CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/01421/2014

HYDERABAD, this the 10th day of December, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

P.Maheswar S/o P.Ramchandraiah,
Age about 43 years,
Gramin Dak Sevak Branch Postmaster (REMOVED),
Medipur BO a/w Nagar Kurnool SO 509209,
Wanaparthy Division. ...Applicant

(By Advocate : Mr.M.Venkanna)

Vs.

1.Union of India, represented by
Its Secretary to the Government of India,
Ministry of Communications & IT,
Department of Posts – India, Dak Bhavan,
Sansad Marg, New Delhi – 110001.

2. The Chief Postmaster General,
A.P.Circle, "Dak Sadan",
Abids, Hyderabad - 500001.

3.The Director of Postal Services,
O/o The Postmaster General,
Hyderabad Region,
HYDERABAD 500 001.

4. The Superintendent of Post Offices,
Wanaparthy Division,
WANAPARTHY 509103. ....Respondents

(By Advocate: Mr. M.Venkata Swamy, Addl.CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the penalty of removal from service.

3. Brief facts of the case are that the applicant was appointed as Branch Post Master of Medipur B.O. on 6.8.1995 and was put off duty on 17.10.2010 for alleged non delivery of Regd/Speed post articles and shortage of cash. Applicant was charged under Rule 10 of GDS (Conduct and Engagement) Rules 2011 on 14.5.2013 and the inquiry officer has held the two charges framed as not proved. Disciplinary authority did not agree with the findings of the I.O and imposed the penalty of removal on 21.7.2014 after following the due procedure. Appeal was made on 4.8.2014 and before the appeal could be decided, the 4th respondent issued notice to fill up the post of Medipur B.O. Aggrieved, OA is filed.

4. The contentions of the applicant are that the I.O has held both the charges as not proved. The disagreement note of the disciplinary authority is not based on evidence. The Disciplinary authority has not applied his mind while imposing the penalty, which is too harsh.

5. Respondents in the reply statement state that the applicant has admitted in his statement dated 26.6.2010 about the shortage of cash of Rs.30,000/- and voluntarily credited the amount into the govt. accounts. The prosecution witnesses have turned hostile and hence, the charges could

not be proved. The Disciplinary authority has given sufficient reasons for disagreeing with the I.O. report and after due consideration of the various facts the penalty of removal was imposed.

6. Heard both the counsel and perused the pleadings on record.

7. I. The applicant was proceeded under Rule 10 of GDS (Conduct and Engagement) Rules by framing the following charges:

"ARTICLE – I

That Sri P. Maheshwar, while working as GDS BPM, Medipur BO A/W Nagarkumool SO failed to deliver the following Registered / Speed Post Letters received from the account Office to the addressees as required of him under Rule - 8l of Book of Rules for Branch Offices (Eighth Edition, corrected upto 28th September, 2007)

Sl. No.	*Rl. No.*	*Office of Booking*	*Addressed to*	*Remarks*
1	*2664/14-6-2010*	*Wanaparthy*	*Gunti Venkatamma Wo Gunti Venkataiah, R/o Allapur Village*	*Delivered by MO on 13.07.2010*
2.	*2679/14-6-2010*	*Wanaparthy*	*Gunti Laxmamma, W/o.Anjaneyulu, R/o Allapur Village*	*Delivered by MO on 13-07-2010*
3.	*2681/14-6-2010*	*Wanaparthy*	*Gunti Krishnamma, W/o. Niranjan, R/o Allapur village*	*Delivered by MO on l3-07-2010*
4.	*EA812553649IN*	*New Delhi*	*D. Narender Reddy, S/o .Bal Reddy, R/o. Akunellikuduru village*	*Delivered by MO on 15-07-2010*
5.	*ET435377615IN*	*Chennai-2*	*J. Bhaskar Reddy S/o J. Krishna Reddy, R/o Akunellikuduru Village*	*Delivered by MO on 15-07-2010*

It is, therefore, alleged that the said Sri P. Maheshwar contravened the provisions of Rule - 86 of Chapter - V of Rules for Branch Offices, Eighth Edition, corrected up to 28th September, 2007 and, thereby failed to maintain absolute integrity and devotion to duty as required in Rule 21 of Gramin Dak Sevak (Conduct and Engagement) Rules, 2011.

