

(6)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

12.11.2009

OA 325/2008

Mr.C.B.Sharma, counsel for applicant.
Ms.Kavita Bhati, proxy counsel for
Mr.Kunal Rawat, counsel for respondents.

At the request of learned counsel for the applicant,
let the matter be listed on 18.11.2009.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

vk

18/11/2009

Mr C.B.Sharma, counsel for applicant
Ms. Kavita Bhati, proxy counsel for
Mr. Kunal Rawat, counsel for respondents
Heard learned counsel for the
parties.
for the reasons dictated separately
the OA stands disposed of.


(B.L.KHATRI)
M (A)


(M.L.CHAUHAN)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 18th day of November, 2009

ORIGINAL APPLICATION NO. 325/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER.

Lallu Lal Yadv son of Late Shri Chanda Lal Ji, aged about 53 years, resident of 28-29, Sanjay Nagar, Kachchi Basti near DCM, Ajmer Road, Jaipur (Rajasthan), removed from service from the post of Postman, Jaipur GPO, Jaipur (Rajasthan).

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Director, Postal Services, Jaipur Region, Jaipur.
4. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur.

.....RESPONDENTS

(By Advocate : Ms. Kavita Bhati proxy to Mr. Kunal Rawat Sr. Standing Counsel)

ORDER (ORAL)

The applicant has filed this OA thereby aggrieved by the order dated 28.01.2008 (Annexure A/2) whereby punishment of removal was imposed by the Disciplinary Authority and order dated 10.07.2008 (Annexure A/1) whereby appeal of the applicant against the order of the Disciplinary Authority was rejected. The applicant has prayed that these orders may be quashed and set aside and he may be reinstated in service with all consequential benefits.

2. Brief facts of the case so far as it is relevant for the disposal of the case are that the applicant while working as Postman, GPO Jaipur was issued charge sheet dated 21.04.2006 containing two charges. The gravemost charges against the applicant was that while working as Postman Jaipur GPO on 16.05.2005, he received an EPP No. 6 causing delivery to Smt. Sarita Singh, DPS O/o CPMG, Jaipur, but he returned it undelivered with wrong remark of "Office Closed" in contravention of the Rule 115 (1) of Postal Manual Vol. VI Part-III. It is further stated that the said article was delivered by the PRI (P) on the very day. Further allegation against the applicant is that he refused to give his statement to Shri P.D. Israni, PRI (P) on 13.06.2005, when Shri P.D. Israni was conducting inquiry about non delivery of the above said article. Thus he has violated the provisions of Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964. On the basis of the report submitted by the Inquiry Officer and after considering the reply to the inquiry report given by the applicant, the Disciplinary Authority imposed the punishment of removal from service vide Memorandum dated 28.01.2008 (Annexure A/2). The appeal filed by the applicant against the same was also dismissed by the Appellate Authority. Based on these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3: The respondents have filed reply. The respondents have justified their action on the basis of the reasoning given by the Disciplinary Authority and the Appellate Authority in their orders.

4. We have heard the learned counsel for the parties and have gone through the material placed on record. From the material placed on record, we are of the view that it is not a case of such a nature where ⁱⁿ proceedings were held in violation of principles of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority/ Appellate Authority is based on 'no evidence.' It may be stated here that the scope of interference in such matter is very limited. The Tribunal cannot sit in appeal over such order to reevaluate or re-assess the material to test the correctness of finding of fact. The fact remains that the charge against the applicant regarding non delivery of 'Express Parcel Post No. 6 on 16.05.2005 for causing delivery to the addressee, Smt. Sarita Singh, the then Director Postal Services (HQ), Office of the Chief Post Master General, Rajasthan Circle, Jaipur, stands fully proved.

