

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.302/2018**

Dated this the 27th day of May , 2021

**Reserved on : 11.01.2021
Pronounced on : 27.05.2021**

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Sh. Dr.A.K. Dubey, Member (A)

Sureshbhai K Salaniya,
At Post: DUDHIYA, Taluka:LIMKHEDA,
Dist. DAHOD.... 389146

... Applicant.

By Advocate Shri O P Khurana

v/s

- 1 The Post Master General, Vadodara Region,
Pratapganj, Vadodara – 390 002.
- 2 The Sub-Divisional Inspector (P),
Devghad Baria Saub Division,
Devghad Baria – 389 380.
- 3 Shri Dhirubhai Parsinhbhai Bhuria,
At & Post Dudhia Dhara,
DHUDHIA, Distt: DAHOD -389 146. ... Respondents.

By Advocate Ms Roopal R Patel

ORDER

Per Shri Jayesh V Bhairavia, Member (J)

- 1 This is the second round of litigation. In earlier round of litigation, the applicant has preferred the OA No.226/2004 wherein he has prayed for quashing and setting aside the Disciplinary Authority's order dated 15.01.2002 (Ann. A/10) wherein the DA had held that charges level against the applicant against the misappropriation was accepted by the applicant and same was stands proved based on material on record, accordingly imposed

the major penalty of removal from service with reference to disciplinary proceeding initiated under the Postal Department Gramin Dak Sevak, (Conduct & Employment) Rules, 2001 r/w Rule 14 of the CCS (CCA) Rules, 1965. The applicant has also pray for quashing and set aside the order dated 01.10.2003 (Ann. A/13) passed by Appellate Authority upholding the major penalty by rejecting his appeal dated 27.9.2003 (Ann. A/12). It is noticed that after going to the facts and documents relevant to the said OA, this Tribunal found that the OA is devoid of merits and the same was dismissed vide order dated 28.02.2005 (Ann. A/14).

1.2. Being aggrieved by the decision of the Tribunal, the applicant challenged the same before the Hon'ble High Court of Gujarat by way of SCA No. 16619/2007. The Hon'ble High Court vide order dated 07.06.2016, disposed of the said SCA as not pressed with liberty to the applicant to approach the authorities for appropriate relief by filing representation and respondents considered the same in accordance with law and with due sympathy (Ann. A/15).

1.3. In view of the said liberty granted by the Hon'ble High Court to the applicant, he had preferred the Mercy Appeal dated 18.6.2016 (Ann. A/16) before respondent no. 1, i.e., The Post Master General requesting to reinstate him at the earliest for the sake of survival of his family facing the situation of starvation as no source of income.

1.4. The respondent no.1 vide his memo no. STA/3-3-3/16 dated 02.09.2016 (Ann. A/17 impugn herein), rejected the Mercy Petition

and upheld the decision of removal from engagement as Gramin Dak Sevak and the order passed by appellate authority.

1.5. Being aggrieved by rejection of the mercy petition, the applicant preferred Miscellaneous Civil Application under provision of the Contempt of Courts Act, 1971 before the Hon'ble High Court alleging that the respondents had violated the directions issued by the High Court vide order dated 07.06.2016 passed in SCA No. 16619/2007. By taking into submission of the applicant the explanation offered by the respondent in the reply affidavit the Hon'ble High Court held that there was no wilful deliberate violation of the directions issued, and accordingly it dismissed the Contempt Petition as devoid of merits and granted liberty to the applicant to question the order dated 02.09.2016 if he intended to do so.

1.6. Pursuant to aforesaid liberty granted to the applicant, being aggrieved by the rejection of his Mercy Petition vide order dated 02.09.2016, the applicant has preferred the present OA under Section 19 of the Administrative Tribunals Act, 1985.

2. In the present OA the applicant has sought the relief to quash and set aside :

(i) *the order No. B2/Dudhia/01-02 at Godhra dated 29.08.2001 (Annexure A-1), by which the applicant was ordered to be on put off duty and amount of compensation under Rule 12(3) of GDS (C&E) Rules, 2001, as ex-gratia payment equal to 25% of his basis allowances together with admissible DA,*

(ii) *Chargesheet dated 30.10.2001 (Annexure A-3),*

- (iii) *order dated 15.01.2002 (Annexure A-10) by which the penalty of removal from service was inflicted upon the applicant,*
- (iv) *order dated 30.4.2002 (Annexure A-11) by which the appeal against the order of removal was rejected,*
- (v) *order dated 01.10.2003 (Annexure A-13) whereby the appellate authority rejected the detailed appeal dated 27.9.2003 filed by the applicant, and*
- (vi) *order dated 02.9.2016 (Annexure A-17) by which the Mercy Appeal was rejected.*

