

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00822/2015

**Pronounced on : 06.12.2017
Reserved on : 22.11.2017**

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

Ishwar Devi wife of Late Subhash Chander, resident of Street No. 3, New Patel Nagar, Nabha, District Patiala.

.....Applicant

BY: Sh. Nakul Sharma

VERSUS

1. Union of India through Director General Post, Ministry of Communication and Information Technology, Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Punjab Circle, Department of Post, Sandesh Bhawan, Sector 17-E, Chandigarh.
3. Director Postal Services (HQ), Punjab Circle, Department of Post, Sandesh Bhawan, Sector 17-E, Chandigarh.
4. Senior Superintendent of Post Offices, Patiala Division, Patiala.

.....Respondents

BY ADVOCATE: Ms. Nidhi Garg

ORDER

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

1. Applicant is a person who was charge sheeted on 16.03.2011 wherein it was alleged that the applicant had admitted an outsider Sh. Sukhwinder Singh inside the Post Office and permitted him to take part in office work. The said charge sheet also contains details of transactions of withdrawals made in the Post Office, and non-comparison of the entries of withdrawal with the warrant of payment or the SB account ledger, and without verifying the last balance shown in the ledger page. This charge

sheet was dropped on technical grounds by the 4th respondent on 11.05.2011 and a second charge sheet was issued after two months on 19.05.2011. The second charge sheet also alleged that the applicant while working as PA/SPM, Amloh, during the period from 31.07.2003 to 02.08.2007, had allowed one Sukhwinder Singh into the interior of the Post Office and permitted him to take part unauthorisedly in the Post Office work. Sukhwinder Singh had facilitated a fraud of Rs. 1,18,400 in Account No. 355590. Applicant argues that the charge sheet was dropped not on technical ground but to fill the lacuna in the dropped charge sheet which according to respondent is allowed under the rules and is a logical reason for revising the charge memo. During enquiry, the original ledger card of Account No. 355590 and specimen signature book were not produced, argues applicant.

2. Applicant also argues that she was a BCR PA and the penalty was issued by respondent No. 4 who was not the authorized person to issue penalty to a BCR PA. Respondent contends that BCR is a mere financial upgradation and not a functional post. The applicant was a time scale Postal Assistant and was treated as such by the competent disciplinary authority. The original ledger card No. 180 of Account No. 355590 on which the disciplinary case was based, was not produced in the inquiry as it was alleged to have been removed by the said Sukhwinder Singh, the outsider person who unauthorisedly gained entry into the interior of the Post Office, where outsiders are not allowed. Applicant also alleges that the inquiry officer had only allowed photocopies of the documents listed in Annexure 3 of the charge sheet. The Presiding Officer had relied upon the statement of

applicant made in Ex.S-15 and S-16, wherein the applicant had admitted to the lapses. The applicant also alleges that no document was produced to show that Savings Bank Account No. 355590 was running a minus balance. Respondent argues that the account office of applicant's Post Office was the Head Office whose ledger where applicant's Post Office entries are reproduced was produced to prove the existence of minus balance in the account. Hence, such a minus balance should have been noted by applicant in the ledger maintained in her own Post Office where the savings account was in existence and fraudulently and unauthorisedly operated by the outsider Sukhwinder Singh for deposit and withdrawal, when applicant was the in charge/boss of the Post Office.

3. Applicant argues that she had paid up all amount which was attributed as loss due to her negligence. In view of the fact that she had paid up the loss attributable to her, she was liable for lenient treatment.

4. The relief sought by the applicant is for quashing Annexure A-6, penalty of dismissal from service, Annexure A-8, appeal which was dismissed by the Appellate Authority and Annexure A-10, order passed by the second respondent wherein the petition of the applicant against dismissal was dismissed.

5. Respondents argue that applicant had been working as PA/Sub Post Master Amloh from 31.07.2003 to 21.04.2007 and was identified as the main offender in the cited charge memo, who allowed an outsider Sukhwinder Singh to unauthorisedly work in the Post Office and open new accounts, thereby violating Rule 653 of P&T Manual Vol. II which prohibits the entry and admittance of strangers inside a Post Office on account of large

amount of cash transaction handled, or allowing strangers to interfere with the work of the Post Office. The allegation is that the applicant had failed to put her initials, as required under the rules, below the signature of the depositor on SB 7 withdrawal form. In some cases, the initials of the applicant appeared against the initial deposit in the fake ledger cards, thereby establishing applicant as a co-culprit in the opening of fake savings account. The applicant had allowed new accounts to be opened even when the depositor had not attended the Post Office at the time of opening of accounts. The applicant had also not checked subsequent deposits in the accounts as required under Rule 31(2)(i)(b) and(c) of POSB Manual Volume

I. This rule reads as follows:

“(b) On receipt of pass book, pay-in-slip and the ledger from the Counter-Assistant, the SPM should compare the entries in the pass book with those in the ledger and the pay-in-slip and initial the pass book and sign in the ledger. A note of transaction should be made by him in the long book. The balance in the ledger after the transaction should also be noted by him. After check he will return the documents to the Counter Assistant.”

