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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.118/2004

Date of decision: 12.07.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. Tarsem Lal, Administrative Member.

Bachna Ram Vishoi, S/o shri Mana Ram, aged 47 years, Gramin Dak Sevak, Mail Carrier, Post Office Phalodi, r/o Post Office, Phalodi, District Jodhpur.

Applicant.

Rep. By Mr. Vijay Mehta : Counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Communication, (Department of Post) Sanchar Bhawan, New Delhi.
2. UP Dak Pal, Post Office, Phalodi, District Jodhpur.
3. Senior Superintendent of Post Offices, Jodhpur.
4. Director, Postal Services, Western Region, Rajasthan, Jodhpur.

Rep. By Mr. M. Godara proxy counsel

For Mr. Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant has filed this O.A impugning the order dated 31.12.2002, vide which he was removed from the post of Gramin Dak Sevak Mail Carrier (GDSMC for short). The applicant has filed an appeal against the said order which was partly accepted and the penalty imposed upon the applicant was modified to the extent that the applicant had been debarred from appearing any departmental examination for further promotion in his line of promotion. The applicant was also imposed a recovery of Rs.

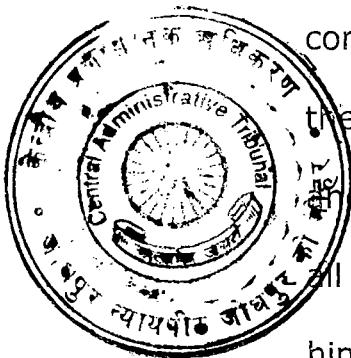


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5000/- which would be deducted in 10 equal installments at the rate of Rs. 500/- per month and the period from the date of removal from service till the date of reinstatement would be treated as 'no work no pay' and the said period would be treated as neither break in service nor would be counted for any purposes.

2. The facts as alleged by the applicant in the O.A are that the applicant while working as GDSMC Phalodi, was issued a memo of charges under Rule 8 of the ED Rules, 1964 on 25.02.2002(annex. A/4). It is alleged that he had failed to obtain receipt from the conductor of the Rajasthan State Road Transport Corporation ('RSRTC' for short) for the TB mail Bag on 09.11.2001, due to which the TB mail bag was found in torn condition and a sum of Rs. 15,000/- was taken away from the bag by someone. The applicant submitted his reply on 07.03.2002. Thereafter the said charge sheet was withdrawn by the respondent No. 2 on 10.04.2002. However, another charge sheet was issued by respondent No. 2 on 15.06.2002 (annex. A/6). The applicant submitted his reply on 28.06.2002. An inquiry was conducted. During the inquiry, the applicant's case was that he put the mail bag as usual by the side of the driver seat and requested the conductor one Shersingh to pass on the receipt for the same. But the conductor replied to him that he is going for a telephonic call and on return from the telephonic call he shall sign the same. But all of a sudden, the driver started the bus and the conductor himself boarded the bus in a running condition and under these circumstances he failed to obtain the receipt for the bag and he

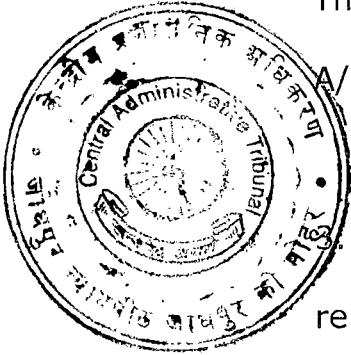


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mentioned the same in the mail list under remarks column. It is further stated that during the inquiry neither the driver of the RSRTC nor the conductor Shersingh was examined. The inquiry officer submitted his report on 26.11.2002 and the 2nd respondents imposed the penalty of removal vide order dated 31.12.2002. He preferred an appeal against the said penalty. In the meanwhile, the RSRTC, after taking necessary legal steps held Shri Sher Singh the conductor of the RSRTC bus guilty of negligence and imposed the penalty of recovery of the said sum of Rs. 15,000/- from him vide order dated 24.09.2003 and a copy of the same was marked to respondent Nos. 2 & 3. The respondent No. 3 while deciding the appeal set aside the order of removal and imposed a fine of Rs. 5000/-, debarred the applicant from appearing any examined and forfeited the salary of the period of removal to reinstatement vide Annex. A/2 dated 14.10.2003. Though several grounds were raised for challenging the order of the Appellate Authority dated 14.10.2003, however, the learned counsel for the applicant confined his argument only to the nature of penalty and submitted that as per Rule 9 of the GDS rules (Conduct and Employment) the penalty awarded is not proper and the same could not have been awarded as the same is ultra vires of the GDS rules. Therefore, he prayed for the quashing of the Annex. A/1, A/2 and A/3.



