

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:BILASPUR



Original Application No.203/00085/2015

Jabalpur, this Tuesday, the 23rd day of June, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Brahmanand Nirmalkar
 S/o Late Siyaram Nirmalkar
 Aged about 49 years,
 Ex. GDS Branch Post Messenger
 & Acting Branch Post Master at
 Kosmi (Chhura) District: Raipur (CG) -Applicant

(By Advocate –**Shri B.P. Rao**)

V e r s u s

1. Union of India
 Through the Secretary
 Ministry of Communication
 Department of Posts, Dak Bhawan,
 New Delhi 110001

2. The Director Postal Services
 Chhattisgarh Circle,
 CPMG Office M.G. Road,
 Raipur 492001 (CG)
 (Appellate authority)

3. The Sr. Supdt. Of Post Offices
 Raipur Division
 Raipur 492009 (CG)

- **Respondents**

(By Advocate –**Shri Vivek Verma**)
(Date of reserving the order: 03.04.2019)

O R D E R

By Ramesh Singh Thakur, JM:-



Through this Original Application applicant is challenging the punishment order dated 24.02.2014 (Annexure A-7) whereby he was removed from engagement/service and appellate authority order dated 15.12.2014 (Annexure A-10) whereby his appeal was rejected.

2. The applicant has prayed for the following reliefs:-

“8.1 That, the Hon’ble Tribunal be pleased to allow the O.A. and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant’s grievance.

8.2 That, the Hon’ble Tribunal be pleased to quash and set aside the Punishment order dated 24.2.2014 (Annexure A-7), Appellate Authority order dated 15.12.2014 (Annexure A-10) in the interest of justice.

8.3 That, the Hon’ble Tribunal be pleased to pass an Order, directing the Respondents to reinstate the Applicant back in service with all consequential benefits.”

3. The brief facts of the case are that the applicant while working as Gramin Dak Sevak Post Messenger at Seoni (Chhura) and was instructed verbally to take additional charge of GDS-Branch Post Master at Kosmi (Chhura) Post Office of Raipur Division. The applicant worked from 07.09.1984 till 19.10.2020. On 01.08.2011 without disclosing any reasons, the applicant was instructed to deposit Rs.14269.40 in the respondents’ account



ACG-67 as shortfall on his part with Government Account otherwise he will lose his service. The applicant deposited the same vide Receipt No.95 dated 01.08.2011 (Annexure A/1). The respondents treated the applicant as absent from 19.10.2010 and placed him under Put-off on 03.08.2011 vide order dated 03.08.2011. A copy of the same is as Annexure A-2. After a year charge sheet has been issued to the applicant vide memorandum dated 23.08.2012 alleging that applicant remained absent w.e.f.19.10.2010 without taking permission from the competent authority. Applicant retained Post Office balance amount of Rs.14269.40 with him which has been rectified from adjustment from the amount debited to unclassified account on 27.07.2011. The applicant has adjusted the said loss on 01.08.2011, thus he misappropriated the Government amount apart from remaining unauthorized absent from duties. A copy of charge sheet dated 23.08.2012 is annexed as Annexure A-3. Applicant denied the charges vide his representation dated 27.08.2012. The disciplinary authority appointed Shri J.S. Pardhi as enquiry officer and Shri N.K. Rajpal as presenting officer to conduct the departmental enquiry against the applicant on the said charge sheet. On account of transfer of inquiry officer Shri Sourabh Kumar Assati has been nominated as enquiry officer. The inquiry officer commenced the



enquiry w.e.f.30.09.2013 (Annexure A-4) and during the disciplinary enquiry, the applicant's application dated 26.01.2013 by which he has requested 6 relevant documents for his defense, have been taken on record. Out of those requested documents the enquiry officer has allowed only two documents. During the enquiry prosecution documents were relied and prosecution witnesses were examined. The enquiry officer submitted its report dated 15.01.2014 to the disciplinary authority holding alleged charges stood proved against the applicant. The report was communicated to the applicant on 20.01.2014. Applicant submitted his representation on 05.02.2014. The disciplinary authority vide memorandum dated 24.02.2014 imposed the punishment of removal from engagement on the applicant. A copy of representation and punishment order are annexed at Annexure A-6 and A-7. The applicant submitted statutory appeal on 05.03.2014 before the appellate authority. On non receipt of any response the applicant filed Original Application No.203/895/2014 before this Tribunal which was disposed of vide order dated 18.11.2014 with a direction to the respondents to decide the statutory appeal of the applicant. The appellate authority rejected the said appeal vide order dated 15.12.2014. Hence, this Original Application.



