CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.435/ Jodhpur/ 2012

Jodhpur this the 07th day of October, 2014

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)

Sukha Ram Gujjar S/o Shri Kishore Ji, aged 40 years, R/o village Nakore, District Pratapgarh, Ex. GDS BPM, Nakore, District Pratapgarh.

.....Applicant

By Advocate: Shri Vijay Mehta.

Versus

1. Union of India through Secretary, Ministry of Communication (Department of Post), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Chittorgarh.
3. Director, Postal Services, Southern Region, Rajasthan, Ajmer.

.....Respondents

By Advocate : Smt. K.Parveen

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:-

"The applicant prays that impugned orders Annexure-A/1 dated 17.08.2011 and Annexure-A/2 dated 27.02.2012 may kindly be quashed and the respondents may kindly be directed to reinstate the applicant with all consequential benefits. Interest at the rate of 12% may also be granted to the applicant on the due amount of salary and allowances. Any other orders may kindly be passed giving relief to the applicant."

2. Brief facts of the case, as averred by the applicant, are that the applicant was appointed on the post of ED BPM, Post Office, Nakore on 13.08.1997. The applicant has been discharging his duties for last more than 14 years to the respondent department. On 21.06.2011 (Annexure-A/3) a show cause notice was issued by the respondent No.2 alleging therein that the applicant was convicted in case No.172/1994 and case No.114/2001 (which was later registered as Case No.20/2002) and after perusal of the report of the Collector and decision dated 20.07.2006 passed in case No.20/2002 he has come to conclusion that applicant is not worth continuing in service. In pursuance of the notice, the applicant submitted his reply on 11.07.2011 and mentioned that it has not been mentioned in the notice that as to what sentence was passed in case No.20/2002 and submits that a fine of Rs.50/- was imposed upon him in case No.172/1994 vide order dated 14.03.1995 much before his appointment as ED BPM in a family dispute after mutual agreement between the parties of the litigation. It was further submitted that prosecution expenses as were imposed on the applicant in case No.20/2002 do not amount to sentence, and even conviction in small matter does not mean that the conduct is such that it is not possible to retain him in service. It has also been mentioned that copy of the letter of the Collector has not been supplied to the applicant and hence he is not in a position to make submissions with regard to the observations of the Collector. But, the respondent No.2 vide his order dated 17.08.2011 (Annexure-A/1) imposed penalty of removal upon the applicant by exercising his power under Rule 11 of the Department of Posts, Gramin

Dak Seveks (Conduct Engagement) Rules, 2011 and it has been held therein that the applicant was found guilty under Section 332 and was convicted by imposing fine of Rs.400/- and was granted probation for one year by furnishing surety. Against that order, the applicant submitted appeal to the respondent No.3, on 01.10.2011 (Annexure-A/4) and the same was rejected by the Appellate Authority vide order dated 27.02.2012 (Annexure-A/2). It has been further submitted that from a bare perusal of the appeal, it reveals that the penalty of removal of the applicant could not have been imposed upon the applicant under the provisions of Department of Posts, Gramin Dak Seveks (Conduct & Engagement) Rules, 2011 and further the disciplinary authority must take into consideration the entire conduct of the applicant but the disciplinary authority did not follow these instructions. It has been further submitted that the Appellate Authority has not considered the several grounds mentioned by the applicant in his appeal. Therefore, the applicant by way of this original application seeks relief as mentioned at para No.1.

3. In reply, the respondent department submitted that the applicant completed more than 3 years service and as such it was decided by the respondents to regularize the service of the applicant and for this purpose a report was called from the District Collector, Chittorgarh for verification of character and antecedents. After inquiry, it was found that a criminal case No.114/2001 under Section 332 and 353 of IPC was pending against the applicant in the competent Court and in the light of the said report, the

applicant was allowed to continue on temporary and provisional basis till finalization of the case. It has been further submitted that after completion of the trial, the learned Additional Judicial Magistrate, Chittorgarh vide his order dated 20.07.2006 (Annexure-R/2) held the applicant guilty of the offence under Section 332 of IPC and directed to release under Section 4 of the Probation of Offenders Act on furnishing a personal bond of Rs.4000/-. It has been further submitted that it was amply proved that the applicant had committed crime and was convicted by the Court of law and a convicted person cannot be retained in public service. Therefore, on the basis of the report of the District Collector, Pratapgarh dated 21.12.2010, the respondents did not find the applicant fit to retain in service and accordingly he was removed from service vide order dated 17.08.2011.

4. In rejoinder, the applicant while reiterating the same averments as mentioned in the OA, denied the averments by the respondents that after inquiry it was found that criminal case was pending against him, whereas no such enquiry was conducted and further the applicant was released on probation which does not amount to conviction and a person released on probation does not suffer any disqualification attached to a conviction.

