

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

O.A. No.020/00146/2012

Date of CAV:09.02.2018.

Date of Order :15.02.2018.

Between :

S.Mohammad Rafi, s/o Mehaboob Basha,
aged about 30 yrs, BPM Branch, Post Master,
Valleruvaripalle (Under the orders of removal),
Badvel Sub-Division, Kadapa District,
R/o Konadamudram, Balayapalle Branch Office,
A/w Chennampalle, Kadapa District.

... Applicant

AND

1. Union of India, rep. by the
Chief Post Master General,
A.P.Circle, Abids, Hyderabad-1.

2. The Post Master General,
Kurnool Region, Kurnool-2.

3. The Director of Postal Services,
O/o Post Master General,
Kurnool Region, Kurnool.

4. The Superintendent of Post Offices,
Kadapa Division, Kadapa District.

... Respondents

Counsel for the Applicant ... Dr.A.Raghu Kumar

Counsel for the Respondents ... Mr.A.Vijaya Bhaskar Babu, Addl. CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The undisputed facts of the case are that while the applicant was working as Branch Postmaster (BPM), Valleruvaripalli BO a/w Badvel, Kadapa, he was issued the Annexure.A-IV charge memo dated 03.05.2010. The charge memo contained three articles of charge. The first article of charge was that the applicant kept cash at Branch Office (BO) beyond the authorized minimum balance of Rs.100/- between 10.11.2008 to 28.11.2008 and from 02.02.2009 to 15.09.2009 without showing liabilities in BO Account Book and without showing payments corresponding to the cash retained in the BO. The second article of charge was that inspite of acceptance of Rural Postal Life Insurance (RPLI) premium of Rs.16,668/-, RD deposits to the tune of Rs.7,300/- with penalty fee of Rs.316/- on 31.12.2008, he had not remitted the same to the Accounts Office, Budvel LSG SO and kept the cash at BO even when there were no payments to be made. The 3rd article of charge was that he had not paid National Rural Employment Guarantee Scheme (NREGS) wage amounts shown in the Payment Order No.2123 dated 14.07.2008 issued by the Mandal Parishad Development Office, Budvel. Thus, the applicant had contravened the provisions of Rule 136 of the Rules for Branch Offices and exhibited lack of integrity and devotion to duty and violated Rule 21 of the GDS (Conduct and Employment) Rules, 2001.

2. On receipt of the charge memo, the applicant submitted Annexure.A-V representation dated 17.05.2010 denying the charges and explaining that he had retained the cash only to meet the liabilities towards NREGS payments. As he has retained the cash only for the aforesaid purpose and not for his personal use, he has not contravened Rule 136 of the BO Rules as alleged in the charge memo. Likewise, he also submitted

his explanation that he retained the amounts received by way of RPLI premium and recurring deposits only for meeting the NREGS expenditure and that there was no complaint from any of the wage seekers under NREGS. However, the respondents proceeded with the inquiry and the Inquiry Officer submitted his report holding the Articles I and III as proved and Article II as not proved. When the Inquiry Officer's report was sent to the applicant, he submitted his representation against the Inquiry Officer's report vide his Annexure.A-XX representation dated 09.07.2011 pointing out the defects in conduct of the inquiry and the illegal appreciation of the rules and evidence. However, the Disciplinary Authority through his impugned order dated 29.07.2011 imposed the penalty of removal from service with immediate effect. Aggrieved by these orders, the applicant submitted Annexure.XXI appeal to the 3rd respondent on 07.10.2011. It is submitted by the applicant that although the Inquiry Officer has held that Article II of the charge as not proved, the Disciplinary Authority did not communicate any reasons for disagreeing with the findings of the Inquiry Officer. Further, the Appellate Authority has come to the conclusion that there is no evidence for holding Article III as proved since the so called complainants themselves admitted before the Inquiry Officer that they received the wages and did not have any grievance. Hence, only one Article of charge has finally been held proved.

