

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.1070/2010

NEW DELHI THIS THE 31ST DAY OF OCTOBER, 2015

**HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Satpal Singh
S/o Shri Mangat Ram
Ex. G.D.S. Mail Deliverer Kurawa
Via-Budhana,
Distt.-Muzaffarnagar (U.P.) ...Applicant

(By Advocate: Mr. Arun Sukhija)

VERSUS

1. Union of India
Through Secretary
Ministry of Communication and I.T.
Department of Posts
Dak Bhawan-Sansad Marg,
New Delhi.
2. The Postmaster General
Bareilly Region-Bareilly (U.P.).
3. The Sr. Superintendent of Postoffices
Muzaffarnagar Division
Muzaffarnagar (U.P.).
4. The Inspector Postoffice
(East) Sub-Division
Muzaffarnagar (U.P.).
5. The Inspector Postoffce
KHATOLI Sub Division
Muzaffarnagar (U.P.) ...Respondents

(By Advocate: Mr. B.K. Berara with Mr. R.P. Sharma)

:ORDER (ORAL):

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J):

This application is directed against the order dated 02.07.2008 passed by the Disciplinary Authority imposing the penalty of removal of the applicant from service as well as the order dated 19.12.2008 passed by Departmental Appellate Authority rejecting his statutory appeal.

2. The applicant while working as Gramin Dak Sevak (GDS) was served with a Memorandum of charges dated 25.08.2007, under the provisions of Gramin Dak Sevak (Conduct and Employment) Rules, 2001, (in short 2001 Rules) on the basis of the following article of charges:-

"Article-I

That above Shri Satpal Singh Gramin Dak Sevak Kurawa Branch Postoffice, while working as Mail Deliverer after availing leave from dated 30.03.2007 to 08.04.2007 did not assume charge on 09.04.2007 at Kurawa Branch Postoffice and without any information continuously remained absent upto 16.04.2007. Due to it the delivery work suffered badly.

Thus he violated the provisions of DG P&T letter No.43/15/65-Pen dated 7 June 1968 and violated rule 7 of Gramin Dak Sevak (Employment and Conduct) Rule 2001 and instruction issued time to time and Rule 21.

Article-II

That above Shri Satpal Singh Gramin Dak Sevak Mail deliverer Kurawa Branch Postoffice on 09.04.2007, he went to Khatoli Sub Postoffice with his son and abused and misbehaved with Shri K.D. Sharma Mail overseer.

Thus due to the said act it is alleged that Shri Satpal Singh violated the provision of Rule 21 of Gramin Dak Sevak (Employment and Conduct) Rules 2001."

3. The Inquiry Officer conducted the disciplinary enquiry and on completion of the same, submitted his report on 28.11.2007 with the finding that while the department could not prove the article of charge-I, the article of charge-II was proved against the applicant. The Disciplinary Authority gave an opportunity to the applicant to make representation against the finding recorded by the Inquiry Officer. Upon consideration of the relevant materials available on record the Disciplinary Authority, thereafter, passed the order dated 02.07.2008 imposing penalty as aforesaid, which has been upheld by the Department Appellate Authority. The applicant, thereafter, filed OA No.1070/2010 before this Tribunal challenging the aforesaid two orders dated 02.07.2008 and 19.12.2008, which was disposed of vide order dated 09.12.2010, partly allowing the said OA and quashing and setting aside the orders passed by the Disciplinary and Appellate Authorities and directing the Disciplinary Authority to pass fresh speaking order imposing any penalty other than dismissal or removal from service with a further direction to reinstate the applicant forthwith, if he has not already crossed the age of superannuation. The said order was put to challenge by the respondents herein before the Hon'ble High Court of Delhi in WP (C) No.1653/2011, which was allowed vide order dated

11.01.2013 by quashing the order dated 09.12.2010 passed by this Tribunal and remanding the matter to this Tribunal for giving a fresh decision in the OA relating to the proportionality of the penalty imposed on the applicant.

