

RB
20/11/94

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 198/94

Date of Admission: This the 7th Day of November 94.

Justice Shri M.G. Chaudhari, Vice-Chairman

Shri G.L. Sanglyine, Member (Administrative)

Shri Pradip Kumar Dutta

Son of Late Arun Chandra Dutta,

Aged about 31 years

Postal Assistant,

Khanapara Sub-Post Office,

Guwahati-22 ... Applicant.

-Versus-

Union of India & Ors. ... Respondents

Mr. G.K. Bhattacharyya with Mr.

G.N. Das and Mr. B. Chakraborty.

Advocates for applicant.

Mr. S. Ali, Sr. C.G.S.C.

Advocate for respondents.

O R D E R.

(For admission)

Mr. G.K. Bhattacharyya for the applicant.

The applicant who was posted as a full-fledged postal Assistant in charge of Khanapara Sub Post Office has been dismissed from service by order dated 3-6-92 pursuant to disciplinary proceedings held under Rule 15 CCS (CCA) Rules 1965. Against that order he preferred an appeal but prior to it being disposed of he approached this Tribunal in O.A. No. 97/93 challenging the dismissal order. The said O.A. was disposed of by this Tribunal by order dated 8-2-94. By that order the appellate authority was directed to take liberal and sympathetic attitude in the matter of imposition of penalty while considering grant of

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relief in the appeal and to dispose of the appeal within the period stipulated. The Director of Postal Services Assam Circle by a reasoned order dated 25-6-94,

✓ Annexure-VII, rejected the appeal. She maintained the penalty of dismissal imposed upon the applicant by the disciplinary authority holding that it is fully commensurate with the gravity of the lapses and that there is no scope to consider the appeal for reinstatement as prayed for by the appellant. The applicant has now once again approached the Tribunal by the instant application and prays that the original penalty order as well as the appellate order be quashed and set aside.

We have gone through the appellate order. Although the appellate authority was of the view that the appeal itself was barred by time but in due deference to the earlier order of the Tribunal she has considered the same on merits. After going through the appellate order we are satisfied that the appellate authority has examined the case with care and has applied her mind to all the relevant aspects.

In disciplinary matters the jurisdiction of the Tribunal is limited. The appellate order cannot be interfered with even if the Tribunal may view the evidence and the facts in a different light. The findings of the authority on facts and appreciation of the material would be conclusive unless it is shown that the orders suffer from illegality or that there has been non application of mind or that these are based on perverse reasoning.

Otherwise the matter should stand concluded. We find the impugned appellate order does not suffer from any

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of these infirmities and cannot be interfered with.

Mr. Bhattacharyya, learned counsel for the applicant, has vehemently argued that there is no charge of misappropriation of money levelled against the applicant and the charge was only relating to technical violation of the rules but both the authorities have assumed that applicant was guilty of misappropriation and have imposed the harsh penalty of dismissal from service and that is illegal. It is not possible to accept this submission because Article 1 of the charge is clear enough to impute such an intention. The relevant portion reads thus: -

"(He) did not make any entry of transaction in the CTD/RD Journals and also did not credit the deposit amount to the Government account....."

There can be misappropriation of money or temporary misappropriation. However its nature would be relevant for a criminal trial but the imputation made as above was clear as to the fact that the amount was not credited by the applicant and thus he had temporarily retained the amount illegally. That conduct surely was relevant for the purpose of the disciplinary action. The observation of the disciplinary authority in para 7 of the order dated 3-6-92 that "immediately started displaying corrupt attitude involving moral turpitude" and the observation of the appellate authority ~~nothing~~ ^{stating} that (he) "started displaying corrupt attitude displaying moral turpitude" have to be understood in the context of imputation contained in the charge and operate as conclusive findings based on facts implying that the conduct

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of the applicant involved moral turpitude rendering him unfit to remain in Government service though it may not amount to misappropriation in the technical sense. Admittedly the applicant had deposited on his own the amount covered by the article of charge. In his memorandum of appeal the applicant has stated that though in the charge, only sum of Rs. 12,050.00 was mentioned a total sum of Rs. 42 thousand was recovered from him for which he was given receipt. The very fact therefore, that the applicant chose to deposit such a big amount shows that he was not innocent in the matter. His statement that he was informed that if he deposited the amount in question and admitted the charge he would be leniently dealt with does not ~~inspire~~ ^{inspire} confidence. If he were innocent he would not have deposited the amount on his own. That obviously was done in desperation. We are ~~not~~ ^{therefore} impressed by the aforesaid submission of the learned counsel.

