

(Reserved on 26.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00877/2017

This the **06th** day of **September, 2018**

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Chandra Mauli Pandey, S/o Late Sri Uday Shankar Pandey, aged about 51 years, R/o Village- Daskolwa, Post Office – Samaspur (Mahnso), Distt - Basti.

.....**Applicant**

By Advocate: Shri R.K. Upadhyay

Shri C.M. Pandey, the applicant in person

Versus

1. The Union of India, through its Secretary (Mins. Of the Communication, Dak Bhawan, Sansad Marg, New Delhi).
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Gorakhpur Region, Gorakhpur, UP.
4. The Postal Superintendent, Basti Division, Basti, Distt. Basti (Sri I.K. Shukla), the Appellate Authority.
5. The Assistant Superintendent Post (the east Sub Division, Basti), the Disciplinary Authority.
6. Shri R.D. Tripathi, the Assistant Postal Superintendent, Sub Division, Bansi, Distt – Sidharth Nagar (as Inquiry Officer No. 1).
7. Shri Anand Kumar, the Postal Inspector, Sub Division, Terarii Bazar, Distt – Sidharth Nagar (as Inquiry Officer No. 2).

.....**Respondents**

By Advocate : Shri D.C. Mishra (absent)

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the impugned order dated 13.07.2017 passed by the respondent

No. 4 (Annexure at Pg. 31 of OA) and the order dated 08.12.2015 (Annexure No. 22 to the OA) passed by the respondent No. 5. Prayer has also been made for a direction to the respondents to allow the applicant to join his service on the post with all consequential benefits. The applicant has also claimed Rs. 5,00,000/- as compensation from respondents as a part of the relief.

2. The facts, as stated in the O.A., are that the applicant while working as GDS MC/MD was suspended on 15.12.2009 and he was served with the chargesheet dated 16.02.2010 (Annexure No. 10 to the OA). The suspension of the applicant was revoked vide order dated 04.05.2010 (Annexure No. 11 to the OA). The applicant was again suspended on 19.12.2011 and another chargesheet dated 12.03.2012 (Annexure No. 12 to the OA) was issued to him. The applicant filed OA No. 690/12 which was disposed of vide order dated 30.11.2012 (Annexure No. 13 to the OA) with the direction to the respondents to complete the inquiry within four months. Then the Inquiry Officer started departmental inquiry against the applicant in respect of chargesheet dated 16.02.2010, in which the applicant had participated and the inquiry report was submitted on 12.11.2015 (Annexure No. 18 to the OA). The applicant also participated in the inquiry proceeding conducted against chargesheet dated 12.03.2012 and the Inquiry Officer submitted the inquiry report on 14.11.2015 (Annexure No. 20 to the OA). It is stated in the OA that the disciplinary authority without supplying a copy of inquiry report and without obtaining defence reply from the applicant has passed the impugned punishment order dated 08.12.2015 (Annexure No. 22 to the OA) removing him from service. Aggrieved, the applicant filed OA No. 1472/2015, which was disposed of by this Tribunal vide order dated 13.04.2017 (Annexure No. 26 to the OA) with direction to the appellate authority to decide the appeal of the applicant, if it is filed within a month, within a period of three months. In pursuance of the direction of the Tribunal, the applicant filed appeal dated 13.05.2017 (Annexure No. 27 to the OA). The appeal of the applicant has been rejected by

the Appellate Authority vide order dated 13.07.2017 (Annexure at page 31 of the OA).

3. The present OA has been filed challenging the orders dated 13.07.2017 and 08.12.2015 based on the following main grounds:

- a. the order dated 13.07.2017 is manifestly erroneous because Shri I.K. Shukla is a opposite party in the complaint case No. 1875/15 filed before Chief Judicial Magistrate (in short CJM), Basti.
- b. The disciplinary authority has violated the DG Posts letters dated 26.07.1990 and 14.09.1994 while putting off the applicant from duty.
- c. Appointment of a retired officer of Group 'A' and Group 'B' for the purpose of departmental inquiry of the GDS under rule 10 of GDS (Conduct and Employment) Rules 2001 and 2011 is violative of DG Posts letter dated 29.01.1996.
- d. The principles of natural justice have not been followed by the disciplinary authority.
- e. The disciplinary authority has violated the order of the Hon'ble High Court dated 28.07.2015 as well as order dated 14.05.2015 passed by this Tribunal in respect of providing full opportunity to the applicant.
- f. Appointment of Shri Chandra Prakash Mishra as Presenting Officer is also illegal as he is opposite party in the Complaint Case No. 1875/10 filed before CJM, Basti.
- g. The demanded documents were not made available to the applicant.

h. Written brief of the Presenting Officer has not been made available to the applicant.

i. Inquiry report has not been made available to the applicant.

j. The order dated 08.12.2015 has been passed without obtaining defence statement from the applicant.

4. The respondents have filed Counter Affidavit (in short CA) stating that the work and conduct of the applicant was never found satisfactory. He was also habitual absentee from duty and for this reason, disciplinary proceeding was initiated against the applicant. Several public complaints against the applicant were also received for which he was put off duty vide memo dated 26.06.2003 and disciplinary proceeding under Rule 10 of GDS (Conduct and Engagement) Rules 2001 was initiated against him vide Memo dated 14.08.2004. It is contended that since the appointment of the applicant as BPM, Samaspur was found to be irregular it was cancelled by the SPOs, Basti vide Memo dated 03.11.2009 which was confirmed by the CPMG, UP Circle, Lucknow vide Memo dated 04.10.2011.