The respondents are contesting the O.A by filing a detailed reply. The respondents submitted that the penalty has been imposed on the applicant after due process of law and therefore

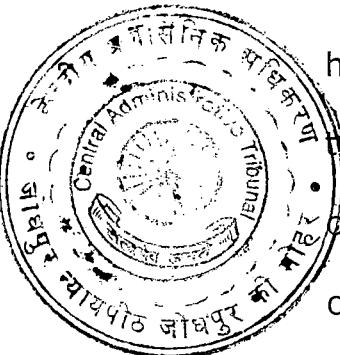
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this Tribunal would not like to interfere with the orders imposed on the applicant after due process of law. The applicant was awarded the penalty of recovery for the pecuniary loss caused to the government due to his negligent behaviour i.e. for not obtaining the receipt for the TB bag from the conductor of the RSRTC bus. The applicant was not paid the salary and allowances from the date of removal till the date of reinstatement on the principle of 'no work no pay'. The revision petition is also rightly rejected. The respondents have prayed for the dismissal of the O.A.

4. We have heard the learned counsel for both sides and carefully gone through the pleadings and records of this case. As regards the facts of this case there is no dispute about the same. The inquiry was held in which the applicant was found guilty for not obtaining the receipt from the conductor for which the penalty of removal was imposed by the Disciplinary Authority and the same was modified by the Appellate Authority. The question arose for our consideration is whether the penalty imposed on the applicant is in accordance with the rules. It is admitted in the reply that the loss of Rs. 15,000/- kept in the TB bag, caused to the department had been recovered from the conductor. We may also mention that the Disciplinary Authority had imposed the penalty of removal on the applicant but the Appellate Authority found that the order of removal was not justified and therefore modified the punishment as mentioned in Annex. A/2.



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5. The following penalties have been specified in Rule 9 of GDS (Conduct and Employment) Rules.

9. Nature of penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Sevak by the Appointing Authority, namely :-

- (i) Censure
- (ii) **Debarring of a Sevak from appearing in the recruitment examination for the post of Postman and/or from being considered for recruitment as Postal Assistants/sorting Assistants for a period of one year or two years or for a period not exceeding three years**
- (iii) Debarring of a Sevak from being considered for recruitment to Group D for a period not exceeding three years;
- (iv) Recovery from Time Related Continuity Allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (v) Removal from employment which shall not be a disqualification for future employment;
- (vi) Dismissal from employment which shall ordinarily be a disqualification for future employment.

(emphasis supplied)

The Appellate Authority while modifying the punishment debarred the applicant from appearing any examination without specifying any period and it appear to us that the applicant has been debarred from appearing in any examination till his superannuation. The treatment of the period between the date of removal till the date of reinstatement as 'no work no pay' has been imposed without any show cause notice nor any explanation has been sought for from the applicant. Hence this part of the penalty is also not in consonance with the rules. Thus the nature of penalties imposed on the applicant is totally contrary to the nature of penalties mentioned in Rule 9 of the GDS(Conduct and Employment) Rules.



6. In view of the above discussion, we have no option but to quash the order imposing penalties issued by the Appellate

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Authority and remit the matter for reconsideration of the Appellate Authority to consider the matter afresh and impose the appropriate penalty in consonance with the Rule 9 of the GDS (Conduct and Employment) Rules. We also notice that earlier while modifying the penalty awarded by the Disciplinary Authority, the Appellate Authority had modified the penalty of removal and therefore we hope that the Appellate Authority while reconsidering the matter would keep his earlier decision in mind and pass a fresh order as per Rule 9 of the GDS (Conduct and Employment Rules.) This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. O.A is disposed of as above. No costs.



Tarsem Lal
(Tarsem Lal)
Administrative Member

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Kuldeep Singh
(Kuldeep Singh)
Vice Chairman.

Part II and III destroyed
in my presence on 26/3/14
under the supervision of
Section officer (as per
order dated 26/3/14)

Section officer (Record)

Mr. A. B. S.

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