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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.929 of 2010

Cuttack this the 29th day of September, 2015

Nibarana Swain...Applicant(s)

-VERSUS-

Union of India & Ors....Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not ? *yes*

R.C.
(R.C.MISRA)
MEMBER(A)

A.K.
(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Nibarana Swain
Aged about 41 years
S/o.Satrughna Swain
At/PO-Analabareni
District-Dhenkanal-759 026

...Applicant

By the Advocate(s)-M/s.P.K.Padhi
M.P.J.Ray
M.Rout

-VERSUS-

Union of India represented through

1. The Director General of Posts
DakBhawan
SansadMarg
New Delhi-110 001
2. Director of Postal Services
Sambalpur Region
At/PO/Dist-Sambalpur-768 001
3. Superintendent of Post Offices
Dhenkanal Division
At/PO/Dist-Dhenkanal-759 001
4. Inspector of Posts
Kamakhyanagar Sub Division
At/PO-Kamakhyanagar
Dist-Dhenkanal-759 018

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra



ORDER**R.C.MISRA, MEMBER(A):**

In this Original Application under Section 19 of the A.T.Act, 1985, applicant has approached this Tribunal for quashing Annexure-A/4, A/6 and A/7 and to direct the respondents to reinstate him in service. Further he has prayed for direction to be issued to respondents to impose any other lesser punishment than removal/dismissal taking into the facts and circumstances of the case and to direct the respondents to release the ex-gratia compensation @ 37.5% after three months of put off duty and the bonus for 2004 and revised ex-gratia with effect from 1.1.2006 with GPF interest.

2. Factual matrix of the matter runs thus: While working as Gramin Dak Sevak Mail Deliverer (GDSMD), Anlaberani S.O. in the District of Dhenkanal, applicant was served with a Memorandum dated 28.11.2006(A/1) under Rule-10 of GDS(Conduct & Employment) Rules, 2001 containing five Articles of Charge, with an instructions to submit his written statement of defence within a period of 10 days from the receipt of the aforesaid memorandum. Applicant having denied the charges, Inquiry Officer as well as Presenting Officer were appointed to enquire into the charges. The I.O. submitted his report on 17.8.2007, copy of which was served on the applicant on 24.8.2007 requiring him to submit ^eof his defence representation, if any. Applicant submitted his defence representation which was received by the respondents on



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19.9.2007. Thereafter, the Disciplinary Authority (Res.No.4) in consideration of the matter in detail, awarded the punishment of removal from employment on the applicant with immediate effect vide Memo No.A2/PF-2/04 dated 15.10.2007(A/4). Applicant preferred an appeal against the above punishment order to the Superintendent of Post Offices, Dhenkanal Division on 28.11.2007 which was considered and rejected vide Memo No.F3-1/2004-05 dated 24.4.2008(A/6). Thereafter, applicant submitted a review petition dated 18.6.2008 before the Assistant Director of Postal Services, O/o. the Post Master General, Sambalpur Region, Sambalpur and the said petition having been considered, the reviewing authority confirmed the orders passed by the disciplinary authority as well as the appellate authority thus rejecting the review petition vide Memo No.ST/RO/11-1/2009 dated 9.9.2009(A/7). Hence, this Original Application.

3. For the sake of clarity, Articles of Charge framed against the applicant are extracted hereunder.

Article-I

Shri Nibarana Swain while functioning as GDSMD of Anlaberani SO (now under put off duty) during the period from 19.9.1990 to 5.9.2004, paid the value of Kolkata GPO MO No.C-1504/29 dated 1.11.03 for Rs.942/- payable to one Durlavananda Dehury, At-Mahuli, PO-Anlaberni, Dist-Dhenkanal on 10.11.03, to a person other than the payee as the payee had expired long before the date of payment and presented the MO paid voucher thereof containing as bogus signature of the payee thereon. By his above acts, the said Sri Swain violated the provisions contained in Rule 12(2) Rule 127(1)(3)(5) of Postal manual Volume VI Part-

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III(6th edition) corrected upto 30.6.1986 and as such the said Sri Swain committed grave misconduct.

It is therefore imputed that Sri Nibarana Swain in his aforesaid capacity of GDSMD Anlaberani SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

Article-II

That the said Shri Swain while working as such during the aforesaid period defrauded the value of Kolkata GPO MO No.K-1444/360 dated 8.4.04 for Rs.544/- payable to one Mr.AnamNaik, At-Mahuli, PO-Anlaberani, Dist-Dhenkanal, who was an illiterate payee, on 27.3.04 and presented the MO paid voucher thereof containing as bogus signature of the payee thereon. By his above acts, the said Sri Swain violated the provisions contained in Rule 12(2) Rule 127(1)(3)(5) of Postal manual Volume VI Part-III(6th edition) corrected upto 30.6.1986 and as such the said Sri Swain committed grave misconduct.

