Depositors of RD Account in question have denied any deposit in their account in oral inquiry but this fact was ignored by the Inquiry Officer and he has relied solely upon statement taken by the investigating Inspectors in the preliminary inquiry. (ii) Inquiry Officer did not provide relevant documents as requested vide application dated 10.11.2000 although relevancy was shown and this has prejudiced the applicant's case. (iii) three defence witnesses were not allowed by the Inquiry officer (iv) Inquiry Officer has failed to discuss the statements of the prosecution witnesses in his inquiry report which is evident from the fact that all the depositors have denied having depositing any amount in their RD Account (v) Inquiry Officer has failed to consider written brief of the

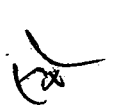


applicant. (vi) That these flaws were pointed out in the representation dated 3.7.2001 (Annexure A/9) but of no avail. After this, the applicant has been removed from service vide order dated 28.9.2001 (Annexure A/1).

The applicant raised an appeal against this order in which also above flaws were pointed out. It was also alleged that no transparency has been maintained right from preliminary inquiry onwards but the Appellate Authority has without noting this defect and without application of mind, followed the line drawn by the Disciplinary Authority and rejected the appeal. Since it is a case of 'No Evidence', Inquiry Officer has also been impleaded as a party. It is concluded that the charges are absolutely incorrect and they have not been proved in oral inquiry and the version of the Inquiry Officer is based on surmises and conjectures as no recovery has been made from the applicant nor any claim has been paid to the depositors of RD Account which prove that charges were made up only to victimise the applicant.

3. In the grounds, it is stated that the charge are vague. That the Inquiry Officer has failed to abide by the rules under CCS(CCA) Rules, 1965. That the requisite documents were not supplied which has prejudiced his defence. That no misappropriation has been committed which is clear from the facts that depositors have categorically stated that they had not deposited any amount and entries in the Pass Books were made erroneously and they have not been paid any amount for the said amount, that penalty of removal from service is disproportionate since only a clerical error has been made, his service of 13 years was unblemished. That due to these reasons, there has been violation of Articles 14, 16, 21 and 311(2) of the Constitution of India. Therefore, this OA is filed.

4. The respondents have submitted a detailed reply. Giving brief history of the case, it is stated that the applicant was involved in misappropriation of Government money to the tune of Rs.1700/- by making deposit entries by impressing date stamp of RD Account Numbers 92189, 92558 and 91578 but he did not deposit Government money in Government Account during the period from 01.05.1999 to 01.08.1999. Thus he had violated Rule 17 of ED Agents (Conduct & Service) Rules, 1964. Disciplinary inquiry was, therefore, conducted. On the basis of facts, charges were found proved and applicant was removed from service vide order dated 28.09.2001 (Annexure A/1). This order was challenged in appeal but the Appeal was



dismissed vide order dated 28.10.2002 (Annexure A/2). Replying to the facts, it is stated that the charges were found proved on the basis of documentary evidence. That original inquiry Officer had to be changed because he was assigned the work of monitoring the business of Development cell of the Division and he was also holding the independent charge of Dausa Sub Division. Therefore, he could not spare time to conduct and complete the inquiry early. There is no bar of changing the Inquiry Officer and that at the relevant time, the applicant did not raise any objection regarding this change and at a later stage, such objection has no validity. The subsequent Inquiry Officer conducted the remaining part of the inquiry keeping in view the rules and instructions. Allegation of the applicant that he utterly failed to conduct the inquiry are denied. The documents demanded by the applicant were not considered relevant to the charge and the applicant had failed to show any relevancy of the same, therefore, the decision of the Inquiry Officer in denying the same is as per law. The same is stated regarding the defence witnesses. He unnecessarily wanted to examine these witnesses on behalf of defence side which was not allotted by the Inquiry Officer. As per rules, the Inquiry Officer has been empowered with this discretion. That the Inquiry Officer found charges fully proved on the basis of documentary evidence i.e. Pass books which were brought on record during preliminary inquiry, statements adduced during preliminary inquiry were taken on record, respective witnesses were cross examined by the applicant and the entire evidence was discussed at length in the inquiry report. The statements of each witnesses has been analysed in detail and certain witnesses were hostile but the charges were still found to be proved on the basis of documentary evidence. The Inquiry Officer has also discussed in detail the case of the defence at Page No. 3 of the Inquiry report after taking into account the brief submitted by the applicant. The Disciplinary Authority has also taken into account the case on behalf of defence side as well as prosecution side and after that the decision was taken by him to punish the applicant by removing him from service. That appeal submitted by the applicant was considered properly by the Appellate Authority after taking all the facts of the case and evidence on record into account. His order is as per law and the version of the applicant that the Appellate Authority did not apply mind is denied. Although allegation of consideration of extraneous material been made, yet no evidence to substantiate this allegation has been putforth and on this ground alone, this allegation deserves to be discarded. For the charge relating to corruption, penalty of

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removal from service cannot be considered to be disproportionate or heavy. It is stated that there is relevance of the fact that no recovery was made from the applicant nor claim was paid to the RD Depositors. On the contrary, it is submitted that applicant submitted an application for depositing misappropriated amount of Rs.1700/- and interest of Rs.300/- thereupon total Rs.2000/- and the same was accepted by the Department. In proof of this, the respondents have appended Annexure R/1 and Annexure R/2 which are copies of application and receipt of amount.

