

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 17-1-05

ORIGINAL APPLICATION NO. 533/2003
with
MISC. APPLICATION NO. 467/2003

Naval Kishore Sharma son of Shri Radhey Shyam Sharma aged about 32 years, resident of 82/558, Pratap Nagar, Sanganer Nagar, Jaipur, last employed on the post of EDVBPM, Kharkeda Branch Post Office (Kmwaramgarh), Department of Post, Jaipur.

....Applicant

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Department of Post, Jaipur.
3. Director Postal Services, Department of Post, Jaipur.
4. Superintendent of Post Offices, Jaipur (Mofussil Division, Jaipur) Department of Post, Jaipur.

....Respondents.

Mr. Shiv Kumar, Counsel for the applicant.
Mr. Madhukar Sharma, Proxy counsel for
Mr. N.C. Goyal, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER MR. A.K. BHANDARI

The applicant has filed this OA u/s 19 of the Administrative Tribunal's Act, 1985, to seek the following reliefs:-

"(i) That the impugned charge sheet dated 28.7.1999 (Annexure A/1), impugned order dated 29.12.2000 (Annexure A/2) removal from service and impugned inquiry report dated 10.10.2000 (Annexure A/3) may please be declared illegal, arbitrary and the same may be quashed with all consequential benefits.

(ii) Any other order/direction/reliefs maybe passed in favour of the applicant which may be deemed fit, just and

proper under the facts and circumstances of this case.

(iii) That the cost of this application may be awarded."

2. Brief facts as stated in the application are that the applicant appointed as EDBPM on 25.05.1992 was without any complaint issued a charge sheet dated 28.07.1999 (Annexure A/1) alleging that he has violated Rule 131, 143, 144 and 174 of the Postal Manual. Detailed inquiry was conducted by authorities in which Inquiry Officer recorded statements of prosecution witnesses and defence witnesses and Inquiry officer considered the charges fully proved and submitted his report on 10.10.2000 (Annexure A/3). The applicant had preferred a representation dated nil to the Inquiry Officer, copy of which is annexed as Annexure A/4. This contained his defence, but Inquiry Officer did not consider it before submitting his Inquiry report. The applicant has also annexed statements of witnesses As Annexures A/6 to Annexure A/11. It is submitted that applicant has deposited an amount of Rs.3100/- with interest on the advice of his superior officers, but this has been considered his admission of the guilt, which is wrong in law. It is further submitted that on the basis of inquiry report, the Disciplinary Authority inflicted punishment of removal from service vide order dated 29.12.2000 (Annexure A/2). The applicant preferred an appeal on 22.3.2001 to the Appellate Authority but the applicant has not received any reply or decision from the Appellate Authority so far.

3. In the grounds, respondents action in removing him from service is stated to be illegal because he has been falsely implicated into the matter. As per the statements of listed witnesses, charges are not proved. None of the witnesses have disclosed that they had given money to the applicant but he did not deposit it in the RD Account. That in fact, it is a case of no evidence. On the basis of such faulty charges, the punishment order is also illegal. That Inquiry officer's report is non speaking and shows non application of mind because he has not correctly considered the statement of witnesses and it deserves to be quashed. The Disciplinary Authority's order of punishment is also not well reasoned, as he has not considered his application and has passed punishment order mechanically without considering the evidence on record. He has failed to consider that there was no direct and even corroborative evidence on record. It is also

alleged that ex-parte inquiry was conducted without giving adequate notice of appearance to the applicant on certain days. Lastly, that the punishment order is disproportionate to the charges alleged on the applicant.

4. Alongwith the OA, MA for condonation of delay has also been filed. Notices were given to the respondents. The respondents have filed seprate replies to the OA and the MA.

5. In reply to the MA for condonation of delay, the respondents have raised serious objections of limitation therein stating that the OA is not within limitation period prescribed u/s 21 of the Administrative Tribunal's Act inasmuch as the applicant has challenged the removal from service order passed on 29.12.2000 in the year 2003. It is further stated that although applicant has tried to show the default of the advocate in not filing the application but he has failed to name the advocate as also he has failed to show as to when he took the paper back from him. By not giving thesefacts, the applicant himself has disclosed that he is half hearted in filing the OA as he has contacted his advocate after a lapse of six months. The reasons shown by the applicant are neither sufficient nor the cause is reasonable. Therefore, the application filed by the applicant for condonation of delay deserves to be dismissed.