3. The main contentions advanced by the applicant are that the Inquiry Officer was appointed on 14.5.2010 even before the expiry of the 10 days given to him for submission of his written statement of defence. The appointment of Inquiry Officer even before submission of his written statement of defence is a case of prejudice and bias on

The part of the Disciplinary Authority as held by the Hon'ble Supreme Court in a catena of decisions. His bias petition against the Inquiry Officer was also rejected by the Disciplinary Authority and the Appellate Authority. The inquiry was conducted in a haste and in violation of the principles of natural justice as the Inquiry Officer did not permit the cross examination of Sri Chennaiah. Further, even when the second article of charge has not been held proved by the Inquiry Officer, the Disciplinary Authority has held the same as proved without communicating any disagreement note. Since the Inquiry Officer has held that the second article of charge is not proved and the Appellate Authority has concluded that Article III is not proved, this is a case of no evidence and the proceedings based on no evidence should be set aside. He also points out that in a similar case of one Sri B.Guraiah, GDS BPM under the same Disciplinary Authority, the delinquent officer, who was charged with retention of cash beyond authorized minimum balance, was let off with a lesser punishment debarring him from appearing in the recruitment examination for the post of Postmaster for a period of 2 years, which is not even a statutory punishment.

4. The respondents have filed a reply statement stating that during a review meeting with the authorities of the District Water Management Agency (DWMA) on 06.05.2009, it was reported that the GDS Branch Postmaster, Valleruvaripalle BO, was paying wages with abnormal delay and also was not paying wages to some wage seekers. During the preliminary inquiries made by the Asst. Superintendent of Post Offices (R) and Inspector Posts, Badvel, it was revealed that an amount of Rs.31,338/- relating to four Pay Orders was not paid to the wage seekers. Further, while verifying the

accounts of the Branch Post Office, it was noticed that the BPM had retained cash without making payments or returning the cash to the Sub-Post Office (Accounts Office). It was noticed that during the month of February 2009, the applicant retained excess cash of Rs.14,619/- without liabilities and without effecting NREGS payments. As he was paying wages with delay and retaining cash without liabilities, he was placed on put-off duty and the Inspector of Posts, Badvel, was instructed to carryout past work verification. During the combined inquiries by the Asst. Project Director, DWMA and the Inspector Posts, Badvel Sub-Division, it was seen that a combined complaint dated 08.03.2010 had been submitted by the wage seekers stating that they were not paid wages of dRs.1,21,000/- relating to 12 Pay Orders for the months of July 2008, August 2008, September 2008 and October 2008. Further, the Inspector of Posts, Badvel, has informed that 32 NREGS wage seekers have reported that they were not paid the wage amount of Rs.9,631/- showing wage slips as the proof of non-payment of wages. Hence, it was confirmed that there was a fraud of Rs.9,631/- in the payment of wages.

5. The respondents have further submitted that the Inquiry Officer and the Presenting Officer were appointed on 14.05.2010, 10 days after the date of issuance of the charge sheet. At this stage, the applicant had submitted an appeal to the Director of Postal Services (DPS), Kurnool Region, for appointment of ad hoc Disciplinary Authority. However, his appeal was rejected. The respondents also submit that while the inquiry was at the stage of examination of two state witnesses, the applicant left the inquiry. Hence, the inquiry was conducted exparte as per the schedule notified by the Inquiry Officer and the examination

of the 3rd and 4th witnesses were completed. The applicant moved a bias petition against the Inquiry Officer, which was rejected. On submission of a further bias petition against the Inquiry Officer, the 3rd respondent while rejecting the bias petition ordered for continuing the inquiry from the stage of examination of state witness no.3.

6. The respondents also state that the put-off duty allowance was not sanctioned initially as the said orders were issued by the Inspector Posts, who was not competent to sanction put-off duty allowance. The GDS was out side his Headquarters, which was in violation of the instructions of the Inspector Posts, Badvel Sub-Division, that he should not leave the Headquarters without prior permission. As per the instructions on subject, an official, who was under suspension or put-off duty, has to claim for subsistence allowance or put-off duty allowance duly submitting a certificate to the effect that he was not engaged in any other employment, business, profession or vocation. The applicant has not claimed the put-off duty allowance with the required certificate. As such, the put-off duty allowance was not ordered initially. However, the same was later paid for the entire period.

