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Central Administrative Tribunal
Jabalpur Bench

OA No.1102/05

Jabalpur this the 24th day of April 2006.

C O R A M

Hon'ble Mr.M.A.Khan, Vice Chairman
Hon'ble Dr.G.C.Srivastava, Vice Chairman

Bharat Kumar Tiwari
S/o Shridama Prasad Tiwari
R/o Kamat Ward, Near Sharma Dairy
Gadarwara
Dist.Narsinghpur (MP).

Applicant

(By advocate Ku.Rashmi Shukla)

Versus

1. Union of India through
Secretary
Indian Postal Department
New Delhi.
2. Chief Postmaster General
Office of Chief Postmaster General
Bhopal.
3. Director
Indian Postal Department
Office of Chief Postmaster General
Bhopal.
4. Senior Superintendent of Post Offices
Hoshangabad (MP).

Respondents.

(By advocate Shri M.Chaurasia)

ORDER

By M.A.Khan, Vice Chairman

The applicant is assailing the order of the disciplinary authority dated 31.10.2003 (Annexure A3), the order-dated 7.4.2004 (Annexure A2) whereby the appeal preferred was dismissed and the order dated

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25.11.2004 (Annexure A1) whereby the applicant's revision was rejected.

2. The allegations of the applicant are as follows: The applicant was working as GDS Branch Postmaster in Gadarwara Branch since 1995. He was served with a charge memo alleging that while working as Branch Postmaster, Gadarwara between 17.10.98 and 29.10.99 he did not enter two sums of Rs.50/- each deposited on 17.10.98 and 29.10.99 by the account holder in his recurring deposit account No.46003 and thereby he embezzled an amount of Rs.100/-. The applicant refuted the charge but participated in the disciplinary proceedings. On conclusion of the enquiry, the enquiry officer submitted his report holding that the charges served on the applicant were proved. The disciplinary authority agreed with the findings and imposed on the applicant the penalty of removal from service. Appeal and revision submitted by the applicant against the order of removal from service have failed.

3. According to the applicant, the entry about the two deposits of Rs.50 each in the official records was not made by him by mistake - human error - and the mistake was committed inadvertently. The applicant admitted in his reply dated 2nd Nov.2001 to the charge memo that he had deposited Rs.168/- towards the principal amount as well as interest/penalty thereon voluntarily when he came to know about the mistake committed by him. He also stated that the Director of Postal Services had passed a non-speaking order on 7.4.2004 while dismissing his appeal. Similarly, his further appeal (revision) before the Chief Post Master General against the appellate order was also rejected by a non-speaking order dated 25.11.2004. The contention of the applicant is that the mistake was a human error and not deliberate and that he himself had corrected the mistake when Shri Balwan Singh, the account holder closed the account after completion of the time period and he himself had informed the Head Office. So the embezzlement could not be deliberate and intentional. Further he had

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also deposited the entire amount with penalty, yet he was served the charge sheet.

4. Defending the action in the reply, the respondents have stated that the applicant had committed a grave misconduct. Reasonable opportunity of hearing was given to the applicant to defend himself. They have also justified the order passed by the disciplinary, appellate and revisional authorities. It was specifically denied that the amount received by the applicant from the depositor was not taken into account by inadvertent mistake and he himself had brought the error to the notice of the Head Office. It was submitted that there was a departmental machinery to carry out sample checks on quarterly basis by mail overseer paying visit to the branch post office; visit of the mail overseer as well as inspection cannot help if the GDS Branch Postmaster does not make entries in the office registers/records and RD journal. The applicant himself had not traced the mistake. In fact the pass book in question was sent to Head post office for closure and it was Narsinghpur Head Post Office staff which detected the irregularity. Thereafter the applicant had deposited Rs.50/-+50/- as installment along with penalty of Rs.68/- from his pocket, totaling Rs.168/-.

