

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: BILASPUR

Original Application No.203/00256/2015

Jabalpur, this Monday, the 10th day of December, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Sukhi Ram Mahinang, S/o Late Mohit Ram Mahinang
Aged about 59 years, Ex. GDS Branch Post Master
Pawani (Bilaigarh) PIN: 493338
District: Raipur (Chhattisgarh) -Applicant

(By Advocate –**Shri B.P. Rao**)

V e r s u s

1. Union of India Through the Secretary
Ministry of Communication Department of Posts,
Dak Bhawan New Delhi 110001

2. The Director Postal Services Chhattisgarh Circle
CPMG Office, M.G. Road Raipur 492001 (CG)
(Appellate Authority)

3. The Sr. Supdt. Of Post Offices Raipur Division
Raipur 492001 (CG) - Respondents

(By Advocate –**Shri Vivek Verma**)

(Date of reserving the order:05.12.2018)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved by imposition of penalty of
dismissal from engagement.

2. The applicant has contended that he was working as Gramin
Dak Sevak (GDS) Branch Post Master, Pawani (Bilaigarh), Post

Office of Raipur Division during the period from 12.11.1986 to 14.10.2009. He was placed under put-off duty on 14.10.2009 by Sub Divisional Inspector (Postal), Balodabazar Sub Division and the same was confirmed by SSPO's Raipur Division, Raipur vide memo dated 27.10.2009. A charge sheet was issued to him vide charge memorandum dated 18.05.2010 (Annexure A/1) for misappropriation of Government money in various RD Accounts and PRLI Accounts. The applicant denied all the charges vide representation dated 02.05.2010. Thereafter, the disciplinary authority appointed enquiry officer and presenting officer to conduct the departmental enquiry against the applicant on the said charge sheet. After holding a full-fledged enquiry, vide communication dated 07.08.2013 (Annexure A/2) the applicant was asked to submit his representation within 15 days on the enquiry report dated 29.07.2013 submitted by the enquiry officer holding the charges stood proved against him. Against the said enquiry report, the applicant submitted his representation on 15.08.2013. The disciplinary authority vide memo dated 11.09.2013 (Annexure A/3) imposed the punishment of 'Dismissal from Engagement'. The applicant thereafter preferred statutory appeal dated 29.09.2013 (Annexure A/4) before the appellate authority.

2.1 On non receipt of any response from the appellate authority the applicant approached this Tribunal by filing an Original Application No.203/00900/2014 which was disposed of vide order dated 18.11.2014 (Annexure A/5) by directing the appellate authority to consider and decide his appeal with a reasoned and speaking order. In compliance of this Tribunal order, the appellate authority vide speaking order dated 19.12.2014 (Annexure A/6) rejected the appeal of the applicant.

2.2 The applicant has contended that several prosecution witnesses had become hostile during the course of enquiry still the charges leveled against the applicant were held to be proved by the enquiry officer. The applicant had not misappropriated any amount. However, in some cases he had taken the amount into postal account after some time which he had accepted and remitted Rs.2100/- as directed by the respondents. As such allegation of permanent misappropriation of any amount is illegal and for the allegation of temporary misappropriation the applicant had already deposited the amount. Therefore, the punishment imposed upon the applicant is much disproportionate.

3. The applicant has, therefore, prayed for the following reliefs in this Original Application :-

“(8). Relief Sought:-

(8.1) That, the Hon'ble Tribunal be pleased to allow the O.A. and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant's grievance.

(8.2) That, the Hon'ble Tribunal be pleased to set aside the Punishment Order dated 11.9.2013 (Annexure A-3) and Appellate Authority Order dated 19.12.2014 (Annexure A/6) in the interest of justice with all consequential benefits.

Or

The Hon'ble Tribunal be pleased to pass an Order, directing the Respondents, in view of disproportionate punishment, to reconsider the quantum of punishment imposed on the Applicant looking to his past unblemished 28 years service.”

