

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 1482 of 97

Present : Hon'ble Mr.Justice B.Panigrahi, Vice-Chairman
Hon'ble Mr.N.D.Dayal, Administrative Member

LAKSHMI NARAYAN MONDAL
S/O Late Satish Chandra Mondal,
formerly working as EDBPM,
Kalitaladiar, EDBO, R/O Vill. & P.S.
Kalitaladiar, P.S.- Berhampore,
Dist.- Murshidabad.

...APPLICANT .

VERSUS

1. Union of India, through the
Secretary, Dept. of Posts,
Ministry of Communications,
Sanchar Bhawan, New Delhi-110001.
2. Director of Postal Services,
Calcutta Region, Yogayog Bhawan,
Calcutta - 700012.
3. Superintendent of Post Offices,
Murshidabad Division, Berhampore,
West Bengal - 742101.
4. Debasish Som, Inspector of Post
Offices (Complaints & Public
Grievances), Murshidabad Division,
Berhampore, West Bengal - 742101.

...RESPONDENTS.

For the applicant : Mr.R.K.De, counsel
Ms.B.Banerjee, counsel

For the respondents: Ms.K.Banerjee, counsel

Heard on : 1.10.04

Date of order : 30.11.2004

O R D E R

N.D.Dayal. A.M.

The applicant who was formerly working as EDBPM of Kalitaladiar EDBO was removed from service after a charge framed against him in a Disciplinary Proceeding relating to a transaction of Rs.500/- showing lack of devotion to duty and failing to maintain absolute integrity was established. The penalty of removal from service was upheld by an order of the Appellate Authority dated 6.2.96. The applicant had therefore filed OA 838/96 inter alia praying for quashing of the penalty order. The Tribunal in its order dated 15.11.96 directed as under :

"3. On hearing the Ld.counsel for both the parties and on perusal of the application together with the annexures. We find that although several grounds were taken by the petitioner in the petition of appeal before the appellate authority, but as a matter of fact, he had admitted that he had accepted a sum of Rs.500/- from a depositor, which was not accounted in the Branch Office Account and as a matter of fact, he was only asking for a lenient action pleading that the omission was a bonafide mistake and he had served the postal department for 20 years without blemish and on realisation of mistake, he had tendered the disputed amount. In such circumstances, we are not inclined to interfere with the order of the appellate authority on ground of supposed procedural illegality or on finding of fact, but it is unnoticeable that the order of the appellate authority even though presumably agreed with the disciplinary authority regarding extreme penalty imposed on the petitioner, still he need not record any reason why he considered such penalty to be commensurate with the facts, which it was incumbent upon him to record. We, therefore, propose to set aside the order of the appellate authority and remit the appeal back to it for disposal after properly considering whether the penalty of removal of service imposed upon the petitioner was commensurate with the facts and circumstances of the present case and to record the reasons in this regard. In case the penalty is found to be excessive, it should be suitably modified also with proper recording of reasons.

4. The application is accordingly disposed of at the admission stage itself setting aside the order of the appellate authority with a direction to it to dispose of the appeal afresh as per direction given above and after giving the petitioner an opportunity of personal hearing."

2. In compliance with the direction of the Tribunal the applicant was given a personal hearing by the Appellate Authority on 15.4.97 and thereafter a detailed speaking and reasoned order was passed on 29.5.97 upholding the punishment order of removal from service. Hence the applicant is once again before the Tribunal seeking the following reliefs :

a) for an order upon the respondents to withdraw cancel or rescind the existing appellate order dated 29.5.97 (mentioned in paragraph 1 of the OA) alternatively for an order quashing the said impugned order dated 29.5.97.

b) for an order quashing or setting aside the order of penalty dated 15.6.95.

c) any other order or orders as deemed fit and proper by way of moulding reliefs.

