CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 467 of 2012

Wednesday this the 7th day of October, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P.Gopinath, Administrative Member

P.K.Vasumathy, D/o K.R.Kunju (late)
K.V.Bhavan, Alumpeedika PO, Prayar-690547
Sub Postmaster, (Removed from service)
Department of Posts, Kollam Postal Division

...Applicant

(By Advocate Mr. V. Sajith Kumar)

Versus

1. Senior Superintendent of Post Offices,
Kollam Postal Division. Kollam-691001.

2 The Director of Postal Services (HQ), O/o the Chief
Postmaster General,Kerala Circle, Thiruvananthapuram.33.

3. Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.695033.

4. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi-110 001.

...Respondents

(By Advocate Mr. P.G. Jayan, ACGSC)

This application having been finally heard on 29.09.2015, the Tribunal on .07.10..2015 delivered the following:

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The applicant seeks quashment of Annexures. A1, A2, A5, A6, A8, A.10 and A.12 .and also seeks a declaration that the punishment of removal

from service imposed on the applicant is highly disproportionate to the gravity of offence alleged against her. She further seeks a direction to be given to the respondents to make suitable modifications in compliance with principles of natural justice reinstating the applicant into service. In the alternative she seeks a direction to be given to the respondents to grant compassionate allowance permissible under the rules and to release the gratuity for the completed years of service.

2. Brief facts necessary for the case are stated as under:-

2.1 The applicant was a Sub Post Master, Prayar. Annexure. A2 is the Memorandum of Charges containing the charges framed against her. Annexures appended to Anenxure A2 memorandum of charges would show the statement of allegations.

2.2 The gist of first charge - Article 1 is to the effect that while the applicant was functioning as Sub Post Master, Prayer on 20.09.2002 accepted Rs. 50,000 from Smt,.Krishnakumari along with an application for purchase of Kisan Vikas Patra (KVP for short) in the name of Smt. Krishnakumari and issued 5 KVPs of Rs. 10000 each (the numbers of which have been mentioned in the charge) but the applicant failed to credit the money in PO account and further the applications received from the investor were not preserved in the office guard file. The second charge -Article II is that the applicant while working as Sub Post Master on 28.10.2002 accepted a sum of Rs. 15000 from Smt. Pnnammal for purchase

of KVP and issued one KVP for Rs. 10000 and another for Rs. 5000, (the numbers of which are mentioned in the charge), but the applicant failed to credit the money into PO account and preserve the application received from the investor in the office guard file. In both the cases there is a charge that he did not make entry of the issue of KVP in the stock register of KVPs maintained in Sub Office. The third charge – Article III is that the applicant while working as SPM Prayar on 23.10.2002 received a sum of Rs. 95000/- from Smt.Saraswathy for deposit in the SB Account No.1141624 standing open at Prayer PO but the applicant failed to credit the amount into account. The rules which have been violated by applicant are clearly mentioned in Annexure. A2.

2.3 Inquiry Officer was appointed. Following the procedure prescribed the inquiry was conducted. Annexure. A.5 is the inquiry report submitted by the Inquiry Officer. There is a detailed narration of entire facts, documentary and oral evidence and discussion on every aspect touching the matter. It is stated that when the applicant was questioned she admitted that she had worked as Sub Post Master, Prayar for the period in question When specific question was put regarding the embezzlement of the amount covered under the charges mentioned above, she said nothing and she replied that she did not remember how the 'case was happened'. The applicant was given opportunity to conduct the case properly.

2.4 Annexure. A6 is the proceedings of the Disciplinary Authority.

On receipt of Annexure. A5 the Disciplinary Authority independently considered the charges levelled against the applicant and the evidence adduced on each of the charges levelled against the applicant. Exts. P1 to P25 were marked on the side of the prosecution and PWs 1 to 5 were examined to prove the charges levelled against the applicant. Out of the five, PW 1 to 3 are the three persons from whom the applicant had accepted the money as stated in the charge. Their evidence is worthy of credence, it is stated. The applicant could not produce any document or offer any plausible explanation regarding non-accounting of the money. It is contended that including the three amounts as mentioned above, the total amount embezzled by the applicant was more than Rs 4 lakhs.

2.5 As stated earlier the Disciplinary Authority has considered the evidence in detail and agreed with the Inquiry Officer and thus held that the charges levelled against the applicant as proved and accordingly the Disciplinary Authority passed the Annexure.A.6 order removing the applicant from service with immediate effect. The order was passed on 17.3.2006.

2.6 Annexure. A8 is the order of the Appellate Authority dated 22.9.2006. All the contentions raised before the Appellate Authority were considered by the Appellate Authority. After consideration of the entire evidence, Appellate Authority concurred with the decision taken by the Disciplinary Authority and hence the appeal was dismissed.