5. It is further stated that the ASPOs, East Sub Division, Basti also noticed serious lapses and ordered to put him off from duty under rule 12 (1) of GDS (Conduct and Engagement) Rules, 2011 vide Memo dated 19.12.2011. The applicant submitted appeal dated 20.12.2011 before PMG, Gorakhpur and without waiting for the decision of the PMG, he filed OA No. 192/2012, which was disposed of with direction to the PMG to decide the appeal of the applicant within two months and in compliance to the said direction, the appeal was decided vide order dated 03.04.2012 (Annexure CA-7). For the serious lapses, again the applicant was put off duty vide order dated 19.12.2011, a disciplinary proceeding under Rule 10 of GDS (Conduct and Engagement) Rules, 2011 was initiated against him and chargesheet was issued on 12.03.2012. The applicant denied the charges vide his reply dated 15.03.2012,

hence Inquiry Officer was appointed to inquire into the charges. During inquiry proceeding, the applicant filed OA No. 690/2012 which was disposed of vide order dated 30.11.2012 wherein the applicant was directed to fully co-operate with the enquiry. Thereafter, several dates were fixed for inquiry but the applicant did not co-operate with the inquiry proceeding, for which the Inquiry Officer vide order dated 25.02.2013 (Annexure CA-12) returned the case to the disciplinary authority to appoint another Inquiry Officer. Then the disciplinary authority issued show cause notice to the applicant vide Memo dated 11.03.2013 (Annexure CA-13) to submit representation within 15 days. The applicant submitted his representation dated 23.03.2013 and after careful consideration of all the facts and circumstances, the disciplinary authority has passed the order dated 01.04.2013 under rule 11(ii) of GDS (Conduct and Engagement) Rules 2011 dismissing the applicant from service. Against the above order, the applicant filed appeal dated 18.04.2013 before the SPOs, Basti Division / appellate authority but without waiting for decision on appeal, he filed OA No. 817/2013, which was disposed of at the admission stage vide order dated 05.07.2013 with direction to decide the appeal within three months. Then the appeal of the applicant was disposed of by the PMG, Gorakhpur vide order dated 31.12.2013 (Annexure CA-14) by ordering for denovo proceeding at the stage of fresh inquiry.

6. It is stated in the Counter Affidavit that another Inquiry Officer was appointed to conduct inquiry afresh. In the meantime, the applicant filed OA No. 155/2014 challenging the order dated 31.12.2013, which was decided vide order dated 14.05.2015 with following direction: -

“Accordingly, the Assistant Superintendent of Post Offices, East Sub Division, Basti/ Respondent No. 5 is directed to reinstate the applicant forthwith and then, if considered necessary, start fresh inquiry proceeding against him. The respondents are directed to provide the applicant full opportunity to defend himself in the

inquiry proceeding, if initiated and complete the inquiry within four months. It is made clear that the applicant will not be entitled for back wages for the period during which he was out of service.”

7. The respondents filed writ petition No. 41284/2015 challenging the order dated 14.05.2015, which was disposed of by Hon’ble High Court vide order dated 28.07.2015 by which respondents were directed to complete the denovo enquiry against the applicant with four months. Thereafter, the applicant vide letter dated 07.08.2015 was informed to co-operate with the inquiry proceeding so that the enquiry may be completed within time. Thereafter, the denovo enquiry was initiated in which the applicant participated on some dates (daily order sheets are at Annexure CA-16). It is stated in the Counter Affidavit that on 19.09.2015 (Annexure A-16 of OA), the applicant refused to participate in the enquiry proceeding on the ground that the time of four months framed by the Tribunal is completed. It is stated that from the date of order of Hon’ble High Court, four months period was to expire on 28.11.2015, but the applicant did not participate in enquiry proceeding despite information through registered letters (Annexure CA-17). Hence the enquiry proceeding was held ex-parte and the Inquiry Officer submitted his report vide letter dated 12.11.2015 (Annexure A-18 to the OA). The disciplinary authority sent a copy of inquiry report to the applicant vide letter dated 13.11.2015 (Annexure CA-18) to submit his defence representation within 15 days, but the letter was received back undelivered. It is stated that despite repeated efforts by the department (Annexure CA-18) to deliver the letter dated 13.11.2015 upon the applicant, it could not be served. It is further stated that the disciplinary authority decided to pass the order dated 08.12.2015 imposing the penalty of removal from service, a copy of which was sent to the applicant which was also received back undelivered with postal remarks “addressee not met at his home after several visit” (Annexure CA-20). Thereafter, the order dated 08.12.2015 was passed by the disciplinary authority. The applicant filed appeal

dated 13.05.2017 to the SPOs, Basti Division, which was rejected vide order dated 13.07.2017. It is stated that the applicant has filed the instant OA without exhausting departmental channels as provided in Rule 19 of GDS (Conduct and Engagement) Rules 2011. It is also stated that the applicant was provided full opportunity at each stage.

8. The applicant filed Rejoinder Affidavit reiterating the facts of OA. However, it is stated that the applicant had handed over the charge of BPM on 17.11.2009 to the concerned employee and thereafter, he was put off from duty. It is also stated that the applicant co-operated and participated in the inquiry proceeding. The inquiry report based upon which the order dated 08.12.2015 has been passed, was not served upon the applicant and this is against the principles of natural justice. It is also stated that the inquiry was not completed within the time stipulated by the Tribunal on account of delaying tactic of the Inquiry Officer. It is reiterated that the inquiry in question has never been conducted in accordance with law as the applicant was not provided reasonable opportunity of hearing. It is further submitted that Shri I.K. Shukla being an opposite party in criminal cases pending before GJM, Basti has rejected the appeal vide order dated 13.07.2017 with malafide intention. It is stated in para 72 of the Rejoinder Affidavit that the written brief of Presenting Officer and Commenting Officer, which are material documents, have not been supplied to the applicant despite repeated demand and thus violates the principles of natural justice.

