

OA.No.170/01297/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01297/2018

DATED THIS THE 23RD DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Veeresh S. Sindagi,
S/o Shivanand Sindagi,
Aged 28 years,
Ex-GDS BPM, Soan BO,
a/w Jewargi SO 585 310
(now removed from service),
Residing at H.No. 13-36,
Durga Jail Road,
Bhavasara Nagar,
Vijayapur 586 101
(By Advocate Shri A.R. Holla)

..... Applicant

Vs.

1. Union of India,
By Secretary,
Department of Posts,
Dak Bhavan
New Delhi 110 001

2. The Director Postal Services,
The Postmaster General,
N.K. Region,
Bangalore 580 001

3. The Senior Superintendent of Post Offices,
Kalaburgi Division,
Kalaburgi 585 101

....Respondents

(By Shri K. Dilip Kumar, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The question in a nutshell which will arise is that, when the applicant handled the cases of 80 people who are illiterate and under a beneficial scheme of the government which will give them a pittance for continuing their livelihood, he did not give receipts. It has come out in evidence that out of this 80, only 3 depositors cases were taken up by the

respondents and in which they had come to the Court and stated that the passbook was in the custody of the applicant. So, they did not know anything about the entries he had made. But they admitted that at different points of time they had received some amounts. We note with some regret that the applicant has no case that he had in fact given to the depositors these receipts at the time of accepting the money from them. If he had a case that he had at least given those receipts, whether he had given the money or not, then there would have been some credence in it. Apparently at this point of time no new defence can be adduced nor it seems to be adduced also. The Inquiry Officer apparently went on an assumption that the evidence to be adduced and assessed is only the evidence of the parties who said that they have received some amounts. Whether these amounts tantamount to the whole of the amount to be paid or whether they have received it on the dates on which it was supposed to be received did not claim the attention of the Inquiry Officer. Even when the material witnesses, even though official, who had deposed on the statements given by the parties and explained it with the help of documentation and there was complete lack of cross examination and even the Inquiry Officer did not put in a clarification question to them but still these evidences which had been adduced by the respondents had not been taken into account by the Inquiry Officer in passing an order.

2. Therefore, we held a detailed examination of this and the dissenting note by the Disciplinary Authority with Shri A.R. Holla, learned counsel

appearing for the applicant. Even though we put questions on the various points raised by the Disciplinary Authority, we were unable to get any answers focusing on this. But at the same time Shri A.R. Holla relies on a judgment of the coordinate Bench in Bharat Singh Vs. Union of India in OA No. 2510/2006 dated 12.09.2007. Apparently it is held in this decision that when expert evidence is to be assessed there is a need for everything to be sent to handwriting expert otherwise the issues will be clouded and remain to be clouded. Thereafter the Bench goes on to determine what is the reasonable opportunity. It would say that under Article 311 of the Constitution of India if no reasonable opportunity is granted it will vitiate the entire process. We have no dispute with both these propositions. Shri A.R. Holla would say that the third one relating to the confession is most important. The Bench decided this matter by saying that confession cannot be accepted. We have some dispute with this. The Hon'ble Apex Court in many a case stated very clearly that if a confession statement made is not retracted within a reasonable time, the reasonable time being understood in the conspectus of diminishment of the compulsions on him, if at all the case of the applicant is that on the compulsion of the inspecting officer he had given those confessions, as soon as he is relieved of this pressure, that is, in any case, within a few days he could have retracted that statement. But in this case as Shri A.R. Holla, learned counsel for the applicant, points out when he himself was examined he stated that these statements are retracted. Such retraction may not have value in the absence of any

corroborative evidence. The corroborative evidence can be furnished by him by referring to the 80 receipts which he ought to have given and taken a contention in defence that he had given it and produced it. This he could have easily done as, if receipts are given, he could have called for the said receipts from the custody of the department itself and asked them to produce it. There is not even a whisper of the suggestion that he has asked the respondents to produce such a document if it is in their possession. Therefore, when a person who is the custodian of a document or a person who could have called for such a document in defence of the contention he has taken fails to do so, then an estoppel arises against him. He cannot contend otherwise and the burden of evidence cast upon him is therefore satisfied and hence we have to hold that this decision will not have any bearing on the case at hand as the applicant has no case at any time that factually the charge is incorrect. Therefore, we hold that the dissent note put up by the Disciplinary Authority seems to be correct and the answer given by the applicant to the dissent note does not inspire confidence and having found that reasonable and more opportunity had been given to the applicant to defend himself and he having not taken the correct contentions in accordance with truth if truth is to be his assistant in this matter and having not availed of opportunities of corroboration of the statement he had given at the time of enquiry, we hold that the stand taken by the Disciplinary Authority is correct.

3. At this point of time Shri A.R. Holla points out one matter again that even the charge is that the applicant had not given the receipts for having received money. The case of the applicant as recorded by the Inquiry Officer seems to be that there is no evidence that the applicant had received this money. But then PW6 and other witnesses have stated in Court, and that too without any cross examination on this point, that they have received some amount from the applicant. It cannot be surmised that applicant will dole out money from his own pocket for the welfare of these people. This contention also will not lie.

4. The OA is dismissed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01297/2018

Annexure A1: Copy of the memo dated 29.01.2015

Annexure A2: Copy of the Inquiry Report dated 30.01.2017

Annexure A3: Copy of the memorandum dated 21.01.2017

Annexure A4: Copy of the order dated 31.07.2017

Annexure A5: Copy of the applicant's appeal dated 12.09.2017

Annexure A6: Copy of the order dated 22.01.2018

Annexures referred in reply

Annexure R1: Copy of the extract of Rule 14 Procedure for imposing major penalties

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