3. In its order dated 29.5.97 the Appellate Authority has noted the facts of the case in brief that Shri Lakshmi Narayan Mondal, Ex-BPM Kalikataladiar BO was proceeded under rule 8 of EDA (Conduct and Service) Rules, 1964 on the ground that while working as EDBPM of the

7

said EDBO. he accepted a sum of Rs500/- on 22.3.93 tendered for deposit in SB A/c No.533587 standing open at Kalikataladiar EDBO in the name of Smt. Bimala Das. made necessary entries in the said Passbook casted balance accordingly and authenticated such entries in the Passbook with his initial/date stamp impression of the BO dtd. 22.3.93 but he did not reflect the said transaction in BO SB journal, BO daily account, BO account book and BO journal on 22.3.93. In violation of rule 131 of BO rules he failed to take the transaction dated 22.3.93 into Govt. account. When the fact of non-credit of the said transaction was detected he was placed under put off duty by the Asstt. Supdt. of POs, Murshidabad Central Sub-Dn. by order dated 4.5.94 which was approved by the Supdt. of POs, Murshidabad Dn. under his No.F4-15/94-95 dtd. 6.5.94 and proceeding under rule 8 was conducted and he was punished with removal from service under SPOs Murshidabad Memo. No. F4-1/5/94-95 dtd. 15.6.95.

4. Thereafter, the Appellate Authority has proceeded to examine the contentions raised by the applicant in his appeal dated 13.9.95, and observed that the applicant accepted the money for deposit into Govt. account but did not credit the amount even though he made necessary entries in the Pass Book of the depositor which indicates his failure to maintain absolute integrity and devotion to duty. It has been further noticed that when the non-credit was detected the applicant credited the missing deposit into Govt. account on 5.5.95 with penal interest which is not a bonafide mistake or omission but establishes lack of his integrity in dealing with public money. The applicant also admitted the charge during the enquiry and again in his representation dated 8.5.95 on the enquiry report. The Appellate Authority found that the Disciplinary Authority had gone through the relevant records, Enquiry report and representation dated 8.5.95, applied his mind and passed the punishment order dated 15-6-95 after taking into account the circumstances of the case and nature of offence. The applicant had been given the opportunity to contest the charges against him and the Disciplinary Authority had proceeded in

the matter as per rules. Thus it was concluded that the penalty of removal from service imposed on the applicant is commensurate with the facts and circumstances of the case. The appellate order states that the Post Office acts as the custodian of public money and as a ED Branch Post Master it was the duty of the applicant to credit each and every paise into Govt. account. Non-crediting it amounts to doubtful integrity and an EDBPM with doubtful integrity cannot be trusted with public money.

5. The applicant has raised several arguments in support of his case which have been denied and disputed by the respondents in their reply. We have heard the Ld. Counsel for both sides and perused the pleadings.

6. As per charge memo dated 9-12-94 the charges against the applicant were as under :

Annexure-I

Statement of Articles of Charge framed against Sri Lakshi Narayan Mondal, EDBPM, Kalitala Dear ^{EDBO} (now under off duty)

Article-I

Sri Lakshi Narayan Mondal while working as EDBPM Kalitala Dear EDBO on 22-3-93 acted in contravention of the provision of Rules 131, 173, 174, 175 and 177 of Rules for Branch Offices (Sixth edition 2nd reprint) in connection with his action/in action relating to the deposit transaction of Rs500/- (Rupees five hundred) only dated 22-3-93 in Savings Bank Account No.533587 standing at Kalitala Dear EDBO in the name of Bimala Das. Said Shri Mondal also by his above noted act showed lac of devotion to duty and also failed to maintain absolute integrity contravening the provision of Rule 17 of EDA (Conduct and Service Rules), 1964.

Annexure II

Statement of imputation of misconduct or misbehaviour in support of the articles of charges framed against Sri Lakshi Narayan Mondal, EDBPM, Kalitala Dear EDBO (now under Off duty)

Sri Lakshi Narayan Mondal while working as EDBPM Kalitala Dear EDBO on 22-3-93 accepted a sum of Rs500/- (Rupees five hundred) only tendered for deposit in SB PB A/C No.533587 standing open at Kalitala Dear EDBO in the name of Smt. Bimala Das for making desposit of the said amount in the aforesaid account and made necessary entries in the pass book to show that the said amount was deposited in the Pass Book on 22-3-93 casted balance accordingly and authenticated such entries in the pass book with the initial of the said Sri Mondal as EDBPM on 22-3-93 and date stamp impression of Kalitala Dear EDBO

dated 22-3-93 but said Sri Mondal did not reflect the transaction in BO, SO journal), BO daily a/c, BO account book and BO journal of Kalitala Dear EDBO dated 22-3-93 and he failed to take into Govt. A/C the transaction dated 22-3-93 and thereby acted in contravention of the Departmental Rules."

