

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING: GWALIOR

Original Application No.202/00226/2017

Jabalpur, this Thursday, the 30th day of August, 2018

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

L.P. Gupta
S/o Late Shri Dhani Ram Gupta
aged 48 years,
working as Postal Assistant
in Head Post Office Morar
(Gwalior) 474006
(By Advocate –**Shri J.P.Saxena**)

-Applicant

V e r s u s

1. Union of India,
through Secretary,
Ministry of Communication
Dak Bhawan,
Sansad Marg,
New Delhi 110 001

2. Chief Post Master General,
Post Offices,
MP Hoshangabad Road
Bhopal, PIN 462012

3. Post Master General,
Indore Region
Indore (MP) 452001

4. Director Postal Services Indore
Region Indore 452001

5. Senior Superintendent of Post Offices,
Gwalior Dn. Gwalior 474006
(By Advocate –**Shri Akshay Jain**)
(Date of reserving the order:-11.05.2018)

- Respondents

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved by imposition of penalty of reduction of two stages for two years, after holding full-fledged departmental enquiry on the charges of his allowing outside person for entry into ledger card, and also for misuse of post office seal.

2. The facts of the case, in brief, are that the applicant was posted at Sub Post Office Dabra on the post of Treasurer vide order dated 26.07.2004. He was assigned additional work of Savings Bank counter intermittently on different dates. A charge sheet was served upon him under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 on 17.05.2010 (Annexure A-1).

2.1 The first charge leveled against the applicant was that while discharging his duties on the post of Treasurer and Postal Assistant Saving Bank Counter RD account No.3027091, 3027092 on 29.11.2004, three years term deposit account No.3027097, 3027098 on 25.02.2005, three years term deposit account No.3027102, 3027103 on 18.03.2005, MIS account No.88726 on 04.01.2007, MIS account No.88747 on 28.03.2007 and MIS account No.88762 to 88766 on 27.06.2007 were opened. The ledger cards of these accounts were not prepared by him. The work

of preparation of ledger cards was done by some unauthorized person and the unauthorized person was allowed to enter inside the sub post office premises at Dabra for doing the work of post office. Hence, the applicant has violated Rule 27 of Post Office Saving Bank Rules Book Vol. I read with Rule 145 and 158 *ibid* and acted in a manner contrary to the provisions of Rule 3(1)(i) to 3 (1)(iii) of CCS (Conduct) Rules, 1964.

2.2 Another charge leveled against him was that during the period from 12.06.2004 to 10.01.2008 the applicant was given additional work of Postal Assistant Saving Bank counter on different dates where he prepared counterfeit pass books to the tune of Rs.10,46,270/-. The applicant prepared counterfeit pass books for opening of new accounts 3 years term deposit account No.2027479 on 20.11.2006, MIS account No.88718 on 22.12.2007, 3 years term deposit account No.2027437 to 2027441 on 11.01.2007, 2027841 on 13.08.2007, 2027842, 2027843 on 22.08.2007, 2027941 to 2027944 on 27.08.2007 and delivered the same to depositors. Out of these pass books, two pass books containing Nos.2027479 and 88718 bear the date and seal of sub post office Dabra. He failed to keep the date and seal in safe custody and allowed unauthorized persons to enter inside the premises of post office freely. Thus, he has violated Rule 20-21 of

Chapter VI of Post office Rules Book Vol.I and also acted in a manner which is contrary to the provisions of Rule 3(1)(i) to 3(1)(iii) of CCS (Conduct) Rules, 1964.

2.3 After conducting a full-fledged departmental enquiry, the enquiry officer in respect of Article-I of the charge has held that the charge of violation of Rule 27, 145 and 158 of P.O.S.B. Vol.I leveled against the applicant was found to be proved. In respect of Article-II of the charge, the enquiry officer, however, found that forged passbooks in the form used by post office were issued to the public. It was also found that these passbooks were not issued from the stock register of Dabra post office. He further held that the case was based on photocopies which are not very clear and the impressions of seal & stamps could not be compared from the photocopies. Hence the charges of violation of Rule 20 & 21 of Postal Manual Vol.VI Part-1 were not found as proved as misuse of seal and stamp of Dabra was not established.

2.4 Since the disciplinary authority did not agree with the findings of the enquiry officer, a copy of dissent note along with a copy of the enquiry report was sent to the applicant vide memo dated 7.11.2013. In reply to that, the applicant submitted his reply on 30.11.2013. Thereafter, the disciplinary authority vide his order dated 03.04.2014 (Annexure A-11) passed the punishment order of

recovery of Rs.523135/- recoverable in 105 installments @Rs.5000/- per month & the last installment of Rs.3135/-, with reduction of two stages for two years and during such period of reduction, he will not earn increment of pay and after expiry of such period, the reduction will not have the effect of postponing the future increment of pay.