It is therefore imputed that Sri Nibarana Swain in his aforesaid capacity of GDSMD Anlaberani SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of GraminDakSevak (Conduct & Employment) Rules, 2001.

Article-III

That the said Shri Swain while functioning in the aforesaid capacity during the aforesaid period defrauded the value of Kolkata GPO MO No.B-1836/213 dated 16.5.2004 for Rs.1155/- payable to Srimu Dehury, At-Mahuli, PO-Anlaberani, Dist-Dhenkanal, on 31.5.2004 and presented the MO paid voucher thereof containing as bogus signature of the payee thereon. By his above acts, the said Sri Swain violated the provisions contained in Rule 12(2) Rule 127(1)(3)(5) of Postal manual Volume VI Part-III(6th edition) corrected upto 30.6.1986 and as such the said Sri Swain committed grave misconduct.

It is therefore imputed that Sri Nibarana Swain in his aforesaid capacity of GDSMD Anlaberani SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of GraminDakSevak (Conduct & Employment) Rules, 2001.

Article-IV

That the said Shri Swain while functioning in the aforesaid capacity during the aforesaid period defrauded the value of Kolkata GPO MO No.B-

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1444/633 dated 8.3.2004 for Rs.1782/- payable to Sri JayakrishnaDehry, At-Mahuli, PO-Anlaberani, Dist-Dhenkanal, on 13.3.2004 and presented the MO paid voucher thereof containing as bogus signature of the payee thereon. By his above acts, the said Sri Swain violated the provisions contained in Rule 12(2) Rule 127(1)(3)(5) of Postal manual Volume VI Part-III(6th edition) corrected upto 30.6.1986 and as such the said Sri Swain committed grave misconduct.

It is therefore imputed that Sri Nibarana Swain in his aforesaid capacity of GDSMD Anlaberani SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

Article-V

That the said Shri Swain while functioning in the aforesaid capacity during the aforesaid period defrauded the value of Kolkata GPO MO No.a-1602/454 dated 2.4.2004 for Rs.2377- payable to Mrs.Basanti Nayak, At-Mahuli, PO-Anlaberani, Dist-Dhenkanal, on 12.4.2004 and presented the MO paid voucher thereof containing as bogus signature of the payee thereon. By his above acts, the said Sri Swain violated the provisions contained in Rule 12(2) Rule 127(1)(3)(5) of Postal manual Volume VI Part-III(6th edition) corrected upto 30.6.1986 and as such the said Sri Swain committed grave misconduct.

It is therefore imputed that Sri Nibarana Swain in his aforesaid capacity of GDSMD Anlaberani SO failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of GraminDakSevak (Conduct & Employment) Rules, 2001.

4. In support of his case, applicant has urged that the money orders wrongly paid to the payees were later on recovered and paid to the correct payees and therefore, the Department have not sustained any loss. His further contention is that the Hon'ble Apex Court in Kailash Nath Gupta vs. Enquiry Officer (R.K.Rai) Allahabad Bench &Ors. (2003 AIR (SC) 1377) has held as under.



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"Where no loss was sustained by the Government, it was observed "when the accused therein made good the sum of Rs.46,000/- with interest, the Board should have compassionate and gracious enough to pass a punishment order other an removal or dismissal".

5. Secondly, it has been contended that the punishment of removal as imposed on the applicant is shockingly disproportionate to the gravity of offence. In this regard, applicant has placed reliance on the decision in B.C.Chaturvedi vs. UOI reported in 1995 (SCC-6) 749, wherein it has been held by the Hon'ble Apex Court that *"if the punishment is shockingly disproportionate, the Court can either mold the relief or direct the authorities to reduce the punishment below that of removal/dismissal or the Court in exceptional cases shorten the punishment"*.

6. It has been submitted that this Tribunal in Girish Chandra Behera vs. Union of India & Ors. 11/2006, Swamy's News 75(Cuttack) in O.A.No.857 of 2004 held that the punishment should be commensurate with the gravity of charges and direction was given to the authorities to pass an order of punishment other than dismissal/removal.

7. Based on the above submissions, applicant has prayed for the relief as referred to above.

8. In their counter reply, respondents have opposed the prayer of the applicant. It has been submitted that the misdeed of the applicant led the Department to losing its image,

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trustworthiness and reliability from its noble poor customers who are having good faith and sending money to the family members remaining far away from their natives. Applicant by his offence has failed to maintain integrity and due devotion to duty as enjoined in Rule-21 of GDS(C&E) Rules, 2001. Applicant pocketed the amount of the payees who were waiting for the same for mitigating daily need to survive lives. Therefore, it was held that his continuance in the department will lead to future frauds on the members of public. According to respondents, punishment of removal from service has rightly been imposed on the applicant.

