

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00162/2013

Reserved on : 18.02.2020

Jodhpur, this the 4th March, 2020

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Bhanwani Shankar S/o Shri Shrawan Lal, aged about 29 years, R/o Vill – Genana, via – Rataru, District- Nagaur. (Office Address:- Worked as GDSBPM at Khamiyad post office, Postal Department).

.....Applicant

By Advocate : Mr S.P. Singh.

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Director, Postal Services, O/o Postmaster General, Western Region, Jodhpur.
3. Superintendent of Post Offices, Nagaur Division, Nagaur.
4. Asst. Superintendent of Post Offices, Nagaur – 341001, Rajasthan.
5. Inspector of Post, Didwana Sub-Division, Didwana – 341 303.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- a. That by writ order or direction the impugned order Memo No. A/2-1/2012 (Annexure-A/1) and impugned order F 17-1/2009 dated 28.01.2013 (Annexure – A/2) may kindly be declared unjust, illegal and deserves to be quashed and set aside.
- b. That by writ order or direction the respondents may kindly be directed to reinstate the applicant into service with all consequential benefits.
- c. That by writ order or direction the respondents may kindly be directed to refund the amount which has been deposited by applicant in UCP.
- d. That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- e. That the costs of this application may be awarded to the applicant.

2. Brief facts of the case, as stated by the applicant, are that the applicant while posted as GDS BPM at Khamiyad (Ratau) Post Office – Naguar was issued charge sheet under Rule 10 of GDS (Conduct & Engagement) Rules, 2001 for alleged irregularities observed. Three article of charges were imputed against the applicant vide Memo dated 18.01.2010 (Annex. A/3). First article of charge against the applicant was that when Mail Overseer Shri Gulab Singh visited on 15.04.2009, the applicant was found to be short of cash for Rs 6010.25 in the said post office. Second article of charge against the applicant was pertaining to misappropriation of Money Order amounting to Rs

3000/- and the third article of charge against the applicant was pertaining to an amount of Rs 4,000/- which was not deposited in the account holders accounts and the said amount was misappropriated by the applicant. After imputation of charges, an inquiry was conducted against the applicant and Inquiry Officer submitted its report to disciplinary authority vide letter dated 23.07.2012 (Annex. A/4) and disciplinary authority sought representation from the applicant within 10 days. The applicant represented against the same on 20.08.2012. The disciplinary authority after considering representation of the applicant and inquiry report found first and second charge against the applicant proved and found third charge not proved. The disciplinary authority vide order dated 13.09.2012 (Annex. A/1) imposed penalty of removal from service on the applicant. The applicant filed appeal dated 03.10.2012 before the appellate authority against the order of disciplinary authority but the appellate authority did not interfere in the penalty order passed by disciplinary authority and rather confirmed the penalty of removal from service imposed by disciplinary authority. It is the grievance of the applicant that respondents did not comply with the mandatory provisions laid down under Rule-217 of P&T Vo. I which clearly states that the competent authority while coming to the conclusion pertaining to the amount which is short, has to prepare an inventory in presence of two witnesses (Annex. A/5). It is also the contention of the applicant that Inquiry Officer had mentioned in inquiry report at para 3 that documents in accordance with Rule 131, 173 & 175 of P&T Rules were neither submitted nor shown to the applicant. There were several irregularities committed by the Inquiry Officer in conducting inquiry. It is also stated by the applicant that the disciplinary authority did not comply with the mandatory provisions as laid

down under Chapter 4 of P&T Vol. 2 and Rule 17 of P&T Vol. V. He also pointed out that the Appellate Authority without going into details towards the appeal filed by the applicant in a whimsical and arbitrary manner passed the appellate order. It is also the grievance of the applicant that the Appellate Authority of the applicant is DPS but in the present case, the appellate order has been passed by SPO who is not competent authority. As per Rule 5 of GDS (Conduct & Employment) Rules, 2001, it is very clear that the order of removal from service can only be passed by the recruiting/appointing authority but in the present case, the subordinate of SPO has passed the punishment order. Therefore, it is the prayer of the applicant that impugned orders are unjust, illegal and deserves to be quashed and set aside. The respondents be immediately directed to reinstate the applicant with consequential benefits.

3. The respondents after issuance of notice have filed reply stating therein that the applicant while working as GDS BPM has misappropriated an amount of Rs 6010/- by keeping the said cash short and by not accounting for the deposits in RD accounts. He also misappropriated a sum of Rs 3000/- in a fraudulent manner. He had also misappropriated a sum of Rs 13010.25 which was subsequently credited in UCR with penal interest of Rs 1453/-. A charge sheet was issued to the applicant on 18.01.2010 wherein the applicant denied the charges and accordingly inquiry was conducted. Since the charges were almost proved in the inquiry, the Disciplinary Authority, i.e. SDI (P) Didwana awarded the penalty of removal from service vide memo dated 13.10.2012. Aggrieved by the said order, the applicant preferred an appeal before the SPO Nagaur who rejected the same vide order dated 28.01.2013. It is the submission of the respondents that the applicant himself vide his