Her lack of supervision as cited in above Rule is also additionally alleged as a failure to note and check that the date stamp of an earlier date i.e. 14.03.2006 which had been impressed on the form SB-103 (Savings Bank Deposit Slip) dated 16.03.2006 in account No. 355590 The lack of supervision of applicant was pointed out in inquiry report on this account

6. The respondents in the reply have placed a list of 20 accounts in which the applicant had committed lapses and thereby contributed to the commission of fraud amounting to Rs. 1,84,900. Following the departmental inquiry, a penalty of dismissal from service was imposed upon the applicant by memo dated 19.12.2012. Appeal dated 21.01.2013 was

dismissed by memo dated 31.08.2013. Revision petition dated 20.03.2014 was rejected vide memo dated 23.09.2014. An FIR No. 69 dated 17.07.2012 has also been registered against the applicant and the other offenders.

7. The first charge sheet issued to applicant was cancelled and a revised second charge sheet was issued which did not cause any prejudice to the applicant as there was a slight modification of the charges to include specifically the amounts defrauded in Savings Account due to lack of supervision by applicant. The issue of a second charge sheet on cancellation of the first, argue the respondents, is allowed as per disciplinary rules. On a perusal of Annexure A-2, we find that the charge sheet was dropped on 11.05.2011 on technical grounds. On a comparison of the first and second charge sheet, we find that the details of fraud in the accounts amounting to Rs. 1,18,400 is supplied in Article I of the charge which would have been helpful to the applicant as she is made aware of the details of the fraud committed for which she is charged, and thereby had a better chance to defend herself. Further, such a cancellation of charge sheet and issuing fresh charge sheet, has been authorised by the respondent department vide DGP&T letter 114/324/78-DiscII dated 05.07.1979. The respondents also submit that the original ledger card and passbook could not be produced during the inquiry and the applicant had been given a photocopy of the same and applicant did not raise any objection during inquiry proceedings. Attested photocopies of the original specimen signature book were also produced during the inquiry. The applicant did not file any objection to the production of these records at the time of inquiry and is now estopped from

taking this plea at a belated stage. It is not a case that applicant has not been given an opportunity to prove her innocence.

8. That Sh. Sukhwinder Singh, an outsider was working inside the counter, was substantiated by the eyewitnesses, i.e. the staff working in the Amloh Post Office. The applicant and the other staff members admitted that Sh. Sukhwinder Singh used to help in the office work though as per rules, no outsider other than postal employees are allowed in the work area of the Post Office. Hence, this was a case of clear violation of laid down procedural rules of work in a Post Office in order to ensure the safety of cash and accountable articles like National Savings Certificates, Money Orders received for payment etc.

9. The applicant had been given adequate opportunity to defend herself during the inquiry and the applicant had not registered any complaint about any impropriety in the inquiry proceedings or being denied an opportunity of being heard.

10. The respondents place Annexure R-1, guidelines of TBOP/BCR which states that TBOP/BCR scheme is not a promotion, but only an upgradation of pay, given on completion of 16 and 26 years of service to an official on a personal basis. This financial upgradation is not a norm and vacancy based promotion. The applicant's lien was therefore in a Postal Assistant Cadre and SSPOs Patiala was the appointing and disciplinary authority and competent to impose all penalties detailed in Rule 11 of CCS(CCA) Rules, 1965. Hence, argument of applicant that punishment was awarded by an incompetent authority is not substantiated.

11. Respondents submit that the statement of the applicant dated 03.08.2010 and 30.08.2010, statement of Gurmeet Kaur dated 02.02.2010 and 13.08.2010, statement of Sukhwant Singh dated 03.02.2010, statement of Avtar Singh dated 28.01.2010 and statement of Sh. Sukhwinder Singh dated 23.02.2010 were produced in the inquiry as listed documents and got confirmed from the witnesses and provided sufficient evidence that Sukhwinder Singh used to unauthorisedly and against rules enter the area behind the counter of the Post Office and unauthorisedly perform office work with the knowledge of the Sub Post Master.