4. We have heard learned counsel Mr. Arun Sukhija appearing for the applicant and learned counsel Mr. B.K. Berara and Mr. R.P. Sharma appearing for the respondents.

5. It has been contended by the learned counsel for the applicant that since the applicant has served the department since 1988 with unblemished record and there being no allegation of any physical assault on his superior officer, the punishment imposed i.e. the removal from service is shockingly disproportionate to gravity of misconduct.

6. Learned counsel appearing for the respondents, on the other hand, referring to the article of charge no.II, which was found to be proved, has submitted that abusing the senior officer is a serious misconduct and hence order of removal cannot be termed as shockingly disproportionate to the gravity of proved misconduct and hence this Tribunal may not interfere with the same. Learned counsel, referring to Rule 9 of 2001 Rules, has submitted that though six punishments are prescribed including the punishment of removal, which has been imposed on the applicant, if the same is interfered with being disproportionate to

gravity of misconduct proved, the other punishment prescribed in Rule 9 cannot be imposed on the applicant, leaving it open to the respondents to impose the penalty of "Censure" only as provided in Rule 9 (i) of the aforesaid rules, which would be inadequate having regard to the gravity of misconduct proved. The learned counsel, therefore, submitted that the order of removal from service does not require any interference by this Tribunal.

7. As noticed above, the scope of the present OA in view of the aforesaid order passed by Hon'ble High Court is limited to the consideration of the proportionality of the punishment imposed by the Disciplinary Authority vide order dated 02.07.2008, which has been upheld by the Departmental Appellate Authority vide order dated 19.12.2008.

8. Out of the two allegations levelled against the applicant, which have been reproduced above in this order, the article of charge no.1, that the applicant after availing the leave from 30.03.2007 to 08.04.2007 did not resume his duty on 09.04.2007 and remained continuously absent from the Branch Post Office without any information till 16.04.2007, was found to be not proved by the Inquiry Officer. The Disciplinary Authority agreed with the finding recorded by the Inquiry Officer in his report relating to the article of charge no.I. The article of charge no.II, however, was found to be proved, which is based on the allegation that on 09.04.2007, the applicant went to Khatoli Sub

Post Office with his son and abused and misbehaved with Shri K.D. Sharma, Mail overseer. There is absolutely, no allegation of physical assault. The factum of misbehavior of the applicant with his superior officer, however, is found to be proved.

9. It is a settled position of law that the quantum of punishment awarded by the Disciplinary Authority can be interfered with by the Court/Tribunal, if the same is shockingly disproportionate to gravity of proved misconduct. Admittedly, the applicant has served the department as GDS since 1980. There is also no allegation against the applicant that any disciplinary proceeding was earlier initiated against him. The applicant till the initiation of present disciplinary proceeding vide charge memo dated 25.08.2007 had unblemished service record.

10. Having regard to the aforesaid position and the applicant having retired in the meantime on attaining the age of superannuation on 31.12.2011, we are of the view that the punishment of removal from service is shockingly disproportionate to the gravity of misconduct proved against the applicant. In normal circumstances, having held so, we would have remitted the matter to the Disciplinary Authority for passing an appropriate order, which in this case we are not inclined to do as no purpose would be served by doing so as the submission advanced by the learned counsel is that only punishment

available to be imposed on the applicant in this case is "Censure" under Rule 9 (i).

11. Hence, the order of penalty imposed on the applicant is substituted by the penalty of "Censure" as provided under Rule 9(i) of the aforesaid Rules. The applicant having already attained the age of superannuation, there is no question to take him back in service. We are, however, of the view that the interest of justice would be served if the respondents are directed to pay 25% of emoluments from the date of his removal from service to the date of his retirement which the applicant would have earned per month if he had worked for five hours a day, having regard to the revised emolument as per the 6th Pay Commission report. Apart from that, if the applicant is entitled to any other retiral benefits, the same shall also be extended to him. If the applicant has not been paid his emoluments from 01.01.2006 till the date of removal from service, the same shall be paid to him.

12. OA is allowed to the extent as indicated above. No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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