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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1110/2003

New Delhi this the 21st day of July, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

H.S. Agrawal,
presently posted as APM,
Ghaziabad Head Office,
Division Ghaziabad (UP)

-Applicant

(By Shri Ashok Kumar Sharma)

-Versus-

1. Government of India through
i. Secretary,
Department of Posts and Telegraphs,
at New Delhi.
2. Post Master General,
Office of the Post Master General Bareilly,
Region Bareilly (UP).
3. Director Postal Services Bareilly,
Region Bareilly (UP).
4. Inquiry Officer,
Shri Ved Prakash,
Dy. Superintendent of Post Office Ghaziabad,
Division Ghaziabad (UP).

-Respondents

(By Advocate Shri S.M. Arif)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns punishment order dated 22.11.2002, show cause notice of enhanced punishment dated 11.2.2003 and also the order passed by the revisional authority in review on 17.3.2003, imposing upon applicant a penalty of recovery of Rs.30,000/- and reduction in pay from Rs.7250/- to minimum at Rs.5000/- till retirement.

2. While working as Sub Post Master in Post Office at Sector 37, Noida, which comes under the Head Office at Ghaziabad, applicant was proceeded against for a major penalty under Rule 14 of the CCS (CCA) Rules, 1965 on the following allegations:

"Article-I

While working as SPM Sector-37 S.O., Shri H.S. Agrawal, on various dates during period 05-07-2000 to 28-10-2000, ordered the treasurers to remit cash as detailed in article 2 of annexure-II to Sector-12 S.O. Noida in connivance with S/Sri Maya Ram Bhatt, SPM and Sri Jamuna Prasad P.A. Sector-12 S.O. although Sector-37 was not authorised to function as cash office of Sector-12 S.O. Thus, it is alleged that by doing so the said Sri H.s. Agrawal has violated the provisions of Rule-7 of Postal Man. Vol.VI part-III and there by also violated the provisions of Rule-3 (1)(ii) & (iii) of C.C.S. Conduct Rules-1964, by failing to maintain devotion to his duty and acting in a manner unbecoming of a Govt. servant.

Article-II

While working as SPM Sector-37 S.O., shri H.S. Agrwal, during the period from 05-07-2000 to 28-10-2000, allowed the heavy cash remittances as detailed in Annexure-II charge without any written requisition/demand from SPM Sector-12, except on 25-10-2000. In this way, the said Sri H.S. Agrwal violated the provisions of Rule-7, read with Rule-16 of Postal man. Volume-VI Part-III. He is also alleged to have violated the provision of Rule 3 (1) (ii) & (iii) of CCS Conduct Rules, 1964, by failing to maintain full devotion to duty and action in a manner of unbecoming a Govt. servant.

Article-III

While working as SPM Sector-37 S.O., Sri H.S. Agrwal allowed the heavy remittances, as detailed in charge-3 of annexure-II, in one trip to Sri Jamuna Prasad P.A. Sector-12 S.O., although a Postal Assistant can be entrusted cash remittance upto Rs.50,000/- only, without escort. In this way, the said Sri H.s. Agrwal has violated the provisions of Rule-3 (i)(ii) & (iii) of CCS Conduct Rules, 1964, by not showing devotion to his duty and action in a manner unbecoming of a Govt. servant."

3. The Inquiry Officer (IO) held the charge proved after a detailed inquiry. On representation against inquiry report the disciplinary authority vide order dated 22.11.2002 imposed upon applicant a penalty of recovery of Rs.30,000/- to be recovered in five equal instalments.

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4. When applicant had made a representation for treatment of regularisation of suspension period vide OM dated 11.2.2003, as no appeal has been preferred against the order of punishment a show cause notice of enhanced penalty was issued by the Post Master General, enhancing the penalty from Rs.30,000/- to Rs.50,000/- and also reduction to the minimum of pay at Rs.5,000/-. This has been responded to and on confirmation of the punishment vide order dated 17.3.2003 present OA has been filed.