9. We have heard the applicant in-person assisted by Shri R.K. Upadhyay, learned counsel. Learned counsel for the respondents was also heard. We have also perused the pleadings as well as the written arguments filed by the applicant at the time of hearing. The applicant also submitted a copy of **judgment dated 28.04.2017 passed by Hon'ble High Court, Allahabad in Service Bench No. 1067/2011 – State of U.P. through Principal Secretary P.W.D. & Anr. Vs. Santosh Kumar Saran** alongwith his written argument.

10. As per the law laid down by Hon'ble Apex Court in a catena of cases, this Tribunal has limited power of judicial review in disciplinary proceedings. In the case of **B.C. Chaturvedi vs. Union of India & Ors reported in 1995(6) SCC 749**, Hon'ble Apex Court has observed as under: -

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case impose appropriate punishment with cogent reasons in support thereof.

.....

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.”

11. In the case of **Union of India Vs. S.S. Ahluwalia – 2007 Law Suit (SC) 950**, the Hon'ble Apex Court has held as under: -

“The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty.”

12. Again in the case of **State of Meghalaya Vs. Mecken Singh N Marak reported in 2009 Law Suit (SC) 1935**, the Hon'ble Apex Court has also held as under:-

“A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”

13. The Hon'ble Apex Court in the case of **State of Orissa Vs. Binapani Dei – AIR 1967 Supreme Court 1269** has observed as under:-

“It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.”.

14. From the above discussions, it is clear that no interference in the disciplinary proceedings would be called for unless there is a violation of statutory rules, or the findings of the inquiry officer and disciplinary authority are not based on the evidence on record or based on the materials on record or the quantum of punishment imposed is disproportionate to the charges established so as to shock the judicial conscious. In this case, admittedly, the inquiry report dated 12.11.2015, based on which the impugned punishment has been passed, was not served on the applicant and his representation on the inquiry report was not available before the disciplinary authority while passing the impugned order dated 08.12.2015. Further, the applicant has

submitted that he was not provided with the documents during the enquiry although his request for additional documents was approved by the Inquiry Officer (in short IO) and that he was not allowed reasonable opportunity by the IO. It has also been stated by the applicant in O.A. that the IO was a party in a criminal case before CJM, Basti where the applicant is the complainant for which the IO and the respondent No. 4 have acted in a vindictive manner towards the applicant as stated at page 79-89 of the O.A. In view of these submissions, whether the report of the IO be objective and fair as required under the rules and whether there is any violation of the rules in the disciplinary proceedings against the applicant, is required to be decided in this case. Lastly, the issue of quantum of punishment imposed vis-a-vis the charges proved is to be examined.

15. The applicant has cited the case of Santosh Kumar Saran (supra) decided by Hon'ble Allahabad High Court in Case Service Bench No. 1067/2011, in which the writ petitioner i.e. State of U.P. had challenged the order of the State Public Service Tribunal (in short PST). Sri Santosh Kumar Saran (refereed as employee) was punished with the penalty of reduction in rank by State of U.P. which was set aside by PST on the ground that the proper enquiry was not conducted and in absence of oral enquiry the punishment order is vitiated. While dismissing the writ petition and upholding the decision of PST, it was held as under:-

“16. The Division Bench of this Court in the case of Mahesh Narain Gupta v. State of U.P. and others, (2011) 2 ILR 570 had also occasion to deal with the same issue. It held:

“At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own

reason after analysis, will have to record a finding that those documents are sufficient enough to prove the charges.

In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in *ex parte* manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.” (emphasis added)

17. Recently the entire law on the subject has been reviewed and reiterated in Chamoli District Cooperative Bank Ltd. Vs. Raghunath Singh Rana and others, AIR 2016 SC 2510 and Court has culled out certain principles as under:

- “i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
- ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
- (iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/ delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
- (iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/ punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

18. The principal of law emanates from the above judgments are that initial burden is on the department to prove the charges. In case of procedure adopted for inflicting major penalty, the department must prove the charges by oral evidence also.

19. From perusal of enquiry report it is demonstrably proved that no oral evidence has been led by the department. When a major

punishment is proposed to be passed the department has to prove the charges against the delinquent/employee by examining the witnesses and by documentary evidence. In the present case no witness was examined by the department neither any officer has been examined to prove the documents in the proceedings.

20. It is trite law that the departmental proceedings are quasi judicial proceedings. The Inquiry Officer functions as quasi judicial officer. He is not merely a representative of the department. He has to act as an independent and impartial officer to find out the truth. The major punishment awarded to an employee visit serious civil consequences and as such the departmental proceedings ought to be in conformity with the principles of natural justice. Even if, an employee prefers not to participate in enquiry the department has to establish the charges against the employee by adducing oral as well as documentary evidence. In case charges warrant major punishment then the oral evidence by producing the witnesses is necessary.

21. We may hasten to add that the a above mentioned law is subject to certain exception. When the facts are admitted or no real prejudice has been caused to employee or no other conclusion is possible, in such situation the order shall not be vitiated. Reference may be made to the some of the decision of Supreme Court in K.L. Tripathi v. State Bank of India reported AIR 1984 SC 273; State Bank of Patiala v. S.K. Sharma reported AIR 1996 SC 1669; and Biecco Lawrie Ltd. v. West Bengal reported (2009) 10 SCC 32.

22. The aforesaid exposition of law, we find, Tribunal has also followed, and thereagainst learned Standing counsel could not show any authority otherwise so as to pursued us to take a different view.”

