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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

OA No.1628/2003

New Delhi this the 16th day of April, 2004.

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

Chandra Kishore S/o Sh. Shiv Charan Lal,  
R/o Opp. Gyan Guest House,  
Sasni Gate, Aligarh. -Applicant

(By Advocate Shri D.P. Sharma)

-Versus-

1. Union of India,  
through Secretary,  
Ministry of Communication,  
Department of Posts,  
Dak B hawan, Sansad Marg,  
New Delhi.
2. The Senior Supdt. Post Offices,  
Aligarh Division,  
Aligarh.
3. The Sub Divisional Inspector Post Office,  
East Sub Division Aligarh -Respondents

(By Advocate Shri M.M. Sudan)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Through this OA applicant challenges dismissal order dated 9.10.2002 as well as appellate order affirming the punishment dated 23.5.2003.

2. While working as EDA Packer in DS College sub Post Office, Aligarh, disciplinary proceedings were ordered on the ground that he made entries in SB account No.753760, which belong to one Gauri Shanker and withdrew an amount of Rs.60,000/-. As such he misappropriated government money showing his lack of integrity of unbecoming of government servant. In the details of the allegations it has been alleged as an entry to deposition of Rs.60,000/- was made in the ledger and applicant has retained the pass book. He called Sh. Gauri Shanker holder of the account and presented the withdrawal form before SPM Moti Lal. He also

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sought witness of SB-7 and accordingly, a payment of Rs.60,000/- was made but it was later on taken from the depositor. He is alleged to have defrauded the Post Office by erasing the entries so that no proof of payment remains as also was instrumental in removal of the form and interpolation of numerical from 0-8.

3. A preliminary enquiry was gone into the incident where statements of both Gauri Shanker and Moti Lal as well as applicant were recorded. In the statement of applicant it has been admitted that on 26.1.2002 he returned the amount of Rs.60,000/- to Moti Lal and this was confirmed by Moti Lal in his statement. Thereafter the witnesses were examined applicant had demanded five documents and submitted a list of 4 PWs. On submission of statement of defence enquiry officer (EO) held applicant guilty of the charge and on response to the enquiry report disciplinary authority (DA) imposed a punishment of dismissal, which was affirmed in appeal, giving rise to the present OA.

4. One of the grounds taken by applicant is of non evidence. According to him, the charges alleged against applicant are of forging the entries and retaining the amount. According to the learned counsel no evidence has come forth in support of the charge. As such the conclusions arrived at by the EO are based on suspicion and surmises, which cannot take the place of proof.

5. Learned counsel for applicant further referring to his application for documents and examination of defence witnesses made on 3.9.2002 contends that out of five documents two have been withheld by respondents as the

Presenting Officer denied those documents without following the laid down procedure under Rule 14 (11) of the CCS (CCA) Rules, 1965. He further assails that out of four defence witnesses only two have been examined. This, according to the learned counsel deprived an opportunity to applicant to rebut the charge.

6. Learned counsel further states that the amount allegedly misappropriated had already been credited on 26.1.2002 by Sh. Moti Lal, who was instrumental in implicating applicant who has no role to play in making the entries or withdrawal of amount. According to learned counsel in the enquiry report integrity of Moti Lal has also been shown to be doubtful. In this conspectus it is stated that decision of the respondents to dismiss him as affirmed in appeal is not sustainable in law.

7. On the other hand, respondents' counsel Sh. M.M. Sudan, vehemently opposed the contention. According to him pre-ponderance of probability is a rule in departmental enquiry. If there is some evidence this Court is precluded from reapprising the evidence or coming to a conclusion different from the disciplinary authority.

8. According to Sh. Sudan sufficient evidence has come from the circumstances as well, which, inter alia, include return of Rs.60,000/- by applicant, which conclusively points towards guilt of applicant. Moreover, by referring to the statement of Gauri Shanker it is stated that it has been established that the amount withdrawn has been retained by applicant.

