

Central Administrative Tribunal, Lucknow Bench, Lucknow
 Original Application No.236/2006

This the 27th day of January, 2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Bhagwan Deen (died on 26.10.2006) son of late Sri Avdhesh resident of village Heerpur, Post Chauria, Tehsil- Sidhaul, District- Sitapur.

1/1. Smt. Ramsri aged about 61 years wife /widow of Sri Bhagwandeen

1/2. Vinod Kumar Misra about 32 years

1/3. Pramod Kumar Misra aged about 28 years

1/4. Smt. Rekha aged about 20 years

1/5. Km. Sweta aged about 16 years

1/6. Km. Tanya aged about 14 years

(All sons and daughters of Sri Bhagwan Deen No. 1/1 to 1/6 all resident of village Heerpur Post Chauria, Sidhaul- Sitapur.

Applicant

By Advocate: Sri A.K.Dixit

Versus

1. Union of India through Secretary to Govt. of India, Department of Post, Sanchar Bhawan, New Delhi.

2. Chief Post Master General, U.P.Circle (Parimandal Karyalaya), Lucknow.

3. Director, Postal Services, U.P. Circle Office of Chief Post Master General, U.P. Circle, Lucknow.

4. Superintendent of Post Offices, Sitapur Division, Sitapur.

5. Inspector of Post Offices (Central Sub Division) Sitapur.

Respondents

By Advocate: Sri Praveen Kumar for Sri G.K.Singh

(Reserved on 18.12.2013)

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

i) Punishment order dated 2/9.5.2005 contained in Annexure No.A-1 be decided to be illegal without any jurisdiction and accordingly be ordered to be quashed and applicant be held entitled to all usual service benefits like seniority back wages, full retiral benefits and other usual monitory benefits as if such order never remained in existence. The applicants being legal representatives and heirs of deceased employee are entitled to all such full back



wages and entire retiral monitory such as gratuity etc. and other benefits and one of them is also entitled to be appointed on compassionate grounds."

ii) Costs of the O.A. and such other reliefs as may be deemed fit and proper in the circumstances of the case may also be pleased to be awarded to the applicant as against the opposite parites.

2. The brief facts of the case are that the applicant who was working with the respondents organization was served with the charge sheet and subsequently an enquiry was conducted and after the enquiry, the disciplinary authority passed an order of removal vide order dated 2/9.5.2006. The learned counsel for the applicant has categorically pointed out that the charges leveled against the applicant was to the effect that while he was posted as Gramin Dak Sevak at Branch Post Office Godhna, he failed to deliver one registered letter to its correct addressee Mahendra Kumar instead it was delivered to some other person named Jagannath Prasad. It is admitted by the applicant that he was serviced with a copy of the enquiry report and after the enquiry, the respondents have passed an order on 13.4/31.5.2005 wherein a recovery of Rs. 1000/- was ordered. The said punishment was subsequently reviewed and it was found that the punishment awarded to the applicant was not commensurate to the misconduct , as such an order of removal was passed. The applicant challenged the order of recovery of Rs. 1000/- by means of O.A. No. 422/2005 and the said O.A. was finally disposed of with a direction to the respondents to take a decision on the show cause notice within a period of 4 weeks from the date on which the reply to the show cause notice is received to the authorities. This order was passed by the tribunal on 19th December, 2005. In pursuance of the said order, the respondents given show cause notice to the applicant and sought for his representation and after the due consideration, the respondents enhanced the

punishment and passed an order of removal which is challenged in the present O.A.

3. The learned counsel appearing on behalf of the respondents have filed their reply and through reply, it was pointed out by the respondents that the impugned order does not suffer from any illegality and it is a reasoned and speaking order and there is no negligence or latches involved on the part of the respondents. It is also pointed out by the respondents that after the initial appointment of the applicant as Extra departmental Mail Peon, Godhana on 13.10.1971, the applicant showed his in disciplined behavior and his nature was also becoming abusive and right from 1974 till 2004, there were number of complaints received by the respondents. The act of slackness in delivering the registered letter to some other person also taken as a grave misconduct and accordingly the respondents have passed the order of removal. It is also pointed out by the learned counsel for the respondents that the applicant is habitual of absenting himself from duty without prior sanction of leave and without information to the higher officials of the Department and beating, abusing, mal functioning, misbehaving with the senior officers is the habit of the applicant and not only this, the applicant started flouting the instructions of the superiors ,as such, the respondents have taken a right decision in passing the order of removal against the applicant. Apart from this, it is also argued by the learned counsel for the respondents that there is no illegality in conducting the disciplinary proceedings and passing the impugned order.

4. Subsequently, the applicant expired on 26.10.2006 during the pendency of the present O.A., as such a substitution application was moved and the said substitution application was allowed by the Tribunal vide order dated 24.4.2007 and the learned counsel for the applicant substituted the legal heirs in the array of parties.

Thereafter, the son of the ex-employee filed the Rejoinder Reply and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated. However, through the Rejoinder Reply, the applicant denied the averments made in the C.A. and has pointed out that the respondents were influenced by the alleged previous conduct of the deceased employee for which he was never being given any opportunity to explain nor any charge sheet or show cause notice was given to the applicant. As such, the impugned order of removal is liable to be quashed.