16. In the instant case, vide Memo dated 12.3.2012, following charges were framed against the applicant:-

“अनुच्छेद प्रथम

यह कि उक्त श्री चन्द्र मौलि पाण्डेय ग्रामीण डाक सेवक डाक वितरक/डाक वाहक शाखा डाकघर समस्पुर नें विभाग के उच्चाधिकारियों को निम्नलिखित पत्र अपने आसन्न उच्चाधिकारी के माध्यम से न भेजकर सीधे भेजा—

1. अधीक्षक डाकघर बस्ती मण्डल को प्रेषित पत्र दिनाक 16.11.2009 तथा 29.08.2011.
2. चीफ पोस्टमास्टर जनरल ज०प्र० परि० लखनऊ को प्रेषित प्रार्थना पत्र दिनांक 10.12.2009, 23.10.2009 तथा 29.10.2011

अतः आरोपित है कि उक्त श्री चन्द्र मौलि पाण्डेय ने अपने उक्त कृत्य द्वारा ग्रामीण डाक सेवक (आचरण एवं नियोजन) नियमावली 2011 के नियम सं 21 के प्राविधानों का उल्लंघन किया।

अनुच्छेद द्वितीय

यह कि उक्त श्री चन्द्र मौलि पाण्डेय ने माह जनवरी, फरवरी, मार्च व नवंबर 2011 में ग्रामीण डाक सेवक डाक वितरक/डाक वाहक के पद पर कार्य करते हुए निम्न तिथियों में अपने गश्त पुस्तिका पर गश्त किये गये गावों के अधोलिखित व्यक्तियों का फर्जी हस्ताक्षर बनाया—

दिनांक	व्यक्ति का नाम जिसका फर्जी हस्ताक्षर बनाया गया
20.01.2011	श्री प्रफुल्ल कुमार यादव पुत्र रामनाथा यादव ग्राम सोदरी पो ० समसपुर, बस्ती।
24.01.2011	
25.01.2011	
31.01.2011	
12.02.2011	
25.02.2011	
02.03.2011	
18.03.2011	
02.11.2011	श्री अवधेश कुमार गिरि पुत्र रामसभा गिरि ग्राम ओरई पो ० समसपुर, बस्ती

अतः आरोपित है कि उक्त श्री चन्द्र मौलि पाण्डेय ने उक्त कृत्य करके डाकघर नियम पुस्तक षष्ठम भाग तृतीय के नियम सं 136 (1) का उल्लंघन किया एवं तदनुसार ग्रामीण डाक सेवाक (आचरण एवं नियोजन) नियमावली 2011 के नियम सं 21 में आपेक्षित सत्यनिष्ठा का कर्तव्यनिष्ठा का पालन नहीं किया।

अनुच्छेद तृतीय

यह कि उक्त श्री मौलि पाण्डेय ने माह जून 2011 में ग्रामीण डाक सेवक डाक वितरक/डाक वाहक शाखा डाकघर समसपुर (गहसों) बस्ती के पद पर कार्य करते हुए बिना सक्षम अधिकारी की अनुमति लिए तथा अवकाश कराये वगैर दिनांक 07.06.2011 को अपने प्रकरण की पैरवी में परिमण्डली कार्यालय लखनऊ गये।

अतः आरोपित है कि उक्त श्री चन्द्रमौलि पाण्डेय ने उक्त कृत्य करके महानिदेशक डाक नई दिल्ली के परिपत्र सं 17-136/2001 जीडीएस दिनांक 10.01.2003 के प्राविधानों का उल्लंघन किया एवं तदनुसार ग्रामीण डाक सेवक (आचरण एवं

नियोजन) नियमावली 2011 के नियम सं 21 में आपेक्षित सत्यनिष्ठा का पालन नहीं किया।

अनुच्छेद चतुर्थ

यह कि उक्त श्री मौलि पाण्डेय ने माह सितम्बर 2011 में जीडीएस डाक वितरक/डाक वाहक शाखा डाकघर समस्पुर के पद पर काय करते हुए दिनांक 21.09.2011 को अपने विरुद्ध चल रही नियम 10 की जाँच कायवाही की बैठक में जाँच परिषत के समक्ष प्रधान डाकघर बस्ती में उपस्थित होकर जाँच अधिकारी से उच्च स्तर में आवेश पूर्ण भाषा में बात किया तथा इस दौरान जाँच अधिकारी की चेतावनी एवं धमकी भी दी एवं जाँच कार्यवाही पत्र पर हस्ताक्षर भी नहीं किया और ऐस करके जाँच कार्यवाही में व्यवधान डाला।

अतः आरोपित है कि उक्त श्री चन्द्र मौलि पाण्डेय ने उक्त घोर अनुशासनहीनता पूर्ण कृत्य करके ग्रामीण डाक सेवक (आचरण एवं नियोजन) नियमावली 2011 के नियम सं 21 के प्राविधानों का उल्लंघन किया।

अनुच्छेद पंचम

यह कि उक्त श्री मौलि पाण्डेय ने माह अक्टूबर 2011 के दौरान जीडीएस डाक वितरक/डाक वाहक शाखा डाकघर समस्पुर के पद पर काय करते हुए दिनांक 31.10.2011 को नेरूलकेस डाकघर मुम्बई दिनांक eMO No.069194111029000196 दिनांक 29.10.2011 रु 500/- का भुगतान प्राप्तकर्ता श्री भवानी शंकर पाण्डेय ग्राम ताडीजोत पो० समस्पुर जनपद बस्ती को करना अपने वितरणा रजिस्ट्रेशन में दिखाया परन्तु वितरण रजिस्टर में वास्तविक प्राप्तकर्ता से ईएमओ की रकम प्राप्त करने की न तो इबारत लिखाया न ही उससे हस्ताक्षर कराया तथा रकम का भुगतान भी प्राप्तकर्ता को न करके उसे घर के किसी अन्य सदस्य को किया।