4. The respondents have filed their reply wherein the preliminary objection raised by the respondents that the applicant has not exhausted its remedy available under Rule 29 as a revision against the appeal passed by the appellate authority and has directed preferred this Original Application under Section 19 of the Administrative Tribunal Act, 1985. Section 20 of the Administrative Tribunal Act, 1985 states that application not to be admitted unless other remedies exhausted. In the preliminary submission of the respondents it has been stated that the applicant was posted as GDS MC/DA Siwani from 04.09.1984 and worked as a officiated GDS Branch Post Master (Chhura) from 09.06.2010. The applicant while working as a GDBPM Kosmi (Chhura), he was unauthorized absent from duty from 19.10.2010 and kept the government money amount of Rs.14269.40. The applicant was instructed to deposit the amount but he has not deposited and on 01.08.2011 he deposited the said amount. The applicant was placed under put-off vide order dated 03.08.2011 issued by Senior Superintendent Post Office, Raipur Division. Subsequently the charge was issued against the applicant vide order dated 23.08.2012 as per the provisions and rules. The applicant denied all the charges and submitted representation to Senior Superintendent Post Office Raipur Division Raipur. The department enquiry



initiated against the applicant as per the provision and departmental rule. After completion of the departmental enquiry copy of order dated 15.01.2014 has been sent to the applicant on 20.01.2014 for seeking explanation. On receipt of explanation the competent authority has imposed the punishment of 'Removal from Engagement on 24.02.2014. The applicant preferred appeal which was rejected vide order dated 05.03.2014. Respondents submitted that the applicant has already been accepted his offence in his written statement dated 28.07.2011 and the same was proved during the departmental enquiry. Thus, action of disciplinary authority was just and fair.

5. The applicant has filed the rejoinder to the reply filed by the respondents and it has been submitted by the applicant that the revision under Rule 29 of Gramin Dak Sevak is not acceptable because after punishment order, the applicant exhausted statutory remedy of appeal and in the instant Original Application applicant is challenging the disciplinary authority and appellate authority order and therefore not availing the departmental remedy of revision is not a ground of dismissing the O.A. For rest of the contents put forth by the respondents, the applicant has reiterated its earlier stand taken in the O.A.

6. Heard the learned counsel for both the parties and perused the documents attached with the pleadings.



7. From the pleadings the admitted facts are that the applicant was working as Gramin Dak Sevak Post Messenger at Seoni (Chhura) and was instructed verbally to take additional charge of GDS-Branch Post Master at Kosmi (Chhura) Post Office of Raipur Division. On 01.08.2011 without disclosing any reasons, the applicant was instructed to deposit Rs.14269.40 in the respondents' account as shortfall on his part with Government Account otherwise he will lose his service. The applicant deposited the same on 01.08.2011 (Annexure A/1). The respondents treated the applicant as absent from 19.10.2010 and placed him under Put-off on 03.08.2011 vide order dated 03.08.2011 (Annexure A-2). A charge sheet was issued to the applicant vide memorandum dated 23.08.2012 alleging that applicant remained absent w.e.f.19.10.2010 without taking permission from the competent authority. Applicant retained Post Office balance amount of Rs.14269.40 with him which has been rectified from adjustment from the amount debited to unclassified account on 27.07.2011 and the said loss has been adjusted on 01.08.2011, thus he misappropriated the Government amount apart from remaining unauthorized absent from duties. A charge sheet was issued vide



memo dated 23.08.2012 (Annexure A-3). Inquiry was conducted and report was submitted on 15.01.2014 to the disciplinary authority holding alleged charges stood proved against the applicant. The disciplinary authority vide memorandum dated 24.02.2014 imposed the punishment of removal from engagement on the applicant. The applicant submitted statutory appeal on 05.03.2014 before the appellate authority and ultimately the appellate authority has rejected the appeal on 15.12.2014.

8. The main arguments on the part of the respondents is that the applicant has not exhausted the statutory remedy available under Rule 19 of the Gramin Dak Sevaks (Conduct and Employment) Rules, 2011 (hereinafter referred to as '**GDS Rules, 2011**') as a revision against the appeal passed by the appellate authority and has directly preferred this Original Application under Section 19 of the Administrative Tribunal Act, 1985 and Section 20 of the said Act which states that application not to be admitted unless other remedies are exhausted.

9. From the specific objections taken by the respondents and because the specific provision under Rule 19 of the GDS Rules, 2011 is applicable to the applicant, the revision petition is maintainable under Revisionary Authority of the respondents. In view of the Section 20 of the Administrative Tribunal Act, this

application is not maintainable at this stage as the applicant has not exhausted the statutory remedy available under the Rule.



10. Resultantly, this Original Application is dismissed as not maintainable. However, the applicant is at liberty to file a revision petition before the competent authority within a period of one month from the date of receiving the copy of this order and the respondents shall not take the objection regarding the limitation for filing the revision. The respondents are directed to decide the revision petition within a period of four weeks thereafter. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

kc

(Navin Tandon)
Administrative Member