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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00789/2014

Date of Decision : 20.5.2015
Reserved on : 13.05.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER

Kundan Lal, Ex. GDS Branch Postmaster, Bhagtana Tullian BC, resident of Village Rurha, P.O. Bhagtana Tullian, Via D.B.N. Tehsil and District Gurdaspur.

Applicant

Versus

1. Union of India, through the Secretary to Govt. of India, Department of Posts, New Delhi.
2. The Chief Post Master General, Punjab Circle, Sector 17, Chandigarh.
3. The Director, Postal Services, Punjab Region, Sector 17, Chandigarh.

Respondents

Present: Mr. Dheeraj Mahajan, counsel for the applicant
Ms. Namita Kandhari, counsel for the respondents

ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of order dated 27.07.2005 passed by respondent no.3 and order dated 06.02.2006 passed by respondent no.2 and grant of consequential service and retiral benefits.
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2. Averment has been made in the OA that the applicant joined the service of the respondent Department as Extra Departmental Delivery Agent (EDDA) on 24.11.1981 and was promoted from time to time and lastly he was working on the post of GDSBPM. It was alleged that on 15.03.2004 the applicant received Sangrur RL No.2322 dated 12.03.2004 addressed to Smt. Ragbir Kaur wife of late Shri Jagtar Singh, Village Pathana and RL No.2324 dated 12.03.2004 addressed to Shri Sukhwinder Singh, s/o Jagtar Singh, Village Pathana. Both these Registered letters were sent from the Court of Additional District Judge, Sangrur and the applicant returned these Registered letters with false remarks and without verifying the facts. It is further alleged that the applicant misappropriated Govt. cash of Rs.1382 on 10.08.2004 and had thus conducted himself in contravention of Rule 136 of Rules for Branch Offices. The applicant was issued charge sheet under the GDS (Conduct and Employment) Rules, 2001 and ultimately the applicant was ordered to be removed from service vide impugned order dated 27.07.2005 passed by respondent no.1 (Annexure A-1). The statutory appeal filed before respondent no.2 was dismissed vide order dated 06.02.2006 (Annexure A-2).

3. It has further been stated that under wrong bonafide belief the applicant filed the Civil Suit before the Civil Court Gurdaspur which was dismissed vide judgment and decree dated 03.02.2012. The applicant



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filed an appeal against this judgment before the learned District Judge, Gurdaspur, who accepted the appeal of the applicant and set aside the impugned judgment and decree and the plaint was ordered to be returned to the applicant to approach this Tribunal as per rules vide order dated 08.01.2014 (Annexure A-3). Hence this OA.

4. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The disciplinary authority while passing the impugned order ignored the pleading of the applicant that the entire case was the result of personal rivalry between the Mail Overseer Sh. Kashmira Singh, Sh. Janak Raj Saini, ASP and Sh. Kashmir Singh, Complaint Inspector, Sh. Mangat Ram, Sarpanch, Smt. Neelam Kumari / Vijay Kumar, Ex. GDS BPM Bhagtana Tullain. In fact Kashmira Singh C.1 took all the record and cash from the Branch Office for inspection at another place.
- ii) SPOs Gurdaspur was not competent to issue orders of put off duty and issue charge sheet to the applicant.
- iii) The request of the applicant for change of the Enquiry Officer was not accepted and was not dealt with by the disciplinary authority while passing the impugned orders.
- iv) The applicant submitted his defence statement of 27.06.2005 through post but the disciplinary authority failed to take objective view in the matter and did not consider the defence statement and the fact that punishment imposed upon the applicant was highly disproportionate to the lapses for which he was charge sheeted. In contravention of the Department Rules, the disciplinary authority has not issued the speaking order in the matter.
- v) It is the settled law that the penalty of dismissal should be imposed only in rarest of rare case involving grave misconduct while the respondent Department had failed to consider the

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length of service rendered by the applicant and he had been dismissed from service.

- vi) The applicant is aged person suffering from health problem and is facing serious financial hardship and the disciplinary authority should have adopted some liberal attitude towards the applicant while passing the extremely harsh punishment of dismissal keeping in view the sympathetic and pitiable condition of the applicant and should have granted the discharge benefit like Ex-gratia gratuity and severance amount and other service benefits as the punishment of dismissal would not only affect the applicant alone but also his family members and the applicant should have been granted all the retiral and service benefits.