अतः आरोपित है कि उक्त श्री चन्द्र मौलि पाण्डेय ने उक्त कृत्य करके डाकघर नियम पुस्तक संग्रह षष्ठम भाग तृतीय की नियम सं 121 (2) सप्तित नियम सं 138 (2) व शाखा डाकघर नियमावली के नियम सं 10 के प्राविधानों का उल्लंघन किया एवं अपेक्षित सत्यनिष्ठा व कर्तव्यनिष्ठा नहीं बनाये रखकर ग्रामीण डाक सेवक (आचरण एवं नियोजन) नियमावली 2011 के नियम सं 21 के प्राविधानों का उल्लंघन किया।

अनुच्छेद षष्ठम्

यह कि उक्त श्री मौलि पाण्डेय ने माह दिसम्बर 2011 में जीडीएस डाक वितरक/डाक वाहक शाखा डाकघर समस्पुर के पद पर काय करते हुए दिनांक 20.12.2011 को सहायक अधिकारी डाकघर पूर्वी उपमण्डल बस्ती द्वारा जारी ज्ञापन सं ४/समस्पुर/डीपी/11 दिनांक 19.12.2011 प्राप्त किया परन्तु उसके

अनुपालन में चार्ज रिपोर्ट पर हस्ताक्षर करने से इन्कार करके घोर अनुशासनहीनता प्रदर्शित किया।

अतः आरोपित है कि उक्त श्री चन्द्र मौलि पाण्डेय उक्त कृत्य करके ग्रामीण डाक सेवक (आचरण एवं नियोजन) नियमावली 2011 के नियम सं 21 में अपेक्षित सत्यानिष्ठा व कर्तव्यानिष्ठा बनाये रखने में असफल रहे।”

17. After the order of the PMG (respondent no. 3) to start denovo inquiry against the applicant, Sri R.D. Tripathi, Assistant Postal Superintendent, Sub Division Bansi, Distt. Sidharth Nagar was appointed as Inquiry Officer (in short IO). The inquiry report dated 12.11.2015 (Annexure A-18 of OA) following main findings are recorded:-

“जॉच निष्कर्ष”

“उपरोक्त समीक्षा व परीक्षण के अनुसार तथा साक्ष्यों की समीक्षा से एवम खुली जॉच के दौरान साक्षियों के बयानों तथा प्रस्तोता अधिकारी के लिखित तर्क का सम्यक रूप से विश्लेषण करने पर जो तथ्य सामने उभर कर आये हैं, उसके आधार पर आरोपों का सही ढंग से मूल्यांकन करने पर यह पाया गया कि आरोप अनुच्छेद प्रथम, अनुच्छेद द्वितीय, अनुच्छेद तृतीय, अनुच्छेद पंचम, अनुच्छेद षष्ठम, अनुच्छेद सप्तम पूर्णरूपेण सिद्ध पाया गया है। मात्र आरोप अनुच्छेद चतुर्थ वस्तविक साक्षियों के साक्ष्य के अभाव में आंशिक तौर पर ही सिद्ध पाया गया है।

इस प्रकार आरोपित कर्मचारी के विरुद्ध विरचित आरोप ज्ञा० सं ० वी/जी.डी.एसत्र एम डी/एम.सी./समस्पुर डी.पी./०९/दि० १६.०२.२०१० द्वारा सभी सात आरोपों में से छः आरोप पूर्णतया सिद्ध हैं। एक आरोप आंशिक तौर पर सिद्ध है।”

18. The disciplinary authority's order dated 8.12.2015 states as under:-

“मैंने जॉच अधिकारी की जॉच आख्या दिनांक 12.11.2015, आरोपित कर्मचारी श्री चन्द्र मौलि पाण्डेय जारी आरोप पत्र दिनाक 16.02.2010 तथा अन्य सबंधित प्रलेखों एवं तथ्यों का गहन अध्ययन किया तथा पाया कि जॉच अधिकारी ने जॉच आख्या में साक्ष्यों एवं साक्षियों का सम्यंक मूल्यांकन किया है तथा आरोपित कर्मचारी सभी संविधान प्रदत्त अवसर प्रदान किया। अतएव मैं जॉच अधिकारी के निष्कर्षों पूर्णतः सहमत हूँ। खूली जॉच में उच्च अधिकारियों के लिखित आदेश का आरोपित कर्मचारी द्वारा उल्लंघन किया जाना तथा उसको प्राप्त करके आदेश का अनुपालन न किया जाना, गश्त पुस्तिका, पर ग्राम निवासी का फर्जी कपटपूर्ण हस्ताक्षर किया जाना, कपटपूर्ण टिप्पठी लिखकर वितरण हेतु प्राप्त डाक वस्तु (स्पीड पोस्ट अर्टिकल) को बिना वितरण किये वापस करना, डाक वस्तु के वितरण हेतु पैसे की माँग करना, डाक थैले का आदान प्रदान प्रतिदिन लेखा कार्यालय से न करना तथा कपटपूर्ण ढंग से डाक का आदान प्रदान करने के सबन्ध में आदान प्रदान तिथि

