Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.203/00084/2015

Jabalpur, this Thursday, the 09th day of July, 2020

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

Hanuman Singh Dhruw
S/o Kacharu Ram
Aged about 46 years,
Ex. GDS-Branch Post Master
Bitkuli Post Office (Bhatpara) 493118
Tehsil: Bilaigarh Dist. Balodabazar **-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 Chief Post Master General
Chhattisgarh Circle,
CPMG Office M.G. Road,
Raipur 492001 (CG)

3. The Director (Postal Services)
O/o The Chief Post Master General
Chhattisgarh Circle, M.G. Road,
Raipur 492001 (CG)

4. The Sr. Supdt. Of Post Offices Raipur
Division SSP Office, Raipur 492001 (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 19.07.2012, appellate authority order dated 18.12.2012 and revisionary authority order dated 28.10.2014 of the respondents and to reinstate him in service.

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.*
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> *8.2 That, the Hon'ble Tribunal be pleased to set aside the Punishment order dated 19.07.2012 (Annexure A-5), Appellate Authority order dated 18.12.2012 (Annexure A-8) and Revisionary Authority order dated 28.10.2014 (Annexure A-12) in the interest of justice.*
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> *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 in the interest of justice or minimize the punishment imposed upon him appropriately looking to the gravity of misconduct proved against him and in view of his 31 years pas unblemished service."*

3. The brief facts of the case are that the applicant was appointed on 11.02.1981 as Gramin Dak Shayak (Branch

Post Master) and posted at Bitkuli (Bhatapara) in Balodabazar District. He was placed under put-off vide order dated 18.02.2003 without assigning any reasons. After a lapse of more than 2 years, a charged memorandum dated 28.02.2005 was issued alleging certain financial irregularities committed by applicant on different dates in different R.D. Accounts. Copy of which is annexed as Annexure A-1. The disciplinary authority appointed enquiry officer and presenting officer. The enquiry officer submitted his enquiry report on 20.09.2005 holding that alleged charges stood proved against the applicant. The disciplinary authority vide letter dated 22.02.2007 ordered for de-novo enquiry from the stage of read over the charge sheet to the applicant and appointed another enquiry officer and presenting officer. The enquiry officer submitted his report on 15.03.2012 holding charge No.1 proved but charge No.2 proved partially. Copy of enquiry report dated 15.03.2012 is annexed as Annexure A-3. The disciplinary authority vide letter dated 27.03.2012 though agree with enquiry officer's findings in

respect to Charge No.1 but without giving reasons for his disagreement with the enquiry officer's findings in respect of charge No.2 himself concluded that charge No.2 also stood proved against the applicant. Copy of disciplinary authority letter dated 27.03.2012 is annexed as Annexure A/4. The applicant submitted his representation against disciplinary authority's said conclusions, to which the disciplinary authority vide its order/memorandum dated 19.07.2012 taking into view the long service rendered by the applicant imposed punishment of censure on the applicant. A copy of which is annexed as Annexure A-5. Vide office letter dated 31.07.2012, the applicant's put off was revoked and he was instated back in service in his former place at Bitkuli, but as the applicant was placed under Put-off since 18.02.2003 and he was not paid his wages for more than 9 years, therefore he submitted his statutory appeal against the punishment order. A copy of which is annexed as Annexure A/6. The appellate authority instead to consider the applicant's appeal, without any reasons issued show cause notice dated

09.11.2012 asked the applicant to submit his explanation against the enhanced punishment of removal from service. A copy of which is annexed as Annexure A-7. Applicant submitted his explanation to show cause notice on 05.12.2012 but the appellate authority vide order dated 18.12.2012 imposed a punishment of removal from service on the applicant with immediate effect. A copy of which is annexed as Annexure A/8. Against the said order, the applicant filed Original Application No.282/2013 which was withdrawn with liberty to avail appropriate departmental remedy vide order dated 20.11.2013. A copy of which is annexed as Annexure A/9. The applicant submitted his revision petition under Rule 9 of GDS (Conduct and Employment) Rules to the Revisionary authority i.e. Respondent No.2 which was not decided in spite of more than 6 months time thus he filed O.A. No.568/2014 and as per the direction passed in the said O.A. on 08.08.2014, the revisionary authority vide their letter dated 28.10.2014 disposed the revision petition and dismissed the same. Copy of which is annexed as

Annexure A-10, A-11 and A-12. Hence, this Original Application.

