

Final Order

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.225 OF 2009

Reserved on: 17-01-2013

Pronounced on: 29.1.13.

CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER (JUDL.)
HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

Snehalata Panda,
aged about 60 years,
W.o. late Jogendranath Panda,
Ex-G.D.S.-B.P.M.,
Bhitalia BO.
Via-Udala,
District-Mayurbhanj

...Applicant

By the Advocates: M/s.D.P.Dhalasamant & P.K.Behera

-VERSUS-

Union of India represented through-

1. The Director General of Posts,
Government of India,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110 001
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar,
District-Khurda
3. Director of Postal Services (Headquarters),
Office of the Chief Post Master General,
Orissa Circle,
Bhubaneswar
3. Superintendent of Post Offices,
Mayurbhanj Division,
Baripada

....Respondents

By the Advocates: Mr.D.K.Behera, A.S.C.

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ORDER

A.K.PATNAIK, MEMBER (J):

In a nut shell, facts of the case are that the applicant, while working as Gramin Dak Sevak Branch Post Master (in short GDSBPM), under Udal S.O., in contemplation of initiation of disciplinary proceedings was put under off duty with effect from 28.9.2005. Thereafter, she was issued with Memorandum of charge under Rule 10 of GDS (Conduct & Employment) Rules, 2001, vide Annexure-A/1 dated 9.12.2005, containing the Article of Charge as under:

“That the said Smt.Snehalata Panda while discharging duty as GDS BPM, Bhimtali BO during the period from 5.7.02 to 23.4.03 accepted to SB deposits of Rs.200/- on 5.7.02 and Rs.100/- on 23.4.03 from Rajabati Hamdah and Basanti Singh, depositors of SB account No.285775 standing open at Bhimtali BO, made necessary entries of deposit in the passbook followed by BO date stamp impression and her signature but did not take the transactions in to Post Office account on that day as required under Rule131(3), 174 & 176 of the Rules for Branch Offices (Sixth Edition, Second Reprint)

By the above act, the said Smt.Panda failed to maintain absolute integrity and devotion to duty and hereby violated provisions of ‘Rule 21 of GDS(Conduct & Employment) Rules 2001’.

2. The Applicant having denied the charge leveled against her, ultimately, an inquiry was conducted, wherein the Inquiry Officer submitted its report holding charge proved. The applicant having been supplied with copy of the inquiry report, submitted her representation to the Disciplinary Authority, who, in consideration of the entire matter, vide Memo dated 12.7.2005 (Annexure-A/4) imposed punishment of

removal from service with immediate effect. Aggrieved with this, applicant preferred an appeal dated 2.8.2006(Annexure-A/5) to the Appellate Authority, who also confirmed the order of punishment of removal, as imposed by the Disciplinary Authority, vide Memo dated 21.1.2007 (Annexure-A/6). In the above backdrop of the matter, the applicant submitted a petition 3.1.2009(Annexure-A/7) to the Revision Authority and thereafter moved this Tribunal in the present Original Application, seeking the following relief.

- i) The order of removal dated 12.7.2006 passed by the Disciplinary Authority (under annexure-A/4) and appellate authority's order dated 21.2.2007 (under Annexure-A/6) be quashed.
- ii) Direction be issued to the respondents to reinstate the applicant into service with all consequential benefits.
- iii) Pass any order/orders as would deem fit and proper to give complete relief to the applicant.

3. Per contra, Respondent-Department have filed their counter.

It has been submitted by the Respondents that the O.A. being devoid of merit is liable to dismissed.

4. We have heard Shri D.P.Dhalasamant, learned counsel for the applicant and Shri D.K.Bhera, learned Addl. Standing Counsel appearing on behalf of the Respondents and perused the materials on record.

5. In support of his contention, Shri D.P.Dhalasamant, learned counsel for the applicant raised the following contentions.

- a) The report of the I.O. is perverse inasmuch as the principal witness, viz., Rajabati Hansdah and Basanti Singh, the depositors, during the course of inquiry

having denied to have deposited Rs.200/- and Rs.100/- on 5.7.02 and 23.4.03, respectively, the I.O. should not have taken cognizance of the statement whatsoever had been made by them at the dictates of the Overseer Mail, during the preliminary inquiry as per Ext. S/1, more importantly when acceptance of alleged deposits by the applicant has not been established by any other conclusive evidence and as such, this is a case of no evidence.

- b) The charge leveled against the applicant have not been proved beyond all reasonable doubts.
- c) The Disciplinary Authority having failed to take into consideration and discuss all the points raised by the applicant in her representation to the report of the I.O., the order of punishment as passed is bald and cryptic.
- d) Imposition of punishment of removal from service is harsh to the gravity of offence committed.
- e) Statement of depositors (Ext.S/1) having been recorded during preliminary enquiry in the absence of any witness cannot have evidentiary value, especially when during the regular inquiry, the said depositors stated not to have deposited any amount.