7. The applicant submitted his representation dated 3-1-95 admitting the charges but with certain arguments to temper such admission. An enquiry was held on 27-3-95 at which the applicant admitted the charges notwithstanding absence of presenting officer. The applicant submitted his written representation and by order dated 15-6-95 the punishment of removal from service was imposed on him by the Disciplinary Authority after detailed consideration of record & relevant aspects as expressed in the penalty order.

8. The applicant has complained that he was not properly informed of having been put off duty which was extended beyond 120 days. But it is found from the reply that he had been addressed by Registered AD post and there is no mention of any representation made by him against extended put off duty. He has also contested the charge-sheet as being vague but a plain reading of the same shows specific details and in relevant facts and figures which reflect the charge. The applicant has repeatedly emphasised that he had not admitted the charges or the statement of imputations, but only admitted the mistake. The applicant submits that it was temporary misappropriation only due to disturbed state of mind. It is however apparent that he deposited an amount of Rs.529.80/- including the interest element only when the misappropriation by him was detected and hence it could not be regarded as a voluntary refund of the amount even before he was caught with having committed the offence. The commission of such a fraud could hardly be accepted as a bonafide mistake and the applicant be treated leniently on that account. The applicant contends that there was no public complaint from the depositor and since the enquiry was held it implies that there was no admission of guilt. Clearly there could not have been any complaint from the depositor because the entries in the Pass Book of the depositor had been correctly made so as not to arouse suspicion of any misappropriation in the depositor's

mind. Besides, in terms of the procedure prescribed in Rule 14 (1) & (5)(a) of the CCS (CCA) Rules, 1965 for imposition of major penalties there is no bar against the Disciplinary Authority obtaining such evidence as it may think necessary even where the charges had been admitted so as to arrive at the findings thereon. The applicant has pleaded that the penalty imposed is too harsh, excessive and disproportionate to the alleged misconduct. He has further contested the order passed by the Appellate Authority but without putting across any cogent and acceptable reasons as to why the punishment imposed was incorrectly held to be commensurate with the facts and circumstances of the case. It is alleged that the Appellate Order indicates non-application of mind and does not comply with the directions of the Tribunal.

9. We have given careful consideration to the case and find no infirmity or illegality in the disciplinary procedure followed that may require interference. Evidently the applicant who admitted the charge has received adequate opportunity to defend himself and the punishment order has been passed keeping in view the material on record in a reasoned and speaking manner. We find that the Appellate Order dated 29-5-97 is not irrational or based on any extraneous considerations. It has been passed on the basis of the relevant records of the proceedings bearing in mind the directions of the Tribunal and as such cannot be said to suffer from non application of mind or be held to be in disobedience of the Tribunal order. The facts and circumstances of the case have been considered alongwith the penalty imposed which was found to be commensurate.

10. The Hon'ble Supreme Court has in a catena of decisions laid down the law on the question of judicial intervention in the punishment awarded in Disciplinary Proceedings. In U.P.State Road Transport Corporation & Ors. -vs- A.K.Parul [JT 1998(7) SC 203] while considering the case of a former bus conductor, who was charged for taking certain passengers without ticket and removed from the post but

was reinstated by order of the High Court which found the punishment awarded to be not commensurate with gravity of charge, the Apex Court held:

"The interference with the punishment on the facts of this case cannot be sustained. In State Bank of India -vs- Samarendra Kishore Endow °JT 1994(1) SC 2176 this Court held that imposition of proper punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the appellate authority to interfere with it, but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High court under Article 226."