4. The respondents have filed their reply wherein it has been stated that the applicant while working as Gramin Dak Sevak Branch Post Master, Bitkuli (Bhatapara) misappropriated the Government money so he was placed under put-off duty vide letter dated 18.12.2003 and the same was confirmed vide office memo dated 31.12.2003. It is further submitted the respondents that the applicant misappropriated Government money in saving bank accounts and R.D. accounts on various dates, thereafter the respondent authorities issued charge-sheet against the applicant vide office memo dated 28.02.2005 as per rules. It is submitted by the respondents that the charge sheet issued against the applicant and also the departmental enquiry has been initiated by the disciplinary authority and also appointed the enquiry officer and presenting officer. During the enquiry the applicant admitted his alleged charge leveled against him. Thereafter the inquiry officer submitted enquiry report to SSPO's Raipur Division

Raipur on 20.09.2005 and the same was also sent to the applicant. The applicant was not satisfied on enquiry report. The disciplinary authority has considered his representation and ordered for de-novo enquiry from the stage of read over the charge sheet of the applicant and appointed another inquiry officer as well as presenting officer on 13.02.2006. The applicant was given sufficient and full opportunity of hearing to represent before the inquiry officer. The disciplinary authority agreed in respect of charge No.1 and also the authority has not agreed in respect of charge No.2 in enquiry report submitted by the inquiry officer because the applicant misappropriated Government money. The applicant submitted representation dated 11.04.2012 before the disciplinary authority. The disciplinary authority taking into view the long service rendered by the applicant passed final order "the punishment of censure" and revoked from put-off duty vide office memo dated 19.07.2012. The applicant made an appeal against punishment order to the appellate authority on 05.02.2012. The appellate authority vide

order dated 18.12.2012 passed the punishment of removal from Engagement. Being aggrieved the applicant filed O.A. No.282/2013 before this Tribunal which was dismissed vide order dated 20.11.2013 with liberty to avail appropriate departmental remedy. The applicant filed revision petition before the revisionary authority the same was rejected vide office memo dated 28.10.2014 as the applicant has misappropriated the government money. Hence the action of disciplinary authority, appellate authority and revisionary authority was just and fair.

5. Heard the learned counsel for both the parties and perused the documents attached with the pleadings. No rejoinder has been filed by the applicant.

6. From the pleadings it is admitted fact that the applicant was working as the applicant was appointed on 11.02.1981 as Gramin Dak Shayak (Branch Post Master) and posted at Bitkuli (Bhatapara) in Balodabazar District. The applicant was placed under put-off vide order dated 18.02.2003 and charged memorandum dated 28.02.2005 was issued for some financial irregularities committed by

applicant on different dates in different R.D. Accounts (Annexure A-1). The disciplinary proceedings were started and ultimately inquiry report was submitted on 20.09.2005. The disciplinary authority vide letter dated 22.02.2007 ordered for de-novo enquiry from the stage of read over the charge sheet. Ultimately the enquiry officer submitted his report on 15.03.2012 holding charge No.1 proved but charge No.2 proved partially (Annexure A-3). The disciplinary authority agreed with enquiry officer's findings in respect to Charge No.1 but without giving reasons for his disagreement with the enquiry officer's findings in respect of charge No.2 himself concluded that charge No.2 also stood proved against the applicant (Annexure A/4). On representation, the disciplinary authority vide its order/memorandum dated 19.07.2012 imposed punishment of censure after taking into view the long service rendered by the applicant. The applicant filed the appeal before the appellate authority. The appellate authority issued show cause notice dated 09.11.2012 for enhancing the punishment of removal from service

(Annexure A-7) and ultimately the appellate authority vide order dated 18.12.2012 imposed the punishment of removal from service. The revision petition filed by the applicant was rejected by the revisionary authority vide their letter dated 28.10.2014.

