CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 555 OF 2007

Dated the 17th October, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

Thankamma Daniel,
W/o VK Daniel,
Gramin Dak Sevak Branch,
Post Master (GDSBPM),
Meenara Branch Post Office,
Pathanamthitta, residing at Vattappara House,
Meenara PO,
Thannithode, Pathanamthitta,
PIN 689 699.

....Applicant

[By Advocate H.MR. Hariraj)

-Versus-

1. Union of India,
   Represented by the Secretary,
   Department of Posts,
   Ministry of Communication,
   New Delhi.
2. Chief Post Master General, Kerala Circle,
   Thiruvananthapuram.
3. Director of Postal Services, HQ Region,
   Office of the Chief Post Master General,
   Kerala Circle, Thirvananthapuram.
4. The Senior Superintendent of Post Offices,
   Kollam Division, Kollam.

...Respondents

[By Advocates: Ms Jisha for Mr TPM Ibrahim Khan, SCGSC)

This application having been heard on 26th September, 2008 the Tribunal delivered the following -

ORDER

(Hon'ble Dr.KS Sugathan,AM)

The applicant was working as Gramin Dak Sevak Branch PostMaster (GDSBPM) Meenara Branch Post Office, Pathanamthitta under the fourth respondent. A charge sheet was issued to her on 28.1.2003 under Rule 10 of Department of Posts GDS (Conduct and Employment) Rules 2001. There were three articles of charge. The first article related to shortage of cash amounting to Rs.2276 at the time of inspection by Asst. Supdt. of Post offices on 26.9.2001. The second and third charges relate to non-crediting of monthly deposits received from Recurring Deposit (RD) holders. In the subsequent oral enquiry the enquiry officer held the first charge as not proved but the second and third charges as proved. The disciplinary authority agreed with the findings of the enquiry officer in respect of second and third charges, but disagreed with the findings on the first article of charge. The disciplinary authority imposed the penalty of removal from service by her order dated 28.2.2005. The appeal filed by the applicant was rejected by the 3rd respondent by order dated 3.3.2006. The revision petition filed by the applicant was rejected by the 2nd respondent vide his order 26.6.2007. Aggrieved by the penalty the applicant filed this OA seeking the following relief:

> "i. The quash AnnexureA1, A2 and A3;
> ii. To direct the respondents to reinstate the applicant with all consequential benefits including arrears of pay and allowance and continuity of service;

iii. Grant such other reliefs as may be prayed for and the court may deem fit to grant; and
iv. Grant the costs of this Original Application."

[2] In regard to the first charge, it is contended by the applicant that according to Rule 11 of the Rules for Branch offices and also para 217 of P&T Manual GDSBPMs are at liberty to keep the cash and valuables by making their own arrangements to ensure safety, but such cash should be produced for inspection within the time required for going to and coming back from the place where the cash is kept for safe custody. The cash that was found short on 26.9.2001 was available at her residence which is just adjacent to the Branch post office. The applicant was not allowed to produce it from her residence by the inspecting officer. When her husband brought the cash it was not accepted. The disciplinary authority has not correctly appreciated the evidence in respect of charge No.1. As regards the second and third charges the amounts were given to her by the depositors on the date they were deposited. The entries in the passbook were made erroneously. The entries in the passbook were not corroborated by the witness. The statements made by the depositors in the preliminary enquiry were retracted during the formal enquiry. Reasonable opportunity has not been given to defend her case. There is violation of principles of natural justice. The punishment imposed is grossly disproportionate to the misconduct.

[3] The respondents have filed reply statements. On the first article of charge, it is stated in the reply statement that as there was no excess cash available on the previous day than to meet the liabilities of the next day the full cash should have been available in the Branch office right from the starting of working hours. The inspection was done during the working hours. The applicant is not allowed to keep a part of the cash in her residence during working hours, when it required for transactions. As regards the second and third articles of charge, the applicant herself has made entries in the respective RD passbooks showing the date of deposits, but these were not accounted for in the post office records on the respective dates. The documentary proof clearly established these two charges. The Hon'ble Supreme Court has held in ***Bank of India v. Suryanarayana AIR 1999 SC 2407*** that "strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge". The appellate and revision authorities have considered all aspects before issuing orders rejecting the appeal/revision. The second respondent has also given a personal hearing to the applicant. Full opportunity has been given to the applicant to defend her case. There is no violation of principles of natural justice.

[4] We have heard the learned counsel for the applicant Shri M.R. Hariraj and the learned counsel for the respondents Ms Jisha for TPM Ibrahim Khan. We have also carefully perused the records.