9. Upon perusal of records, we have heard the learned counsel for both the sides in extenso. Applicant has not filed any rejoinder to the counter reply. However, he has filed a written notes of argument and we have also gone through the same.

10. In the written notes of arguments applicant has advanced some points regarding supply of documents, i.e., depositions, statements, order sheets and also enquiry report in hand written by dint of which he has been seriously prejudiced. It has been argued that the list of documents by which and a list of witnesses by whom the articles of charges are proposed to be substantiated should be supplied to the delinquent and as those were not supplied to the applicant, the proceedings stand vitiated.

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11. We have considered the rival submissions and given our anxious consideration. The sum and substances of the imputations are in relation to payment of money orders to persons other than the payees and procurement of bogus signatures on the M.O. paid vouchers. Needless to say, applicant has not furnished before the Tribunal for perusal his defence statement to memorandum of charge, written representation to the report of the I.O., appeal against the orders of punishment and the review petition. In the absence of all these materials, it would be far fetched for the Tribunal to take a view whether or not applicant was not supplied with the list of documents by which and a list of witnesses by whom the articles of charges are proposed to be substantiated. This is because, onus lies on the applicant to establish that despite the listed documents being asked to be supplied were not supplied to him to effectively defend his case. There is nothing on record to show that even such a request having been made by him was not considered by the competent authorities. Therefore, the points which have not been raised before the disciplinary authority or the appellate authority, as the case may be, cannot be urged for judicial scrutiny before the Tribunal. Be that as it may, the entire thrust of the O.A. is that the punishment of removal from service being shockingly disproportionate to the gravity of offence, less punishment other than that should have been awarded on the applicant. This approach of the applicant



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gives out a clear indication of admission of his guilt and he does not have any grievance in the matter of conduct of disciplinary proceedings in any manner whatsoever. Therefore, in the instant case the only point discernible is whether the punishment of removal from service as imposed on the applicant is disproportionate to the gravity of offence and if so, whether the Tribunal can ^u ^l mold the punishment or remit the matter to the authorities for imposition of any punishment other than the removal of service.

12. Before considering the aforesaid point, we would like to quote hereunder the relevant part of the order dated 15.10.2007(A/4) issued by the disciplinary authority.

"From these corroborative evidences it is crystal clear that the C.O. has put bogus signature of payees and did not make payment the M.O. VALUE TO THEM. The C.O. in his representation dated 12.9.07 has pleaded that in all cases had effected payment to wrong payees and subsequently recovered the amount from wrong payee and then effected payment to correct payee. To prove his plea the C.O. has not produced the wrong payees on the other hand he has produced some applications of payees along his representation dated 12.9.07 wherein the payees have stated to have received the M.O. value on the belated dates. On the contrary the C.O. has pleaded that as the payees have received the M.O. amounts and they have no further claim to departments, as such he has not caused any loss to the department, but he has committed irregularity in paying MOs wrongly due to pressure of work. The pleas of CO are not acceptable as it is established from the depositions of payees and documentary evidences that the C.O. has put bogus signatures of payees on the M.O. forms and did not pay the M.O. value to them. Hence, I

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fully agree with the findings of the I.O. that the Charge No.II, III, IV and V are proved.

In view of the facts and circumstances of the case, I find that the said Sri Swain while working as GDS Mail deliverer Anlaberani S.O. committed grave misconduct by putting bogus signatures on M.O. forms and by not making payment M.O. value. By the act of the said Sri Swain the department loss (sic) its trustworthiness and reliability from its valued customers and it is not possible to regain easily for such type of mischief. Moreover the said Sri Swain failed to maintain absolute integrity and I do not think he will mend in future. Hence his reinstatement and continuity in the department will be harmful..."

13. No doubt there is no pecuniary loss sustained by the department due to the misconduct committed by the applicant. However, the fact remains, whether an employee, whose integrity has been called in question by his frequent acts of misconduct in dealing with the gullible citizens, could be bestowed with less punishment other than removal from service.

14 Disposition of absolute integrity, honesty, transparency and devotion to duty should be the whole of the motto of a Government servant in all spheres of his activities. If such ^equalifies are conspicuous by their absence as in this case, the concerned public servant will be a liability on the Government and on the society at large. Since a perpetual nuisance is writ large in the present case which has been established after a full fledged inquiry, we cannot but hold that the punishment of removal from service of the applicant in no way is

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disproportionate to the gravity of offence. Therefore, the punishment of removal from service as imposed on the applicant, in our considered view, is justified and in the circumstances, we are not inclined to mould the punishment or consider it expedient to remit the matter to the authorities for imposition of any punishment other than the removal of service.

15. Last but not the least, we would like to mention that the decisions relied on by the applicant in support of his case are of no help in view of the fact that those decisions are from different contexts which is not the case of the applicant herein.

16. In the result, the O.A. being devoid of merit, is dismissed.

No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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