

OA No. 291/140/2012

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/140/2012

Order reserved on 17.03.2021

DATE OF ORDER: 25.03.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Ram Saran Sharma Son of Shri Tilak Chand Sharma, aged about 48 years, resident of Village and Post Ananddari (Kaman), District Bharatpur. Last employed as Gramin Dak Sevak, Branch Post Master Ananddari (Kaman), District Bharatpur (Dismissed from services).

....Applicant

Shri C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. Director Postal Services, Jaipur Region, Jaipur-302007.
4. Superintendent of Post Offices, Bharatpur Postal Division, Bharatpur.

....Respondents

Shri Rajendra Vaish, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "i) The entire record relating to the case be called for and after perusing the same memo dated 23/12/2011 (Annexure-A/1 – revising authority order) with the memo dated 23/09/2008 (Annexure-A/2 – appellate order) with the memo dated 28/04/2008 (Annexure-A/3- punishment order) be quashed and set aside with all consequential benefits.
- ii) That the charge memo dated 24/01/2007 (Annexure-A/5) be quashed and set aside with the inquiry proceedings including inquiry report at Annexure-A/10 with all consequential benefits.
- (iii) That the respondents be further directed to reinstate the applicant on the post of Gramin Dak Sevak Branch Post Master Ananddari (Kaman), District Bharatpur with all consequential benefits.
- iv) Any other order / directions of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- (v) That the costs of this application may be awarded.

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Extra

OA No. 291/140/2012

Departmental, Branch Post Master Ananddari (Kaman), District Bharatpur on 09.06.1981 and since then he was working with entire satisfaction till the passing of the punishment order for dismissal from services by the Disciplinary Authority and upheld by the Appellate Authority and Revising Authority. It is the case of the applicant that on 18.04.2006 without any reasons, he was put off from duty by respondent No. 4 on the ground that disciplinary proceedings are pending against him. No reasons were indicated by the respondent No. 4 while putting him off from duty, instead he was served with a charge memo dated 24.01.2007 under Rule 10 of Gramin Dak Sevak (Conduct and Employment) Rules 2001 on the allegations that applicant did not credit Rs. 4548/- of R.D. Accounts obtained from depositor in Branch Office Account and, therefore, had misappropriated money and had credited the same after some time. Accordingly, he had violated Rule 132-F, 133 (2), 134(1) & 134(2) of Branch Office Rules and did not maintain devotion to duty and has violated Rule 21 of Rules 2001. During put off from duty, he was allowed 25% of TRCA allowance vide memo dated 27.07.2006,

OA No. 291/140/2012

which was never reviewed nor enhanced by respondent No. 4. After denial of the charges, Inquiry Officer as well as Presenting Officer were appointed. The applicant denied the charges levelled against him and requested for a detailed enquiry as per procedure of Rule 14 of CCS (CCA) Rules, 1965. The Inquiry Officer conducted the enquiry proceedings against the rules and against the principles of natural justice and submitted his report by proving the charges. The Inquiry Officer discussed all the proceedings taken place in preliminary enquiry, in the enquiry report dated 19.11.2007. The documents were taken into account by the Inquiry Officer, which were never testified and prosecution witnesses were dropped on the request of Presenting Officer. The applicant submitted his detailed representation against the enquiry report but respondent No. 4 without due consideration imposed punishment from service vide Memo dated 28.04.2008 (Annexure A/3). Thereafter, the applicant preferred the appeal before the Appellate Authority on 07.07.2008 and the same was rejected vide Memo dated 23.09.2008. The allegations against applicant of misappropriation of Rs. 4548/- on

OA No. 291/140/2012

the basis that he failed to credit the amount and thereafter preliminary enquiry was conducted by respondent No. 4 but during the preliminary enquiry, the applicant was never given any chance of hearing, neither he was allowed adequate additional documents. The Appellate Authority also did not consider the facts and also the quantum of punishment but justified the order of dismissal from service passed by the Disciplinary Authority. Also the Revision Petition has been rejected vide Memo dated 23.12.2011 (Annexure A/1). Thus, the applicant states that as the Inquiry Officer did not follow the mandatory provisions of Rule 14(18) during the course of enquiry proceedings, which is mandatory and, therefore, as the report of the Inquiry Officer is not as per Rules, so the punishment order and further orders are liable to be quashed and set aside.

