

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 19th day of May, 2011

ORIGINAL APPLICATION NO. 449/2007

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Gajanand Sharma son of Shri Balabux Sharma by caste Sharma, aged about 34 years, resident of Village Newar, Via Banskho Tehsil, J.R. Garh, District Jaipur. Presently removed from Gramin Dak Sevak Branch PostMaster Newar, Post Office, Tehsil Janwaramgarh.

.....Applicant

(By Advocate: Mr. P.N. Jatti)

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Superintendent Post Offices, Jaipur Motussal Division, Shastri Nagar, Jaipur.

.....Respondents

(By Advocate: Mr. D.C. Sharma)

ORDER (ORAL)

Brief facts of the case are that the applicant while working as GDSBPM, Newar BO (Banskho) was served upon a charge sheet under Rule 10 of GDS (Conduct & Employee) Rule 2001 vide SPOs Jaipur Memo dated 01.10.2003 on the charge of misappropriation of a sum of Rs.2000/- by making forged payment of Raichur RS M.O. dated 28.05.2003 for Rs.2000/- on 07.06.2003. The applicant showed it as paid on 07.06.2003 by making forged signature of the payee and witness. Later on the misappropriation amount was voluntarily credited by the applicant at Banskho SO on 12.06.2003. Thus he was alleged



for violation of the provisions of Rule 109 of the BO Rules and Rule 21 of GDS (Conduct & Employee) Rules, 2001.

2. On denial of the charges by the applicant, the then ASP (HQ) Jaipur (Mfl) Division was appointed as Inquiry Officer to inquire into the charges leveled against the him. The Inquiry Officer conducted the inquiry as per the provisions of Rule 14 of the CCS (CCA) Rules, 1965 and submitted the inquiry report dated 31.03.2004 wherein the charges leveled against the applicant were found proved. Thereafter a copy of the said inquiry report was supplied to the applicant for his representation. The applicant preferred his representation dated 05.05.2004. The Disciplinary Authority considered the case on giving due consideration on the basis of relevant records, reports and evidences and decided it by imposing the penalty of removal from service vide Memo dated 30.06.2004.

3. The applicant preferred an appeal against this penalty order dated 05.10.2004 to DPS, which was rejected vide Memo dated 04.05.2005. Thereafter the applicant preferred Revision Petition dated 13.06.2005 to CPMG Rajasthan Circle, Jaipur, which was rejected vide Memo dated 11.12.2006.

4. Aggrieved and dissatisfied by the orders passed by the Disciplinary Authority, Appellate Authority and Revising Authority, the applicant preferred this OA after a lapse of more than 15 months. The main challenge of the applicant is on the ground that his statement dated 25.02.2004 (Annexure A/5) has not been properly considered and further his representation dated 05.05.2004 (Annexure A/6),



which is self explanatory, had also been ignored by the Disciplinary Authority.

5. Learned counsel for the applicant placed reliance on the judgment of the Madras Bench of the Tribunal in OA No. 860/1994 decided on 11.08.1997 in support of his submission that looking to the charges, quantum of punishment awarded by the Disciplinary Authority can be interfered by this Tribunal, if it shocks the conscience of the Tribunal [P. Manohar vs. Union of India & Another reported in October, 1998 Swamynews 65].

6. In support of his submission that the explanation submitted by the applicant has not been properly examined by the Inquiry Officer, learned counsel for the applicant also placed reliance on the judgment of the Administrative Tribunal (New Delhi) dated 21.01.1994 passed in OA No. 2168/1989 [Charanjit Singh Khurana vs. Union of India] reported in June, 1994 Swamynews 375. The Tribunal held that non consideration of explanation furnished against Inquiry report renders punishment order bad.

7. Learned counsel for the applicant also referred to Rule 15 (3) & (4) of the CCS (CCA) Rules, 1965, which reads as under:-

"(3) **Order of punishment is a judicial order.** - Departmental proceedings are not divisible. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant. Both the stages are judicial in nature. Consequently any action

decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment.

[Bachittar Singh v. State of Punjab, AIR 1963 SC 395]

(4) **Imperative to consider the statement of defence received after due date but before passing final order.** - The petitioner (delinquent) made a representation on the 19th June, 1976 seeking extension of time and the same was received by the authorities on 26th June, 1976. The request for extension of time was rejected on the 26th June, 1976. Be that as it may, the fact remains that the third respondent viz., the punishing authority did received the representation to the show cause notice well in advance before the impugned order was passed. Therefore, it was just and necessary for him to consider the representation and then pass appropriate orders. That apart, the Appellate Authority also did not consider the representation in spite of a ground being taken in the appeal memo that the third respondent has ignored the representation. It is needless to say that in any inquiry of this nature, the explanation submitted by the petitioner is very important and has to be necessarily considered by the concerned authorities. Under these circumstances, the impugned orders have to be quashed as prayed for, and the 3rd respondent directed to consider the representation submitted by the petitioner and then pass appropriate orders.

[K. Sadasivaiah vs. General Manager, Telecommunication, Hyderabad, 1978 SLJ 253]

8. After referring the aforesaid provisions, the Inquiry proceedings are not divisible. Consequently, any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority, who is empowered to impose the punishment. Further as per Rule 15(4) of the Rules, 1965, the explanation submitted by the petitioner is very important and has to be necessarily considered by the concerned authority.

9. Per contra, learned counsel for the respondents submitted that the explanation so submitted by the applicant has been thoroughly

considered. He referred to question no. 7 and in answer to question no. 7, he admits that he has not cross examined the person, SW-I, Shri Hazari Mal Meena and neither produced any documents in his defence. On the contrary, vide letter dated 12.06.2003 (Annexure R/2), he admitted the fact that he was in need of money as his children fell ill and under the compelling circumstances, he misappropriated the fund. Further learned counsel drawn our attention to Annexure R/3 wherein the applicant has shown his willingness to deposit the amount and the same amount of Rs.2000/- has been deposited by the applicant vide Annexure R/4. Again vide Annexure R/6, the applicant submitted that on account of mistake, the payment of Money Order has not been paid to Hazari Mal Meen whereas the payment has been shown to be paid to him on 07.06.2003 and in fact money was retained by him. Now he wants to deposit the same vide Annexure R/7. He deposited the same amount voluntarily. Thus the conduct of the applicant shows that he has misappropriated the fund by making false signature and admittedly, he behaved like of unbecoming a Government servant. Thus the penalty of removal from service has rightly been imposed by the Disciplinary Authority vide order dated 30.06.2004 (Annexure A/3) and the same has been rightly upheld by the Appellate Authority and Revising Authority vide orders dated 04.05.2005 and 11.12.2006 (Annexure A/2 and A/1 respectively).

10. We have heard the rival submission of the respective parties and perused the material available on record. It is an admitted case of the applicant that he has misappropriated the fund. It is evident by the statement of the applicant itself as person SW-I, he has cross examine