7. The respondents point out that as the GDS BPM, the applicant was authorized to retain cash and stamps within the prescribed limits. He, however, retained the cash above the authorized limits for months together. As per Rule 102 (b) of the Postal Manual, Volume VI, Part-III, Chapter-II, as far as possible, the Branch Postmaster must work with balances within the authorized limits and should not retain cash in excess of the authorized maximum except when this is necessary in order to meet the actual

existing liabilities. Moreover, the cash retained by the applicant above the prescribed limit was not disbursed to the wage seekers for days together. Further, if the BPM crosses the limits, it has to be on valid grounds. They concede that for the reasons unknown, three complainants later deposed during the inquiry that they have received wages, through some other persons. However, payment through middlemen and third persons is prohibited under the NREGS. They have denied the contention of the applicant that he utilized the cash balances for the payment of NREGS wages. They have denied the allegation of malafides by the 3rd and 4th respondents and pointed out that the inquiry was conducted as per the rules and procedure. They have refuted the allegations that the inquiry officer did not allow him to cross examine the witnesses.

8. The respondents have also refuted the contention of the applicant that the inquiry was conducted in haste and in violation of the principles of natural justice. They submit that reasonable opportunity was provided to him to defend his case and that the inquiry continued for one year merely on account of the applicant. It is also submitted by the respondents that the Inquiry Officer held the charges in Article II as not proved on technical grounds and held that the rest of the articles of charge framed in the charge sheet were proved. As the two charges were held proved, the Disciplinary Authority imposed the penalty of removal from service on the applicant. The Appellate Authority has only awarded the benefit of doubt to the applicant when he held that there was no substance to prove the Article III of the charge memo. Further, as it was found that the applicant had failed to discharge his duties by retaining excess cash, the Appellate Authority upheld the orders of the Disciplinary Authority.

9. The respondents further state that there is no connection with this case to the disciplinary proceedings in respect of Sri B.Guraiah. The disciplinary action was taken on the basis of evidence, inquiry report and other records and it is not correct that conclusions have been drawn on the sole evidence of the Inspector Posts. It is also stated that after the conclusion of the inquiry under Rule 10, the verification of voucher nos.202247 and 202264 purported to have been signed by wage seekers, it was found that the signatures/LTI had been created and that the applicant had submitted bogus vouchers. Further, the Hon'ble Supreme Court has categorically stated that the Tribunals/Lower Courts should not interfere in the disciplinary proceedings and not direct the Department to modify the punishments awarded as a result of the inquiry and only any lacunae in conducting the proceedings can be pointed out.

10. The applicant has filed a rejoinder reiterating the averments made in the OA and pointing out that as a BPM he had the duty to pay the wages of NREGS workers and that he has kept the cash only to meet the NREGS liabilities. He also states that the conclusions drawn by the Inquiry Officer as well as Disciplinary Authority and the Appellate Authority exhibit serious contradictions rendering the whole case as a case of no evidence.

11. The respondents have also filed an additional reply statement to the rejoinder reiterating that disciplinary action was taken on the basis of the evidence, inquiry report and the records, and conclusions were not drawn on the sole evidence of the Inspector, Posts. They also submit that the applicant has submitted bogus vouchers to impress the

Accounts Section as if the amounts were paid to the wage seekers. As he failed to comply with the provisions of Rule 133, 135 and 136 of the Book of Branch Office Rules, he contravened Rule 21 of the GDS (Conduct & Employment) Rules 2001. It was in these circumstances that the action was taken against the applicant. It has also been stated that in the additional reply statement that action was taken to fill up the post of GDS BPM, Valleruvaripalle Branch Office, vide 4th respondent memo dated 2.1.2012 and that the selection was finalized on 2.2.2012 and the post was offered to one Sri P.Narasimhulu. However, on a clarification sought by this Tribunal, the learned Standing Counsel has furnished instructions given by the respondents, which state that at present the post of BPM, Valleruvaripalle BO is being held as additional charge by GDS BPM, Madakalavaripalle Branch Office.