5. Now the question which requires our consideration is whether the penalty of removal from service, as imposed by the Disciplinary Authority and confirmed by the Appellate Authority, comes within the category of penalty proportionate to nature of misconduct committed by the applicant. From the material placed on record, it is evident that the applicant was appointed as Postman on 03.11.1980 and the order of removal from service was passed by the Disciplinary Authority on 28.01.2008. Thus before passing of the order of removal from service, the applicant has rendered more than 27 years of service. The effect of the removal from service is that the service of 27 years rendered by the applicant with the Department will not count as qualifying service ⁱⁿ

for the purpose of pension. As already stated above ~~whereby~~^{whether} in the facts & circumstances of this case, the punishment imposed by the authority can be said to be commensurate with the gravity of misconduct conducted/alleged to have been proved against the delinquent employee? In other words, from the facts & circumstances of this case, can it be inferred that punishment imposed by the Disciplinary Authority is shockingly disproportionate to the gravity of charge alleged & proved against the delinquent employee? Admittedly, the charge against the applicant is that he has not delivered Express Parcel Post No. 6 on 16.05.2005 to the address, Smt. Sarita Singh, the then Director Postal Services (HQ), Office of the Chief Post Master General, Rajasthan Circle, Jaipur. The misconduct that is alleged in our view would definitely amount to violation of discipline not expected of an employee but ~~Maintain~~^{misconduct} may not fit into the category of gross violation of discipline. It is well settled that the doctrine of proportionality is well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. The Apex Court in the case of **Chairman cum Managing Director, Coal India Limited & Another vs. Mukul Kumar Choudhuri & Others**, JT 2009 (11) 472 has held that award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would

any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

6. Thus the further question which requires our consideration is whether the matter has been examined by the Disciplinary Authority/ Appellate Authority in the light of the law laid down by the Apex Court. As can be seen from Para No. 3(ix) of the Appellate order, the Appellate Authority has dealt this point regarding the quantum of punishment in most casual manner without giving any reasons. At this stage, we wish to reproduce Para No. 3(ix), which thus reads as under:-

"(ix) He has contended that the disciplinary authority awarded penalty of removal from service without considering the facts and gravity of the offence, as there is no loss to department and nor his integrity is in doubt.

The penalty was imposed on him after taking into account the facts and gravity of his offence. Therefore his contention that there is no pecuniary loss to the Govt. and nor his integrity is in doubt is meaningless. This is a case of indiscipline, which is quite intolerable in any establishment."

7. As can be seen from the portion, as reproduced above, the Appellate Authority has not considered the matter in right perspective and has not taken into consideration measure, magnitude and all other relevant factors into consideration. Simply because the delinquent employee has not delivered the parcel, this fact alone without any other incriminating circumstances/ misconduct would be sufficient to

pass the order of removal from service thereby fortifying 27 years of service, which the applicant has rendered, can any reasonable employer would have imposed such punishment? We are of the considered view that in such circumstances of the case, no reasonable employer would have imposed such a punishment and the punishment imposed by the Disciplinary Authority and as confirmed by the Appellate Authority is a outrageous defiance of logic, shocking, perverse and irrational. Thus the punishment is not only unduly harsh but grossly in excess to the allegations.

8. It may be relevant to state here that in the case of Chairman cum Managing Director, Coal India Limited & another (Supra), the delinquent employee remained absent from duty for 6 months and the Apex Court has held that under the facts & circumstances of the case, order of removal from service was not justified. The Apex Court instead of remitting the case back, reinstated the appellant. However, he was denied back wages.

9. Similarly, the Apex court in the case of **Jagdish Singh vs. Punjab Engineering College & Others**, JT 2009 (8) SC 501 held that absent of an employee for 15 days does amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Accordingly the order of removal from service was modified to that of stoppage of two increments with cumulative effect and further that he would not entitled for any monetary benefits during the

period he was out of service and that period would be counted only for the purpose of his service benefits.

10. Thus viewing the matter from aforesaid angle and the law laid down by the Apex Court, we are of the view that this is a case which is required to be remitted back to the Appellate Authority to pass appropriate order regarding quantum of punishment to impose lesser punishment than the removal from service commensurate with the gravity of misconduct committed by the applicant.

11. Accordingly, the impugned order dated 10.07.2008 (Annexure A/1) passed by the Appellate Authority is quashed and set aside. The Appellate Authority is directed to pass appropriate order in the light of observations made above within a period of two months from the date of receipt of a copy of this order.

12. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