

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 478/2011

ORDER RESERVED ON : 11.02.2015

DATE OF ORDER : 30.3.2015

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER.
HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL MEMBER.

Prabhu Lal Tabra S/o. Shri Ram Lal Tebra by cast Tebra, Aged about 53 years, R/o. Padanga Via Bandanwara – Nasirabad District Ajmer. Presently removed from duty as GDS BPM Padanga on 22.09.2009.

..... Applicant.

(By Advocate Mr. P. N. Jatti)

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur – 7.
3. Postmaster General, Southern Region, Ajmer.
4. Supdt. Post Offices, Beawar Dn. Beawar.

..... Respondents

(By Advocate Mr. Mukesh Agarwal)

ORDER

Per : Smt. Chameli Majumdar, Member (J).

The applicant, who was working as GDS BPM, Padanga, has filed this O.A. challenging the order of removal passed by the Disciplinary Authority as well as the order upholding the order of punishment by the Appellate Authority.

2. The main grievance of the applicant is that the Applicant was not offered any opportunity of hearing. The applicant was removed from service w.e.f. 22.09.2009 without following the rules and procedures of disciplinary enquiry and in violation of the principles of natural justice.

3. The applicant has contended that a charge sheet was served on him under Rule 10 of the GDS (Conduct and Employment) Rules, 2001. The charge sheet was issued by the Superintendent of Post Offices, Beawar. The applicant denied all the charges in the preliminary hearing and he prayed for an oral enquiry in the matter but without holding any proper enquiry the order of punishment of removal was passed on 18.09.2009 by the Disciplinary Authority, being the Superintendent of Post Offices, Beawar. The applicant challenged the said order before the Appellate Authority, being the Director of Postal Services, Ajmer, but the appeal was not properly considered and was rejected. Thereafter the applicant submitted a revision petition before the Postmaster General, Ajmer. The same was also rejected. Hence this

O.A.

4. The respondents have filed their reply. The

respondents have contended that the applicant, while working as GDS, Branch Postmaster, Padanga, failed to make the payment of the following six old age pension money orders amounting to Rs. 2400/-

| Sl. No. | Issue Office | M.O. No. | Issue Date | Payee Name | M.O. amount |
|----------------|---------------------|-----------------|-------------------|---------------------------|--------------------|
| 1 | Bhinai | 963/35 | 17.06.2008 | Sundari/Suwa regar Khedi. | 400 |
| 2 | Bhinai | 963/32 | 17.06.2008 | Jhummi/bagta bhil Khedi. | 400 |
| 3 | Bhinai | 967/47 | 17.06.2008 | Nosar/Pratap bhil Khedi | 400 |
| 4 | Bhinai | 968/238 | 17.06.2008 | Hapudi/roda rawat Khedi. | 400 |
| 5 | Bhinai | 967/38 | 17.06.2008 | Jhamku/rama bhil | 400 |
| 6 | Bhinai | 962/38 | 17.06.2008 | Hagami/Khema regar khedi. | 400 |

5. The respondents have further contended that the applicant admitted his misconduct. However, he was given opportunity in accordance with the relevant Rules of procedure. The order passed by the Disciplinary Authority and Appellate Authority are all valid and proper.

6. We have heard Shri P.N. Jatti, Learned Counsel for the applicant and Shri Mukesh Agarwal, Learned Counsel for the respondents. We have also perused the pleadings along with documents annexed thereto.

7. Learned Counsel for the applicant submits that the procedure prescribed under the relevant rules for conducting an enquiry was not followed. The applicant was not afforded ample opportunity to

put forward his defence. Although the applicant denied the charges, no proper enquiry was held. He further submitted that as per Rule 10 proper enquiry is mandatory before imposing the punishment of removal. In the present case no enquiry was held as per Rule 10. The applicant, in his first enquiry dated 02.03.2009 did not admit the charges and requested for holding the enquiry. He further submits that no statements of witnesses were taken on 24.08.2009, as such, the rules were not followed. The applicant was put under undue pressure and the Inquiry Officer insisted him to admit the charges. The Inquiry Officer insisted that he should give in writing the admission of the charge. None of the witnesses were called to depose before the enquiry. The applicant has relied on Annexure A-8, which is his statement dated 02.03.2009 wherein he stated that he did not admit the charge and he asked for further enquiry.

8. The Learned Counsel for the respondents submits that the charges levelled against the applicant could be made only after getting the detailed preliminary enquiry; statements of all the six old age pensioners were obtained along with relevant evidence with thumb impression of payees

of money orders/complainant. The applicant was also examined on 22.09.2008 by the SDI (P) Nasirabad. The Learned Counsel further submitted that the applicant admitted in his statement dated 22.09.2008 that he committed this misconduct. However, he has prayed for mercy.

9. We have gone through the order passed by the Disciplinary Authority as well as the Appellate Authority and the Revisioning Authority, being the Postmaster General. The orders of the Disciplinary Authority and the Appellate Authority have merged with the order of the Revisioning Authority. We have gone through the order passed by the Postmaster General on the Revision Petition of the applicant. In the said revision petition, the applicant alleged that the disciplinary authority as well as the appellate authority did not consider the following facts put forth by him while passing and upholding the impugned order of removal from service :

- (i) that the original complaint dated 22.08.2008 was a typed complaint addressed to the Tehsildar Bhinai, which does not bear any witness in support of thumb impression affixed.

(ii) that the Deputy Tehsildar Bhinai conducted enquiry by obtaining thumb impression without any witness and without any paid vouchers on receipt which were received back by the remitter. The petitioner was not asked to explain on the complaint. Thus the enquiry was one sided.