letter dated 20.04.2009 accepted that amount of cash shortage of Rs 5224/- and cash received from sale of MO was used by the applicant himself for his personal use. Also, there are letters dated 11.06.2009 and 04.09.2009 written by the applicant about crediting the said amount voluntarily to the tune of Rs 10,000/- and Rs 3011/- in the Government Account at Didwana HPO. The respondents stated that the applicant himself had accepted the charges and had also accepted that he made a fake thumb impression of his own hand and did the signature of the witness and not made the said payment to Smt. Manohar Kanwar and utilized the amount. After period of 3 months, he paid the said amount to the daughter of Smt. Manohar Kanwar. Also as per statement of the applicant dated 20.04.2009, it is clear that applicant had himself admitted his guilt. Ample opportunities were given to the applicant for his defence in the inquiry. The inquiry was conducted as per rules and no procedure was violated. Disciplinary Authority after going through the inquiry proceedings passed the order of removal from service. Thereafter, the Appellate Authority has considered the appeal of the applicant dated 03.10.2012 and has taken into consideration each and every aspect/points raised in the appeal by the applicant. Finally, the Appellate Authority after considering each point raised by the applicant confirmed the punishment awarded to the applicant by order dated 28.01.2013. Since the Appellate Authority of the applicant is SPO Nagaur, therefore, appellate order has rightly been passed by SPO Nagaur. Thus, respondents averred that ample opportunities were given to the applicant for his defence during inquiry proceedings and after considering all the material available on record and statement of the applicant, witnesses and considering all the documents, the authorities have passed appropriate orders as per rules.

Respondents, therefore, stated that no interference is required to be accorded in the present case.

4. Heard counsels for both the parties.

5. It is the case of the applicant that there were several violations of rules during inquiry proceedings and respondents have failed to conduct inquiry as required under Rule 217 of P&T Vol. Also, the respondents have not provided documents to the applicant which he had asked for pertaining to misappropriation of the amounts. Fair procedure was not adopted in the inquiry; therefore, charges levelled against the applicant are not justified. It is also the grievance of the applicant that conduct of the applicant was required to be seen as he himself deposited the amount immediately. Also, the mandatory provisions of P&T Vol. II and P&T Vo. V were not adopted. The inquiry Officer in his report dated 16.06.2012 has clearly disclosed that two charges are not proved and inspite of the same, the Disciplinary Authority has passed order of removal from service which is not sustainable in the eyes of law. Hence, penalty order passed by the Disciplinary Authority as well as appellate order confirming the penalty of removal from service deserves to be quashed and respondents be directed to reinstate the applicant forthwith.

6. On the other hand, it is stated by the respondents that there is no violation of any procedure during inquiry proceedings and no documentary evidence has been produced by the applicant that he demanded certain documents during inquiry proceedings which has not been provided to him. Merely stating that the Inquiry Officer has not followed rules is improper. There are several statements made by the applicant himself that he is guilty of offence and some letters have also been produced

during inquiry proceedings pertaining to the deposition of certain amount with penal interest by the applicant which was misappropriated. There is no violation of principles of natural justice as all the opportunities were provided to the applicant during inquiry. The competent authorities have passed the order with proper justifications after going through the documents, evidences and material available on record. Respondents, therefore, stated that the punishment of removal from service in case of the applicant is justified and cannot be said to be disproportionate after seeing the conduct of the applicant wherein he has misappropriated public money.

7. We have considered rival contentions of the parties and perused the record.

8. On going through the pleadings and documents annexed, it is clear that the applicant while working as GDS BPM Khamiyad (Ratau) Post Office – Naguar had found to be misappropriating public money during visit of Mail Overseer and was accordingly served charge sheet dated 18.01.2010 (Annex. A/3) imputing three article of charges against him. Two charges against the applicant were found to be proved and one charge was not proved. Inquiry proceedings were conducted as per the rules and opportunities were granted to the applicant. The applicant has not produced any documentary evidence suggesting that any rule has been violated during conduct of the inquiry nor he has produced any letter or document suggesting that he has asked for documents which were denied to him during conduct of inquiry. From the inquiry report, it is clear that the applicant had not raised any such grievance to the Inquiry Officer at relevant time. The Disciplinary Authority after going through the material available on record and considering inquiry report

passed penalty order of removal from service as two charges of misappropriation of money has been proved against the applicant. Thereafter, appeal against the same has also been decided by Appellate Authority, i.e. SPO Nagaur being Appellate Authority, by a speaking order. The applicant has failed to show violation of any laid down procedure and merely stating that procedures have been violated does not help his case as new grounds have been prepared by the applicant in the present OA other than raised before the Inquiry Officer, Disciplinary Authority and Appellate Authority. Such grounds have never been raised before these authorities during course of the inquiry proceedings at relevant times.

9. The applicant himself vide letter dated 11.06.2009 (Annex. R/1) and 20.04.2009 (Annex. R/2) admitted his guilt pertaining to fraudulently drawing the M.O. and taking the said money in his personal use. He also admitted about deposit of Rs 10,000/- in government account voluntarily towards misappropriation. These facts goes to show that the applicant had indeed misappropriated public money while working in a public utility service department and this act of the applicant brings poor picture of the department in front of the public. Therefore, the authorities have rightly imposed penalty of removal from service on the applicant. It is clear that where charges of serious nature are proved, court cannot interfere with the quantum of punishment awarded merely on the ground of sympathy and mercy and such punishment cannot be reduced. Interference from the court is warranted when there is no material available for the findings arrived at by the Inquiry Officer or no reasonable person can reach to such conclusion on material available on record. It is not the case of the applicant in the present matter. Hence, no interference is required from this

Tribunal in the impugned orders passed by the Disciplinary Authority and confirmed by the Appellate Authority.

10. In view of the discussions hereinabove made, impugned orders dated 13.09.2012 (Annex. A/1) and 28.01.2013 (Annex. A/3) is just, proper and legal one and needs no interference from this Tribunal. Accordingly, present OA is dismissed being devoid of merits with no order as to costs.

**[Archana Nigam]
Administrative Member**

**[Hina P. Shah]
Judicial Member**

Ss/-