

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00026/2018

TODAY, THIS THE 28th DAY OF SEPTEMBER, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

Smt B.N. Ashalakshmi,
W/o Manjunatha Shetty,
Aged 50 years,
Ex-GDS BPM, Jigali BO,
a/w Malebennur SO,
Chitradurga – 577 530
Residing at Jigali,
Harihara Taluk,
Davangere – 577 530

... Applicant.

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India,
By Secretary,
Department of Posts,
Dak Bhavan,
New Delhi – 110 001

2. The Director of Postal Services,
O/o Postmaster General,
S.K. Region,
Bengaluru – 560 001

3. The Superintendent of Post Offices,
Chitradurga Division,
Chitradurga – 577 501

... Respondents

(By Shri S. Sugumaran, ACGSC)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

The applicant while working as GDS BPM was proceeded against with disciplinary action on allegation of accepting Rs. 30000/- from a customer and not depositing this amount and for a discrepancy in accounting Rs. 1600/- in 4 Recurring Deposit accounts. The Disciplinary Authority (Respondent NO. 3) found the charges

proved and imposed a penalty of reduction of pay by 3 stages for 3 years without cumulative effect. However, the Appellate Authority (Respondent No.2), suo motu, issued notice to the applicant proposing to enhance the penalty and after considering her representation against it, imposed a penalty of dismissal from service. This O.A is against the order of dismissal and is mainly on the grounds that the order is without application of mind, amounts to interfering with the judgement of a quasi judicial authority, and is unfair taking into account the gravity of the alleged offence and the penalty already imposed.

2. The respondents have not materially differed with the facts alleged by the applicant. According to them, the Appellate Authority had exercised the power under Rule 19 of the Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011. The enhanced punishment is imposed after taking into account the gravity of the offence and after giving the applicant an opportunity to represent against. They have quoted the decision of the Hon'ble Supreme Court (Union of India & Another vs. K.G. Sony, 2006 SCC (L&S) 1568) according to which the scope of judicial review in departmental enquiry proceedings is limited.

3. After going through the pleadings, perusing the records and hearing the counsels of both the parties, it is clear that the limited issue on which this Tribunal is to decide is about the quantum of punishment. Here, we reproduce the most relevant portion of the impugned order (Annexure A-9):

"The charges against the said B.N. Ashalakshmi are grave in nature which includes misappropriation of public money. In her statement she has not denied the allegations made against her. Having committed acts involving questionable integrity, the GDS cannot claim to have served sincerely and honestly. By resorting to the misappropriation of money in the accounts of public, she undermined the faith reposed by the public on the department, I find that the disciplinary authority has inclined to consider her case leniently only on the basis of her length of service and her assurances. I find no grounds to consider these aspects when the GDS commits high degree of misappropriation. Therefore, I find that the penalty imposed on her by the

disciplinary authority, is not commensurate with the gravity of the misconduct and certainly there is a case of enhancement of punishment. Therefore I pass the following order..."

4. The increase in punishment as is clear from reading the above portion, has been made because of the high degree of gravity attached by respondent No.2 to the infraction. He has also differed with the Disciplinary Authority on the grounds of leniency (length of her service and her assurances) cited by the Disciplinary Authority. Thus, the change in the quantum of punishment is solely based on the difference in Appellate Authority's judgement (about the gravity of misconduct and the grounds for leniency) with the judgement of the Disciplinary Authority. It is true that the scope of judicial review in such matters is limited. A higher judicial, or even quasi-judicial, authority should not substitute its judgement for the judgements of the lower authority (who are likely to be more proximate to the cause of action) unless there are very strong reasons to do so. Hence, while it will be improper for this Tribunal to substitute its judgement for the judgement of the Appellate Authority (Annexure A-9), by the same logic, it was also incorrect for the Appellate Authority to have substituted its judgement for the judgement of the Disciplinary Authority. It is especially so if there are no errors, legal or factual, in the orders of the subordinate Disciplinary Authority.

5. The gravity of the offence is not denied by the Disciplinary Authority and is, in fact, clearly mentioned in the order of the Disciplinary Authority, which we quote below:

"The gravity of offence on the part of charged GDS are serious in nature, which require deterrent action, however, keeping in view of her length of service and assurance that, she would not come across with such irregularities in future, I take a lenient view and pass the following order..."

It is also not denied by the respondents that the applicant had a long service. There are no reports about any other infraction by her during this long service career. The charges for which she has been punished have apparently not caused any loss to the Government since the money which was not accounted for was either accounted later or returned to the complainant. We also note that almost all the material witnesses in this case either did not support the charge or turned hostile during the enquiry. In these circumstances, the judgement of the disciplinary authority to take a lenient view in case of a widow of 50 years, with 2 kids, and a sole bread winner of the family, does not appear to be very incorrect. Therefore, we do not find enough justification in the order of the Appellate Authority for the revision of punishment from temporary reduction of pay to the extreme penalty of dismissal from service. We, therefore, set aside the impugned order of the Appellate Authority dated 26.09.2017 (Annexure A-9). The order (Annexure A-6) of the Disciplinary Authority stands.

6. The O.A is accordingly allowed. The applicant should be taken back in service immediately. Since she has not worked for the period she remained dismissed and since the order of the Appellate Authority, though not entirely justified, was issued in good faith for ensuring deterrence of such misbehaviour by others, and since it has partly served the intended purpose of enhancing her punishment, there will be no need to pay her any salary/wages for the period for which she remained dismissed from service. No orders as to costs.

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

**(DR. K.B. SURESH)
JUDICIAL MEMBER**

Cvr.

Annexures referred to by the applicant in OA:

Annexure-A1: Copy of the order dated 27.06.2014
Annexure-A2: Copy of the order dated 08.07.2014
Annexure-A3: Copy of the memorandum dated 13.01.2015
Annexure-A4: Copy of the order dated 23.03.2016
Annexure-A5: Copy of the Inquiry Report dated 17.11.2016
Annexure-A6: Copy of the order dated 26.12.2016
Annexure-A7: Copy of the notice dated 22.05.2017
Annexure-A8: Copy of the applicant's representation dated 10.06.2017
Annexure-A9: Copy of the order dated 26.09.2017

Annexures filed by the respondents along with reply:

Annexure-R1: Copy of the passbook
Annexure-R2: Copy of the statement of Balappa dated 07.08.2014
Annexure-R3: Copy of the passbook of Balappa
Annexure-R4: Copy of the statement of Shivanandappa
Annexure-R5: Copy of the passbook of Shivanandappa
Annexure-R6: Copy of the statement of M.M. Redresh
Annexure-R7: Copy of the statement of G. Mahalinga Angadi
Annexure-R8: Copy of the statement of Admission dated 16.09.2014
Annexure-R9: Copy of the settlement of claim dated 14.11.2014