3. In reply, the respondents stated that the applicant while working on the post of GDSBPM Ananddari since September, 2004 to September, 2005, had accepted monthly installment of RD deposits with passbooks from the depositors. He made the entries of deposits

OA No. 291/140/2012

in the passbooks and affixed the date stamps in the appropriate columns and attested the entries by making his initials in the passbooks but he did not make deposit entries in the BO RD Journal and even did not account for the said amount in the post office records, thereby, he misappropriated an amount of Rs. 4584/-. Further, he was also habitual for retention of excess cash against the authorized limit in Ananddari BO Account. Therefore, for the aforesaid irregularities, disciplinary action against the applicant under Rule 10 of GDS (C&E) Rules, 2001 was initiated against the applicant and Inquiry Officer as well as Presenting Officer were appointed in the said case. The Inquiry Officer had submitted his report and the charges framed against the applicant were found to be proved. The copy of the enquiry report was provided to the applicant by the Disciplinary Authority on 21.11.2007 and opportunity was given to him to file his representation within 15 days. Accordingly, the applicant submitted his representation dated 03.12.2007. The Disciplinary Authority after proper examination of the relevant records, evidence on record and the enquiry report, imposed the penalty of

OA No. 291/140/2012

dismissal from service vide order dated 28.04.2008 (Annexure A/3). Against the said order, the applicant submitted an appeal on 07.07.2008 and the Appellate Authority after taking into consideration the relevant record and every aspect of the case, confirmed the punishment order vide Memo dated 28.04.2008. Against the said order, the applicant submitted a Revision Petition under Rule 19 of GDS (C&E) Rules, 2001 on 26.03.2009 and the same was rejected by the Revisionary Authority vide its order dated 23.12.2011 (Annexure A/1). It is the case of the respondents that the enquiry against the applicant has been conducted as per the procedure prescribed under Rule 10 of GDS (C&E) Rules, 2001 and the principles of natural justice have been duly followed. The action of the respondents is in consonance with the relevant provisions and the punishment awarded to the applicant commensurate with the charges levelled against him. Pertaining to the compensation of TRCA allowance, it was stated that the same was reviewed vide SPOs Bharatpur Memo No. F4-3/05-06 dated 27.07.2006. The respondents further stated that the applicant himself has accepted in his defence /

OA No. 291/140/2012

representation to credit the RD deposit amount of Rs. 4548/- voluntarily, which was not credited into account by mistake and assured the respondents that he will not repeat such type of irregularities in future. In spite of none of RD depositors were examined but authenticity of their pre-recorded statements was confirmed by other witnesses during the enquiry, hence, Inquiry Officer had exhibited such documents. Therefore, the applicant has rightly been punishment with dismissal from services for his proven guilty of misappropriation. The Inquiry Officer has proved the charges on the basis of oral and documentary evidence adduced before him during the enquiry. Therefore, the contention of the applicant that none of charges were established is unsustainable. Thus, there is no reason to interfere in the orders passed by the authorities as the same are passed with due application of mind after following proper procedure and following principles of natural justice.

4. Heard learned counsels for the parties and perused the material available on record.

OA No. 291/140/2012

5. Besides reiterating the facts, the allegations levelled by the applicant is that the whole enquiry proceedings and enquiry report is based on the statement of prosecution witness, not related with the matter and statement of material witnesses during the enquiry proceedings, and those were taken into account during the course of enquiry proceedings and no due consideration was given to the statement of the applicant. So the enquiry proceedings cannot be stated to have been conducted as per the procedure laid down under the law. Also the Inquiry Officer relied upon certain documents, which were not testified by the authors. Also the applicant was not allowed the additional documents to be supplied and the same were rejected by the Inquiry Officer without any basis. The grounds raised by the applicant is that he never concealed any facts before the departmental authorities during the preliminary enquiry and also he has credited amount with interest to the department, which facts should have been considered while deciding the quantum of punishment by the respondents. As the same was not taken into consideration, the action of the respondents is,

