

PRESENT:

Advocate for Applicant - M/s.R.Pattnaik, S.C.Puspalak,  
S.C.Beura, Advocates.

Advocate for Respondents- Mr..U.B.Mohapatra,  
SSC(Central).

Order dated: 31st May 2007

Applicant while working as GDS BPM, Arkhapur BO in account with Balipadar SO, was proceeded against under Rule 10 of GDS (Conduct and Employment) Rules, 2001 vide Memo No. F4-2/2001-2002 (Disc.) dated 14.05.2002. The charge against the applicant was that while he was working as GDSBPM of Arkhapur BO during period from 17.4.1980 to 13.11.2001 he accepted monthly deposit from Smt. Dhobani Nayak, mother of minor depositor Mamini Nayak at the rate of Rs. 100/- in each month on dates for 53 months as mentioned in Annexure-A/2 of application against RD Account No. 25781. Applicant made entries of the aforesaid deposits in the pass book, raised the balance correspondingly under his initials and impressed date stamp of the Branch Post Office. But

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he did not take the aforesaid deposits of Rs.5300/- into Government account on the date of deposit or on any subsequent dates. When the fraud was detected, the Applicant credited Rs.8000/- on 12.11.2001 on his own accord, with interest due, under unclassified receipt at Balipadar Sub Post Office. During enquiry, the charge having been proved he was imposed with the punishment of removal from service. The said punishment having been confirmed in appeal and in revision preferred by the Applicant, he moved this Tribunal in the present Original Application challenging the same to be bad in law on the ground that (i) the Respondents appointed the EO to enquire the charge without supplying him the charge and other documents relevant in preparing his defence; (ii) the EO tilted the balance in favour of the Department without giving any importance to the statement of the depositor that she had not deposited more than 700/- in the said Pass Book in seven successive months; and (iii) though statement adduced by the Applicant in the enquiry that the entry with date stamp and signature of the Applicant in the pass book was taken forcibly by the husband of the depositor

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which was witnessed by Shri Bansidhar Nayak and Nabaghana Dalaei, no heed was paid to such statement by the EO and ultimately, the Applicant was visited with the harsh punishment of removal.

2. Respondents, by filing counter strongly opposed the stand taken by the Applicant in his Original Application and have stated that the disciplinary proceedings was conducted in free and fair manner in accordance with Rules. They have also stated that adequate reasonable opportunity was provided to him to defend his case. Since the allegation was proved beyond reasonable doubt, after following due procedure of Rule/principles of natural justice and in due application of mind, the Disciplinary Authority imposed the order of punishment on the applicant which was also confirmed by the Appellate Authority as also Revisional Authority. They have, therefore, prayed for dismissal of this OA.

3. Before proceeding to deal with the contentions of the parties, it is relevant to state that to judge the validity of any administrative order or statutory discretion, normally the

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Wednesbury test is to be applied i.e. to find out if the decision was illegal or if it suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its own decision to that of the administrator. The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles. The position in our country, in administrative law, where no

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9 fundamental freedom as aforesaid is involved, is that the Courts/Tribunal will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on *Wednesbury* and *CCSU* principles as stated by Lord Greene and *Lord Diplock* respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority. Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in appropriate case where such action is alleged to offend fundamental freedom. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14 (Ref: **Union of India and another vs. G.Ganayutham (Dead)** by LRs, AIR 1997 SC 3387)

Also In the matter of disciplinary proceedings the settled principle of law is not appreciation of evidence but

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what is permissible is to see that the case is of no evidence, finding based on suspicion and surmises, extraneous matter and whether the finding recorded passes the test of a common reasonable prudent man. Any evidence not admissible in law is to be discarded (Ref. **Kuldip Singh vs Commissioner of Police, JT 1998 (8) SC 603**).

Rulings of the Apex Court are that in judicial review, the Courts or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct. (Ref: **1996 SCC (L&S) 627- State of Tamil Nadu and another vrs. S. Subramaniam**).

In **V.Ramana v. A.P. SRTC and Others [2005] 7 SCC 338** it has been held as under: "The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical

or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or normal standards. In view of what has been stated in the *Wednesbury's* case (supra) the court should not go into the correctness of the choice made by the administrator and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. [See also **Hombe Gowda Edn. Trust & Anr v. State of Karnataka and Ors** (2005 (10) SCALE 307=2006(1) SCC 430; and **State of Rajasthan and another v. Mohammed Ayur Naz** (2006 (1) SCALE 79= (2006) 1 SCC 589].

Unless specific prejudice caused for non supply of any documents is shown, mere non supply of documents cannot be a ground for interference in the order of punishment (Ref: **Syndicate Bank and Ors. Vs Vekatesh Gururao Kurati**, 2006 (1) SC SLJ 332).

4. In the light of the above decisions, we proceed to examine the matter as to whether this case comes under any of

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the provisions warranting and enabling this Tribunal to interfere with the impugned order of punishment imposed on the Applicant. In his connection, having heard the parties we have gone through the materials placed on record. But we find no irregularity or illegality in the matter of conducting the disciplinary proceedings as against the Applicant. The plea that he was not supplied charge-sheet and copies of documents could not assume any importance because according to his own admission he participated in the enquiry. As regards his stand that though the depositor deposited total Rs.700/- in seven successive months but her husband forcibly took the entry with date stamp, and signature of applicant in the pass book is not believable; because taking forcible signature on the official paper is a serious offence and if it was so, then the Applicant ought to have immediately taken shelter of the law. But no such evidence either has been filed before the EO nor before this Tribunal to show that he had taken any such step. Similarly, also we do not find that the present order of punishment is not at all shocking to the judicial conscience; because an employee is

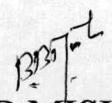
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27 required to exercise high standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee like the Applicant is required to take all possible steps to protect the interest of the institution and to discharge duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming on the part of the employee/officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Post Offices. Except the grounds stated above, nothing more has been canvassed by him in support of his challenge of the order of punishment imposed on the Applicant.

5. In view of the above, we find no merit in this OA to interfere and the same stands dismissed by leaving the parties to bear their own costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

  
(B.B. MISHRA)  
MEMBER(A)