

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 21st day October, 2010

ORIGINAL APPLICATION No.411/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Desh Raj
s/o Shri Hardayal Ram,
Ex-GDS, Branch Post Master,
Moi Purani, Via Singhana,
Distt. Jhunjhunu,
r/o Village and Post Moi Purani,
Via Singhana,
Distt. Jhunjhunu (Raj.)

(By Advocate: None)

.. Applicant

Versus

1. Union of India
through the Secretary to the Government of India,
Department of Posts,
Ministry of Communications,
New Delhi.
2. Post Master General,
Rajasthan Western Region,
Jodhpur.
3. Superintendent of Post Offices,
Jhunjhunu Division,
Jhunjhunu.
4. Sub Divisional Inspector,
Khetri,
District Jhunjhunu.

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) by an appropriate order or directions the impugned orders dated 16.12.2005 as well as 31.7.2006 (Annex-A/1 & A/2) may kindly be quashed and set aside.
- ii) by an appropriate order or directions the respondents be directed by issuance of an appropriate order or direction to reinstate the humble applicant in service with all consequential benefits.
- iii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant looking to the facts and circumstances of the present case.
- iv) The Original Application may kindly be allowed throughout with costs.

2. Briefly stated, facts of the case are that the applicant while working as Gramin Dak Sevak Branch Post Master (GDSBPM), Moi Purani, via Singhana, District Jhunjhunu was issued a chargesheet under Rule 10 of the GDS (Conduct and Employment) Rules, 2001 vide memo dated 20.6.2005 which was delivered to the applicant on 22.6.2005. The said charge memo was issued on the basis of the complaint received from Smt. Sunita Devi, payee of money order on 18.8.2004. The matter was got enquired into from the Sub Divisional Inspector (Post) Khetri Nagar and he submitted preliminary enquiry report on 8.12.2004 in which it was reported that the applicant kept Rs. 9000/- in his pocket by making fake signature of Smt. Sunita Devi (Payee) and witness Shri Pratap Singh on the money order. The said signatures were made in three money orders amounting to Rs. 3000/- each shown to be paid on 30/31.3.2004.

15/16.4.2004 and 14/15.6.2004. The applicant has confessed in his statement dated 10.9.2004, 14.9.2004, 17.9.2004 and 18.5.2005 that by making fake signature of Smt. Sunita Devi he had taken the payment of Rs. 9000/- of the above three money orders for his personal needs and the misappropriated amount of Rs. 9000/- has been voluntarily credited by the applicant vide Singhana ACG-67 no. 77/14.9.04, 88/17.9.04 and 70/10.9.04 each of Rs. 3000/- by making an application in his own handwriting in the name of SPM Singhana. The applicant was put off from his duty on 6.6.2005 and a charge memo was also issued. The Enquiry Officer was appointed and ultimately charges against the applicant were held to be proved. Copy of the enquiry report was sent to the applicant on 21.1.2005 and applicant has submitted representation dated 1.12.2005 which was received on 5.12.2005. After careful consideration of representation and considering the facts of the case, the Disciplinary Authority decided the case of the applicant vide memo dated 16.12.2005 and penalty of removal from employment was awarded. The applicant preferred appeal against the order of punishment, which was also rejected by the Appellate Authority vide order dated 31.7.2006. It is these orders which are under challenge before this Tribunal.

3. The plea taken by the applicant in this case is that payment of money orders were made to Smt. Sunita Devi on the basis of the authority letter issued by Smt. Sunita Devi and payment was not made through open procedure. For that purpose, the applicant has placed reliance on the so called statement of Smt. Sunita Devi

which is in the handwriting of Smt. Sunita Devi. It is further averred that Smt. Sunita Devi has dis-owned her signature due to village politics. Another defence taken by the applicant is that he has credited the amount in UCR due to police threatening by SDI (P), Khetri Nagar.

4. Notice of this application was given to the respondents. The respondents have filed reply thereby justifying their action on the basis of the report submitted by the Enquiry Officer. It is stated that the charges against the applicant stand proved by the Enquiry Officer on the basis of prosecution witness and documentary evidence and the applicant was given full opportunity to defend his case. In the reply, the respondents have categorically stated that the applicant attended hearing on 19.7.2005 when proceedings before the Enquiry Officer were adjourned to 30.7.2005 so that he could nominate his defence assistant, which request of the applicant was acceded to by the Enquiry Officer. Further 5 days more time for allowing the applicant to engage defence assistant and to submit list of witnesses was also acceded to by the Enquiry Officer and thus, the applicant has also submitted list of 3 defence witnesses. The respondents have further stated ^{That} ~~next~~ date for examination of SW-5 and DW-5 were given for 29.8.2005 and 14.10.2005. The applicant was also examined on 22.10.2005. The applicant has also submitted written proof after conclusion of the evidence on 27.10.2005. Thus, according to the respondents there is no violation of principles of natural justice. According to the respondents, the defence taken by the applicant to the effect that

he has authority to receive payment is not acceptable in view of the statement of Smt. Sunita Devi dated 18.5.2005 whereby she has categorically stated that neither any authority letter was given to the applicant nor she has signed 3 receipts of payment of money order. The respondents have placed on record statement of Smt. Sunita Devi on record as Ann.R/1. The respondents have stated that if the applicant has so called authority letter then why he has not disclosed it in this first statement dated 10.9.2004 and why he has made fake signature of Smt. Sunita Devi payee of the money order and witness Shri Pratap Singh on the money orders paid vouchers. The respondents have also placed on record statement dated 10.9.2004 of the applicant on record as Rnn.R/2 and R/3.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