12. The learned counsel for the Applicant also brought to our notice that as per the instructions of the DG, Posts, if an appointment is made to fill up the vacancy caused by the dismissal/removal of a GDS employee, the appointment should only be provisional till the dismissed/removed employee has exhausted all channels of appeal.

13. Heard the learned counsel on both sides and perused the record.

14. The learned counsel for the Applicant relied on the judgment of the Hon'ble Apex Court in *State of Punjab v. V.K.Khanna* to demonstrate the point that the appointment of an Inquiry Officer even before the receipt of reply to the charge memorandum would show that the authorities action is not free and fair. Further, when

the Inquiry Officer himself has held the second Article of charge as not proved and the Appellate Authority has held Article III as not proved, and when only one Article of charge has been held proved, the penalty of removal from service is highly disproportionate to the charge against him.

15. The learned Standing Counsel, on the other hand, argued that the applicant had been found guilty of a very serious irregularity of retaining cash without any valid reasons. Further, when the disciplinary inquiry was conducted in accordance with the rules, there are no valid grounds for interfering in the disciplinary proceedings.

16. The applicant has challenged the impugned proceedings on the following grounds:

(i) Procedural defects in the conduct of the inquiry and violation of the principles of natural justice

(ii) The entire case is one of no evidence.

(iii) The punishment awarded is disproportionate to the proven charge.

(iv) Unjust and inequitable treatment when compared to similarly charged employees.

17. (i) Procedural defects:

The applicant has contended that he has received the charge memo dated 3.5.2010 only on 10.5.2010 and submitted his written statement of defence on 17.5.2010. The applicant submits that he has submitted the written statement of defence well within the time that was granted to him in the Annexure.A-IV charge memorandum dated 3.5.2010. However, even before the time given to him had expired the respondents appointed the

Inquiry Officer and the Presenting Officer on 14.5.2010. The applicant has therefore argued that appointment of an Inquiry Officer even before the receipt of the reply of the delinquent employee indicates bias on the part of the Disciplinary Authority.

Annexure.A-IV charge memo reads as follows:

“Sri S.Mohammad Rafi, GDSBPM (Put Off) is directed to submit within ten days of the receipt of this memorandum a written statement of his Defence and also state whether he desires to be heard in person.”

18. The applicant has categorically asserted that he has received the charge memo only on 10.5.2010 and that his written statement of defence was submitted on 17.05.2010, which is well within the time that was allowed to him. This has not been controverted by the respondents. Hence, we are inclined to hold that the appointment of the Inquiry Officer and Presenting Officer on 14.05.2010 itself has been done in haste and that the respondents seem to have a pre-conceived notion about the guilt of the charged employee.

19. In *State of Punjab v. V.K.Khanna & Others* (AIR 2001 SC 343), the Hon'ble Supreme Court has dealt with this issue in great detail and has held as follows:

“2. The concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependant upon the facts and circumstances of each matter pending scrutiny before the Court and no straight jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness. And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is

in contemplation of an ordinary man of prudence similarly placed – It is the appreciation of this common man's perception in its proper perspective which would prompt the Court to determine the situation as to whether the same is otherwise reasonable or not.

.....

34. *The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias – What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindse viz, : the inquiry shall proceed irrespective of the reply – Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations, it is in the affirmative – the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr.Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.”*

20. In the light of the aforesaid ratio, the respondents ought to have applied their minds after the receipt of the reply to the charge memo and then taken a decision as to whether a further inquiry by appointing an Inquiry Officer and a Presenting Officer is necessary or not. As the respondents have failed to do so, their action cannot be held to be fair and just.