5. We have heard the parties and perused the records.

6. The arguments of the applicant are two fold. Firstly, that the mistake in not entering the two sums of Rs.50/- each in the recurring account in question was inadvertent or human error and, therefore, it was not a case of embezzlement of the amount. From the pleadings and records, it appears that the applicant had admitted that two amounts of Rs.50/- each were received by him from the account holder and the same were recorded in the pass book but were not entered in the official records and the money was not accounted for. The question whether the mistake of the applicant was bonafide or an inadvertent human error or it was a deliberate act of embezzlement was a question of fact and it could be decided on the basis of the evidence, which was produced and recorded during the enquiry. The

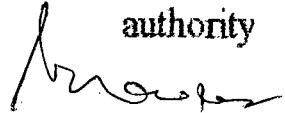
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finding, which has been recorded by the EO and the disciplinary authority in their orders that it is a case of embezzlement and a grave misconduct, has not been questioned before us on the ground that it was not based on evidence. The power of the Tribunal in judicial review in such matters is very limited.

7. It is now well settled by catena of judgments of the Hon'ble Supreme Court that the Tribunal in exercising the power of judicial review reviews the manner in which the decision has been arrived at and does not review the decision itself. The object of judicial review is to consider whether the delinquent has been given a fair hearing or not and not to decide that the decision of the administrative authority is necessarily correct in the eyes of the Court. The Tribunal does not act as an appellate authority and also does not appreciate or re-appreciate or consider the adequacy or inadequacy of evidence. The scope of the power of the Tribunal is very limited. It can interfere with the order of the disciplinary authority when the disciplinary proceedings and the order of the disciplinary authorities suffer from material irregularities which have resulted in serious prejudice to the delinquent in proving his defence in the case or when the order the disciplinary authority is based on no evidence or it may be called as perverse or where extraneous factors have been taken into consideration or the order has been passed on the dictats of the superior authorities (B.C.Chaturvedi Vs. Union of India) (1995) 6 SCC 749.)

8. Applying the above principles of law on the facts of the present case, we are unable to re-appreciate the evidence so as to reach a conclusion that the mistake in not taking the deposited amount in the official record/account was inadvertent and a human error. The argument of the learned counsel for the applicant, therefore, has no merit.

9. The second argument of the learned counsel for the applicant is that the penalty of removal from service imposed by the disciplinary authority and upheld by the superior authorities is grossly



disproportionate to the proven charge. It has been held in the case of B.C.Chaturvedi (supra) that the Tribunal cannot interfere with a penalty order unless the penalty imposed is shocking to the conscience and grossly disproportionate to the proven charge.

10. The applicant was working as Branch Postmaster and he was dealing with public money and was authorized to receive money from account holders. He was required to show highest degree of integrity in dealing with public money, as any irregularity would have discredited the postal services shaking the confidence of the public in the entire postal department. In a similar case of a bank employee, the Hon'ble Supreme Court in State Bank of India and another Vs. Bala Bagchi and Ors. (2005) 7 SCC 435 observed absence of any loss to the Bank was no defence. It was further observed:

“A bank officer is required to exercise highest standards of honesty and integrity. He deals with money of depositors and customers. Every officer/employee of the bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank.”

11. These observations will equally apply to postal employees as well when they discharge duties and functions akin to a bank employee as has happened in the present case.

12. In another case in Union Bank of India Vs.Vishnu Nobai (1998) 4 SCC 310 the Hon'ble Supreme Court upheld the dismissal from service of a bank employee, holding that the punishment was appropriate to the proven misconduct. The amount involved may be a small one and the applicant made good the loss and had deposited the amount with penalty. But, the fact remains that the applicant had defalcated the money, which was a grave and serious misconduct on the part of a Branch Postmaster who was entrusted with the duty of accepting money from accounts holders and which was to be accounted for in the official records.

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13. In view of the grave nature of the misconduct committed by the applicant, we do not find that the penalty of removal from service imposed on the applicant is shocking to the conscience of the Tribunal or is not commensurate with the charge, which has been proved against him.

14. For the reasons stated above, no interference is warranted in the impugned orders. OA is dismissed. Parties to bear their costs.

Girish
(Dr.G.C.Srivastava)
Vice Chairman

Mohammed
(M.A.Khan)
Vice Chairman

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पूर्णकल से ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अच्छे लिखत:-
 (1) संविध, उत्ता उपायामय नाम एसोसिएशन, जबलपुर
 (2) आवेदक वी/वीजनी/वु..... के काउंसल
 (3) प्रबन्धी वी/वीजनी/वु..... के काउंसल
 (4) चंथपाल, फोजां, जबलपुर ज्यावरीठ
 सूचना एवं आवश्यक कार्यालयी द्वारा

Roshni Shukla
Mr. Charyasoo
Dr. B.B.J.

Fazil
24.4.06