3. On going through the pleadings and averments in the present OA, it reveals that the applicant has reiterated the same facts which he had raised in the previous OA and except the prayer against the decision dated 02.09.2016 passed by competent authority on applicant's Mercy Petition, it appears that all other prayers in this OA are identical to the prayer sought in earlier OA. The 1d. counsel for the applicant Mr. O.P. Khurana mainly submitted as under :

- 3.1** It is a case of no evidence but sheer victimization. The applicant was illegally served with putting of order by the SDI (P)/DA in violation of provision under 12 of GDS (C&E) Rules, 2001.
- 3.2** The charge sheet dated 30.10.2001 issued by the disciplinary authority was quite arbitrary and illegal for violating the provisions under the GDS Rules. The statement as to imputation of misconduct reflects mala fide contention of the concerned authority for mentioning misuse of Rs. 1250/- but suppressing the material fact that amount of Rs. 1891/- against Rs. 1250/- had been already recovered from the applicant and that an amount of Rs. 591/- was recovered in excess but

not refunded. There is no allegation to the misuse of Rs. 1891/- which had been forcefully recovered from the applicant.

- 3.3** The innocent applicant was working as Gramin Dak Sevak, i.e., GDS was misguided by the immediate higher authority and in the guise of extending helping hand the representation was prepared on his behalf by the said authority without allowing the applicant to state the truth and consequently the said representation of the applicant has been used against him. Thus, the DA had not considered the case of applicant in true spirit and was victimized by the respondents.
- 3.4** The inquiry was conducted behind the back of the applicant and the DA illegally imposed the deathlike penalty of removal from service.
- 3.5** The applicant's representation dated 06.02.2002, was dictated and prepared on advise by the SDI (P)/DA, without even orally disclosing the fact to the applicant that he was removed from service and send it through RPAD requesting the Superintendent of Post Office, i.e., Appellate Authority for reinstatement in service was made on behalf of applicant since applicant rendered 14 years of blotless service. In fact, the applicant had received the order of major penalty 15.01.2002 and appellate authorities order dated 30.04.2002 only on 02.09.2003, hence there was no question to prefer any appeal dated 06.02.2002 as stated by the respondents. The representation dated 06.02.2002 was not an appeal against order passed by the DA. However, arbitrary and illegally the respondent had considered it an appeal of the applicant.

3.6 The appeal dated 27/29.09.2003 filed by the applicant was rejected by AA vide its order dated 01.10.2003 contrary to the law laid down by Hon'ble Apex Court in the case of UOI Vs. J. Ahmed reported in AIR 1979 SC 1022 and judgment passed in the case of ANGAD DAS Vs. UOI & ors. dated 18.02.2010 in CA No. 1429 – 1430 / 2010, and submitted that an innocent mistake in the blotless service carrier of about 14 years could not have been equated with a misconduct as also a polite letter of request praying for reinstatement in service cannot be treated as an appeal.

3.7 The applicant's Mercy Petition dated 18.06.2016 was decided by the reviewing authority without passing any speaking order. The said impugned order dated 02.09.2016 not at all passed in compliance with the letter and spirit of the observation and direction of the Hon'ble High Court's order dated 07.06.2016. Neither the representation is considered sympathetically keeping in view the blotless service of about 14 years not decided as per rules and not within the stipulated period of 6 months.

3.8 The said impugned order is silent about justifying the quantum of punishment of removal from service. The ld. counsel place reliance on various judgment as mentioned in the OA and submit that the applicant has been victimized in imposing the deathlike penalty of removal from service after assuring a minor penalty as there was no financial embezzlement and no loss had been cost to the Govt. revenue. The reviewing authority failed to consider the said aspect

and passed the impugned order which is illegal and required to be quashed and set aside.

4. Pursuant to the notices issued to the respondents, counter reply has been filed by the respondent and denied the contention of the applicant. Apart from reiterating the facts which they raised in the earlier round of litigation, they emphasised that since the mercy appeal had been decided, the applicant would be stopped from challenging the rest of the documents, as the same had achieved finality and Hon'ble High Court had given liberty to the applicant to submit representation only in connection with the punishment imposed upon him.