गलत अंकित करना तथा कार्यदिवस को ड्यूटी से अनाधिकृत रूप से अनपरिस्थित रहने सबंधी आरोप आरोपित कर्मचारी के विरुद्ध सिद्ध पाये गये तथा सिद्ध पाये गये आरोप गम्भीर है जो उसके कर्तव्यनिष्ठा एवं सत्यनिष्ठा पर प्रश्नचिन्ह है एवं आरोपित कर्मचारी का उपरोक्त कृत्य डाक विभाग की छवि आर जनता में धूमिल करता है। अतः आरोपित कर्मचारी श्री चन्द्र मौलि पाण्डेय कार्यपूर्थक ग्रामीण डाक सेवक डाक वितरक डाक वाहक समस्पुर (महसो) बस्ती को डाक विभाग मे रखना न्यायोचित नहीं है।

अतः मैं हेमन्त कुमार सहायक अधीक्षक डाकघर पूर्वी उपमण्डल बस्ती, एतदद्वारा उक्त श्री चन्द्र मौलि पाण्डेय कार्यपूर्थक ग्रामीण डाक सेवक, डाक वितरक/डाक वाहक समस्पुर (महसो) बस्ती को सेवा से 'निष्कासन' का दण्ड देता हूँ।

19. In the appeal dated 13.05.2017 (Annexure A-27 of OA) filed by the applicant before the Appellate authority (respondent no. 4) stated the following main grounds:-

- i. The inquiry report was not served upon the applicant and it is against the principles of natural justice. It was also not completed within the time stipulated by the Tribunal .
- ii. The inquiry in question has never been conducted in accordance with law as the applicant was not provided reasonable opportunity of hearing.
- iii. Despite repeated request by the applicant for change of Presenting Officer Shri Chandra Prakash Mishra on the ground of some legal dispute are there between the applicant and Shri Mishra, but it was ignored and he was appointed as Presenting Officer.
- iv. The documents listed at Appendix III were not presented during the inquiry proceeding despite requested by the applicant.
- v. The written brief of Presenting Officer and Commenting Officer, which are material documents, have not been supplied to the applicant despite repeated demand and thus violates the principles of natural justice.
- vi. The action of the disciplinary authority in putting of the applicant on off duty is against the DG (Posts) letter dated 26.07.1990 and 14.09.1994.
- vii. The appointment of a retired officer as Inquiry Officer is against the DG (Posts) letter dated 29.01.1996.

- viii. The disciplinary authority has passed the order dated 08.12.2015 without affording any opportunity to the applicant to submit his defence and has passed the order in a arbitrary manner.
- ix. The order dated 28.07.2015 passed by the Hon'ble High Court and the order dated 14.05.2015 passed by this Tribunal have not been followed by the disciplinary authority.
- x. Copy of the inquiry report was not served on the applicant and no opportunity was given to represent against the inquiry report before passing punishment order by disciplinary authority

20. The operative part of the order passed by the Appellate authority dated 13.07.2017, rejecting the applicant's appeal dated 13.05.2017 (Annexure A-27), states as under:-

“उपरोक्त वर्णित तथ्यों के परिपेक्ष्य में अपीककर्ता के विरुद्ध पारित दण्डादेश अनुशासनिक अधिकारी द्वारा सभी सम्बन्धित तथ्यों एवं प्रलेखों के सम्यक अध्ययन एवं विचारोपरान्त लिया गया है। अपीलार्थी के विरुद्ध जॉच कार्यवाही में निहित प्राविधानों/प्रक्रियाओं का पालन किया गया है तथा अनुशासनिक प्राधिकारी द्वारा जारी दण्डादेश तर्क संगत एवं मुखर है एवं दिया गया दण्ड आरोपों के सापेक्ष सानुपातिक (Commensurate) है। अपीलकर्ता के विरुद्ध अनुशासनिक प्राधिकारी के ज्ञापन सं0 बी/जीडीएस एमडी/एमसी/समसपुर/डीपी/09 दिनांक 16.02.2010 द्वारा लगाये आरोप जॉचोपरान्त सिद्ध पाये गये हैं एवं तदनुसार ज्ञापन सं0 बी/जीडीएस एडी/एमसी/समसपुर/09 दिनांक 08.12.15 द्वारा पारित दण्डादेश में हस्तक्षेप करने का कोई औचित्य नहीं पाया जाता है।

अतः मै आई0के0शुक्ल, अधीक्षक डाकघर बस्ती मण्डल बस्ती, अपीलकर्ता री चन्द्रमौलि पाण्डेय भूतपूर्व ग्रामीण डाक सेवक डाक विरक/डाक वाहक शाखा डाकघर समसपुर, (महसो) जनपद बस्ती को दण्डादेश ज्ञापन सं0 बी/जीडीएस एमडी/एमसी/समसपुर/09 दिनांक 08.12.2015 द्वारा “सेवा से निष्कासन” के दिये गये दण्ड की पुष्टि करता हूँ एवं तदनुसार उपरोक्त री चन्द्रमौलि पाण्डेय की अपील दिनांकित 13.05.2017 निर्णीत करता हूँ।”

21. An important ground taken by the applicant in the appeal as well as before this Tribunal in this OA was that the IO did not ensure supply of the documents which he had approved to be supplied, but later on, it was overlooked by the IO, who proceeded with the inquiry without supplying these documents to the applicant. Another ground was that the applicant was not supplied with the copy of the report of the IO to submit his representation to the disciplinary authority before passing of the punishment order dated 08.12.2015 (Annexure A-22) by the disciplinary authority. These important requirement as per the rule 10 of the GDS (Conduct and Engagement) Rules,

2011, which prescribes the procedure for imposing penalty on a GDS, states as under:-

“10. Procedure for imposing a penalty.-

(1) No order imposing a penalty shall be passed except after -

(a) the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make: and

(b) such representation, if any, is taken into consideration by the Recruiting Authority:

Provided that the penalty of dismissal or removal from engagement shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges:

Provided further that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry.