21. The applicant has raised a further procedural defect by pointing out that the Disciplinary Authority had held the second article of charge as proved even when the Inquiry officer has held this charge as not proved. The applicant contends that the Disciplinary Authority has held this charge as proved without even communicating to him a note of disagreement with the findings of the Inquiry Officer.

22. We have perused the Inquiry Officer's report. The Inquiry Officer held that the imputation that the charged officer retained cash and did not send the same to the Accounts Officer was proved. Finally, however, he held that the second article of charge was **not proved**. The findings of the Inquiry Officer in respect of the second article of charge are admittedly contradictory. The Disciplinary Authority ought to have pointed out the contradictory findings and put the delinquent employee on notice, if he wanted to disagree with the findings of the Inquiry Officer. He would also be required to give an opportunity to the charged employee to give his representation against the disagreement note. In the instant case, the Disciplinary Authority has failed to give reasons for disagreeing with the findings of the Inquiry Officer and has erroneously stated that the Inquiry Officer had held the second article as proved. The impugned proceedings therefore stand vitiated by these procedural defects.

23. (ii) **Case of no evidence:**

The applicant has argued that the entire proceedings are based on the evidence of the Inspector Posts, who is also the Investigating Officer and the sole prosecution witness. He points out that the Appellate Authority has himself held that there is no basis

for the 3rd Article of charge as the complainants themselves admitted that they have received the wages correctly. Further, the Inquiry Officer has held the second article of charge as not proved. A perusal of the Annexure-II Appellate Authority's orders show that even according to the PO records the amounts have been paid to Smt.M.Narasamma and Sri M.Chennaiah. The Appellate Authority has also recorded as follows:

“Minute study of the article of charge in the light of the inquiry conducted by the IO and statements recorded from the complainants and BO records reveals that it can be conveniently believed that wages were paid to the complainants on 26.07.2008. The appellant prepared LOT (List of Transactions) which contained the details of the payments effected to the complainants. The disciplinary authority did not differ with the PO records but his contention of charge is chiefly based on the complaints lodged by Smt.M.Narasamma, w/o Nadipi Chennaiah, SB a/c holder of 202247 and M.Narasamma, w/o Pedda Chennaiah, SB a/c holder of 2016674 and Sri M.Chennaih. As the complainants themselves admitted in the inquiry that they received wages correctly, there is hardly any substance to sustain the article of charge. Hence, the benefit of doubt is extended to the appellant and he is relieved of this article of charge.”

Thus, as far as the third article of charge is concerned, it is a case of no evidence.

24. In this context, it is necessary to point out that in the reply statement filed by the respondents, they have referred to a combined complaint dated 8.3.2010 preferred by the wage seekers under NREGS stating that they were not paid wages of Rs1,21,000/- relating to Pay Orders for July, August, September and October 2008. It has also been

stated that 32 NREGS wage seekers have reported that they were not paid wage amount of Rs.9631/- showing wage slips as proof of non-payment of wages and thereby it was confirmed that there was a fraud of Rs.9631/- in the payment of wages under NREGS. In the additional reply statement, it has been alleged that the applicant has submitted bogus vouchers. However, the charge sheet issued to the applicant does not mention any of these irregularities. There is also no allegation of any fraud committed by the applicant in the charge memo dated 3.5.2010. Therefore, we cannot rely upon these submissions, which have been canvassed as evidence against the applicant.

25. (iii) The penalty is highly disproportionate when only one article of charge has been held proved.

The applicant contends that the penalty of removal from service is excessively harsh when even according to the respondents only one article of charge has been held proved. A perusal of the charge memo would show that the first charge against the applicant was that he kept cash at BO beyond the authorized minimum balance though there were no payments corresponding to the cash that was retained. He thereby contravened Rule 136 of Rules for Branch Offices (Seventh Edition) and exhibited lack of integrity and devotion to duty. The second article of charge was also that even though he had collected amounts by way of of RPLI Premium and RD deposits, he had not remitted and kept the cash with him for about 9 days. A perusal of the charge would show that there is no allegation of embezzlement or even temporary misappropriation of funds. There is also no charge that the applicant by his action has caused pecuniary loss of any kind either to the department or to the depositors.

