

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI - 5.

ORIGINAL APPLICATION NO. 19794

MISQ PETITION NO. (IN O.A.)

REVIEW APPL. NO. (IN O.A.)

CONT. PETITION NO. (IN O.A.)

Smt. S. B. Deka

APPLICANT(S)

VRS.

Mo D. Son.

RESPONDENT(S)

Mr. G. K. Bhattacharyee

ADVOCATE FOR APPLICANT.

Mr. G. N. Das

Mr. B. Chakradarby

Mr. S. Ali Sidiq

ADVOCATE(S) FOR
RESPONDENTS.

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This application is in
form and within time.

C. F. of Rs. 50/-

deposited vide

IPO/BID No. 500941

Dated 4/10

5.10.94

Heard for admission. Having regard
to the circumstances inter-alia that the
applicant seems to have put in an
unblemished service of nearly eleven years,
that, she may have been mentally
disturbed at the time as it appears that
her husband had fallen in a river and
needed treatment and that she was
deprived of earning a livelihood having
lost the job, we gave a very detailed
consideration to the statements in the
petition and a patient hearing to the
learned counsel for the applicant. The
applicant was holding the post of Extra
Departmental Branch Post Master (EDBPM),
Titkuri Branch, at the material time. She
was, therefore, holding an important and
responsible post. During the annual
inspection of the Branch office, Titkuri,
on 23.3.1991, shortage in amount of
deposits and stamps and other irregular-
ties were noticed. The applicant was
thereupon put off duty with effect from
12.11.1991. A departmental enquiry was
thereafter held under the P & T (Conduct
and Service) Rules, 1964. She participated

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in that enquiry. The articles of charge listed were, shortage of cash and lapses to enter transactions of deposits in the prescribed journal, book of accounts and daily accounts on the respective dates of deposits. Applicant was, therefore, alleged to have contravened Rule 17 and Rules 131(3) and 174(2) of the P. & T EDA (Conduct and Service) Rules, 1964.

The applicant in her written statement although denied that she had committed misappropriation in respect of the deposited cash amount or had committed lapses in making proper entries admitted the fact that she was unable to produce the amount of Rs.2185.65 on 23.8.1991 and she purported to explain that due to unavoidable circumstances she could not produce and deposit the said amount in time but that part of the amount was deposited on the very next day, i.e. 24.8.1991, and further cash amount of Rs.400/- on 17.11.1991 and Rs.500/- on 15.11.1991. She denied any contravention of the rules as alleged.

The shortage was out of the amount of deposits made by the depositors.

Amount of Rs.1837.40 out of cash and stamp balances, ^{and} amount of Rs.900 out of the amount of deposits, totalling Rs.2185 had been temporarily misappropriated by the applicant and her written statement showed that these amounts were paid subsequently. The applicant participated in the enquiry. Considering the documentary and oral evidence and the written statement of the applicant, who did not adduce any evidence, the Enquiry

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	5.10.94	<p>Officer finding that the articles of charge were proved against the applicant. The Disciplinary Authority considered the representation of the applicant and had noted that no fresh arguments were submitted and after considering the material on record held that the applicant had misappropriated Government money for her personal use and imposed a penalty of removal from service with immediate effect, by order dated 11.3.1994. The Appellate Authority noted the arguments that were advanced before him on behalf of the applicant and on consideration of the material that came on record at the enquiry by a reasoned order held that the lapses of the applicant and violation of the rules is proved beyond doubt and is supported by documentary and oral evidence. He also held that the punishment imposed is commensurate with the gravity of the lapses. He, therefore, rejected the appeal. In the circumstances we can hardly find any illegality in the procedure followed at the enquiry and the punishment that is awarded.</p> <p>The learned counsel for the applicant submitted that in as much as the preliminary enquiry report on the basis of which the chargesheet was served on her was not produced in evidence nor a copy thereof was furnished to her the entire proceedings of the enquiry are rendered void ab initio. We find no merit in this submission. The applicant has not been held guilty on the basis of the charge memo. What she had to meet was the chargesheet and in that respect she was afforded full opportunity. On that ground, therefore, the enquiry cannot be held void.</p> <p style="text-align: right;">J.W.D.</p>

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It is next urged by the counsel that grave illegality has been committed by the enquiry officer by examining Bhadreswar Kalita, SDI(P), Rangia, who had conducted the annual inspection and had noticed the lapses of the applicant, although he was not cited in the list of witnesses. However, it is not the case of the applicant that she had not cross-examined the said witness.

Secondly, before the Disciplinary Authority such a grievance was not made nor before the Appellate Authority who had enumerated the grounds urged before him in the appeal. For the first time in para 7 of the application it is stated that great prejudice has been caused to the defence of the applicant as she could not prepare for the cross-examination effectively of this witness. It is not possible to accept this grievance at this belated stage as the final fact finding authority was the Appellate Authority and before him such contention was not raised. That apart, we do not find any illegality in the witness having been examined even though his name may not have been mentioned in the list of witnesses. That fact could assume importance only if the applicant was denied opportunity to cross-examine the witness.

The learned counsel next submitted that the punishment awarded to the applicant amounts to putting her to double jeopardy of recovery of the amount as well as suffer punishment. This submission, however, does not stand scrutiny. Reference is made to Rule 7(i)

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and Rule 7(ii) of the conduct and service rules mentioned earlier. These rules provide alternative punishments of recovery of the amount of shortfall and of removal from service. The submission that since the applicant had paid back the amount of shortfall cannot be understood to mean that there was recovery of that amount by way of punishment or penalty. The applicant seems to have voluntarily paid back the amount and there was no recovery as such of anything personally from her in addition thereto. It was open to the authorities to award punishment of removal in the facts and circumstances of the matter and in the light of the findings arrived at the enquiry.

Lastly, the learned counsel submitted that the punishment is disproportionate to the nature of the misconduct. The counsel reiterated that there was no intention on the part of the applicant to misappropriate the amount and owing to being caught in adverse circumstances there was some delay in regularising the deposits. This being a case of disciplinary enquiry for misconduct in the discharge of service the above aspect is not material. It has been rightly observed by the Appellate Authority that the aspect of proving criminal intention does not fall under the purview of enquiry. What is of primary consideration is the nature of misconduct and the question that has to be answered is whether such a person should be continued in the interest of public and

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the State, in a position of trust where public money is involved. The Disciplinary Authority has considered this aspect and has noted that the money deposited by the members of the public in good faith has been used by the applicant for personal use and this breach of trust had caused much embarrassment not only to the department but also to the members of the public as well as to the depositors of money in the Postoffice accounts who do so in good faith that their money would be safe. No fault could be found in this approach. The authorities had come to the conclusion that the applicant has failed to maintain absolute integrity and devotion to duty and has, therefore, contravened the rules of conduct. Such a person cannot be foisted upon the respondents by interfering with the order of punishment on sympathetic grounds. We do not think that the punishment awarded, although it may operate harshly upon the applicant, is disproportionate to the nature of the misconduct and hence we do not find any question involved which would require to be examined at the final hearing of the matter. We are not satisfied that the application deserves to be admitted. Consequently, the application is summarily rejected.

22.11.94
copy of order add.
5-10.94 issued to all
concerned by Regd.
Post ride @/no. 4802
to 4807 add. 25-11-94.

Subhendu
S. 10. 94
Vice-Chairman

Vice-Chairman

Member

5/10/99

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