(I) The record of proceedings shall include-

(i) a copy of the intimation to the Sevak of the proposal to take action against him;

(ii) a copy of the statement of allegations, along with a list of evidence in support thereof, communicated to him;

(iii) his representation, if any;

(iv) the records of the enquiry proceedings along with the enquiry report of the Recruiting Authority or Enquiry Officer, if any, appointed in a case where a formal enquiry is necessary;

(v) the representation, if any, of the Sevak on the Inquiry Officer's report;

(vi) findings of the Recruiting Authority in respect of the allegations, with reasons therefore; and

(vii) the order imposing the penalty.”

From the list at (v) of the record of proceedings, it is clear that the representation on the IO's report is required to be the part of the record.

22. In this case, the proceedings have been initiated with issue of the charge-sheet dated 12.3.2012 against the applicant under the GDS (Conduct and Engagement) Rules, 2011 and the rule 18 of the said rule provides for the appeal against the order of the disciplinary authority. The rule 18 states as under:-

“18. Consideration of appeal

The Appellate Authority shall consider-

- (a) whether the procedure specified in these rules has been complied with;
- {b) whether the findings are justified: and
- (c) whether the penalty imposed is excessive, adequate or inadequate; and passing orders,
- (i) setting aside, reducing, confirming or enhancing the penalty;
- (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty.”

As per the rule 18, it was the responsibility of the appellate authority to ensure that the procedure as per the rules have been followed by the enquiry officer during inquiry and by the disciplinary authority while passing the order of punishment. Under the rule 10 of the GDS (Conduct and Engagement) Rules, 2011 it is necessary to serve a copy of the IO's report on the charged official to obtain his representation, if any, for consideration of the disciplinary authority before passing the order of punishment

23. In this regard, the para 34 of the CA describes the efforts made by the respondents to serve a copy of the IO's report on the applicant. The para 34 regarding the service of the letter containing IO's report states as under:-

“34. That, the inquiry officer after completing the enquiry submitted his inquiry report (in two copy) to Disciplinary Authority ASPOs East Sub Division, Basti vide letter No. E.O. 1/2015/ Chandra Mauli Pandey / 15-16 dtd. 12.11.2015. On receipt of above mentioned inquiry report of IO, the Disc. Authority sent a copy of inquiry report to the applicant by Regd. Post RL No. RU 628646263IN dtd. 13.11.2015 vide letter dtd. 13.11.2015 to submit his defence representation within 15 days but the said Regd. letter dtd. 13.11.15 was received back undelivered with the remark that the addressee not met being not resided at his native village after several visits dtd. 14.11.2015, 16.11.2015, 17.11.2015, 18.11.2015, 19.11.2015 and 20.11.2015. The copy of the letter dtd. 13.11.2015 & envelope containing remarks of Postman, is being annexed herewith as ANNEXURE -CA 18. Thereafter, efforts to deliver the said inquiry report to the applicant through Mail Overseer became in vain. In this regard report of Mail Overseer dtd. 02.12.2015 is being annexed herewith as ANNEXURE -CA 19.”

We have carefully perused the remarks/report of the postman and Mail overseer who were entrusted to serve the copy of the report. Report of the postman who tried to deliver the registered letter at Annexure CA-18 stated that the applicant was not available in spite of several attempt made by him to hand over the letter. The Mail overseer was also sent by the respondents to deliver the letter. His report at Annexure CA-19 shows that he also could not meet the applicant and his son did not disclose him the place where the applicant would be available. Another official was also there with the Mail overseer. That was treated to be adequate service and then the disciplinary authority proceeded to pass the punishment order. This point was pointed out in para 21 of his appeal stating that he was not allowed the opportunity for last representation before passing the punishment order. The appellate authority's findings on para 21 of the appeal show that the contention of the applicant was not accepted by the appellate authority, although it was a serious violation of the procedure as prescribed under the rule 10 of the GDS (Conduct and Engagement) Rules, 2011. We note that no effort was made by senior functionary of the department to get the service of the letter completed by affixing the letter on the wall of his residence in presence of the independent witnesses as laid down under the Civil Procedure Code. Failing all other efforts, service could have been done through a newspaper advertisement. Without such efforts, it cannot be said that reasonable efforts were made to serve the IO's report on the applicant. The appellate authority ignored this lacuna in the proceedings, before passing the impugned order dated 13.07.2017. The appellate authority, who was required to look into these aspects of the proceedings, which had been raised by the applicant, simply rejected the submission of the applicant ignoring the issue of violation of the rules, mentioned by the applicant in his appeal.

24. Regarding the inquiry, the applicant has raised the issue of non-supply of a list of 62 documents after approval of the same by the IO vide the order of the IO dated 12.9.2015 (Annexure A-16) and non-examination of the original documents based on which the charges were framed and proved by the IO. On perusal of the IO's report dated 12.11.2015 (Annexure A-18) that during the inquiry conducted between 26.9.2015 till 26.10.2015, the applicant was not present, but the IO proceeded with the inquiry without giving any notice to the applicant to participate in the inquiry or else the inquiry would proceed ex parte. It is further seen that verification of most of the documents and evidence of the prosecution witnesses was conducted by the IO from 26.9.2015 onwards, in absence of the applicant and as a result, the witnesses were examined without any cross-examination or confrontation with the applicant, who was

not informed that the inquiry will proceed ex-parte if he does not participate. The inquiry report did not reveal any order of the IO to that effect. The IO was eager to complete the inquiry due to the time limit given by the Court. This was the reason indicated by the appellate authority while examining this point in the appeal. Without issuing any letter/notice informing him that if he fails to participate on the next date, then inquiry would proceed ex-parte, the IO has simply proceeded with the inquiry mentioning non-cooperation of the applicant. Regarding supply of documents after approval of IO, the statement of the presenting officer dated 19.9.2015 has been recorded stating that the applicant was not entitled to be given these document as he did not mention how these are relevant for the charges. If it was not mentioned, then it was the responsibility of the respondents to have taken a view if these documents were relevant or not. They were required to supply only the documents which were considered by the IO/respondents to be relevant. Such a finding was not available in the IO's report. Instead, the IO simply accepted the statement of the presenting officer, without giving any opportunity to the applicant to show if the documents were relevant for the charges framed (Annexure A-17).