OA No. 291/140/2012

therefore, liable to be quashed and set aside. Also the Inquiry Officer did not follow the mandatory provisions of Rule 14 (18) during the course of enquiry proceedings, which was mandatory. As the report of the Inquiry Officer was not as per rules, the punishment order has to be quashed and set aside. The orders passed by the Appellate Authority as well as Revisionary Authority are also said to be quashed. As the respondents have not followed any rules during the course of enquiry proceedings, the punishment order passed against the applicant is not sustainable. The applicant has relied on the judgments / orders passed by the Hon'ble Supreme Court as well as by the Principal Bench of this Tribunal, which are as under: -

- (i) **Ministry of Finance and another vs. S.B. Ramesh**, reported in 1998 SCC (L&S) 865.
- (ii) **S.K. Mishra vs. Union of India & Ors.**, reported in 2004 (2) ATJ 488.

6. The respondents have countered the grounds raised by the applicant stating that the Inquiry Officer had never denied any request of the applicant for any documents to be brought on record. The enquiry

OA No. 291/140/2012

proceedings and the enquiry report is based on the documentary evidence and witnesses and thereafter after going through all the material, the Inquiry Officer had come to a conclusion that all the charges levelled against the applicant are proved. The Inquiry Officer had proved the charges on the basis of oral and documentary evidence adduced before him during the enquiry by following proper procedure of enquiry proceedings under the relevant rules. Accordingly, after carefully considering the defence / relevant documents and enquiry report, the punishment of dismissal from service was awarded by the Disciplinary Authority as per the provisions of Rule 5 of GDS (C&E), Rules 2001. Therefore, the action of the respondents is not against the provisions of Articles 14, 16 and 21 of the Constitution of India. The Inquiry Officer had followed the principles of natural justice during the enquiry by providing sufficient opportunity to the applicant to defend and so the submission of the applicant that proper procedure was not followed during the enquiry is denied. The statement of the applicant that he had credited amount with interest in the interest of the department

OA No. 291/140/2012

as per the directions of the authorities is denied. The applicant had failed to account for the Government money in the post office records and had misappropriated the said amount and so the charges of misappropriation were proved against him. As Postal Department is a public utility department and misappropriation committed on the part of the applicant would create a bad picture in the eyes of law as the general public will lose faith in the Postal Department. As it is the case of misappropriation of Government money and as the same was proved on the basis of relevant records, therefore, it is not mandatory to examine the Government servant himself. As there is no violation of rules committed by the Inquiry Officer during the enquiry and no such incidence has been shown by the applicant during the enquiry. Raising the said points in the present O.A. is immaterial as the same should have been pointed out before the inquiry officer during enquiry. Therefore, the orders passed by the authorities are just and proper and the same did not deserve to be quashed and set aside.

OA No. 291/140/2012

7. The factual matrix of the case is that while applicant was working as GDS BPM, Ananddadri (Kaman) during the period from March 2004 to September, 2005, he had accepted monthly instalments of RD deposits along with passbooks from the depositors and made entries of deposits in the passbooks, affixed date stamps in the appropriate columns and attested the deposit entries by making his initial in the passbooks. But he did not account for the amount of said deposits entries in the PO account. Thus, in this manner, he had misappropriated an amount of Rs. 4548/- of various RD accounts as mentioned in the charge memo dated 24.01.2007. (Annexure A/5). He had retained excess cash to the authorized limit of Rs. 500/- without any liabilities on the dates mentioned in the charge memo, thereby he had misappropriated the Government money. Thus, he was alleged to have violated the provisions of Rules 132 (1), 133(2), 134(1) & (2) of Branch Office Rules and Rules 21 of GDS (C&E) Rules, 2001. On denial of the said charges, Inquiry Officer was appointed to enquire into the charges levelled against the applicant. The Inquiry Officer had conducted the enquiry as per