2.7 Annexure. A.10 the order passed by the Revisional Authority dated 7.9.2007 would show that there was another re-appraisal of the evidence. The entire matter was considered in detail. In fact the Revisional Authority found that the extreme penalty of dismissal would have been justified. However, penalty of remvoal from service was only imposed. As such the Revisional Authority did not find any reason to show further leniency to the applicant and thus the Revision Petition was also dismissed. A Review Petition was also filed. That was also found to be of no merit and that was also dismissed as per Annnexure. A12.

3. The judgment rendered by the Hon'ble High Court in W.P(C) No. 35158 of 2007 which was filed by the respondents herein challenging the order in OA 234/2006, filed along with M.A. No. 942/2015 has no relevance to the issue involved in this OA.

4. It is vehemently argued by the learned counsel for the applicant that the original documents were not produced to substantiate the charges levelled against the applicant. We find no provision to accept that contention. The learned counsel for the applicant has relied upon the decision of the Apex Court in ***Makhan Singh Vs. Narainpura Cooperative Agricultural Service Society Limited – AIR 1987 SC 1892*** in support of his submission that to prove the charge of embezzlement of money the original documents should have been produced but only Photostat copies were produced. The facts dealt with in the aforesaid decision are entirely

different. There, one charge was that the appellant therein had not attended to his work between 11.5.1981 and 29.5.1981 due to his illness. It was also contended that the applicant had gone on a strike without obtaining any leave and that he had also committed embezzlement of the money belonging to the Society. It was noted by the Supreme Court that admittedly no domestic inquiry was held by the management before passing the order of termination of the appellant's services. It was also noticed that the evidence led by the management in support of embezzlement alleged was very scrappy. The management had only produced three photocopies of entries in the passbook which were marked as Exts M1 to M3 and original were not produced. No explanation was given by the management for not producing the originals. Here, the position is entirely different. PW1 to PW3 the complainants were examined and their evidence was worth convincing. Besides, other papers and documents were also produced. The photostat copies of only some of the documents were produced for valid reasons. Here the Exts.P1 to 25 which were marked during inquiry would include so many other documents as well. There was no objection for the applicant at the time of marking those documents. The fact that the non-production of originals of three certificates which were issued to the complainants will not in any way affect the decision taken by the inquiry authority or Disciplinary Authority, nor does it affect the orders of the Appellate Authority, Revisional Authority and Review Authority.

Practically no tenable contention could be advanced by the applicant to resist the charge levelled against her. Therefore, the argument advanced by the learned counsel for the applicant on that ground is found untenable..

5. The other ground that has been projected by the learned counsel for the applicant is that no independent witness was examined. It is not discernible how there could be independent witnesses in these transactions. Three complainants had given evidence against the applicant that the respective amounts were entrusted by them to the applicant. That is the most acceptable evidence. The other two witnesses are the official witnesses who produced the documents and gave evidence relating to the transactions mentioned in the charges.

6. The other argument urged by the learned counsel for the applicant that documents were not supplied is also not found to be correct since the charges would show that the description of the documents which were relied upon by the Inquiry Officer, the copies of which were made available to the applicant. Therefore, there was no violation of any of the rules pertaining to the disciplinary inquiry. After appreciating the evidence the Inquiry Officer found that the charges levelled against the applicant are proved. After going through the entire evidence oral and documentary the Disciplinary Authority was convinced of that fact and concurred with the view taken by the Inquiry Officer. The finding of guilt was rightly confirmed by the Appellate Authority, Revisional Authority and Review

Authority as well.

7. The court can exercise the power of judicial review only if there is a manifest error in th exercise of power or if the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and is patently erroneous. Judicial review in such matters is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. The court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive its own independent finding. See the decisions of the Hon'ble Supreme Court in ***High Court of Judicature at Bombay through its Registrar vs. Uday Singh S/o Ganpatrao Naik, Nimbalakar and others – (1997) 5 SCC 129***, **Govt. of A.P and others Vs. Mohd, Nazrulla Khan – (2006) 2 SCC 373** and ***Union of India Vs. Manab Kumar Guha -- (2011) 11 SCC 535.***

8. In the light of the aforesaid decisions, we have no hesitation to hold that the finding entered against the applicant is perfectly correct.

9. The other point for consideration is whether the penalty imposed on the applicant is strikingly disproportionate to the gravity of offence committed. The applicant was removed from service. As stated earlier the charges levelled against her was regarding the embezzlement of money which could be proved to the hilt. Considering the gravity of the offence

committed by the applicant, it cannot be said that the punishment imposed on her is disproportionate.