6. In reply to the above Shri D.K.Behera, learned Additional Standing Counsel submitted as under:

- a) During the course of enquiry Rules regarding conduct of disciplinary have been scrupulously followed and there has not been violation of the principles of natural justice at any stage of the proceedings.
- b) The I.O. having taken cognizance of Ext.S/1 has not committed any illegality as the said document formed part of the relied upon documents by the prosecution.
- c) The inquiry is based not only on the evidence adduced by the witness, but also materials/documentary evidence as exhibited during the course of inquiry which are of equal importance.
- d) The Disciplinary Authority has not left out any of the points raised by the applicant in her representation and having considered the totality of the

circumstances, has imposed punishment the punishment of removal from service which is justified as the applicant in the capacity of GDSBPM has lost trustworthiness of the general public.

e) The punishment of removal is in commensurate with the gravity of offence.

Applicant has not filed any rejoinder to the counter.

7. Before considering the matter, we would like to make it clear that as per settled position of law, in a matter of disciplinary proceedings the Court/Tribunal could interfere where the charges are vague, unspecific and/or the conclusion arrived at is perverse and based on no evidence.

8. From the submissions made by the learned counsel for the parties as mentioned above, the sole point that arises for our consideration is whether the conclusion arrived at by the Disciplinary Authority while imposing the punishment of removal is perverse and/or based on no evidence.

9. Before considering the above point, it would be apt to quote hereunder the findings recorded by the Disciplinary Authority while imposing punishment vide Annexure-A/4.

"I have gone through the representation dt. 10.5.06 of the charged official and considered the same with reference to the connected documents. The charged official categorically admitted during oral inquiry and in her above representation that the pass book (Ext.S-2) was with her and she used said pass book to teach the GDSMD of her office about SB work by giving illustration of deposits on 5.7.02 and 23.4.03. But she denied to have received any amount from both the depositors and the depositors have also admitted the same in their depositions. But in Ext.S-1 both the depositors admitted to have handed over money

to the charged official and the charged official in turn admitted to have received the money, made entries in the Pass book (Ext.S-2) and spent the amount. **Keeping of pass book in the post office by the BPM is an offence as rules do not permit so. Moreover, as discussed by I.A., the charged official has no jurisdiction to teach GDSMD of her office by using one passbook. Frther more rules governing SB transactions of BO do not permit the BPM to make entries of depositors in the pass book without receiving money from the depositors.** The point raised by the charged official in her representation that Ext.S-3 and Ext.S-7 were taken at isolated place with threat is not believable. As adduced during inquiry SW-3 taken Ext.S-3 at the BO itself and SW-4 taken Ext..S-7 in his office, which was a public office in presence of SW-3. Thus, the question of isolated place and threat etc. do not arise. **So, I am fully agree with the findings of the I.O. and in the opinion that Smt.Snehalata Panda is not a trustworthy lady to hold the post of BPM, Bhimtali and to deal with public money.** Therefore, I Sri P.C.Behera, Superintendent of Post Offices, Mayurbhanj Division, Baripada, hereby order that Smt.Snehalata Panda, BPM, Bhimtali BO in account with Udala SO be removed from service with immediate effect".

10. From the above, one basic point crops up for consideration is whether the statements recorded vide Ext.S-1, Ext.S-3 & Ext.S-7 during preliminary could be utilized as the evidence based on which the Disciplinary Authority has imposed punishment.

11. It is the settled position of law that preliminary enquiry is conducted for being satisfied whether there exists a *prima facie* case to proceed against a delinquent departmentally in accordance with rules. It is an admitted fact that the preliminary enquiry had not been conducted based on any complaint made by the depositors. Be that as it may, if the statement made during the preliminary enquiry is taken into consideration as the sole basis of coming to the conclusion that the

charge leveled against the delinquent has been proved, then it goes without saying that there was no need to conduct any regular inquiry further in the matter after following the due procedure of rules. In this context, it would be worthmentioning that the applicant having denied the charge leveled against her in the charge memo issued to her vide Annexure-A/1, the Disciplinary Authority ordered appointment of Inquiry Officer and Presenting Officer for conducting a regular inquiry. From this it is clear that conduct of regular inquiry as ordered by the Disciplinary Authority is in dispensation of the preliminary enquiry. Therefore, based on whatever statements made by the witnesses and the documentary evidence adduced during regular hearing before the Inquiry Officer opinion on the establishment or otherwise of the charge should be expressed, lest the holding of regular inquiry would become an empty formality.