OA No. 291/140/2012

provisions of Rule 14 of CCS (CCCA) Rules, 1965. The allegations raised by the applicant that the Inquiry Officer had not followed the provisions of Rule 14 (18) during the course of enquiry proceedings, cannot be accepted at this stage since the same grounds should have been raised by the applicant during the enquiry and raising the same subsequently is of no use. No such letter or material has been produced by the applicant to show that he has raised the said ground before the Inquiry Officer at that relevant time. As seen, it is clear that the Inquiry Officer had conducted the enquiry after providing ample opportunity to the applicant in the enquiry and had also followed the principles of natural justice. The question of applicant raising the grounds that enquiry was not followed in apt manner as per law cannot be accepted as seen from the enquiry proceedings. It is seen that the charges were proved and the Inquiry Officer submitted his report dated 19.11.2007 establishing the charges. Against the same, the applicant made a representation, which was duly considered and thereafter the Disciplinary Authority had passed an order dated 28.04.2008 imposing the penalty of

OA No. 291/140/2012

dismissal from service. Being dissatisfied by the said order, the applicant filed an appeal raising several grounds. The Appellate Authority, as seen from the pleadings, has taken into consideration each and every aspect of the case and allegations raised in the appeal by the applicant. It was clarified by the Appellate Authority that Shri Y.K Sharma, Superintendent, CSD, an incumbent of the same post, while holding the dual charge of Superintendent Bharatpur was fully empowered to exercise the statutory powers vested in the regular incumbent of the post and as such the penalty awarded was in order. The said ground, therefore, was not maintainable as per order dated 24.01.1963. Pertaining to the ground raised by the applicant that none of the RD depositors were examined. It was clarified by the Appellate Authority that authenticity of the pre-recorded statements of the witnesses was confirmed by other witnesses during the enquiry and further added that the charge of article-I was not only proved on the basis of the above statements, but also on the other documentary and oral evidence adduced during the enquiry, therefore, the said contention

OA No. 291/140/2012

raised by the applicant was found not sustainable. Pertaining to the ground raised before the Appellate Authority regarding non availability of leather cash bag at BO, the Authority stated that the applicant failed to produce any document/evidence in support of the said contention during the enquiry. It is seen from the record that during enquiry proceedings, the applicant admitted his guilt and requested the Inquiry Officer that he has undergone several years of satisfactory service to the department, he is coming from a poor family and has several liabilities to undergo, therefore, his guilt of misappropriation may be pardoned as he has deposited the said amount to the respondents with interest and henceforth he will not commit such offence again. Therefore, the Inquiry Officer may take a lenient view in the matter. It is seen that Postal Department is a service department to general public and misappropriation of any amount will create losing the faith in the eyes of general public and, therefore, the statement of the applicant that he has deposited the said amount thereafter with interest is meaningless. Misappropriation of even a single rupee is misappropriation in the eyes of law.

OA No. 291/140/2012

Therefore, when general public has faith in Postal Department and if such misappropriation of amount is seen and the applicant has failed to deposit the amount of the said deposits entries in the PO account and has misappropriated the amount for his personal use cannot be said to be justified act on the part of the applicant. It is seen that the Appellate Authority has also carefully examined the appeal of the applicant and has rejected the said appeal after going through each and every ground raised by him. Also the Revisionary Authority has examined the case of the applicant and after duly examining the same and going through the documentary as well as oral evidence as per the records, has confirmed the punishment and found no reason to interfere with the decisions of the Disciplinary Authority as well as Appellate Authority. Thus, it cannot be said that the quantum of punishment awarded to the applicant was arbitrary, illegal or unjustified. Therefore, as seen, it is clear that the Disciplinary order, Appellate order and Revisionary order has been passed as per rules, regulations and instructions on the subject by the appropriate authorities after providing every

OA No. 291/140/2012

opportunity to the applicant and after following principles of natural justice.

8. Thus, in view of the observations made above, it is clear that the punishment order dated 28.04.2008 (Annexure A/3) passed by the Disciplinary Authority, order dated 23.09.2008 (Annexure A/2) passed by the Appellate Authority as well as the order dated 23.12.2011 (Annexure A/1) passed by the Revisionary Authority do not warrant any interference as the orders passed by the Authorities are just and proper. Also the charge Memo dated 24.01.2007 (Annexure A/5) cannot be interfered with. Thus, the applicant is not entitled to any relief as prayed for in the present Original Application. Accordingly, the Original Application is dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat