

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.332/2012

Date of C.A.V. : 08.11.2017

Date of Order : 05.03.2018

Between :

S.Mallikarjuna, S/o S.Narayanappa,
aged about 25 years, Ex-GDS / Branch Postmaster,
Jambugumpla B.O., a/w Kundurpi S.O.,
Ananthapur District. ... Applicant

And

1. Union of India, rep. by
The Chief Postmaster General,
A.P.Circle, Hyderabad.
2. The Postmaster General,
Kurnool Region, Kurnool.
3. The Director of Postal Services,
A.P.Southern Region, Kurnool.
4. The Superintendent of Post Offices,
Ananthapur Division, Ananthapur,
District Ananthapur. ... Respondents

Counsel for the Applicant ... Mrs.Rachana Kumari, Advocate
Counsel for the Respondents ... Mr.K.Venkateswarlu, S.C. for Rlys

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... *Member (Judl.)*
Hon'ble Mrs.Minnie Mathew ... *Member (Admn.)*

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

A charge memo dated 31.12.2009 was issued to the applicant while he was working as GDS BPM, Jambugumpla B.O. by the 4th respondent levelling charges of unauthorized absence and misappropriation of public money. The applicant submitted his representation against the charge memo. Not accepting the representation, a regular departmental inquiry was initiated against the applicant for the following charges :

ARTICLE-I

That the said Sri S.Mallikarjuna while working as GDSBPM, Jambugumpala BO a/w Kundurpi SO under Anantapur HO from 01-10-2005 to 21-01-2009 has unauthorizedly absented himself from duty on 15-12-2008, 20-12-2008, 24-12-2008, 26-12-2008 and 12-01-2009 and kept a shortage of Rs.6156-85 (Rupees Six thousand one hundred and fifty six / 85 paise only) on 16-01-2009 in his BO cash and stamp balances. Thus he contravened the provisions of Rule 136 and Para 1 of "What a BOM should not do" of Rules of Branch Offices (Seventh Edition) corrected upto 31-03-1986.

It is therefore, imputed that the said Sri S.Mallikarjuna by his above acts exhibited lack of integrity and devotion to duty and thereby violated the provisions of Rule-21 of GDS (Conduct & Employment) Rules, 2001.

ARTICLE-II

That the said Sri S.Mallikarjuna while working as GDSBPM, Jambugumpala B.O. a/w Kundurpi S.O under Anantapur H.O. during the period from 01-10-2005 to 21-01-2009, had withdrawn total amount of Rs.2,600/- (Rs.1800/- each) on 05-12-2008 and 12-12-2008 without the knowledge of the depositors of both the accounts, failed to make entries of withdrawals in the respective Pass Books, charged the amounts of withdrawals to accounts but did not pay the amounts of withdrawals to the said depositors.

It is therefore, alleged that the said Sri S.Mallikarjuna by his above acts contravened the provisions of Rule 134 of Rules for Branch Offices (Sixth Edition, corrected upto 31-12-1964) and thus exhibited lack of integrity and devotion to duty and thereby violated the provisions

of Rule 21 of GDS (Conduct & Employment) Rules, 2001.

ARTICLE-III

That the said Sri S.Mallikarjuna while working as GDSBPM, Jambugumpala B.O. a/w Kundurpi S.O. under Anantapur H.O. during the period from 01-10-2005 to 21-01-2009 had accepted Rs.30 during January 2009 for opening of a new RD account in the name of Smt.Marekka, issued SB-26 receipt No.36 in book No.212 and also accepted Rs.50-00 on 10-01-2009 from the depositor of RD-Account No.21862 standing open in the said BO towards monthly deposit in the said RD-Account from the month of January 2009, made entries of deposit in the pass book, impressed the BO Date Stamp and initialed the entries in the pass book but did not enter this deposits in the BO RD-Journal and also did not account for the amount of deposits in the BO-Account as required under Rules 129, 131 and 174 of Rules of Branch Offices (Sixth Edition, corrected up to 31-12-1964).

It is therefore, alleged that the said Sri Mallikarjuna by his above acts contravened the provisions of Rule 129, 131 and 174 of Rules for Branch Offices (Sixth Edition, corrected upto 31-12-1964). and thus exhibited lack of integrity and devotion to duty and thereby violated the provisions of Rule 21 of GDS (Conduct & Employment) Rules, 2001.

ARTICLE-IV

That the said Sri S.Mallikarjuna while working as GDSBPM, Jambugumpala B.O. a/w Kundurpi S.O. under Anantapur H.O. during the period from 01-10-2005 to 21-01-2009 had accepted amount towards RPLI premium in RPLI Policy No.EA-18405 on different dates, made entries of amount in the premium passbook, but did not enter this amount of the premium in RPLI journal and also did not account for the amount in the BO Accounts as required under Rule 131 and 174 of Rules from Branch Offices (Sixth Edition corrected up to 31-12-1964).

It is therefore, alleged that the said Sri S.Mallikarjuna by his above acts contravened the provisions of Rule 131 & 174 of Rules from Branch Offices (Sixth Edition corrected up to 31-12-1964) and thus exhibited lack of integrity and devotion to duty and thereby violated the provisions of Rule 21 of GDS (Conduct & Employment) Rules, 2001.

2. After completing the inquiry, the inquiry officer held that all the four charges against the applicant were proved vide the inquiry report dated 29.11.2010. He submitted his report to the 4th respondent who called for the representation of the applicant against the inquiry report. The applicant submitted his representation dated 03.01.2011. The 4th respondent who is the

Disciplinary Authority did not accept the contentions put forth by the applicant in his representation, concurred with the finding of the inquiry officer and passed the impugned order dated 31.03.2011 imposing the punishment of removal of the applicant from service with immediate effect. Aggrieved thereby the applicant submitted an appeal to the 3rd respondent who is the Appellate Authority on 10.06.2011. The Appellate Authority confirmed the order passed by the Disciplinary Authority. The applicant therefore filed the present OA assailing the orders of the Disciplinary Authority and Appellate Authority seeking the relief of setting aside the said orders and reinstate him into service with all consequential benefits.

3. The allegations made in the OA by the applicant such as no witnesses were examined in the inquiry, evidence was not properly appreciated by the inquiry officer as well as by the authorities who concurred with the inquiry officer and also that the inquiry was held in violation of the procedure proscribed, have been refuted by the respondents in their reply statement. The respondents contended that the applicant resorted to misappropriation of public money by way of withdrawing the amounts from the SB accounts without the knowledge of the account holders coupled with non-crediting of RPLI premium and RD amounts realized for opening new RD account etc., apart from keeping shortage of office cash to the tune of Rs.6156-85 paise. They have explained in detail as to how the applicant resorted for misappropriation and introduced a false theory of hospitalization. They did not accept the contention of the applicant that he was

not allowed by the inquiry officer to cross examine the witnesses. The respondents sought to dismiss the OA on the ground that the allegations made by the applicant have no substance.

4. We have heard Smt.Rachana Kumari, learned counsel for the applicant and Sri K.Venkateswarlu, learned standing counsel for the respondents.

5. Before the inquiry officer PW-1 to PW-7 on behalf of the department and DW-1 to DW-5 on behalf of the applicant – charged officer were examined. Exhibits P-1 to P-34 were marked on behalf of the department and Exhibits D-1 to D-4 were marked on behalf of the applicant – charged officer.

6. Article-I of the charge relates to unauthorized absence of the applicant from duty on 15.12.2008, 20.12.2008, 24.12.2008, 26.12.2008 and 12.01.2009 and also that he kept a shortage of Rs.6156-85 on 16.01.2009 in his Branch Office cash and stamp balances. The defence of the applicant is that he was admitted in hospital, Y.N.H.Kota, Karnataka State on 10.01.2009 due to severe ill health with the help of DW-1 and Sri L.Vijaya Kumar. DW-1 in his deposition stated that he took possession of the cash of Rs.6100/- from the charged GDS-applicant while he was admitted in hospital on 10.01.2009. But in his earlier statement which was marked as EXP-31 the applicant stated that he had kept the

cash in the custody of the neighbours. The inquiry officer found that the deposition of DW-1 and EXP-31 are mutually inconsistent and therefore no reliance can be placed on the version of the applicant-charged officer. In the defence brief submitted by the applicant he stated that IP Kalyandurg refused to take cash from DW-1 on 16.01.2009. But DW-1 in his deposition before the inquiry officer stated that he never informed to the charged GDS about retaining the office cash till the date of the discharge from the hospital. Basing on these contradictory versions also the inquiry officer rejected the defence theory of the applicant and basing on the oral and documentary evidence held that the Charge No.1 was proved.