It is further submitted by the respondents that it is clearly discernible from the language of the said order dated 07.06.2016 where the Hon'ble High Court has used the word 'sympathy' obviously in relation to the punishment. Thus, the applicant now cannot go beyond the liberty which was accorded to him.

5. It is further submitted by the respondents that after disposal of the Contempt Petition (R/MCA No.2792/2016) by the Hon'ble High Court, which was preferred in the context of the Order dated 07.06.2016 passed in SCA No.16619/2007, the present OA had been filed before this Tribunal, the applicant cannot challenge chargesheet and others barring decision on Mercy Petition as all those issues had achieved finality when applicant withdrew the said SCA with liberty to file Mercy Petition. Liberty accorded as such, would not open the past settled issued. Further, after the order passed by Hon'ble High Court in said contempt petition, now it is not open for the

applicant to allege in the present OA that the respondent had not complied the order passed by Hon'ble High Court in SCA No. 16619/2007. Hence, the applicant is not entitled to any relief and the present OA is required to be rejected at the threshold.

6. The applicant has filed the rejoinder as well as written submissions reiterating the averments which had been mentioned in the OA.
7. Heard Shri O.P.Khurana, counsel for the applicant and Ms. R.R.Patel, counsel for the respondents and perused the materials on record.
8. It is noticed that the charges levelled against the applicant about misappropriation of amount while he was working as GDS was stands proved during the inquiry as such the CO, i.e., the applicant herein admitted the said charges levelled against him, accordingly the DA vide its order dated 15.01.2002 imposed major penalty of removal from service and the appellate authority vide order dated 01.10.2003 uphold the said penalty. Aggrieved by the said decisions the applicant had preferred OA No. 226/2004 before this Tribunal. Considering the fact that applicant had accepted his guilt before the inquiry officer as also in his representation against the inquiry officer's report, the decision of appellate authority upholding the decision of major penalty awarded by the DA, and the applicant failed to prefer a revision application before the competent authority, this tribunal did not find any merit in the said OA and accordingly same was dismissed vide its order dated 28.02.2005 (Ann. A/14). Further, the Hon'ble High Court of Gujarat while disposing of the SCA No. 16619/2007 filed by the applicant against the order passed by this Tribunal, ,

undisputedly, the finding and order of this Tribunal had not been disturbed in its order dated 07.06.2016 (Ann. A/15). Therefore, in our considered view it is not appropriate and permissible at this juncture to revisit the decision of disciplinary authority with respect to initiation of departmental inquiry against the applicant, and to re-examine the legality and validity of the decision of disciplinary authority imposing major penalty vide order dated 15.01.2002 as also the order dated 01.10.2003 passed by the appellate authority upholding the major penalty. Thus, at this stage the submission of the counsel for the applicant with respect to legality and validity of the decisions taken by the disciplinary authority against the applicant is not acceptable.

9. So far the grievance against the rejection of his Mercy Petition by the competent authority is concerned, it is noticed that the respondent no. 1 in its speaking order did consider the ground stated in the Mercy Appeal (Revision Petition dated 18.06.2016) and by recording cogent reason the said Mercy Appeal was dismissed. At this stage, it is appropriate to refer and reproduce the relevant observation and finding recorded in impugned order, which reads as under :

“....., as such Shri S K Salaniya that petitioner has preferred present MERCY APPEAL (revision petition) dated 18.06.2016. I have gone through the relevant records of the case and submissions of Petitioners, main arguments raised by the Petitioner are as under :

1. *The petitioner submitted that as he was unwell on 13.08.2001, so in good faith he entrusted 5 (five) MOs for payment to his friend (Sh. Dhirubhai P. Bhuria) and he committed the alleged misappropriation.*
2. *The petitioner submitted that being innocent about the rules and procedures of disciplinary proceedings to make appropriate representation he approached to IP / IO respectively and he was assured by SDI(P) and Inquiry Officer that that as he has deposited misappropriated amount, so there would be no punishment, if he accepts the allegations made in charge*

sheet as mistake and undertake that such mistake won't be repeated in future and they (IP / IO) dictated the reply to the charge sheet / inquiry report.

3. *The petitioner submitted that appellate authority has considered his casual representation dated 06.02.2002 as appeal which was again dictated by SDI (P), which was neither mentioned the order appealed against nor it was forwarded by the SDI (P) / Disciplinary Authority under Rule 16 & 17 of GDS (C & E) Rules, 2001, could not have been treated as my formal appeal, as such reasonable opportunity was not given to him to defend his case.*

The matter has been examined based on the order of Hon'ble High Court in the Special Civil Application No. 16619/2007.

