

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4548 OF 2016

Nitin s/o Dhondabaji Bhusari, Subhash Nagar, Nagpur

-vs-

The Union of India, Thr. Secretary, Dept. of Posts, Ministry of Communications,
Parliament Street, New Delhi and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. M. Sudame, Advocate for petitioner.
Shri S. S. Doifode, AGP for respondent No.1.

**CORAM : B.P.DHARMADHIKARI &
A.S.CHANDURKAR, JJ.**

DATE : AUGUST 29, 2016

The petitioner, an employee (Postman) who has worked for about ten years has questioned the order of his dismissal after departmental enquiry dated 19/04/2015. Review has been preferred belatedly and hence Reviewing Authority did not condone the delay and rejected the review on 19/02/2009. O.A. No.2066/2010 was then filed before the Central Administrative Tribunal and on 19/04/2015 it found no substance in it.

In this background Advocate Shri M.M. Sudame submits that review has been dismissed without any application of mind though law contemplates its adjudication as an appeal. He further adds that charge of absence or

overstay was not so serious and the alleged misappropriation is also not proved to be intentional one. In entire career of ten years, only three money orders were inadvertently delivered to wrong persons and after realizing an error, the petitioner has deposited back the amount. As such there was no intention of misappropriation.

With his assistance we have perused the papers. Reason given in order dated 19/02/2009 refusing review is that petitioner did not prefer appeal within statutory time. The reason of loss of mental equilibrium pressed into service in explaining delay for more than three years was not substantiated as no medical papers were produced along with such application. The consideration of reviewing authority therefore cannot be said to be perverse or erroneous.

The charge against the petitioner was of misappropriation. The fact that he had received the money orders and amount thereof is not in dispute. His defence is that inadvertently he delivered the amount thereof to wrong persons. Effort is to show that there was case of mistaken identity.

In the wake of this defence burden was on the petitioner to establish it. The petitioner has not examined any of those three persons to show that it was a case of mistaken identity. No evidence also has been led to point out

why there was any scope for such mistake.

In this situation though the burden shifted on petitioner and the petitioner has not discharged that, consideration on merits in the impugned order cannot be faulted with.

No case is made out for exercise of extraordinary writ jurisdiction. Writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

-: C E R T I F I C A T E :-

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