7. The charge in relation to Article – II is to the effect that the applicant withdrew two amounts of Rs.1800/- each from the account of the depositors and failed to make the entries in the respective pass books and also he did not pay the amounts of the withdrawals to the said two depositors. EXP-10 and EXP-11 produced by the department indicated the withdrawal of an amount of Rs.1800/- from SB A/c Nos.667578 and 667579 respectively from each account. EXP-2 and EXP-3 indicated that the withdrawals relating to the said amounts were not entered in the pass books. PW-1 in her evidence stated that she never withdrew the amounts. However, PW-3 who is the minor son of PW-1 contrary to his earlier statement deposed before the inquiry officer that the applicant paid the amount to PW-3 after getting the acquaintance of PW-3 as witness. However, this witness stated that he took the amounts of withdrawals

without the production of pass books in the absence of PW-1. The inquiry officer basing on the contradictory versions of PW-3, arrived at the conclusion that he might have been managed by the applicant by the time when the inquiry was conducted. As such the inquiry officer held that this charge was also proved.

8. As regards Charge No – III the department exhibited EXP-4, EXP-5, EXP-25, EXP-28, EXP-19, EXP-20 and EXP-32 and also examined PW-2 and PW-7. The RD pass book having A/c No.21862 indicated that the amount of Rs.50/- was accepted by the applicant towards the deposit, made entries in the pass book and the same was supported by oral evidence of PW-2. But it was revealed through EXP-5, EXP-10, EXP-20 & EXP-28 that the said amount of deposit was not accounted for in the BO Accounts on the respective dates. Further the department produced SB-26 receipt book which indicated that on 10.01.2009 the charged GDS – applicant has accepted the deposit of Rs.300/- towards opening of New RD Account in favour of PW-2. Before the inquiry officer EXP-25, EXP-19, EXP-20 & EXP-28 produced by the department revealed that the deposit was not accounted for in the BO account on the said date. As seen from EXP-28, on 10.01.2009 the charged GDS – applicant has entered on transaction with remarks “Too Late” and the RD transactions for the day were concluded with total of Rs.600/-. The applicant closed the RD Journal on 10.01.2009 with the remark “Too Late”. The inquiry officer arrived at the conclusion that the applicant has intentionally not accounted for the amount mentioned in the charge i.e. an amount of Rs.350/- and the same was preplanned by him. According to the

inquiry officer the charged officer – applicant did not make any entry in the journal and the same has not been accounted for in the BO accounts allegedly on account of the ill health of the applicant. Thus the inquiry officer held that this charge was also proved.

9. Charge in Article-IV relates to collecting the premium in respect of RPLI Policies by making the entries in the premium pass book, but not entering these amount of premium in the RPLI journal and also not accounting for the amount in the BO Accounts as required under the rules. To prove this charge, the department produced EXP-8, EXP-9, EXP-19, EXP-20, EXP-26, EXP-27, EXP-30 and examined PW-4 & PW-7. The RPLI premium receipt book which was exhibited at the time of inquiry indicated that the amounts were accepted by the applicant, made entries in the premium receipt book. The said fact has also been supported by PW-4. EXP-19, EXP-20, EXP-26, EXP-27 and EXP-28 revealed that the said amounts were not accounted for in the BO accounts from the respective dates. In his defence statement the applicant stated that he accepted the premium on 10.01.2009, but not on 09.01.2009. But PW-2 in his deposition stated that he made the deposits 2 or 3 days prior to Sankranthi festival, but did not mention the exact dates. In any event as the applicant admitted receipt of the amount and as it was not entered in the accounts of the branch office, the inquiry officer found that this charge was also proved. Thus there is enough oral and documentary evidence before the inquiry officer in proof of all the charges levelled against the applicant.

10. The applicant got himself admitted in the hospital from 10.01.2009 to 20.01.2009 on the ground that he was suffering from some ailment. After discharge from the hospital, the applicant according to his version collected the cash kept with DW-1 and credited the same in UCR accounts (unclassified receipts). The inquiry officer however disbelieved the version of the applicant about his hospitalization due to the contradictory versions stated by him and recorded a finding that he introduced a false theory to overcome the allegations of misappropriation of public money.