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9. By referring to denial of documents it is stated that documents 1, 2, and 5 have been provided to applicant and inspection was carried out whereas documents 3 and 4 were not available. Applicant thereafter submitted his defence. In so far as defence witnesses are concerned, as for want of particulars these defence witnesses have not been brought and applicant has failed to name his defence witnesses and has himself accepted the decision and by his defence statement his earlier objection has no value and deemed to have been abandoned. In nut shell what has been stated is that as the enquiry has been proceeded in accordance with rules and the decision of the DA as well as appellate authority is by a reasoned order, dealing with the contentions of applicant.

10. Lastly, it is stated that on a corruption charge punishment imposed is proportionate.

11. On careful consideration of the rival contentions and in view of the settled principles of law as held by the Apex Court in Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 603 in a disciplinary proceeding the test is of a common reasonable prudent man. If the findings of the EO and punishment imposed rests upon no evidence and based<sup>h</sup> on surmises the same is amenable to judicial review. But if there is some evidence the matter would not be interfered with as the Tribunal is precluded from reapprising the evidence or taking a contrary view as taken<sup>h</sup> by the departmental authorities.



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12. We also find that circumstantial evidence is admissible in an enquiry unlike a criminal trial strict rules of evidence and the detailed procedure has no applicability in a quasi judicial proceeding. The only safeguard is that the enquiry is proceeded in consonance with the principles of natural justice and a reasonable opportunity should not be denied to the concerned.

13. In so far as the contention that documents 3 and 4 have not been made available the sine qua non for supply of documents is that the delinquent should state the relevancy of the documents required in his defence. If the document is available with the respondents only then it is to be delivered. This obligation has not been satisfied by applicant as we do not find any relevancy in his application. Moreover, it has not been established for want of these documents <sup>h</sup>any prejudice has been caused to applicant.

14. In so far as non-examination of defence witnesses is concerned, the witnesses whose names have been given by applicant have been called and duly examined. The EO has clearly rejected his plea of defence for want of name of defence witnesses and thereafter <sup>Applicant<sup>h</sup></sup> acceded to it and accepted the decision and submitted his defence for want of protest there is an <sup>h</sup>abandonment in this request of applicant, which cannot be attributed to respondents.

15. As regards no evidence and no misconduct alleged by applicant we find that pre-ponderance of probability is the rule in the disciplinary proceedings. In <sup>h</sup>order to bring within the ambit of no evidence it has to be

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established that no evidence pointing towards guilt of delinquent has been adduced in the enquiry. The allegations against applicant is that he forged the record with a view to misappropriate government money through Gauri Shanker. It has come in the evidence of Gauri Shanker that being an illiterate rickshaw puller applicant was managing his account book. On 29.6.2001 he was called by applicant to the Post Office with an information that Rs.60,000/- had been deposited by applicant in his account which were to be withdrawn. There was no occasion for the depositor to have come to the Post Office if applicant had not informed him of deposition of Rs.60,000/-. It is also not in dispute that this amount of Rs.60,000/- has not been deposited by the depositor Gauri Shanker. Witnessing the withdrawal and the evidence that applicant has himself taken the amount from Gauri Shanker and his subsequent statement on 8.6.2002 where he acknowledged on his own volition without any coercion with his free will that he returned this amount to Moti Lal on 26.1.2003 clearly points out that he was the only person interested in misappropriating this money. Otherwise there was no occasion for him to return the amount. This is a case where assuming that the forgery and other allegations are not substantiated, yet the fact that amount has been taken by applicant and his subsequent conduct of returning this amount clearly shows that he was instrumental in withdrawal of this amount, which he retained and misappropriated.

16. Taking test of a common reasonable prudent man this action of applicant clearly shows and points out towards his guilt of being instrumental in withdrawal of this amount and misappropriation. The findings of the

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disciplinary as well as appellate authorities and conclusions arrived at by the EO are rested on evidence and cannot be termed as perverse, based on suspicion, assumption or surmises.


17. We also do not find any procedural illegality or infirmity to vitiate the proceeding. Applicant has been accorded reasonable opportunity in consonance with the principles of natural justice.

18. At this stage, learned counsel for applicant states that on identical allegations criminal trial is going on against applicant. We observe that on conclusion of the trial the law shall take its own course.

19. In the result, finding no infirmity in the impugned orders OA is dismissed. No costs.

  
(S.A. Singh)  
Member (A)

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(Shanker Raju)  
Member (J)