12. It was argued that since Account No. 355590 was opened in a fake name, the passbook of the account could not be produced. Sh. Gurmail Singh, Postman, Amloh, during his submission made in the inquiry, stated that names and addresses in six accounts are incomplete thereby certifying the deliberate falsification of the address of account holder. When he made efforts to locate the addressees, no such depositor was available at the address. Hence, the particulars of address of the depositors in the fraudulent account did not match the entry in the ledger card. SB-103 deposit form dated 14.03.2006 was for Rs. 1000, but the amount shown in the ledger of the fraudulent account was Rs. 100. This is in contradiction with the date of opening of the account in the specimen signature book which is shown as 16.03.2006. The name and signature of the depositor on SB-3 account opening form of the fraudulent account was different from that noted in the specimen signature book. The date of initial deposit in ledger card of the fraudulent account did not match with that on SB 103 deposit form of the fraudulent account. Applicant in her statement dated 30.08.2010, had

admitted and recognized her initials against the account opening entry. Further, the signature of a Postmaster is available in various work papers of a Post Office including the Daily Account prepared on an everyday basis in a Post Office. Hence, it is not difficult to establish that applicant had put her initials in the fraudulently opened account.

13. The respondent rebuts the pick and choose policy of the disciplinary authority to punish persons associated with the fraud as alleged by the applicant, and argue that every official connected with the fraud was awarded a punishment commensurate with the gravity of the offence and the role thereon in the commission of the fraud. Jagdev Singh retired on 30.06.2009 when the preliminary investigation was ongoing, and FIR was registered against him alongwith the applicant. The recovery under the PAD Act for Jagdev Singh for his contribution to fraud, is under consideration with Deputy Commissioner, Fatehgarh Sahib. The charge against the applicant was one of facilitation of a fraud due to non-observance of supervisory and work related rules and lapses on her part. Disciplinary proceedings had been initially against co-offender Sh. Narang Singh and Smt. Gurmeet Kaur. As regards prosecution of Smt. Rajinder Kaur, Sh. Mewa Singh and Sh. Sukhwant Singh, competent authority did not find a justification for their prosecution.

14. During the inquiry, it was also revealed that no minus balance was shown in the record of Amloh Post Office to avoid notice of commission of fraud and fabrication of record, but there was minus balance in the accounts of Amloh Post Office maintained in the Head Post Office as a parallel record. Evidence had been adduced that such fraudulent accounts

as cited in the charge sheet, were opened during the postmastership of the applicant. Though the presence of depositors was required at the time of opening of new accounts, the depositors were not present as required under the rules and this facilitated the fabrication of fake accounts with fake names. This is attributed to a lack of supervision by the Sub Post Master over the working of the Post Office. The embezzlement was going on from 26.11.2005 and due to lack of supervision, was facilitated to be continued for a period 16.03.2006 to 01.05.2007. Further, as noted in the charge sheet, whereas the account had a balance of Rs. 1100, the applicant had allowed a withdrawal of Rs. 10,000 on eight occasions amount to Rs. 80,000 on 03.04.2006, 21.02.2007, 03.04.2006, 10.03.2007, 12.03.2007, 22.03.2007, 04/05.04.2007 and 01.05.2007. The inquiry officer had made a very detailed analysis and evaluation of oral and documentary evidence and material on record and argued at the conclusion that both charges are proved against the applicant. The punishment imposed by disciplinary authority was also proportionate to the guilt of embezzlement of government money, an offence for which the Apex Court had held, deserves the harshest punishment.

15. Judicial review, generally speaking, is not directed against a decision, but is directed against the decision making process. The question of choice and quantum of punishment is within the jurisdiction and discretion of the disciplinary authority, reviewing authority and appellate authority. The sentence has to generally suit the offence for which a person has been examined. In this case, we observe that doctrine of proportionality has not been violated or exceeded. We find nothing irrational or perverse which are the generally recognized grounds of judicial review. Judicial

review is not an appeal from a decision, but review and the manner in which a decision is made. Generally a judicial authority, in disciplinary matters does not sit in judgement on the correctness of the decision, providing the doctrine of proportionality has not been violated.

16. The jurisdiction of the Tribunal to interfere with disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with findings of the Inquiry Officer or the competent authority when they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent official is conferred on the competent authority either by an Act or legislature or rules made under the proviso of Article 309 of the Constitution. If there has been an inquiry consistent with the rules and in accordance with the principles of natural justice, and the punishment meets the ends of justice, the need for judicial interference is minimal. If the penalty imposed can lawfully be imposed, and is imposed on a proved misconduct, the Tribunal generally has no power to substitute its own discretion on that of the competent authority. The Tribunal also cannot interfere if the conclusion of the Inquiry Officer or the competent authority is based on evidence, such as is adduced in a departmental inquiry. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings.

17. We do not find that this case is inconsistent with rules of natural justice or is in violation of statutory rules prescribing the mode of inquiry and this is also not a case which is based on no evidence. From the

foregoing discussion, we do not find any merit in this OA and accordingly dismiss the same. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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