5. The first contention raised by the learned counsel for applicant is that under Rule 29 of the CCS (CCA) Rules, 1965 the power of revision on review in Postal Department is to be exercised under Rule 29 (1)(iii) by the Member (Personnel) of Postal Service Record. As the show cause notice of enhanced penalty has been issued by the PMG the punishment is without jurisdiction.

6. Respondents' counsel Sh. S.M. Arif vehemently opposed this plea and contended that the case of applicant is covered under Rule 29 (1)(iv) where being posted in the Department, Head of the Department is authorized to act as a revisional/reviewing authority.

7. On careful consideration of the rival contentions on this ground we are of the considered view that the order does not lack jurisdiction. Applicant who has been working in the Post Office, Head of the Department, i.e. , PMG is competent to issue show cause notice and enhance penalty. This ground fails.

8. Learned counsel further states by relying upon the decision of the Apex Court in **Govt. of A.P. v. Mohd. Ghouse**, 2001 (8) SCC 416 that as per Rule 14 of the Post Office Manual Vol. III under the sub heading of Accounts remittances are permissible to be exchanged between to SOs in the same Head Office. This practice has been consistently followed for number of years and cannot be disturbed and is a recognized practice.

9. On the other hand, respondents' counsel vehemently opposed this and according to him Rule 7 of the Manual clearly provides that a cash office is a SO which in addition to performance of duties also serves as a depot for cash. A SO may remit surplus cash direct to its office and also indent it on direct for funds upto the monthly limit fixed by the Superintendent. As applicant has exceeded the limit of remittance and the remittance is without any indent from SO 12, the same contravenes Rules and what has been stipulated as a condition precedent for treating a long practice admissible that it should not offend any rule. As such a practice is in contravention of Rule 7 of the Post Office Manual Vol.6, Part-III the plea of applicant cannot be countenanced.

10. Learned counsel for applicant further states that applicant has been discriminated in the matter of punishment as others involved have been let off with minor punishment.

11. In the matter of punishment though discrimination under Articles 14 and 16 is not permissible but sine qua non to this ground is that others are equally

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placed. As applicant was instrumental being SPM and was responsible for remittance the others who are not similarly circumstanced as the role attributed to applicant is different, being unequal applicant has not been meted out invidious discrimination.

12. It is trite law that in a disciplinary proceeding re-appraisal of evidence and sitting of the Tribunal as an appellate authority is not permissible. Learned counsel of applicant has miserably failed to point out any defect in the inquiry proceedings. We cannot re-appraise the evidence and substitute our own conclusions in place of what has been arrived at by the departmental authorities.

13. In so far as misconduct is concerned, we find that apart from one transaction the remittance has been done by applicant to SO Sector 12 without any indent from the concerned. This violates the rules. Statements of PWS clearly show that no indent was called for. Accordingly, the procedure adopted is in contravention of the provisions of Post Office Manual. Applicant if adopted necessary precaution and had sought permission of the head of the department or SSPO the Government would not have suffered a loss to the tune of more than one crore rupees. Although already taking a lenient view the disciplinary authority keeping in view the approaching retirement of applicant has imposed a very minor punishment. Moreover, in the matter of punishment, seeing the gravity of charge and the role played by applicant, our conscience has not been shocked to interfere in the matter of punishment.

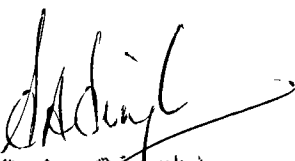
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14. The reasons arrived at to punish applicant is on a reasoned finding of IO, dealing with all the contentions of applicant. Mere reference to Rule 14 ibid has to be read in consonance with Rule 7 as well, certainly misconduct is made out and established against applicant. The orders passed by the disciplinary authority is reasoned dealing with the contention of applicant and on show cause notice and on accord of reasonable opportunity to applicant PMG has passed a reasoned order to enhance the penalty, which does not suffer from any legal infirmity.

15. No other legal and valid grounds have been taken to assail the impugned orders.

16. In the result, for the foregoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.


(S.A. Singh)
Member(A)

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(Shanker Raju)
Member (J)