Mr. Bhattacharyya next submitted that the authorities have misconstrued the statement of the applicant as admission of the guilt. In his submission when the statement is read as a whole it only means that what the applicant admitted was certain lapses and technical mistakes and not appropriation of money intentionally and he has also offered the explanation that the lapses and mistakes were due to fault and lack of knowledge. The learned counsel therefore, submitted that there was no admission on which the punishment could be based or the penalty could be awarded within the ambit of Rule 14(5) of CCS(CCA) Rules 1965. He submitted that

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as the admission could not be acted upon it was incumbent upon the respondents to hold a full-fledged disciplinary enquiry affording an opportunity to the applicant to rebut the alleged charge. Since that is not done both the impugned orders are vitiated.

We find it difficult to agree with the above submissions of the learned counsel. The admission made by the applicant (Annexure III) on 8-7-90 reads as follows:

"I beg to state that the amounts quoted in your above quoted letter left uncredited by me to the Govt account due to fault of mine and beyond knowledge. Therefore, I admit the charges in full and I do not like hear (sic) the case is (sic) person."

Further in that statement he stated that the amounts have been deposited by him in full voluntarily and credited into account. The above quoted statement has been construed by both the authorities as admission of the charge. The statement falls in two parts. Firstly the applicant admits that he had retained the amounts with him and secondly he explains that it was due to fault of his and beyond knowledge. The fact therefore, that the amount was not credited into the Govt. account stands established. On the second part about lack of knowledge and fault we fully agree with the discussion on the point made by the appellate authority in her order. That discussion shows that apart from the applicant as a Government servant was expected to be conversant with the rules and procedure in discharging the day to day duties, he had also undergone prescribed training

extensively both in practical and theoretical training and after that he was placed in charge as a full-fledged Postal Assistant at different places. She has also noted that after the posting of the applicant as Postal Assistant he was given a full course on the various transactions of a Post Office both in theory and practice and that the fact that he worked earlier in three different post offices ^{being} ~~ignorant~~ disproved his claim of ~~views~~ ignorant of what happened.

Even if therefore, the entire statement is read as a whole it leads to the inevitable conclusion that the applicant had not credited the amounts. That is tantamount to serious misconduct for which the charge was framed and and it stands fully proved. As stated earlier the question of misappropriation in the strict sense of the term does not arise in this case.

Next, turning to the submission that a full fledged enquiry should have been held suffice it to note that in his statement Annexure III the applicant had clearly stated that he did not want any hearing. That question therefore, does not arise.

Thus there is no ground to require interference with the impugned orders.

Mr. Bhattacharyya, then submitted that the penalty of dismissal from service operates very harshly upon the applicant and as his misconduct did not involve misappropriation of money and having regard to his conduct of depositing the amount even before the articles of charge were framed it may be reduced. He points out that in the earlier order of this Tribunal it was clearly indicated

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that having regard to the conduct of the applicant the appellate authority was expected to take liberal and sympathetic attitude but that the appellate authority has not acted in consonance with those directions and has maintained the penalty of dismissal. All that we can say in respect of it is that if the appellate authority would have awarded a lesser penalty we would not have interfered with the same. However, it does not mean that if the authority had come to the conclusion on consideration of all the circumstances that the proper penalty was dismissal from service it would not be open to us to take a different view. In that connection the appellate authority has noted following circumstances:

- 1) The applicant was appointed on a compassionate ground,
- 2) Within a short time he started displaying attitude unbecoming of a Government servant.
- 3) Although he had credited the misappropriated amount voluntarily but that was after it was detected ^{and it} audit does not mitigate the seriousness of the fraudulent acts committed by him.
- 4) The conduct of the applicant displayed corrupt attitude displaying moral turpitude and lack of devotion to duties as required of Government servant.
- 5) The ground of ignorance or lack of knowledge is baseless.

It is cleared from the above conclusions that the appellate authority found that the penalty imposed was fully

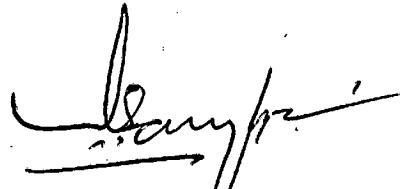
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commensurate with the gravity of the lapses and there was no scope to consider the prayer in the appeal.

After going through the record we do not find any good reason to interfere with the order of the appellate authority. The decision about the adequacy of penalty essentially rests with the authority concerned and as we are not satisfied that there exists any ground to hold that it has not been imposed in accordance with the law we are not inclined to interfere with the impugned orders. The applicant on his part when he was provided the job on a compassionate ground should have been more careful in his work and if he has now to face dire consequences he has to thank himself for the same and the authorities cannot be blamed for holding that he was no longer fit to continue as a Government Servant.

For the aforesaid reasons the application is summarily rejected.


(G.L. SANGLYNE)
MEMBER (ADMINISTRATIVE)


(M.G. CHAUDHARI)
VICE-CHAIRMAN

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