ARTICLE II

That Sri P. Maheshwar while working as GDS BPM, Medipur BO a/w Nagarkumool S.O., kept Shortage of cash Rs. 30,000/- (Rs. Thirty thousand Only) in cash balances of Medipur BO (The IP, Nagarkumool sub division visited Medipur BO A/W Nagarkumool SO on 26-06-2010 and verified the cash and stamp balances of the BO and found shortage of Rs.30,0001) as against the balances of cash Rs.50841-50.

It is therefore, alleged that the said Sri P. Maheshwar contravened the provisions of Note below Rule-11 of Chapter - I of Rules for Branch Offices, Eighth Edition corrected up to 28th September 2007 and thereby failed to maintain absolute integrity and

devotion to duty as required in Rule 21 of Gramin Dak Sevak (Conduct and Engagement) Rules, 201 l."

The inquiry officer has held both the charges as not proved and his conclusions in regard to both the charges are as under:

"*ARTICLE – I*

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"In the sitting dated 09.01.2014, the SW5 confirmed that he recorded SE-1, SE-4. SE-6 and SE-8 and he collected SE-I, SE-2, SE-5, SE-9 and SE-7 personally. In answer to Q4 of Cross examination by CO, SW5 confirmed that his version is correct. But the SWs disowned the written statements and signature available on it. Had the statements correctly obtained from the SWs. Their signatures should have been tallied with the signatures/thumb impressions during the inquiry. SW5 has collected empty wrappers without number and address of the article which is quite useless.

In the sitting dated 09.01.2014, SW6 in his deposition stated that he found countable and unregistered articles in the BO during his visit on 25.6.2010 evening and immediately called IP, Nagar Kurnool to make further investigation and report. In reply to Q5 in Cross examination by CO, the SW6 stated that he directed the IP to investigate and he was silent on obtaining statement of the CO. He simply phoned to the IP to investigate the matter & report and left the BO is not correct.

In the sitting dated 21.04.2014, SW-7 in his deposition stated that he found several undelivered ordinary/registered articles and he seized all the letters and the same have been delivered to the Mail overseer with a direction to deliver the letters and record the statements of the addressees and also to collect the wrappers. But SW5 has not obtained the statements from the correct addressees and he collected only empty wrappers without article number and address of the article. All the statements have been attested by SW-7. The PO could not produce 2 SWs in connection with this Article of charge and he finally dropped the 2 witnesses. The Prosecution side has failed to produce the documentary evidence as well as oral evidence.

From the foregoing, I hold that this Article stands ***NOT PROVED*** *on the strength of the aforesaid documentary and oral evidence. "*

ARTICLE – II

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"The other important connected documents viz BO daily account dated 26.6.2010, representation, if any, obtained from the CO for crediting the amount in UCR. UCR receipt duly signed by the CO and inventory/Panchanama, if any. conducted have not been produced by the PO for documentary proof. The SW7 in answer to Q1 of cross examination by CO, he stated that SE-10 is the only proof for keeping shortage of cash by the CO and the CO stated the circumstances for writing SE-10 in answer to Q2 of Question by IO. To prove SE-10, none of the documentary evidence has been produced during the inquiry.

On the strength of these documentary evidence analyzed and evidence evolved in this inquiry I opine that the documentary evidence in respect of shortage of cash as alleged in Article II is not comprehensive and total. Even though there is oral evidence it lacks credence and found to be inconsistent self-contradictory, illogical and lacks coherence. Therefore I opined that the documentary evidence which is not corroborative will suffice to show that the Article II is not proved. Therefore, I opined that this Article II stands ***NOT PROVED*** *on the strength of Oral and documentary evidence.*

CONCLUSION*:- Even though probability and preponderance will suffice to prove the charges in the Departmental inquiries, in this case I found that the documentary) and oral evidence is flaw and not proved the guilt. I therefore hold that the charges framed in both the Articles I & II in Annexure I and Il of the said memo of charges stands* ***NOT ROVED*** *beyond doubt."*