The other averments made in the reply statement about the fraud that has occurred to the wage seekers under NREGS cannot be taken into consideration as the applicant has not been charged in respect of these irregularities. In this scenario, when the charge proved is only that the applicant has kept cash beyond his authorized limit for a certain period of time, the imposition of the extreme penalty of removal from service is harsh and disproportionate to the charge that has been proved against him.

26. In *Ranjit Thakur v. Union of India & Others* (1987 (4) SCC 611), the Hon'ble Supreme court held that the doctrine of proportionality is part of the concept of judicial review. This proposition has been reiterated in *Regional Manager, UPSRTC, Etawah v. Hoti Lal & Another* (2003 (3) SCC 605), *Union of India v. G.Ganayutham* (1997) 7 SCC 463 and *Om Kumar & Others v. Union of India* (2001 (2) SCC 386).

27. In the instant case, we are satisfied that the punishment of removal from service imposed on the applicant is highly excessive and disproportionate warranting interference by this Tribunal.

28 (iv). **Unjust and inequitable treatment when compared to similarly charged employees:**

The applicant has cited the case of one Sri Guraiah, GDS BPM (off-duty), Pundlachennupalle BO, who was also charge sheeted for having kept cash beyond authorized minimum balance from 15.04.2009 to 29.06.2009. He points out that even though the charge against the said Sri Guraiah was held proved, the 4th respondent, who was the Disciplinary Authority in that case, also had not awarded any of the statutory punishments and only debarred him from appearing in the recruitment examination for the post of Postman for a period of two years. But, in the case of the applicant, the same respondent had imposed the extreme penalty of removal from service.

29. Admittedly, the punishment awarded in each disciplinary case will depend upon the facts and circumstances of that case and a plea that a different treatment was given in some other case cannot in the ordinary course be cited as a ground for modifying or reducing the penalty. However, on a perusal of the Annexure.A-XXII order of the 4th respondent dated 15.2.2010, we note that the said Sri B.Guraiah was also proceeded against for having kept cash beyond the authorized minimum balance without showing liabilities and even when there were no payments corresponding to the cash kept. Additionally, Sri Guraiah was also charge sheeted for unauthorized absence without applying for leave from 15.04.2009 to 29.06.2009 and having allowed another person to work as BPM without approval of the authorities. The charge memo has been issued by the 4th respondent herein. The Inquiry Officer has categorically held that the two articles of charge are proved beyond any shadow of doubt.

30. Thus, the applicant's case and the case of Sri Guraiah are on a very similar footing. They are also under the very same Disciplinary Authority and the proceedings against Shri Guraiah were finalized on 15.02.2010, whereas the impugned orders were issued against the applicant on 29.07.2011. When the lapses are similar and when the charges are held proved and when they are under the same Disciplinary Authority, we find that while one employee has not been imposed any punishment, the other has been imposed the extreme penalty of removal from service. The respondents have failed to distinguish the two cases by any intelligible differentia and have only stated that there is no connection with this case to the disciplinary proceedings in respect of Sri Guraiah. We are not impressed by this sweeping statement. We are of the view that there is some merit in the applicant's contention of inequitable treatment and we also find no valid reasons for imposing the extreme penalty of removal from service in the present case.

31. Having regard to the aforesaid discussions, we hold that the applicant is entitled to succeed. The impugned orders are quashed and set aside. The OA is allowed with a direction to the respondents to reinstate the applicant into service and post him as GDS BPM, Valleruvaripalle Branch Office, within a period of (8) weeks from the date of receipt of a copy of this order. He shall be entitled to the consequential benefit of seniority but shall draw wages only with effect from the date of his reinstatement. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

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

Dated: this the 15th day of February, 2018

Dsn.