10. The applicant holding such a position, 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 with iron hands. Where a person deals with public money or engaged in financial transactions, or acts in a fiduciary capacity, highest degree of integrity and trustworthinesses is must and exceptionable. It is the trust that is reposed on the applicant that was committed breach of. It was the hard earned money of the complainants (PW1 to PW3) examined in Annexure.A5 and other persons which were swindled by the applicant. Even temporary misappropriation may attract the offence of criminal breach of trust. As such the contention that the punishment imposed on the applicant is disproportionate also cannot be sustained.

11. It was held by the Hon'ble Supreme Court in ***State of Meghalaya and others Vs. Mecken Singh M Marak – (2008) 7 SCC 580*** that a court or tribunal while dealing with the quantum of punishment has to record reasons as to why it felt that the punishment is not commensurate with the proved charges. The punishment imposed by the disciplinary authority or appellate authority unless shocking to the conscience of the court cannot be subjected to judicial review. The same is the view taken by the Hon'ble Supreme Court in ***Depot Manager, APSRTC Vs. P.Jayaram Reddy – (2009) 2 SCC 681.*** Here, it is not a case where the charges were ridiculous nor can it be said that the sentence is an outrageous

defiance of logic and as such it cannot be said that the sentence is shockingly disproportionate. The learned counsel for Respondents would submit that there is no perversity or irrationality in the penalty imposed on the applicant and so this Tribunal should not interfere merely on compassionate grounds.

12. In ***State Bank of Patiala Vs. S.K.Sharma – (1996) 3 SCC 364*** the Supreme Court emphasized that the court shall not interfere with the order of punishment for the reason that in such an eventuality setting aside an order may not be in the interest of justice rather it may be tantamount to negation thereof. It was held:

> "Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that *technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice.* Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise." **(Emphasis added).**

Similar view was taken by the Supreme Court in ***S.K.Singh vs. Central Bank of India and others – (1996) 6 SCC 415 and State of UP Vs. Harendra Arora and another -- AIR 2001 SC 2315*** . Similar is the view taken in ***Aligargh Muslim University Vs. Mansoor Ali Khan – (2000) 7 SCC 529*** and ***S.L.Kapoor Vs. Jagmohan -- AIR 1981 SC 136.*** The aforesaid decisions were followed in ***Union of India Vs. Bishamber Das Dogra – (2010) 1 SLJ 100.***

13. The Hon'ble Supreme Court in ***Diwan Singh Vs. Life Insurance corporation of India and others – (2015) 2 SCC 341*** has held tht it is not the amount but the confidence which was reposed on the public servant

which is of primary consideration. There, it was a case of defalcation of Rs. 533/-, that too only for a temporary period of 3 ½ months. Following the decision in ***NEKRTC Vs. H. Amaresh – (2006) 6 SCC 187*** the Hon'ble Apex Court in the decision cited supra (***Diwan Singh's case)*** held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor, which is impermissible in law and there would be no justification for substituting the punishment to compulsory retirement from removal from service. It has been further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest. The facts of that case are almost identical to the facts of this case.

14. Considering the very serious charges framed against the applicant which could be proved to the hilt, we are not inclined to accept the plea raised by the applicant that the punishment imposed on her is strikingly disproportionate.

15. Learned counsel for the applicant has referred to Annexure.A13 to Annexure. A15 to contend for the position that the penalty imposed on other persons was modified. The cases dealt with in Annexure. A13 to Annexure. A15 are totally different. The proportionality of the punishment imposed on the applicant has to be considered in the light of the facts and circumstances brought out in the instant case. Article 14 of the

Constitution does not envisage negative equality. Thus Annexures A.13 to A15 have no relevance to the point in issue in this case.

16. The learned counsel for the applicant submits the a direction may be issued to the respondents to consider the applicant's request for compassionate allowance, as according to the learned counsel for the applicant, the applicant had put in about 21 years of service in the department and so she may not be totally denied of the pension and gratuity. Learned counsel has also submitted that the applicant is now in abject penury and that she is suffering from serious ailments as well. Those are not matters which can be considered by this Tribunal, in order to upset the penalty imposed on the applicant.

17. The learned counsel for the applicant has also referred to Rule 41 of CCS (Pension) Rules which provides that the Authority competent to dismiss or remove the incumbent from service, may, if the case is deserving for special consideration, sanction compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him/her if he/she had retired on compensation pension. It is for the Government /authority concerned to consider the same if a request to that effect is submitted by the applicant. The treatment certificate and other medical records, if any, are to be submitted by the applicant to the authorities concerned. In this case it is not necessary for us to consider the same. So far as this application is concerned, finding of guilt and

punishment imposed on the applicant are found to be just and proper. No illegality was committed by any of the authorities concerned so as to interfere with the same.

18. In the result, this OA is dismissed. No order as to costs.

(P. Gopinath)
Administrative Member

(N. K. Balakrishnan)
Judicial Member

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