II. Thus the inquiry officer has not found any oral or documentary evidence to prove the charges. The charge about non delivery of registered and speed post articles is not a serious offence as to invite a harsh penalty of removal. Similarly, the shortage of cash of Rs.30,000 was not proved. We have no doubt that the disciplinary authority has the full discretion in imposing the penalty but while exercising the vested power, the disciplinary authority has to do so within the boundaries as defined under rules and law, by proper application of mind. The disciplinary authority disagreed with the findings of the Inquiry officer without backing with required evidence. It is true that the applicant has admitted that he has given a statement on 26.6.2010 that there was shortage of cash and it was made good by him by crediting the amount into the government accounts. The ld. counsel for the applicant submitted that the applicant was subjected to undue duress in obtaining the statement and getting the amount credited. Regular inquiry is conducted to provide a reasonable opportunity to the employee to prove his innocence before an independent adjudicator like the I.O. Otherwise, there is no purpose to prescribe the need for a regular inquiry and the respondents could have straight away proceeded against the applicant on the basis of his statement. However, that is what is not allowed under rules and law. True

to speak, it was for the respondents to get the charges proved in the regular inquiry. However, they failed to do so. Besides, the punishment is shocking and disproportionate to the offence committed. The punishments provided in the disciplinary rules are graded so that the disciplinary authority can apply his mind and impose a penalty which is apt and appropriate.

III. In the instant case, the I.O has, in unambiguous terms, held the charges as not proved by submitting an exhaustive report, the relevant portions were extracted hereinabove. In the context of the I.Os findings, the penalty is much more qualified to be termed as disproportionate and shocking the conscience of the court. Imposing such disproportionate penalties is violative of Article 14 of the Constitution. We are aware that the Tribunal cannot sit on appeal over the decision of the disciplinary authority. However, on coming across cases where dis-proportionality of the penalty to the offence, is brazenly evident, the Tribunal has to step in, to ensure that no injustice is done to the wronged party. While making the above observations we echo the observations of the Hon'ble Punjab-Haryana High Court in ***Rajesh Yadav vs State of Haryana and Ors*** on 31 May, 2019 in CWP No.23083 of 2015 as under:

> *The Hon'ble Supreme Court in CharanjitLamba vs. Commanding Officer, Southern Command &Ors., 2010 (4) SLR 385, has held as under:-*
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> > *"9. The doctrine of proportionality which Lord Diplock saw as a future possibility is now a well recognized ground on which a Writ Court can interfere with the order of punishment imposed upon an employee if the same is so outrageously disproportionate to the nature of misconduct that it shocks conscience of the Court. We may at this stage briefly refer to the decisions of this Court which have over the years applied the doctrine of proportionality to specific fact situations.*
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> > *10. In Bhagat Ram v. State of Himachal Pradesh (1983) 2 SCC 442 this Court held that if the penalty imposed is disproportionate to the gravity of the misconduct, it would be violative of Article 14 of the Constitution.*

11. In Ranjit Thakur v. Union of India & Ors. (1987) 4 SCC 611, this Court was dealing with a case where the petitioner had made a representation about the maltreatment given to him directly to the higher officers. He was sentenced to rigorous imprisonment for one year for that offence. While serving the sentence imposed upon him he declined to eat food. The summary court martial assembled the next day sentenced him to undergo imprisonment for one more year and dismissal from service. This Court held that the punishment imposed upon the delinquent was totally disproportionate to the gravity of the offence committed by him. So also in Ex-Naik Sardar Singh v. Union of India & Ors. 1992 (1) RCR (Criminal) 583 instead of one bottle of brandy that was authorised the delinquent was found carrying four bottles of brandy while going home on leave. He was sentenced to three months rigorous imprisonment and dismissal from service which was found by this Court to be disproportionate to the gravity of the offence proved against him.

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15. That the punishment imposed upon a delinquent should commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form quality of a misdemeanour are entitled to claim but the same is recognised as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the courts in India have recognised the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment is disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step into interfere with the same."

The case of the applicant is fully covered by the above judgment in terms of its shocking nature, gravity of the penalty imposed vis-à-vis the offence committed and more so in the context of the I.O findings being in favour of the applicant .However, imposing an appropriate penalty is in the domain of the disciplinary authority.

IV. We, therefore, in view of the above stated circumstances, quash and set aside the order of removal imposed vide memo dated 21.07.2014. We remit the case back to the disciplinary authority directing to impose an appropriate penalty, in the light of the observations made supra and as per extent rules and law. Time allowed is 3 months from the date of receipt of the order.

V. With the above direction, the OA is allowed to the extent indicated, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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