5. Heard both the parties. Counsel for the applicant contended that applicant was serving on the post of GDS BPM from 13th of August, 1997 on temporary/ provisional basis and he was served a notice dated 07.10.2011, Annexure-A/3, by which the applicant was asked to submit his

explanation regarding his conviction in two criminal cases. One is the case No.114/2001 under Section 332 of Indian Penal Code, which was subsequently registered as case No.20/2002 in which the benefit of Section 4 of the Probation of Offenders Act was extended to the applicant and only a security of Rs.4000/- had to be furnished and Rs.400/- as prosecution expenses were imposed upon the applicant and in case No.172/1994 case pending under Section 332 of the Indian Penal Code a fine of Rs.50 has been imposed upon the applicant. The reply of Annexure-A/3 i.e. Charge Memo was submitted by the applicant and the order of removal passed by the respondents as Annexure-A/1, against which the applicant has filed a reply and the Appellate Authority without considering the submissions made dismissed the appeal vide order dated 27.02.2012 Annexure-A/2. Counsel for the applicant contended that it is an established principle of law that when the accused is granted or extended the benefit of Probation of Offenders Act, it implies that the provisions of the Section 12 will apply to all those cases. Counsel for the applicant in support of his argument relied upon the judgment of Rajasthan High Court passed in *Udai Singh vs. State of Rajasthan* in SB Criminal Misc. Petition No.3366/2013 decided on 06.11.2013; in which the Hon'ble Rajasthan High Court has held that " a bare perusal of the above makes it clear that if a person is dealt with under Section 3 or 4 of the Act, he will not suffer from any disqualification attaching to a conviction of an offence under such laws Meaning thereby that Section 12 in itself provides that when a person is dealt with under Section 3 and 4 of the Act, no disqualification could be attached to him by

virtue of Section as of the Act. Counsel for the applicant further contended that as per the reply filed by the respondents one of the main ground of the removal of the applicant from service was regarding the concealment of the facts of the pendency of the cases in Annexure-R/3 in which the applicant did not disclose the pendency of the cases and the judgment delivered against him. Counsel for the applicant further contended that Annexure-A/3 is the letter by which the explanation of the applicant was called but it does not contain any mention of the fact that he has concealed the facts of the pendency of the cases while filling the attestation form Annexure-R/3 on 04th of August 2010 and simply on the ground of the conviction of the applicant in above cases, he was removed from service and his appeal was dismissed by Annexure-A/2. Counsel for the applicant further contended that no opportunity was given to the applicant to file reply regarding the fact that how and in what circumstances he could not refer the judgments of the criminal courts in Annexure-R/3 and without providing any opportunity of hearing on this point, Annexures-A/1 and A/2 orders were passed by the competent authority, therefore they are not sustainable in the eyes of law. He further contended that while deciding the reply filed by the applicant, the disciplinary authority must consider whether his conduct was such as warrants an imposition of penalty of removal. For this purpose they have to peruse the judgments of the criminal case and consider all the facts and circumstances of the case and the disciplinary or appellate authority should take into account the entire conduct of the applicant, the gravity of the

misconduct, the impact of misconduct likely to be on administration, other extenuating circumstances and redeeming features.

6. Per contra, counsel for the respondents contended that from the perusal of Annexure-R/3 which was submitted on 04.08.2010, it is well evident that the applicant concealed the pendency of the cases as well as the order of conviction and order of fine and order of extending the benefit of Section 4 of the Probation of Offenders Act upon the applicant, and on concealment of these facts the respondents have rightly removed the applicant from services. It was the main contentions of the counsel for the respondents that from Annexure-R/3 it is very clearly revealed that the applicant concealed the fact of the pendency of the cases and the order of conviction and he has never denied this fact before the competent authority by way of reply, therefore, the orders at Annexure-A/1 and A/2 are legal and sustainable in the eyes of law.

7. We have considered the rival contentions of both the parties and also perused the record. From the Annexure-A/3 it is well evident that there is no reference of this fact that the applicant has concealed the fact of pendency of the criminal cases and orders passed against him but it refers only to the pendency of the criminal cases and decisions in the cases. The appellate authority held that the applicant has concealed the pendency of the cases though the disciplinary authority has not referred this fact in his order. It is well settled principle of law that while imposing the penalties the disciplinary authority ought to have considered the entire conduct of the

applicant whether its amount of offence of moral turpitude or it is a very grave misconduct committed by the applicant. In our considered view, Annexure-A/3, does not refer this fact that the applicant has concealed the fact of the pendency of the cases as well as the conviction while applying for regularization vide declaration dated 04.08.2010. In the absence of any specific charge, there was no opportunity for the applicant to submit his explanation regarding this fact, but this fact has been considered by the respondents while removing the applicant from the services. So far as other grounds are considered the respondents ought to have considered the entire conduct of the applicant and merely on the ground of pendency of the cases and order of imposition of fees and order of extending the benefit of Probation of Offenders Act it was not sufficient to pass the order of removal of the services because the Disciplinary Authority and the Appellate Authority ought to have considered other related circumstances also.

8. In view of the discussions hereinabove made, we are of the considered view that Annexures-A/1 and A/2 are not sustainable in the eyes of law and accordingly they are set aside and the applicant is entitled to be reinstated in service with immediate effect on account of setting aside of the Annexures-A/1 & A/2. However, it is also ordered that if the law permits the respondents are free to hold fresh enquiry/ disciplinary proceedings against the applicant regarding concealment of the facts regarding criminal cases while submitting the verification form on

04.08.2010 or any other misconduct. Further, the applicant was removed from the services and he remained out of job from 17.08.2011 therefore, so far as wages are concerned the applicant shall file a representation before the competent authority and the competent authority shall decide the representation as per law. Accordingly, the OA is allowed as above with no order as to costs.

[Meenakshi Hooja]
Administrative Member

[Justice K.C.Joshi]
Judicial Member

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