25. From the facts as discussed above, it is clear that the IO did not adhere to the procedure as laid down under the rules on account of the time limit for completion of inquiry as per the Court order (order of IO dated 19.9.2015). The violations of rules by the IO were pointed out by the applicant in his appeal dated 13.5.2017, but these were not considered by the appellate officer stating in para 34 of the impugned order dated 13.7.2017 that the IO had to complete the inquiry within time stipulated by the Tribunal and for non-adherence of the rules, the applicant was responsible as he did not cooperate to complete the inquiry in time. Even if the applicant refused to participate in the inquiry from 26.9.2015 onwards on the ground that the inquiry was not completed within time specified by the Tribunal, IO was required to ensure reasonable opportunity to the applicant as per the rule 10 of the GDS (Conduct and Engagement) Rules, 2011 and if necessary, a request could have been made to the Tribunal to allow more time for completing the inquiry as per the rules. There is nothing on record to show that such a request was made. It is clear that the manner in which the inquiry was hurriedly concluded by the IO without giving reasonable opportunity to the applicant and the same was accepted by the disciplinary and appellate authority, has resulted in serious violation of the rules, vitiating the inquiry as well as the disciplinary proceedings against the applicant.

26. In addition to the defective inquiry as discussed above, the inquiry report was not served on the applicant giving him a last opportunity to defend himself as required under the rule 10 and as discussed in para 23 above, reasonable efforts were not made to serve the IO's report on the applicant who managed to evade receiving the report. We are not able to agree with the contentions of the appellate authority that for such deviations in procedure and rules, the applicant was responsible for his non-cooperation. Even if the contentions are accepted to be true, still the respondents were required to extend reasonable opportunity to the applicant in the inquiry in accordance with the first proviso of the rule 10(1) of the GDS (Conduct and Engagement) Rules, 2011, before imposing the penalty of removal/dismissal from service.

27. We take note of the fact that as per the judgment of Hon'ble Supreme Court in a number of cases, this Tribunal's power for judicial review of disciplinary proceeding can be invoked only if there is violation of rules or the findings of the authorities are perverse and not based on evidence. Regarding the quantum of punishment, in the case of B.C. Chaturvedi (Supra), which has been discussed in para 10 of this order, it has been held that the Tribunal can judicially review in the punishment imposed by the authority, if the punishment is held to be shocking the judicial conscience. In this case, apart from the statutory violation of rules in disciplinary proceedings, as discussed earlier, the quantum of punishment i.e. removal from service is not justified in view of the fact that the inquiry, which has been conducted, is vitiated on the ground that reasonable opportunity has not been given to the applicant. As per rule 10 of GDS (Conduct and Engagement) Rules, 2011, without conducting the inquiry after giving reasonable opportunity to the applicant, the punishment of removal from service cannot be imposed. The chargesheet dated 12.03.2012 leading to the punishment of dismissal from service has been framed against the applicant for the misconducts, which are mostly relate to the charge of insubordination, non-adherence of the instructions / rules by the applicant while discharging his duties and unauthorized absence. There is no allegation of any misappropriation or any deficiency in applicant's delivery of service to the people. There is no past history of similar misconduct by the applicant for which he was punished, as revealed from the record. As held by the Hon'ble Supreme Court in the case of Deputy Commissioner Vs. J. Hussain – AIR 2014 SC 766, the authority is to keep in mind the following points while deciding the quantum of penalty: -

- i). Gravity of misconduct
- ii). Past Conduct

- iii). Nature of duties
- iv). Position in organization
- v). Previous penalty, if any
- vi). Kind of discipline required to be maintained.

In this case, there has been denial of reasonable opportunity to the applicant. The appellate authority, who was required to examine whether there was any violation of rules, failed to consider the appeal of the applicant in accordance with the rules. There is no history of any punishment imposed on the applicant which has been furnished by the respondents alongwith pleadings. Under the circumstances, we of the considered view that the punishment of removal from service is shockingly disproportionate to the charges proved against the applicant.

28. In view of the above, the impugned order dated 13.07.2017 passed by the respondent No. 4 / appellate authority and the punishment dated 08.12.2015 passed by the respondent No. 5 / disciplinary authority are quashed and set aside and the case is remitted to the disciplinary authority to reconsider the matter after serving a copy of the IO's report on the applicant to obtain his representation, if any, on the IO's report and pass a fresh order of penalty on the applicant under the rules and the quantum of such penalty, as in rule 9 of GDS (Conduct & Engagement) Rules, 2011, shall exclude removal / dismissal from service in view of the observations at para 27 of this order. The disciplinary authority shall comply with this order within three months from the date of receipt of a copy of this order. If the applicant is aggrieved by the order of the disciplinary authority, he is at liberty to file appeal and then revision under the provisions of GDS (Conduct and Engagement) Rules, 2011 against the order of the disciplinary authority.

29. The O.A. is allowed as above. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...