The submission of the official that, his letter dated 06.02.2002 appealing against the SDI (P) disciplinary order issued vide Memo No. PF/SKS/02 dated 15.01.2002 was casual representation only in completely unfounded. It is also clearly establishing that Shri S. K. Salaniya EX GDS Dudhiiya had utilized the Quasi Judicial remedy of appeal available under GDS ruled of Department of Posts to address the order of removal issued by SDI (P), Devgarh Baria vide Memo No. PF/SKS/02 dated 15.01.2002.

The argument that, the letter dated 06.02.2002, appealing against the orders issued vide Memo No. PF/SKS/02 dated 15.01.2002 was casual in nature and its contents were dictated by SDI (P) have also been unfounded and appear to be the afterthought of Shri S. K. Salaniya only. There is no evidence to suggest that he was forced to by SDI (P) to draft the appeal with contents therein. Thus, the appellate authority's orders are also clear and the official has also utilized all opportunities due in the GDS Rules to his credit to appeal. Due procedure has been followed for handing letter dated 06.02.2002. There is no merit in the argument that the letter was casual and it does not reveal why such a step was taken except other than to appeal against the order issued vide Memo No. PF/SKS/02 dated 15.01.2002. Thus, the present argument is only an afterthought and is conveniently trying to not address the idea that it was indeed an appeal at the stage of process under GDS rules. Any appeal can be directly addressed to the appellate authority after a disciplinary order and need not be routed through a subordinate authority or disciplinary authority and would still construe as a regular appeal application under the GDS rules of the Department.

There are no new facts, details that have been provided by Shri Salaniya in this petition, which required any further analysis. All issues have been examined at each level appropriately defined in the GDS (C&E) Rules, 2001 and therefore I don't see any merit in any of the arguments submitted at this stage. There is no question of innocent mistake and any information on official records by the government officials of having ever engaged Shri Dhirbhai Parssinhbhai Bhuria on 13.08.2001 for any form of deliveries in Post Office. Thus, the point of misappropriation of Rs. 1891/- against Shri Suresshbhai K. Salaniya stands and the petition of Shri Salaniya is rejected, I uphold the decision of "removal from engagement" and the appellate authority."

10. It can be seen that the revising authority by exercising its limited power of revision, had examined the material on record and arrived at the conclusion that disciplinary authority and appellate authority had not committed any procedural error and considering the fact that grave charge of misappropriation levelled against the applicant was proved, as also the applicant had admitted his guilt, upheld the decision of major penalty. Revising Authority has passed speaking order by considering the grievance of the applicant as also the nature of proven charge of misappropriation levelled against the applicant. We do not find any procedural infirmities in the impugned decision dated 02.09.2016 (Ann. A/17). Therefore, in our considered view, the submissions of the counsel for the applicant and the judgements relied upon by him are not much helpful to the applicant in the facts and circumstances of the present case as stated hereinabove. Hence, we are not inclined to disturb or interfere in the order passed by the revising authority.

11. It is appropriate to mention that in the recent judgment passed by the Hon'ble Apex Court in the case of **Pravin Kumar Vs. Union of India reported in (2020) 9 SCC 471**, the 3 Judge Bench of Hon'ble Apex Court by considering the various judgment passed by its earlier Benches on the point of scope of judicial review in service matter reiterated the settle principle of law and held that *“....it would be gain said that judicial review is an evaluation of the decision – making process and not the merits of the decision itself. It ought to be used to correct manifest error of law of procedure, which might result in significant injustice or in case of bias or gross unreasonableness of outcome.”*

Further, while considering the point of Punishment and plea of leniency, the Hon'ble Apex Court in para 38 of the said judgment also held that : *“...but for grave offences there is a need to send a clear message of deterrence to the society. Charges such as corruption, misappropriation and gross indiscipline are prime examples of the latter category, and ought to be dealt with strictly.”*

12. Applying the aforesaid guidelines to the facts of the case in hand, it is clear that removal from service is not disproportionate to the gravity of charges of misappropriation which have been proven against the applicant herein and taking any other view would be an anathema to service as held by the Hon'ble Apex Court in the case of Pravin Kumar (Supra). In our considered opinion, the applicant's contention that the removal from service is disproportionate to the allegation of misappropriation is without merit.
13. In light of the above discussion, we do not find any merit in this OA which is accordingly dismissed. No order to cost.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

Nk/abp