4. The respondents in their reply have submitted that the disciplinary authority has considered his representation, examined all relevant documents and enquiry report while passing the punishment order of 'Dismissal from Engagement'. It has been specifically mentioned in the reply that the appellate authority has also examined all the relevant facts and documents and found that the applicant was involved in misappropriation of Government money which is a serious nature of misconduct.

4.1 It is further submitted by the respondents that during the departmental enquiry the examination of all prosecution witnesses was conducted as per rules. The charges were framed with the help of prosecution documents and witnesses, and charges were proved during enquiry. Therefore, the punishment awarded by the disciplinary authority was proportionate to the ratio of misconduct

proved against the applicant. It is also submitted by the respondents that the applicant misappropriated government money to utilize it on personal purposes and same was accepted by applicant himself in his statements dated 14.10.2009 and 26.04.2010.

4.2 The respondents submitted that the instant Original Application filed by the applicant is not maintainable and is liable to be dismissed on the ground that the applicant has approached this Tribunal without availing the remedy under Rule 19 of the GDS (Conduct & Employment) Rule 2011, whereby a revision application can be filed against the order of the appellate authority.

5. The applicant in his rejoinder has submitted that in the matter of departmental punishment, exhausting at least one statutory appeal is sufficient to approach this Tribunal. He further submitted that the respondents have not submitted their specific submissions on the facts, allegations, and grounds as raised by him. No documents have been attached with the reply of the respondents.

6. Heard the learned counsel for both the parties and perused the pleadings and documents annexed therewith.

7. In the matters pertaining to disciplinary enquiry, the Hon'ble Supreme Court in the matters of **Rajasthan Tourism Development Corporation Limited and another Vs. Jai Raj**

Singh Chauhan, (2011) 13 SCC 541: (2012)2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below:

“(19) In Union of India Vs. Parma Nanda (1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, this Court while dealing with the scope of the Tribunal’s jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.”

(20) In B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 the Court reviewed some of the earlier judgments and held:

“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 disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

(21) In Apparel Export Promotion Council Vs. A.K. Chopra (1999) 1 SCC 759: 1999 SCC (L&S) 405 the Court again referred to the earlier judgment and observed:

“16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on **no evidence** or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is **not** concerned with the

*correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in **Chief Constable of the North Wales Police v. Evans** (1982) 1 WLR 1155:(1982) 3 All ER 141 (HL) observed:*

'... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.'

17. *Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."*

8. Thus, it is settled law that jurisdiction of Courts/Tribunals in disciplinary matters is very limited. In the instant case we find that all the procedural requirements have been duly complied with during the course of enquiry. The principles of natural justice were duly complied with. The disciplinary authority as well as the appellate authority, have also considered the question of quantum of punishment after taking into account all the material placed

before them. Thus, we find their decisions within the legal parameters, and, therefore, we do not find any illegality or irregularity in passing the impugned orders.

9. Further, in the matters of **Mihir Kumar Hazara Choudhury Vs. Life Insurance Corp. & Anr.**, Civil Appeal No.7612 of 2009 decided on 11.09.2017 the Hon'ble Supreme Court of India has held thus:

“(27).An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any Institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. (See some observations in Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain, (2005) 10 SCC 84).

(28). There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several 16 depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse

orders (see some observations in Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik, 1996(9) SCC 69).

(29). In our opinion, having regard to the seriousness of the charges coupled with virtually no defense taken by the appellant in answer to the charges and lastly, the findings of the Enquiry Officer, the punishment of dismissal was appropriate as provided in the service regulations and hence does not call for any leniency in awarding such punishment".

10. In the instant case, we find that the charges framed against the applicant were duly proved during the course of enquiry. The applicant himself had admitted that he had temporarily misappropriated government money to utilize it for his personal use. Therefore, in view of the decision of the Hon'ble Supreme Court in the matters of **Mihir Kumar Hazara Choudhury** (supra) the punishment of dismissal from engagement awarded by the disciplinary authority and upheld by the appellate authority do not call for any interference.

11. In the result, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

rkv

(Navin Tandon)
Administrative Member