[5] Following the judgments of the Hon'ble Supreme Court in ***BC Chaturvedi vs. Union of India (1995 6 SCC 749)*** and ***High Court of Judicature v. Shashikant Patil (2000 1 SCC 416)*** the scope of judicial review in disciplinary proceedings is limited to the examination of (a) whether there has been a violation of the principles of natural justice, or (b) whether the proceedings have been held in violation of statutory regulations, or (c) the decision is vitiated by considerations extraneous to the evidence or (d) whether the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion. Keeping the aforesaid grounds in mind, we have looked at the material on record in this case. The report of the enquiry officer shows that applicant was given reasonable opportunity to present her case. Three defence witnesses were also examined. While holding the first charge as not proved the enquiry officer had accepted the defence plea. In respect of the second and third charge the enquiry officer had come to the conclusion that the documentary evidence and the circumstantial evidence are strong to prove the charges. The entries in the passbook were proved as genuine. Reasons for disagreement on the first charge has been communicated to the applicant. In response to the enquiry report, the applicant

submitted a representation dated 10.2.2005. It is nowhere stated in this representation that she has not been given reasonable opportunity to defend her case. On the other hand the applicant is pleading for pardon for trivial lapses. The following extracts from the aforesaid representation is relevant:

> "9. I beg your pardon for the noted trivial lapses. I regret very much for the same. I assure that I will be more careful in future and will not come up for any adverse notice of any kind. There is no loss to the department or depositors. The image of the department was not tarnished in any way. I was put off from duty on 9.10.01. The put off duty was prolonged due to no fault on my part. The charge sheet was issued only on 28.01.03. I had already suffered a lot due to the prolonged put off duty and this itself is a sufficient punishment for the accidental lapses on my part.
> 10. Therefore, I humbly request to your goodself to be kind enough to exonerate me and take me into service pardoning my lapses."

[6] We have also perused the orders issued by the appellate and Revision Authorities. These orders do not indicate that proper consideration has not been to the issues raised. Both the appellate and revision authorities had given the applicant a personal hearing. The appellate authority did not consider that the lapses were trivial. The following extract from the appellate order is relevant:

> "5. I have gone through the appea land all other connected records pertaining to the case. As requested for by the appellant a personal hearing was allowed to her on 19.10.2005. On going through the records of the case, I find that the charges levelled against the appellant were not based on mere trivial lapses on her part and all the three charges relate to misappropriation of government money and non-accounting of RD deposit amounts on the dates) of their receipt. The offence committed by the appellant as per Article II and III of the charge memo, which have been proved beyond doubt on the basis of both oral and documentary evidence in the departmental inquiry, is really serious warranting severe action. In the personal hearing given to her on 19.10.2005, she could not also

deny the charges against her. I find that the punishment imposed on her by the Adhoc Disciplinary Authority is commensurate with the gravity of the offence committed by her. As such I am not inclined to interfere with the penalty imposed by the Adhoc Disciplinary Authority which stands confirmed. The appeal submitted by the appellant is, therefore, rejected."

[7] It is mentioned in the revision order that "the charges levelled against the petitioner ate misappropriation of government money and non accounting of RD deposits. By doing so, the petitioner defrauded both the Department and the innocent customers and undermined the faith reposed in the department by the public. Her argument that there is no loss to the Department is unacceptable since making good the loss subsequently does not reduce the gravity of the offences."

[8] In view of the foregoing discussion we are of the considered opinion that the respondents have complied with the rules and procedures before imposing the penalty. There is no violation of the principles of natural justice. The applicant's counsel relied on the judgment of this Tribunal in OA No. 171 of 2002. We find that the findings of the Tribunal in that case cannot be pressed into service in this case because the one only charge against the applicant in that case was shortage of cash which was made good in half an hour, similar to the first charge against the present applicant. But in the case of the present applicant there are two more charges which are more serious and held as proved by the enquiry officer. Therefore the

applicant is not entitled to the benefit of the order of this Tribunal in OA171 of 2002.

[9] The respondents have relied on the judgment of the Hon'ble Supreme Court in ***Union of India vs.Sardar Bahadur (1972 4 SCC 618)***. The apex Court in that had looked into the question whether punishment can be sustained even though the first two charges have not been proved and only the third charge was proved. The following extract from that judgment is relevant:

> "18. It may be recalled that the punishment of compulsorily retirement was imposed upon the respondent on the basis that all the three charges had been proved against him. Now, it is found that only the third charge has been proved. The question then is whether the punishment of compulsorily retirement imposed by the President can be sustained even through the first two charges have not been proved.
> 19. Now it is settled by the decision of this Court in *State of Orissa v. Bidyabhushan Mohapatra* that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

[10] On the question of quantum of punishment, interference can be justified only if it is "so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias" (*Ranjit Thakur v. Union of India 1987 4 SCC 611)*. For instance, dismissal of an employee for misplacing an office file in the absence of ulterior motive (Dev Singh v Punjab Tourism 2003 8 SCC 9) But not when a police constable is

dismissed for collecting money from drivers of auto rickshaws violating traffic rules and letting them off (*State of Karanataka v. H.Nagaraj (1998 9 SCC 671).* In the present case the charges proved against the applicant are such that indicate betrayal of the trust reposed in a public servant by a government department as well as by members of the public. We do not therefore consider that it is a fit case for this Tribunal to intervene in the quantum of punishment also.

[11] For the reasons stated, the OA is dismissed. No costs.

(Dr.KS Sugathan)
Member(Administrative)

(George Paracken)
(Member (Judicial)

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