5. Heard the learned counsel for the parties and perused the records carefully.

6. The applicant joined the Department as Extra Departmental Mail Peon on 31.10.1971 and after serving a long period, he was given the charge sheet, though copy of the charge sheet is not available on record, neither it was filed by the applicant nor on behalf of the respondents. But it is clear that an enquiry was conducted and the copy of the enquiry report was also served upon the applicant. It is also to be seen from the record that the order passed by the Disciplinary Authority on 13.4/31.5.2005 clearly shows that on 24.9.2004, the charged employee accepted the guilt and has also prayed for exemption and submitted that the said mistake would not be repeated again. In pursuance of the said, the disciplinary authority passed an order of recovery of Rs. 1000/- to be deducted in 10 monthly installments of 100/- each. After the said order was passed, the case of the applicant was reviewed in terms of a letter dated 1.7.2005 and after exercising the power under Rule 19 of Gramin Dak Sevak (Conduct and Employment) Rules, 2001, the applicant was removed from service. The applicant preferred an O.A. before the Tribunal and pointed out that after the order of recovery, a show cause notice dated 8.8.2005 was issued showing cause as to why penalty of recovery imposed upon the applicant

should not be enhanced and he should be dismissed from service. While deciding the O.A., the Tribunal directed the respondents to supply copy of letter dated 1.7.2005 which is referred in the show cause notice dated 8.8.2005 and seek applicant's explanation/ reply and after the receipt of the said reply, action to be taken. In pursuance thereof, the respondents served the copy of letter dated 1.7.2005 to the applicant. The learned counsel for applicant has also taken reliance to the letter dated 1.7.2005 which is a part of Annexure No. 5 and has also taken a ground that it was the pre-conceived decision of the respondents to enhance the punishment.

The letter dated 1.7.2005 reads as under:-

"I have been directed to ask you to kindly review the punishment order which was awarded by SDI (Central) Sitapur vide his memo No. A-80/04/Disc. Action dated 13.4.2004/31.5.2005 to Sri Bhagwan Deen GDS DA/ Runner Godhna (Sidhaul) Sitapur because this case does not appear to be commensurate.

You are requested to kindly look into the matter on top priority basis and report compliance to this office for onward submission to DPS (HQ)."

7. The respondents have also issued a corrigendum dated 30th December, 2005 indicating therein that by mistake, Rule 20 was mentioned instead of Rule 19. The applicant also submitted a reply to the show cause notice and after the receipt of the reply, the respondents have passed the impugned order. Undisputedly, the applicant has accepted the guilt and also requested for pardoning him as by mistaken he has delivered one registered letter to some other person. The bare perusal of the letter dated 1.7.2005 which is a part of Annexure No. 5 to the O.A. clearly shows that the authorities are directed to review the punishment which was awarded to the

applicant vide memo dated 13.4/31.5.2005 and on the basis of the dictates of the higher authorities , the respondents enhanced the punishment of the applicant. It is also undisputed to the effect that under Rule 19 , the revisionary authority has a power to confirm /modify or set aside the order. The learned counsel for the applicant received number of complaints as stated in the O.A. but the respondents failed to indicate that the applicant was ever served with any charge sheet or show cause notice was given to the applicant or he was ever punished for any misconduct. Since the applicant was due to retire within two years when the punishment was awarded, as such awarding the punishment of removal on the dictates of the higher authorities appears to be unjustified. The learned counsel for the applicant has also placed reliance on the following judgments:-

- i) **Shamsher Bahadur Singh vs. State of U.P. and others reported in(1993) 1 UPLBEC 488.**
- ii) **Union of India and others Vs. Bishambhar Nath Mishra and others reported in (2001) 1 UPLBEC 864**
- iii) **S.R. Tiwari Vs. Union of India and another reported in (2013) 3 UPLBEC 1822.**

8. It is also to be seen that the punishment of removal shocks the conscience of the Court because the applicant has only delivered one registered letter to some other person and he has accepted the guilt and also requested for pardoning him for this mistake. It is proper to remand back the matter to the disciplinary authority to reconsider the punishment awarded to the applicant commensurate to the misconduct committed by the delinquent employee. As observed by the Hon'ble Apex Court in the case of **V. Ramana Vs. APSRTC and others AIR 2005 Supreme Court 3417**, "the scope of Judicial Review as to the quantum of punishment is permissible only if it is found that it is not

commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found be shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.”

As observed in the case of **Union of India Vs. R.K.Sharma reported in AIR 2001 SC 3053** that “**If the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference.**”

9. As observed above, that initially the applicant was awarded punishment of recovery of Rs. 1000/- and thereafter, the same was reviewed and order of removal was passed by the authorities on the dictates of higher authorities which appears to be disproportionate to the misconduct committed by the applicant as such, the impugned order dated 2/9.5.2006 is liable to be quashed and accordingly it is quashed and the matter is remanded back to the disciplinary authority to reconsider the punishment awarded to the applicant and pass a fresh order within a period of 3 months and order so passed, be communicated to the legal heirs of the ex-employee.

10. With the observations made above in para 9, the O.A. is allowed. No order as to costs.

J. Chandra
(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-