6. The respondent have also filed additional affidavit to the rejoinder filed by the applicant.

7. In this case none appeared on behalf of the applicant. When the matter was listed on 5.10.2010, this Tribunal has passed the following order:-

"It is a 2006 matter. None has appeared on behalf of the applicant.

Let the matter be listed for final hearing on 21.10.2010.

It is made clear that no adjournment will be granted on that date and the matter will be decided finally, even if, no appearance is made on behalf of the applicant."

Even today, none has appeared on behalf of the applicant, as such, we have proceeded to decide this matter on merit instead

of dismissing the same in default, in view of the provisions contained in Rule 15 of the CAT (Procedure) Rules, 1985.

8. We have heard the learned counsel for the respondents. From perusal of the findings recorded by the Enquiry Officer and the copy of the documents annexed with the reply, it is clear that charges against the applicant stood fully proved in view of the statement made by the complainant Smt. Sunita Devi dated 18.5.2005 (Ann.R/1) and the statement of the applicant dated 10.9.2004 (Ann.R/2), 18.5.2005 (Ann.R/6) coupled with the fact that the applicant has made fake signatures of Smt. Sunita Devi, payee and witness Shri Pratap Singh on the money order paid voucher Ann.R/3. As already stated above, this fact is clearly established from the statement made by the complainant dated 18.5.2005 (Ann.R/1) and also from the admission made by the applicant in his statement dated 10.9.2004 (Ann.R/2) and 18.5.2005 (Ann.R/6) and also from his application dated 10.9.2004, 14.9.2004 and 17.9.2004 addressed to Sub Postmaster, Singhana where he has admitted the fact that he has misappropriated the Govt. money for his personal needs. Thus, the defence taken by the applicant that he has withdrawn the said amount on the basis of the authority letter given by Smt. Sunita Devi cannot be accepted on the face of the aforesaid documentary evidence. Further, the applicant has also voluntarily credited the misappropriated money vide his application dated 10.9.2004, 14.9.2004 and 17.9.2004. The explanation of the applicant that he had encashed the money orders on the basis of the authority letter given by Smt. Sunita Devi, payee, in that

eventuality he has not explained why he has made fake signature of Smt. Sunita Devi and witness Shri Pratap Singh on the money order paid voucher. Thus, if the matter is seen in the light of the aforesaid documentary evidence, we are of the view that the findings recorded by the Enquiry Officer to the effect that charges stand proved and order passed by the Disciplinary Authority as well as by the Appellate Authority cannot be faulted. The vague explanation given by the applicant that such admission made by him under the threatening of the police, cannot be accepted.

9. The learned counsel for the respondents placed reliance upon the judgment of the Apex Court in the case of Damoh Panna Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain, AIR 2005 SC 584 and judgments of the Hon'ble Rajasthan High Court in DB Civil Writ Petition No.1329/2004, Mool chand vs UOI and DB Civil Writ Petition No.3150/200, Amar Singh vs. UOI to the effect the in such cases penalty of removal from service cannot be said to be harsh.

10. The law on this point is no longer res-integra. The Apèx Court in the case of Swadesh Pal Baliyan vs. Air Force Commanding-in-Chief, 2005 (1) SLJ 285 has held that unconditional admission can be relied upon and when one has admitted clearly no other proof is required. It was further held that in view of admission during the enquiry it is not necessary to examine in depth details the bald and vague allegations in the explanation submitted more than 4 ½ year later reiterating the confession and the appellant was held guilty of the charges.

Further, the Hon'ble High Court in the case of Rabindra Mohan vs. Union of Territory of Tripura, AIR 1961 Tripura 1 held that when the delinquent admitted the charges and did not want an enquiry it is not necessary under Article 311 of the Constitution or under the CCS (CCA) Rules to hold an enquiry.

Further, in the case of K.Ventateswarlu vs. Nagarjuna Grameena Bank, 1995 (6) SLR A.P. 223 the High Court held that imposition of penalty on the basis of admission of guilt in reply to the charge-sheet is valid and question of inducement and coercion arises only when the confession is made prior to the charge. It was also held that admission made in reply to the charge-sheet in his own handwriting and it must be treated as voluntary and uninfluenced.

11. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judi. Member

R/