5. In the written statement filed on behalf of the respondents preliminary objection has been taken that the OA is highly belated as the order of removal was passed on 27.07.2005, the appeal against this order was dismissed vide order dated 06.02.2006 (Annexure R-1 and R-2) and the OA had only been filed in August, 2014. It has further been stated that the applicant had entered in the Department as GDSBPM Bhagtana Tulian in account with Dera Baba Nanak SO under Batala Headquarter. During the period from 01.03.2004 to 31.03.2004, the applicant had received Sangrur RL No.2322 dated 12.03.2004 addressed to Smt. Raghbir Kaur, wife of late Sh. Jagtar Singh, Village Pathana and RL No.2324 dated 12.03.2004 addressed to Sh. Sukhwinder Singh, S/o late Sh. Jagtar Singh, Village Pathana on 15.03.2004. Both these registered letters were sent by the Court of learned Addl. District Judge, Sangrur. These registered letters were returned to the sender by the applicant with false remarks and without verifying the facts. Secondly, the applicant while working as such

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has misappropriated the government cash of Rs.1382 on 10.08.2004. Charge sheet was therefore issued to the applicant and enquiry was conducted as per Rules. The applicant did not choose to appear before the Enquiry Officer, so ex-parte proceedings were initiated. The enquiry report was submitted on 04.04.2005 (Annexure R-3). On the basis of the enquiry report, the competent authority passed an order dated 27.07.2005 (Annexure R-1). The applicant filed an appeal against the order, which was also dismissed by the competent authority vide order dated 06.02.2006 (Annexure R-2). The appeal filed by the applicant was considered by the competent authority. The competent authority has taken into consideration all the issues raised by the applicant and the order (Annexure R-2) dated 06.02.2006 was passed.

6. The applicant had also not challenged the enquiry report, he was proceeded against under Rule 10 of GDS C 8E Rule 2001 vide SPO Gurdaspur order dated 20.09.2004. After considering all the facts, Enquiry Officer and the Presenting Officer were appointed to consider the charge sheet. During the course of enquiry, the applicant was given every opportunity by the Enquiry Officer to defend his case. The applicant failed to defend his case, so the enquiry report dated 04.04.2005 was submitted whereby all the charges were held proved against the applicant. The competent authority thereafter passed order dated 27.07.2005 for removal of the applicant from service. The appeal filed by the applicant was

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dismissed by the competent authority vide order dated 06.02.2006 (Annexure R-2). The SPO is the competent authority to issue put off duty orders. The applicant was appointed by SSPOs (Class I) and the Gurdaspur Postal Division was down graded to Class II and the DPS was appointed disciplinary authority as per the instructions contained in DG instruction no.5 below Rule 10 of GDS C&E Rules, 2001 so the case of the applicant was decided by DPS, as the SPOs Gurdaspur was not competent to decide the case. Copy of the instruction no.5 is annexed as Annexure R-4.

7. The applicant was granted full opportunity by the Enquiry Officer but the applicant failed to defend his case as submitted in the enquiry report. The enquiry report has not been challenged by the applicant, so the same has become final. The orders dated 27.07.2005 and 06.02.2006 are based upon the enquiry report, hence the same be upheld. The applicant has misappropriated an amount of Rs.1382, so the punishment of removal from service is the appropriate punishment for grave misconduct.


8. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant reiterated the content of the OA. He stated that the applicant had not been allowed adequate opportunity to defend himself as the notices regarding the enquiry

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proceedings were not conveyed to him. Learned counsel also stated that the registered letters that have been sent to the applicant did not pertain to his area and hence he could not be chargesheeted regarding these.

9. Learned counsel for the respondents stated that the procedure as prescribed for the conduct of disciplinary proceedings had been fully complied with by the respondent Department. The applicant did not participate in the enquiry proceedings and at this stage he could not challenge the order of penalty imposed on him that was based on the findings as per the enquiry report. The appellate authority had passed a reasoned and speaking order and hence there was no merit in the OA.

10. We have given our careful consideration to the matter. The enquiry report which is on record has been perused carefully as also the charge sheet and the orders passed by the Disciplinary Authority and the Appellate Authority. From the material on record, it is evident that the applicant did not participate in the enquiry proceedings, he did not appoint his Defence Assistant nor did he produce any witness in his defence. Since the applicant has not defended himself before the Enquiry Officer, he cannot claim that he was condemned unheard. The Apex Court has held in 'Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College, 2004 (1) RSJ 21 (SC), as follows:-



“Principles of natural justice-Opportunity of hearing-Only a person who is ready and willing to avail of opportunity can make a grievance about denial of any opportunity-Ample opportunity granted to appellant to place his case who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference in extending cooperation-On that score the appellant cannot have any grievance.”

11. Also it is clear from the material on record that the applicant returned the registered letters stating that the addressees had expired. In fact, since the registered letters did not pertain to his area, he should have returned them to the concerned Post Office for being sent for delivery through the concerned BPM. To record the false statement that the addressees of the letters had expired was clearly an offence and the related charge has been proved against the applicant. Hence, we are of the view that there is no merit in the grounds taken in the OA and the same is dismissed. No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh

Dated: 20.5.2015.

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