2.5 Being aggrieved by the aforesaid order, the applicant filed revision petition dated 14.06.2014 (Annexure A-12) to respondent No.2. The respondent No.2 modified the punishment order dated 03.04.2014 (Annexure A-11) vide order dated 10.01.2017 (Annexure A-13) whereby the penalty for recovery was waived off. The revisionary authority only imposed upon the applicant the penalty of reduction of two stages for two years and during such period of reduction, he will not earn increment of pay and after expiry of such period, the reduction will not have the effect of postponing the future increment of pay.

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

“8.1 That the present application filed by the applicant may be allowed.

8.2 That the charge sheet memo dated 17-05-2010 (A-1) and the subsequent proceedings as well as the punishment order dated 03-04-2014 (A-11) and order of revising authority dated 10-01-2017 (A-13) may kindly be ordered to be set aside and quashed.

8.2 That respondent 5 may be directed to restore the pay which he would have drawn had he not been punished vide order dated A-11 and A-13 and to pay arrears of pay arising as a result of quashment of afore said impugned punishment orders.

8.3 That Respondents may be directed to release all consequential benefits arising as a result of quashing of impugned order A-11 and A-13.

8.4 That any other just, suitable and proper relief which this Hon'ble Tribunal deems fit may also kindly be granted to applicant. Cost be also awarded in favour of the applicant."

4. Respondents in their reply have submitted that the applicant has worked at the Saving Bank Counter during 12.06.2004 to 10.01.2008. He has opened new saving accounts i.e. in SB, RD, TD and MIS category on different dates, but he has not maintained the ledger card of the said accounts on his own. The ledger cards have been maintained by some other unauthorized person by entering into the post office. It has been further stated that 14 different types of saving accounts i.e. SB, RD, TD MIS were fraudulently opened and fabricated pass books were prepared in Dabra sub office. This is only because of the reason that the applicant has failed to keep the post office seal safely in his custody, resulting in misuse of said seal in pass books of newly opened accounts. The total involve amount would be Rs.1591270/- and he was charge sheeted for such an irregular act in

contravention of the post office rules during his posting on counter as PA Dabra sub PO.

4.1 The respondents have further stated that the applicant was posted as Treasurer in Dabra SO but he worked as Counter PA. The work of Treasurer and Counter PA are very much different and for any change of duty, supervisor order is necessary but the applicant has not obtained any such order from competent authority to work as counter PA as mentioned in Annexure A-6. The applicant has failed to produce any proof of change of in his duty in his statements recorded in enquiry. Thus it is clear that he has not performed the duty assigned to him and had worked on another seat.

4.2 The respondents stated that the applicant has not produced any order for change of duty. The supervisor has full right to modify the duty to order for new duty but for this purpose order of supervisor in the order book is required. In addition the applicant has not conveyed any grievance to the competent authority regarding allocation of excess work to him. The applicant was given full opportunity to defend his case, principles of natural justice were fully followed, the applicant has never raised any issue against the inquiry officer.

4.3 The respondents have further stated that the prosecution witness Shri D.C. Gupta the then Senior Post Master Indore who has conducted the preliminary inquiry in the case has found that unauthorized person Shri Vipin Bihari Gupta was allowed to enter in the office and was allowed to see post office records unauthorisedly. The ledger cards were not prepared by the applicant which was his sole duty.

5. The applicant has also filed his rejoinder and in reply to that the respondents have also filed their additional reply.

6. We have heard the learned counsel for both the parties and perused the pleadings and documents annexed therewith. We have also gone through the rejoinder of the applicant as well as additional reply to the rejoinder filed by the respondents.

7. We find that in the instant case both the disciplinary authority as well as the revisionary authority have duly applied their mind to each and every contentions raised by the applicant in his brief as well as in his revision and only after considering and meeting out the submissions of the applicant, have passed very elaborate and reasoned orders. The revisionary authority after taking a lenient view in the matter, has already waived off the recovery of Rs.5,23,135/-, imposed upon him by the disciplinary authority, after considering the applicant's revision-petition. The

applicant has failed to point out any illegality or irregularity in the conduct of the enquiry. The applicant was duly supplied with copy of the dissent note of the disciplinary authority, along with copy of the enquiry report, before passing the punishment order. Thus, principles of natural justice were duly complied with by the authorities during the course of departmental enquiry. It has been proved during the course of enquiry that unauthorized person Shri Vipin Bihari Gupta was allowed to enter in the post office and was also allowed to see the post office records unauthorizedly. The respondents have clearly stated that because of the negligence and irregularity committed by the applicant, agent has misappropriated/cheated the amount of Rs.15,91,270/-.

8. Law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in **B.C.Chaturvedi Vs. Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, wherein it has been observed as under :-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority

to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings.*** Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. ***The disciplinary authority is the sole judge of facts.*** Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. ***The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence*** and to arrive at its own independent findings on the evidence.....”

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C.Goel* (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

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18...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, ***can not 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 authority/ 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”.

(emphasis supplied)

9. Thus, in view of the discussions made hereinabove, as well as the settled law governing the field, we are of the considered view that in the instant case we do not find any illegality or irregularity warranting our interference.

10. Accordingly, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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