11. Learned counsel appearing for the applicant relied on *Krishnakant B.Parmar Vs. Union of India and another in Civil Appeal No.2106 of 2012* wherein the Hon'ble Supreme Court held as follows :

“16. The question whether ‘unauthorised absence from duty’ amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.”

12. This judgement relied upon by the learned counsel for the applicant cannot be applied to the facts of the present case. In the instant case the inquiry officer rightly basing on the evidence forthcoming before him recorded a finding that the applicant introduced a false theory of hospitalization. The said finding has been confirmed by the Disciplinary and Appellate Authorities. The evidence available on record justifies recording of such finding by the inquiry officer. Therefore having recourse to the aforesaid judgement the applicant cannot take the plea that his absence to his duty is not wilful. The evidence on record obviously indicate that to circumvent the charges of misappropriation, the applicant introduced a false theory of hospitalization.

13. One of the important contentions raised by the applicant is that the inquiry officer did not examine the witnesses in detail at the time of inquiry and recorded their statements. He also contended that he was not allowed to cross examine the witnesses and thereby the whole inquiry suffers from non-observance of the principles of natural justice. From the material available on record it appears obviously that the applicant was allowed to cross examine the witnesses which is evident from the inquiry report and also from the material available on record that he put some questions to PW-1 and PW-3. Therefore, there is absolutely no force in the contention of the applicant that he was not allowed to cross examine the witnesses.

14. As regards the other contention it seems that the inquiry officer confronted the witnesses with their previous statements in the preliminary inquiry and thereafter recorded their statements briefly. In our view the said procedure cannot be said to be illegal. In this context it would be much relevant to peruse the judgement of the ***Hon'ble Supreme Court in State Bank of Bikaner & Jaipur Vs. Srinath Gupta and another 1996 (6) SCC 486***, wherein it is held as follows :

"The statements under Section 161 Cr.P.C. may not be admissible in the criminal trial, but the said statements can be produced in a disciplinary enquiry. The person who made the statement had been examined before the enquiry officer. It was open to the witness to have stated orally the entire contents of what was recorded in the statement under Section 161 Cr.P.C. Instead of following this time consuming procedure, the said statement recorded under Section 161 Cr.P.C. was read over to the witness who admitted the contents thereof. In this way the earlier statement under Section 161 of the Cr.P.C. became a part of the examination-in-chief of the witness before the Inquiring Officer. It is not in dispute that the said statements had been given to the respondent in advance and full opportunity was given to the respondent to cross examine the said witnesses. It was concluded that no illegality has been committed by taking a record the statements, which had been made under Section 161 of the Cr.P.C."

15. In the instant case also the earlier statements were shown to the applicant. Further more, the inquiry officer examined the witnesses with reference to those statements. The applicant was permitted to cross examine the witnesses, in fact the applicant cross examined the witnesses by putting them some questions. This apart, the inquiry officer mostly relied on the documentary evidence which was adduced by the department. Having gone through the material on record, we do not think that the applicant was mislead by the inquiry

officer at any time. Unless the case of the applicant is shown to have been prejudiced, it is not open for the applicant to contend that the inquiry officer who is a quasi judicial authority has to conduct inquiry in a particular manner. There is vast difference in the matter of conducting a departmental inquiry and conducting a regular trial of civil or criminal case. The strict procedure which is required to be followed in a regular trial of a criminal need not be followed in a departmental inquiry. In the instant case the applicant is made known clearly the evidence against him, the witnesses were present and they were examined before the inquiry officer. The applicant cross examined the witnesses whenever he thought that the cross examination was necessary. Therefore, he cannot complain that the inquiry was vitiated for non-observance of principles of natural justice.

16. The Disciplinary Authority as well as the Appellate Authority having perused the inquiry report and other material available on record rightly confirmed the order passed by the inquiry officer. We do not find any irregularity or illegality in the procedure followed in the disciplinary inquiry held against the applicant. The standard of proof in a departmental inquiry is different from that of the one in the trial of a criminal case. In the criminal trial it is proof beyond reasonable doubt and in the departmental inquiry it is the preponderance of probability. If the said principle is applied all the charges levelled against the applicant can be said to have been duly proved by the department. The punishment imposed against the applicant cannot be said to be shockingly disproportionate having regard to the gravity of charges levelled against him.

17. For the foregoing reasons, we do not see any merit in the OA and dismiss the same accordingly without any order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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