7. The main argument addressed by counsel for the respondents is that the applicant was placed under put off vide order dated 18.02.2003 and the same was confirmed vide letter dated 31.12.2003 as the applicant has misappropriated Government money in saving bank accounts and R.D. accounts on various dates and was charge sheeted on 28.02.2005. Inquiry was initiated by the disciplinary authority. During the inquiry the applicant admitted his alleged charge leveled against him. Though the disciplinary authority has considered the representation of the applicant in ordered for de-novo enquiry and the inquiry officer has given sufficient and full opportunity of hearing to the applicant. But the disciplinary authority in view of the long service rendered by the applicant passed final order of punishment of censure and revoked from

put-off duty vide office memo dated 19.07.2012. But the appeal preferred by the applicant to the appellate authority was rejected and passed the order of punishment of removal from service. The applicant preferred revision petition dated 02.12.2013 (Annexure A/10) which was rejected by the revisionary authority vide order dated 28.10.2014 (Annexure A/12) whereby the said authority has passed the detailed order. The applicant has failed to point out the illegality in the order passed by the appellate authority and revisionary authority. The appellate authority and revisionary authority has considered each and every aspect as the matter is regarding misappropriation of Government money which is a serious matter. The applicant has failed to proof his case regarding violation of natural justice and other provisions of law.

8. The settled position of law has been dealt with by Hon'ble Apex Court in the matter of ***B.C. Chaturvedi*** vs. ***Union of India*** (1995) 6 SCC 749. This Tribunal has also dealt with a similar issue in the case of ***Prashant Kumar David*** vs. ***Union of India and others*** (O.A. No.942/2013)

decided on 21.12.2017. The relevant Paragraphs are as under:-

"9. Law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in ***B.C.Chaturvedi*** *Vs.* ***Union of India****, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, wherein it has been observed as under:-*

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.*
>
> *13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the*

evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C.Goel (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

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18. The disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, can not normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof".

(emphasis supplied)

10. Further, the Hon'ble Supreme Court in the matters of ***Rajasthan Tourism Development Corporation Limited and another*** *vs.* ***Jai Raj Singh Chauhan****, (2011) 13 SCC 541: (2012)2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below: -*

"(19) In Union of India Vs. Parma Nanda (1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, this Court while dealing with the scope of the

Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under: -

> *"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."*

(20) In B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 the Court reviewed some of the earlier judgments and held:

> *"18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing*

the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(21) In Apparel Export Promotion Council Vs. A.K. Chopra (1999) 1 SCC 759: 1999 SCC (L&S) 405 the Court again referred to the earlier judgment and observed:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears,

ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155:(1982) 3 All ER 141 (HL) observed:-

> *"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."*
>
> *17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."*

11. Thus, it is settled law that jurisdiction of courts in disciplinary matters and imposition of penalty is very

limited. In the instant case we find that all the procedural requirements have been duly complied with by the respondents. The disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have duly considered the evidence placed on record and with a view to maintain discipline they imposed appropriate punishment keeping in view the magnitude and gravity of the misconduct. The decision has been arrived at by the competent authority after following the principles established by law and the rules of natural justice and the applicant has received a fair treatment to meet the case against him. The applicant has totally failed to substantiate his case and he has also not even pointed out any glaring mistake in the conduct of enquiry against him warranting our interference. The only ground taken by him that he was on leave at the time incident does not absolve him from the charges levelled against him. Therefore, we do not find any ground to interfere with the orders passed by disciplinary and appellate authorities.

12. In the result, the Original Application is dismissed, however, without any order as to costs."

9. In view of the considered position, we do not find any illegality or ambiguity in the order of respondents.

10. Resultantly, this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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