

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

OA No. 060/00594/2016

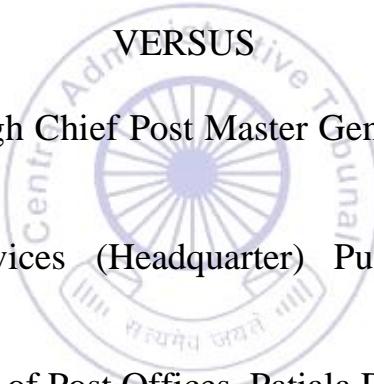
Pronounced on : 20.12.2017
Reserved on : 13.12.2017

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)

Harpreet Singh, age 41, son of Balbir Singh, Ex GDSBPM, Chuni Kalan Branch Office in account with Sirhind SO, R/o Village Chuni Kalan, Distt. Fatehgarh Sahib (Punjab).

.....Applicant

BY ADVOCATE: **Sh. I.S. Sidhu**



VERSUS

1. Union of India, through Chief Post Master General Punjab Circle, Sector 17, Chandigarh.
2. Director Postal Services (Headquarter) Punjab Circle, Sector 17, Chandigarh.
3. Senior Superintendent of Post Offices, Patiala Division Patiala.

.....Respondents

BY ADVOCATE: **Sh. V.K. Arya**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant was working as Branch Postmaster, Chuni Kalan when he was put off duty under Rule 10 of GDS Rules, 2011. The applicant was issued Annexure A-5 charge sheet wherein it is alleged that while working as GDSBPM Chuni Kalan, he failed to make entries of amount of Rural Postal Life Insurance (RPLI) policy premium amount in the RPL register and RPLI premium receipt book of the insurant. Six dates have been indicated on which

such premium was presented, amounting to Rs. 17,142, which the applicant had failed to take into Government account on the indicated dates of presentation of premium. Thus, acting in contravention of Rules 133 and 134 Branch Post Office (BO) Rules and Rules 4 and 103 of Financial Handbook Part I and also the applicant violated Rule 21 of GDS (Conduct & Employment) Rules, 2001. The applicant was issued Annexure A-3, penalty of dismissal from engagement. Annexure A-2 is the appeal, which modified the penalty of dismissal to that of removal from employment and Annexure A-1 is the revision petition which was rejected on the ground of being time-barred.

2. Applicant argues that FIR 136 dated 23.09.2009 under Section 409 of the IPC, was lodged at the Police Station Bassi Pathana against the applicant for misappropriation of Rs. 17,142 deposited by Sh. Mahipal Singh holder of RILI-CH-EA-52935. The CGM Fatehgarh Sahib held that the evidence brought on record was not sufficient to prove any of the charges against the accused beyond the shadow of substantive doubt. As the prosecutor had failed to produce desirable standards of proof, no advantage of weakness of defence case could be taken. Hence, applicant was acquitted on the above grounds of evidence not sufficient to prove the charge.

3. The applicant argues that the charge in the criminal case filed and in the departmental proceedings is the same. The statement of witness Mahipal Singh recorded in the criminal case denies that he had given Rs. 17,142 to the applicant for depositing RPLI premium. Applicant also submits that he was denied reasonable opportunity to defend himself in the departmental proceedings. Applicant brings to note that by the time the revision petition in the departmental proceedings was filed, the criminal court had delivered its judgement which was also placed before the revision authority for consideration. The revision authority

held that proceedings in the criminal case are different in nature from departmental disciplinary proceeding. The relief sought by the applicant is for quashing the punishment, appellate and revisionary orders issued in the matter.

4. The respondent in the reply statement submits that the applicant while working as GDSBPM Chuni Kalan BO accepted an amount of Rs. 17,142 from one Mahipal Singh holder of Postal Life Insurance Policy No. R-PB-CH-EA-52935 on various dates as indicated below:-

Date of Deposit	Period of Deposit	Rate of Instalment	Total Amount
28-01-2008	2/07 to 1/08	631/-	7562/-
31-03-2008	2/08 to 3/08	631/-	1262/-
28-04-2008	4/08 to 5/08	631/-	1262/-
29-11-2009	6/08 to 11/08	631/-	3786/-
28-04-2009	12/08 to 4/09	631/-	3260/-

Respondents argue that the applicant neither credited the above amount into the Government account and also did not issue receipt for the above PLI Premium to the insurant. The respondents however admit that the above amount was recovered from the applicant and credited into the Government account after the fraud was detected. But this would not absolve the applicant of the fraud of misappropriating insurance premium handed over to him in the post office for deposit.

5. During the course of inquiry, the applicant made a request for change of Inquiry Officer/Presenting Officer on the ground of bias. The request of the applicant was accepted and a new officer was appointed. On conclusion of the inquiry proceedings on 12.07.2011, vide order sheet No. 5, applicant was asked to submit his defence statement alongwith list of defence witnesses. Applicant again represented for change of IO/PO. Applicant failed to submit defence statement within stipulated time stating that his Defence Assistant was busy. The applicant made repeated requests for extension of time to submit his defence statement, thereby giving the impression of evading/prolonging the inquiry.

6. Applicant also evaded participation in the mandatory examination for which dates were issued on five occasions viz. 9.8.12, 27.8.12, 10.9.12, 15.10.12 and 23.10.12 and the Inquiry Officer closed the inquiry ex parte on 23.10.2012. Copy of the inquiry report was sent to the applicant to submit his representation if any within fifteen days. Applicant was also reminded to submit his representation. Applicant requested time to prepare his representation and was allowed ten days' time. He finally submitted his representation on 21.2.2013. Applicant was imposed a penalty of dismissal from service to which he preferred an appeal. The punishment was reduced to removal from engagement as GDS. The revision petition submitted by the applicant was also disposed of upholding the appellate decision. Thus, this was not a case where the applicant was not given an opportunity to participate in the inquiry proceedings or that the respondents did not follow the mandated procedure as stipulated by the rules.