(iii) that the Department of Posts has relied upon the complaint addressed to the Tehsildar and enquiry report thereon. The role of enquiry officer during oral enquiry was also prejudiced. The prejudiced action of the I.O. Dated 28.04.2009 for getting his confession application during oral enquiry which was dictated one, has been made weapon against him. The enquiry was one sided and defective.

10. The Postmaster General held that the charges were framed against him on the basis of the preliminary enquiry report and statement of all the six old age pensioners along with relevant witnesses made on each thumb impression of payees of money orders/complainant were obtained. The applicant himself admitted and submitted in his confession statement on 22.09.2008 before the Inquiry officer. The Postmaster General also came

to the finding that during the enquiry it was clearly established that the applicant has himself affixed the forged thumb impression of payees on the Money Orders and that he also failed to pay the amount of money orders to the payees of old age pension but he pocketed the amount of all the six money orders for his own personal use. During the course of oral enquiry, at the stage of examination of state witnesses on 28.04.2009, the petitioner has accepted the charges levelled against him before the Inquiry Officer.

11. We have also seen from the record that the applicant accepted the charges by furnishing application dated 22.09.2008 in presence of his defence assistant and requested to close the enquiry. Therefore, in our considered view, after submitting the application dated 22.09.2008 requesting to close the enquiry, the applicant cannot turn around and say that proper enquiry was not held.

12. From Annexure R-4, being the statement of the applicant, it appears that the applicant admitted before the Inquiry officer in the oral enquiry that he did not make the payment of the amount of those money orders to the payees.

13. The applicant submitted an application to the Inquiry Officer on 28.04.2009 in which he admitted the charges levelled against him. Thereafter no further proceeding was held. However, the enquiry report was submitted holding him guilty of the charge. A copy of the enquiry report was submitted to him. The applicant requested to conduct a fresh enquiry which was not adhered to. The Disciplinary Authority, after going through the record, passed the order of removal from service. The statement of the applicant has been annexed to the Original Application wherefrom it appears that the applicant, in his own handwriting, admitted the charge. It further appears that the applicant took the payment of the six old age pension money orders amounting to Rs. 2400/- and he had credited an amount of Rs. 2090/- under UCR on 23.09.2008 and 26.09.2008. The Learned Counsel for the respondents submits that this fact is ample proof to substantiate the charge against the applicant that the applicant misappropriated the amount and after the enquiry, credited the same. In view of admission of the applicant, we are of the view that there was no wrong on the part of the Inquiry

Officer to come to the conclusion that there was no need to further proceed with the enquiry.

14. Learned Counsel for the respondent has relied on the judgment passed by C.A.T., Jaipur bench in O.A. No. 267/2012. The facts involved in the said O.A. is similar to the present O.A. In that case the charged official withdrew an amount of Rs. 7,289/- each of three persons by forged thumb impression/signature and the said amount was subsequently paid on 22.03.2010, 27.03.2010 and 27.03.2010. The said amount was subsequently paid to the depositors on 16.04.2010. The Ld. Tribunal relied on the judgment of the Hon'ble Supreme Court in the case of Chairman-cum-Managing Director, Coal India Limited & Another Vs. Mukul Kumar Chaudhary & Others [AIR 2010 SC 75]. Para 22 of the said judgment is set out herein below :

"22. The Hon'ble Supreme Court in the case of **Chairman-cum-Managing Director & Another, Coal India Limited Vs. Mukul Kumar Chaudhary & Others, 2009 15 SCC 620**, as referred to by the learned counsel for the respondents has held in para 13 of the judgment that "In a case such as present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the Inquiry officer about proof of charges." Even in this case, the applicant has admitted his charges. Hence the Inquiry Officer came to the conclusion that there was no need to further proceed with the inquiry. A copy of that inquiry report was duly

served to the applicant. If he had any grievance then he should have represented against the report of the Inquiry Officer but the applicant in his reply to the Inquiry report has again admitted that allegation against him and prayed for a pardon vide his letter dated 22.12.2010 (Annexure R/4). Thus the ratio laid down by the Hon'ble Supreme Court in the case of Chairman-cum-Managing Director, Coal India Limited & Another Vs. Mukul Kumar Chaudhary & Others (supra) is squarely applicable under the facts & circumstances of the present O.A."

15. The Hon'ble Supreme Court in the case of

V.S.P. Vs. Goparaju Sri Prabhakara Hari Babu [2008]

(5) SCC 569 has held that where admissions are on record, a detailed enquiry need not be conducted. In the said case, the employee admitted the charge of unauthorized absence. The Hon'ble Supreme Court, after referring to Section 58 of the Evidence Act, 1872, held that detailed enquiry was not called for even if such admissions are made to another authority.

16. After going through the records we find that the two statements were made by the applicant before the Inquiry Officer admitting the charge are much prior to the statement he made on 02.03.2009 saying that he did not admit the charge and asked for further enquiry. Therefore, the statement made on 02.03.2009 is an after-thought.

17. Regarding proportionality of the punishment,

the Postmaster General has held that the applicant completely belied the faith reposed on him by the Department by way of his abominable act of siphoning off the money meant for the old age pensioners who are surviving through this money during their twilight years. The applicant did not think about the plight of these old age pensioners before committing the criminal act of fraudulently taking away the money. The authorities arrived at the conclusion that the fraudulent act of the applicant warranted punishment of removal. It is well settled that the Court or Tribunal shall not ordinarily substitute its own decision with regard to quantum of punishment unless the same is shockingly disproportionate.

18. We do not find any infirmity or illegality in the impugned order passed by the Disciplinary Authority and the Appellate Authority. Accordingly, the O.A. is dismissed. No order as to costs.

Chameli Majumdar
(Smt. Chameli Majumdar)
Judicial Member

Anil Kumar
(Anil Kumar)
Administrative Member

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