

CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A. /XXXX No. 259 of 1998

DATE OF DECISION 13.2.2001

Shri Jatindra Nath Sarma

PETITIONER(S)

Mr B.K. Sharma, Mr S. Sarma and  
Mr U.K. Nair

ADVOCATE FOR THE  
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. and  
Mr B.S. Basumatary, Addl. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.259 of 1998

Date of decision: This the 13th day of February 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Jatindra Nath Sarma,  
Nongrimbah Road,  
Laitumkhrah, Shillong.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma and  
Mr U.K. Nair.

- versus -

1. The Union of India,  
Ministry of Communication,  
New Delhi.

2. The Chief Postmaster General,  
N.E. Circle, Shillong.

3. The Senior Superintendent of Post Ofices,  
Meghalaya Dn. Shillong.

4. The Director General and Secretary,  
Communication,  
Department of Posts,  
New Delhi.

.....Respondents

By Advocate Mr A. Deb Roy, Sr., C.G.S.C. and  
Mr B.S. Basumatary, Addl. C.G.S.C.

.....  
O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 1.9.1997 passed by the Senior Superintendent of Post Offices, Meghalaya Division, SH-I, the respondent No.3, awarding the punishment of compulsory retirement to the applicant as well as the order dated 5.3.1998 passed by the Director of Postal Services (HQ) and Appellate Authority dismissing the appeal of the applicant by upholding the penalty.

2. A thumb-nail sketch leading to the passing of the impugned orders is given below:

The applicant joined the services under the respondents as Grade IV employee in the year 1967 and was posted at Jowai Post Office in Meghalaya. He was transferred and posted from Jowai Post Office to Laitumkhrah Post Office in 1972. Thereafter he was transferred and posted to the G.P.O., Shillong in the year 1974 and since then he was working in the Shillong G.P.O., where, amongst others, he was entrusted the work of Savings Bank Counter and he was also ordered to work in the R.D. Accounts Section. By an order dated 6.3.1986 the applicant was put under suspension. He was also chargesheeted for trial in the Court of Chief Judicial Magistrate under Section 409 and for that purpose five cases were registered against the applicant, namely Special Case No.1/87, 2/87, 3/87, 4/87 and 5/87 under Section 409 I.P.C. By a reasoned order dated 18.9.1989 the applicant was discharged from the offences charged and found that the charge was groundless. The respondent authority thereafter decided to hold an enquiry against the applicant under Rule 14 of CCS(CCA) Rules 1965 and by Memorandum dated 23.8.1990 the substance of the imputations of misconduct or misbehaviour in respect of which the enquiry was proposed to be held alongwith the statement of imputations of misconduct or misbehaviour in support of each of the article of charge and the relevant documents, etc were served upon the applicant, asking him to submit his written statement in defence. The articles of charge as enjoined in Annexure I reads as follows:

"While Shri Jatindra Nath Sharma was posted and functioning as Postal Assistant, General Post Office, Shillong during the period from 20.5.1983 to 26.2.1986 failed to maintain absolute integrity and devotion to duty as much as he misappropriated a total amount of Rs.1,83,950/- which was received by him for depositing in R.D. accounts of different accounts holders for depositing in R.D. accounts of different accounts holders for depositing in their respective accounts through agents and in doing so he also manipulated pass books accounts ledger etc. Thereby by the above acts Shri Jantindra Nath Sharma contravent rules 3(1) (i) and (ii) of Central Civil Services (Conduct) Rules, 1964."

3. The applicant earlier assailed the very initiation of the departmental proceeding before the Tribunal, but, however, did not press the same at the time of hearing. The Tribunal accordingly disposed of the application

6. Mr A. Deb Roy, learned Sr. C.G.S.C., on the other hand, submitted that the award of compulsory retirement was rightly awarded on the applicant on the basis of materials on record. He submitted that the discharge and/or acquittal from the criminal case, by itself did not absolve the applicant from the charges as the materials on record unerringly pointed the guilt of the applicant and accordingly he was found guilty of the charge and accordingly was awarded with the punishment. The applicant was charged contravention of Rule 3(1) (i) and (ii) of the CCS (Conduct) Rules for his failure to maintain absolute integrity and devotion to duty by misappropriating the Government Account.

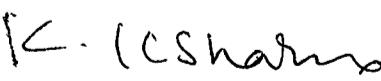
7. Misappropriation of Government money, no doubt, amounts to failure to maintain absolute integrity and failure to maintain devotion to duty. The aforesaid charge was based on the ground that the applicant misappropriated the amount. The criminal court found that accused person refunded the amount in all the respective cases. It also found that the act of 'alleged' lapses was explained by the accused as due to heavy pressure of work he was overburdened and so the deposits could not be made on the same day. The Chief Judicial Magistrate as the competent criminal court found that the charge of misappropriation was groundless. In the enquiry also the Inquiry Officer found that the applicant duly received the amount on different dates from the agents. The amounts so collected, were reflected in the various R/D Accounts, but the same were not entered in the Long Book as well as the hand to hand receipt book. The Inquiry Officer also found that the schedules of the agents were signed by the applicant's Supervisor. The applicant all throughout, pleaded that he could not deposit the collection on the same day due to pressure of work and reported the matter to the superior authority. The Inquiry Officer found that since the applicant himself admitted that he could not deposit the amount on the same day the fact ought to have been reported to the higher authority or his immediate superior so that the collection could have been shown pending at the Treasury. Since it was done it was proved that the applicant actually failed to deposit the amount collected from the agents on the actual date of collection,

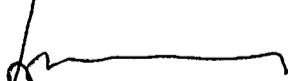
and.....

and therefore, the charge stood proved. As indicated earlier the charge against the applicant was not for his failure to credit the deposit. On the other hand, the charge was for contravention of Rule 3(1) (i) and (ii) for misappropriation of the amount specified. The applicant was charged for violation of the CCS Rules solely on the ground of alleged misappropriation. The expression 'misappropriation' connotes the act of misappropriating, which means wrong appropriation, in other words to embezzle. To misappropriate there should be an act of appropriation. The charge of alleged misappropriation was not established by the materials on record. The finding of fact reached by the Inquiry Officer and the Disciplinary Authority as well as the Appellate Authority is contrary to the evidence on record and therefore, the same suffers from the vice of error of law. The finding based on no evidence, therefore, cannot be sustained.

8. The Appellate Authority did not find the applicant guilty for failure to maintain absolute integrity and devotion to duty and found guilty of contravention of Rule 3(1) (i) and (ii) for non-crediting the collection. The Appellate Authority also fell into error in holding the applicant guilty of misappropriation in the absence of any evidence on record. The impugned order of compulsory retirement dated 1.9.1997, therefore, cannot be sustained. So also the order of the Appellate Authority dated 5.3.1998. The impugned orders are accordingly set aside. The respondents are directed to reinstate the applicant into service forthwith. The applicant, however, shall not be entitled for any back wages, but he shall be entitled for all other service benefits like seniority etc., sans back wages.

9. The application is allowed to the extent indicated. There shall, however, be no order as to costs.

  
( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

  
( D. N. CHOWDHURY )  
VICE-CHAIRMAN