7. The respondents argue that the charges were proved beyond any shadow of doubt by the Inquiry Officer. The charge was one of misappropriation of Government money and that too money tendered by a Postal Life Insurant towards payment of his insurance premium. That the applicant misappropriated such money which was given to him in good faith in order to keep insurance policy going is in itself a serious misdemeanour vis a vis the insurant, and secondly he also failed to credit the money into the Government accounts. His misdemeanour was therefore on two accounts i.e. misappropriation, and breach of trust of an insurant who was paying premium to keep his policy active.

8. This is not a case of lapse, but of deliberate misappropriation. The applicant had been given all chances under the Rules to defend himself. On his request of alleged bias, the Inquiry Officer and the Presenting Officer were also changed. The respondent also brings to our notice that there are judgements and Government of India's orders wherein it has been clearly stipulated that there will be

no bar to initiate disciplinary proceedings on the same or similar charges as that on which criminal proceedings are also ongoing, if the competent authority thinks it necessary to do so. Therefore, initiating departmental proceedings when criminal proceedings were ongoing is a provision admissible under the rules and the applicant's counter arguments on this are not acceptable.

9. There is also no doubt that the consumer whose premium was misappropriated by the applicant, had admitted in the departmental proceedings that he had handed over the amount to the applicant. During cross-examination by the applicant, the complainant deposed that his statement in the court was not recorded properly and he only signed whatever was placed before him. The Inquiry Officer and the disciplinary authority have relied upon the statements and documents adduced during the departmental inquiry and hence there has been no miscarriage of justice. The principle of double jeopardy does not apply to this matter as the criminal procedure and departmental inquiry are two different process, proceeded under different laws/rules and hence cannot be compared. It was not necessary for them to have before them or peruse the court's proceedings while arriving at a decision in the departmental inquiry. Further, the Criminal Court proceedings were concluded after the disciplinary appellate authority had taken action in the departmental proceedings. Hence, it is observed that reasonable and adequate opportunity was provided to the applicant in the departmental inquiry proceedings and on this ground, we do not find any ground to interfere. The conduct of enquiry did not contravene any of the laid down rules.

10. The inquiry authority and the disciplinary authority could not have diluted the stipulated rules regarding the acceptance of insurance premium and crediting the same into the Government accounts. Judicial review of administrative action in a disciplinary matter is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafide intentions. It is intended as a tool to check

whether the decision in the disciplinary case was made lawfully. We find that none of the above stipulated infractions had taken place for a judicial review of the disciplinary action.

11. Judicial review is not directed against a decision but against the decision making process, and to ensure that decision taken is proportionate to the misdemeanour and also accords fair treatment. It would be erroneous to think that the Tribunal can also sit on the correctness of the decision itself. The Tribunal cannot interfere with the findings of the Inquiry Officer or the competent disciplinary authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent official is conferred on the competent disciplinary authority. If there has been an inquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice, is a matter exclusively within the jurisdiction of the competent disciplinary authority. Penalty imposed should be one which can be lawfully imposed for the proven misconduct.

12. The Tribunal has no power to substitute its discretion for that of the disciplinary authority. The Tribunal also cannot interfere if the conclusion of the Inquiry Officer or the competent authority is based on evidence adduced during the course of the inquiry. When an inquiry is conducted, it is necessary to determine whether it was held by a competent person, whether the rules of natural justice were complied, and the conclusions are based on evidence. We find no infraction on this account. The authority entrusted with the power of inquiry had jurisdiction, power and authority to reach a finding of fact or conclusion.

13. The Apex Court in **B.C. Chaturvedi Vs. UOI, 1996 AIR 484, 1995 SCC (6) 749**, had held as follows:-

“Neither the technical rules of Evidence Act nor proof of fact or evidence as defined therein apply to disciplinary proceedings.”

If the conclusion or the finding was such as no reasonable person would have ever reached, the Tribunal may interfere with the conclusion or finding. We find no such reason to mould the relief.

14. Embezzlement of money tendered by a public member to the Post Office towards payment of insurance premium, even for a temporary period, would attract the offence of criminal misappropriation. The faith and the confidence, with which the insurance money was entrusted, would be lost on account of such misappropriation. The Apex Court in **Karnataka SRTC Vs. A.T. Mane, 2005 (3) SCC 254** had held that it is not the amount of money misappropriated that becomes the primary factor for awarding punishment. It is the loss of confidence which is the primary factor to be taken into consideration in cases of misappropriation. Apex Court in Chairman and MD United Commercial Bank & Ors, Vs. P.C. Kakkar had at paragraph 15 held as follows:-

“Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment.”

The purpose of departmental inquiry and prosecution is two different and distinct aspects. Criminal prosecution is launched for an offence for breach or violation of a law. Departmental inquiry is intended to maintain discipline in

service and prevent any omission of public duty or commission of breach of departmental rules. The Apex Court in **SLP (C) No. 9658/2006, Jaswant Singh Vs. UOI & Ors.** had held as follows:-

"13. It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed."

15. Hence, we are also of the view that acquittal by a criminal court would not be a ground on identity of charges, for dropping of or setting aside departmental proceedings. Accordingly, OA is dismissed. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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