Again, in State of Karnataka & Ors. -vs- H.Nagaraj °JT 1998(9) SC 376 in a matter relating to a Police Constable who was dismissed from service for collecting Rs.50 to Rs.70/- from Auto Rickshaw Drivers for letting them go after unofficial detention for traffic offences and if they refused, Rs.150 to Rs.200/- were collected after issue of public notices the Hon'ble Supreme Court referred to its earlier decision in Union of India -vs- Parma Nanda °JT 1989(2) SC 1326 and observed that the same view has been reiterated in a more recent decision in Union of India & Ors., -vs- G.Ganayutham JT 1997(7) SC 572 wherein it was held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards. The order of the Tribunal reducing the punishment was set aside.

11. Further, in District Judge Bahraich & Anr. -vs- Munijar Prasad JT 2001(8) SC 643 which was a case of an ad-hoc Driver who was dismissed on certain charges of misconduct by the Disciplinary Authority but penalty was set aside by the High Court which remanded the matter for fresh decision, the Hon'ble Supreme Court took the following view :

" We have serious doubts of the manner in which the learned single judge has dealt with the writ petition. The applicability of doctrine of proportionality as demonstrated in Union of India & Anr. -vs- G.Ganayutham Jt 1997(7) SC

7

5723 appears to have been completely lost sight of by him. As held in Om Kumar -vs- Union of India °JT 2000(Suppl.3) SC 926 in exercise of judicial review jurisdiction, High Court cannot interfere with quantum of punishment, in the field of administrative law unless it is satisfied that Wednesbury Principles are violated, in which case the High Court shall ordinarily remit the matter to authority competent to order punishment. In UPSRTC -vs- Subhash Chandra Sharma °(2000) 3 SCC 3246 punishment of removal awarded after proof of charges was held not liable to be interfered with unless it was "shockingly disproportionate". No such finding was arrived at either by learned single judge or by the division bench."

12. In Union of India & Ors -Vs- Narain Singh (2002(3) AISLJ 151) the Apex Court was dealing with a matter wherein the Driver had been charged for disobedience and assault on the Head Constable, his superior officer, and admitted his mistake seeking pardon. He was found guilty of the charges and dismissed which was upheld by the appellate authority but set aside by the Division Bench of the High Court which reduced the punishment. When the ld.counsel tried to support the impugned order on the ground that the Division Bench of the High Court had taken a just and kind view considering the fact that the respondent had served for a long time and came from a poor family the Apex Court observed :

"We are unable to accept this submission. As stated above, the law is clear. It is not for the Court to determine the quantum of punishment once charges are proved. In this case it cannot be said that the punishment of dismissal is not commensurate with the charges. It is not for the Court to interfere on misplaced grounds of sympathy and/or mercy."

13. In yet another case of Regional Manager, U.P. SRTC Etawah & Ors -vs- Hotilal and another (2003(3) SCC 605) a bus conductor who did not issue tickets even after realising the fare from the passengers and was found in possession of old tickets with the intent to use them again, was terminated but the penalty was set aside by a Division Bench of the High Court since the alleged misconduct had caused loss to the State to the extent of Rs.16/- only and the punishment was not considered to be commensurate with the charge. Here the Hon'ble Supreme Court while upholding the order of dismissal observed :

"It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate."

If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable." (para 10)

14. Admittedly the applicant had served the Postal Department for a long period of time but this by itself would not mitigate the gravity of the offence. There can be little doubt that being the custodian of public money as ED Branch Post Master it was the applicant's bounden duty to credit the depositer's money in Government account honestly in justification of the trust reposed in him instead of misappropriating the same for his personal gain. It needs no emphasis that in a Disciplinary matter the competent authority should appreciate the gravity of a misconduct properly and not take a lenient view particularly in cases where there is a failure to maintain integrity and devotion to duty as enjoined in the Government Servants (Conduct) Rules because this would have a deleterious effect on the discipline in the organisation as well as go against public interest.

15. In view of the above discussion we are not inclined to intervene in the matter. The application is dismissed. There shall be no order as to costs.

Member(A)

Vice-Chairman