12. In the instant case, it is an admitted position that SW-1 and SW-2 became hostile as they turned against their statements that they had made during preliminary enquiry vide Ext.S-1. This fact the applicant had urged in her representation to the report of the I.O. before the Disciplinary Authority. But the Disciplinary Authority, without appreciating the statements made by SW-1 and SW-2 during regular enquiry only swayed away on the statements whatsoever made by them during preliminary enquiry vide Ext.S-1 dated 2.9.2005 vis-à-vis the statement made by the applicant vide Ext.S-7 dated 12.9.2005, leaving aside Ext.S-3 dated 3.5.2009 wherein the applicant had clearly made a statement that the amount against Account No.285775 had not been

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deposited in accordance with the rules nor credited to SP Journal and Account and that they had taken back Rs.300/-, came to the conclusion that the charge leveled against the applicant had been proved. Viewed from this, there being contradictory statements made by SW-1 and SW-2 during preliminary enquiry as well as regular inquiry and there being no unimpeachable document adduced during preliminary to show that SW-1 and SW-2 had indeed deposited the questioned amount by following the due procedure, by no stretch of imagination the documents forming the subject matter of preliminary enquiry, i.e., Ext.S-1 was enough testimony before the Disciplinary Authority to hold that the charge leveled against the applicant had been established. Similarly, there being in existence two contradictory statements during preliminary enquiry, i.e., Ext. S-3 dated 3.5.2009 and Ext. S-7 dated 12.9.2005, it was irrational on the part of the Disciplinary Authority in taking into consideration Ext.S-7 dated 12.9.2005 thereby leaving aside Ext.S-3 dated 3.5.2009.

13. Apart from the above, a pertinent question the applicant, vide Paragraph-6 in her representation dated 10.5.2006 (Annexure-A/3) had raised before the Disciplinary Authority, based on the report of the I.O., which reads as under.

“Another pointed raised by I.O., the credit of Rs.300/- U.R at Udal SO by the CO. It is uncontradicted fact when the CO has made two entries of deposits in a pass book without getting the deposit money nor pay in slip from the depositors she has been directed by theOfficer SDI(P) Udal to credit the amount of Rs.300/- failing which she will be handed over to Police....”

14. The above finding of the I.O. espouses and speaks volumes for that even if two entries of deposits in the pass book were made those were without any pay in slip. In this connection, it would be profitable to 131 of Savings Bank, which reads as under.

131-Receipt of subsequent deposits (1) To deposit money to the credit of an account, after the amount has been opened all that a depositor is required to do is to take or send the amount, with his pass-book (S.B.-5) to the post office along with a pay-in-slip (SB-103).

The Branch Postmaster should check the entries in the pay-in-slip, note the balance after the transaction and initial entry. He should then accept the cash presented and ensure that it agrees with the entry in the pay-in-slip. He should then prepare a receipt for the amount in Form S.B-100 in triplicate by means of double sided carbon paper, date-stamp the receipt. The pencil copy is to be given to the depositor, the duplicate copy should be sent to the Account Officer along with the B.O. daily account and the triplicate copy retained in the book of receipts as office copy”.

2. xx xx xx
3. xx xx xx
4. The pass-book and pencil copy of the receipt (S.B.100) should be returned to the depositor”.

15. From the above, it is clear that deposit into the account initiates or originates with the pay-in-slip along with the pass book and materialized/culminated with the handing over the pass book and pencil copy of the receipt (S.B.100) to the depositor.

16. Notwithstanding the fact that SW-1 and 2 turned hostile, during the preliminary enquiry pencil copy of the receipt (S.B.100) has not been recovered from them during preliminary enquiry. Had it been so, in our considered view, even if they denied to have deposited the questioned amount, this statement could have been refuted by dint of pencil copy of pay-in-slip (S.B.-100) and in such eventuality, nothing

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prevented in the way to establish the charge leveled against the applicant. Similarly, the prosecution has during the regular hearing not produced the other two copies of pay-in-slip (SB-100) meant for Account Officer and Office Copy to bring home the charge ~~the charge~~ against the applicant.

17. In this view of the matter, we would hold that in the absence of corroborating evidence, the Respondent-Department were not justified in taking cognizance of the statements made in Ext.S-1 vis-à-vis Ext.S-7 during preliminary enquiry in order to come to a conclusion that the charge leveled against the applicant had been established warranting punishment of removal from service.

18. Coming to the point in issue, we would like to note that the Disciplinary Authority having taken into consideration the observation that "**Keeping of pass book in the post office by the BPM is an offence as rules do not permit so. Moreover, as discussed by I.A., the charged official has no jurisdiction to teach GDSMD of her office by using one passbook. Further more rules governing SB transactions of BO do not permit the BPM to make entries of depositors in the pass book without receiving money from the depositors**" has come to a conclusion that the charge leveled against the applicant has been proved and accordingly, imposed the punishment of removal from service. This in our considered view, having not formed the subject matter of charge, the applicant could not have been punished on that account. In the circumstances, we are constrained to answer the point in issue that the conclusion arrived at by the Disciplinary Authority while

imposing the punishment of removal is nothing but perverse and based on no evidence. In the circumstances, we have no hesitation to quash the impugned order of punishment of removal from service as imposed on the applicant vide Annexure-A/4 dated 12.7.2005 and the order of the Appellate Authority vide Annexure-A/6 dated 21.2.2007, confirming the order of the Disciplinary Authority, and accordingly, direct the Respondents to reinstate the applicant in service forthwith and grant her all consequential benefits within a period of four months from the date of receipt of this order. Ordered accordingly.

19. In the result, the O.A. is allowed. No costs.


(R.C.MISRA)
MEMBER (ADMN.)


(A.K.PATNAIK)
MEMBER (JUDL.)