6. Respondents have filed detailed reply to the OA stating that applicant had misappropriated Government money amounting to Rs.3100/- by making deposit entries and impressing the date stamp of post office in the Pass Book Recurring Deposit Account No. 79081 but failed to deposit the money in the Government account for which the charge sheet under relevant rules was served upon him and inquiry was conducted. That Disciplinary Authority after consideration of facts found the charges proved and applicant was removed from service under Rule 8 of EDA (Conduct) Rules, 1964. That he never filed an appeal and now has moved this OA to challenge the order dated 29.12.2000 (Annexure A/2) thereby not availing the departmental statutory remedy.

7. In parawise reply to the OA, emphasis has been laid on admission of the guilt about the charges levelled against him though his application dated 21.5.1999, copy of which has been annexed in Annexure R/l by which he has submitted a receipt of Rs.3100/- as principal amount and Rs.900/- as penal interest, total Rs.4000/- to cover the amount of defaulcated, copy of

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Receipt dated 22.5.1999 is annexed as Annexure R/2. It is stated that this evidence are is explanatory about the truth of the matter. That the applicant has admitted in statement dated 20.5.1999 that he has received an amount of Rs.3100/- but he did not credit the same in Govt. account and thereafter submitted an application dated 21.5.1999 (Annexure R/1) to connect the misappropriated amount in UCR voluntarily and credited the same vide Receipt No. 29 dated 22.5.1999 above. It has also been emphasised in the reply that appeal dated 22.3.2001 (Annexure A/5) was never received by the Appellate Authority and that applicant has not submitted the proof of sending the same to the Appellate Authority. On the basis of above pleadings, ground of illegality have been denied and stated that respondents action was perfectly justified.

8. During arguments, learned counsel for the applicant has placed reliance on earlier decisions of Co-ordinate Benches reported vide 1985 SCC (L&S) 815, Anil Kumar vs. Presiding Officer and other in which - it is held that the inquiry report should be well reasoned, absence of which shows non application of mind. and vitiate the inquiry. The learned counsel for the applicant has also referred to the judgement in the case K. Bhaskar vs. The C.O. HQ. Training Command (Unit), Airforce, Bangalore & Others reported vide ATJ(1) 434 in which it is held that for total reliance to arrive at the conclusion of guilt, admission of guilt by delinquent should be unambiguous.

9. The learned counsel for the respondents on the other hand emphasised that before going to the merits of the case, this Tribunal should consider bar of limitation under which this OA is not worth-consideration.

10. We have given careful consideration to the fact including the application for condonation of delay filed by the applicant and we feel that it is important for us to first consider whether the application cross the hurdle of limitation before we go into merits of the case. It is clear from the prayer clause that the applicant has challenged the charge sheet dated 28.7.1999 (Annexure A/1) and punishment order dated 29.12.2000 (Annexure A/2) as also the Inquiry report dated 10.10.2000 (Annexure A/3), The period of limitation in regard to these is long over even if we consider impugned dated 29.12.2000 being the last of the three. in which case the OA should have been filed before 30.12.2001.

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While considering the application for condonation of delay, we are required to consider the reasons of delay stated therein and decide whether they are reasonable. However, the reasons adduced by the applicant do not satisfy us. Objection of the respondents is sustained that the applicant has only half heartedly consulted the earlier advocate in as much as he withdrew the brief from him after six months for which he has not given any justification. Another contention of the applicant in the application that he had preferred an appeal vide letter dated 22.3.2001 (Annexure A/5) on the basis of which, the OA could be filed by him upto 22.9.2002 and that there has been only a marginal delay is not accepted because the respondents have vehemently denied receipt of any appeal. It is felt that instead of waiting for the decision by Appellate Authority, applicant should have reminded him and taken to legal recourse in time if he had filed such an appeal. For the sake of arguments, even if this contention of the applicant is accepted, there has been delay of nearly one year even after the date of appeal for which no reasonable justification has been given. We feel that applicant has no justification for this delay and on this ground alone, without going into merit of the case, the OA is dismissed with no order as to costs.

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(A.K. BHANDARI)
MEMBER (A)

MLC
(M.L. CHAUHAN)
MEMBER (J)

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