5. The grounds taken by the applicant are equally vehemently denied by the respondents on above lines. The allegation of illegality and violating principles of natural justice and articles of Constitution of India are denied. It is also stated that by no stretch of imagination, it is a case of no evidence and each evidence has been meticulously analysed by the Disciplinary Authority and Appellate Authority before passing respective orders.

6, Although the applicant submitted rejoinder but nothing new has been adduced by him. Reply to the rejoinder was also submitted by the respondents.

7. On the request of the learned for the applicant, original record of inquiry was produced by the respondents and the same was referred to in course of arguments by the learned counsels for the applicant and the respondents. The main defence of the applicant during arguments was that an Inspecting Officer from the Head Office, Shri C.P. Arora, visited applicant's Branch Post Office in his absence and seized the respective pass books in respect to which allegation of misappropriation has been raised against him, that this Officer had the access to Post office date stamps, <sup>and</sup> he embossed stamp on the Pass Books adjacent to the entries of deposits in them. That the applicant's signature are not there for these deposits entire. However, the Inspecting Officer has tried to make water tight case against the applicant with malafide intentions. Secondly, prosecution witnesses especially the holder of these accounts, S/Shri Shanker Siogh, Phool Singh and Smt. Safedi Devi during cross examination have stated that they had not deposited the alleged amounts of money on the relevant dates and that their signature/thumb impression have been taken under threat/duress by the Inquiry Officer. Lastly, the inquiry was not conducted as per the rules.

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8. The learned counsel for the respondents on the other hand pleaded that as per prevalent rules Inspecting Officers periodically inspect post offices by surprise and during one such inspection, discrepancy in the working of the applicant were noticed. Subsequently, when accounts of Head quarter were checked, corresponding entries in the respective RD Accounts were found not made. Preliminary inquiry was got conducted and it proved embazzlement. On the basis of preliminary inquiry, charge sheet was issued. As such, there is nothing illegal in Shri C.P. Arora's surprise inspection and the applicant is trying to raise unwarranted allegations to cover his misdeeds. Regarding plea of witnesses' denying that they had deposited money, it was stated that the concerned witnesses were villagers, one of them even illiterate and they depended solely on the honesty and integrity of the Postmasters unsuspectingly and the applicant has taken undue advantage of their faith and trust and misappropriated the money, which is proved documentarily although some witnesses have given contradictory statements in the Inquiry. The allegation of inquiry having not been conducted as per rules is denied on the basis of pleadings already available on record.


9. We have very carefully considered all the pleadings and seen the original record of INquiry submitted by the respondents. The original record consists of original pass books of the three account holders, statement of witnesses given during preliminary inquiry and testified by them during the departmental inquiry proper. It is also seen that statement given during departmental inquiry contains original application and receipt of Rs.2000/- covering amount of misappropriation (Rs.1700/-) and interest (Rs.300/-). The perusal of the Pass books reveals that relevant entries of embazzled amounts in the three pass books are in the same hand-writing as the earlier entries made by the applicant which are not in dispute. Date stamp in front of the relevant entries is also exactly the same as past date stamps and correspond with dates written in hand in column No. 1 except one mistake that the date written with hand is 31.6.1999 in the Pass Bok of Shri Shanker Singh (RD Account Holder No. 92558) but the post office Date Stamp is of 30.6.1999. However, it was clarified during oral arguments that this was obviously a clerical mistake because in the month of June, there cannot be 31 days. On the basis of this perusal, we have no doubt left in our minds about the fact that entries about the alleged embazelled amounts were also made by the same person who

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had made earlier entries which are not in dispute. Since the earlier entries were made by the applicant, the respondents suspicion about embazellment is not ill-founded and the needle of suspicion points at the applicant. On the basis of this, we are not inclined to believe that Shri C.P. Arora may have made false entries with malafide intention. This plea is also rejected because applicant has failed to submit any evidence to prove malafide intention of Shri C.P. Arora. On the contrary, the learned counsel for the respondents has by quoting many other examples of non application of relevant rules by the applicant in day to day work proved that applicant was committing many other irregularities. The fact that the applicant has on his own accord deposited Rs.2000/- to cover the embazzled amount with interest also proves his guilt. Perusal of statements of the prosecution witnesses shows that all the three witnesses have denied remembering the date of deposit and have during cross examination also denied deposit of money by them but this is seen to be due to their ignorance and total dependance on the Postmaster for maintenance of the RD Accounts. In any case these apparent contradiction do not help the applicant's case either because in the end all have stated that they had deposited the amounts as per the entries in the Pass Books. The respondents have given adequate explanation about the INquiry Officer's denial of certain documents and defence witnesses. We find that Disciplinary Authority and Appellate Authority's orders are detailed, well reasoned and inclusive of all points raised by the applicant in his reply to the show cause notice and Memo of Appeal and no fault can be found with the respondents on this count.

10. In view of what has been stated above, the OA is dismissed with no order as to costs.

  
(A.K. BHANDARI)  
MEMBER (A)

  
(M.L. CHOHAN)  
MEMBER (J)

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