

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

ORIGINAL APPLICATION NO. 569 OF 2014

Jabalpur, this Wednesday, the 28th day of February, 2018

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

B.L.Gangber, S/o late Ramsingh Gangber,
Aged about 52 years, Sub Post Master,
Byron Bazar Post Office, Raipur-492001 (CG) **- APPLICANT**

(By Advocate – Shri B.P.Rao)

Versus

1. Union of India through the Secretary,
Ministry of Communication, Department of Posts,
Dak Bhawan, New Delhi-110 001

2. The Chief Post Master General, Chhattisgarh Circle,
CPMG Office, M.G.Road, Raipur-492001 (CG)

3. The Director (Postal Services),
Office of Chief Post Master General, M.G.Road,
Raipur-492001 (CG)

4. The Sr. Superintendent of Post Offices,
Raipur Division, First Floor of Ganj Post Office,
Station Road, Raipur-492009 (CG) **- RESPONDENTS**

(By Advocate – Shri Vivek Verma)

(Date of reserving the order: 22.02.2018)

ORDER

By Navin Tandon, AM-

The applicant is aggrieved by non-payment of salary for the period of suspension, as well as by imposition of penalty of withholding of one increment without cumulative effect.

2. The applicant while working as Sub Post Master, Shankar Nagar was placed under suspension vide order dated 03.07.2008. Thereafter a charge sheet under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was issued to him vide memo dated 01.08.2008, wherein it was alleged against him that he did not perform his duties in accordance with the rules of the department, which resulted in excess withdrawal over deposit in A/c No.548742 by the depositor. His suspension was revoked vide order dated 01.08.2008. After holding departmental enquiry, penalty of withholding of one increment without cumulative effect was imposed upon him vide its order dated 14.10.2011 (Annexure A-5). The appeal and revision-petition submitted by the applicant were rejected vide orders dated 05.11.2012 (Annexure A-7) and 9.10.2013 (Annexure A-9) respectively.

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

“8.1 That, the Hon’ble Tribunal be pleased to allow the O.A. and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant’s grievance.

8.2 That, the Hon’ble Tribunal be pleased to set aside the Punishment Order dated 14.10.2011 (Annexure A-5) and Appellate Authority Order dated 5.11.2012 (Annexure A-7) and Revisionary Authority Order dated 9.10.2013 (Annexure A-9) in the interest of justice.

8.3 That, the Hon’ble Tribunal be pleased to set aside the Respondent’s letter dated 9.12.2013 (A-13) and pleased to pass an

Order, directing the Respondents to pay the salary for Suspension Period ad to treat the said period as Spent on duty for all purpose.

8.4 That, the Hon'ble Tribunal be pleased to set aside the Respondent's letter dated 23.1.2014 (A-15) and pleased to pass an Order, directing the Respondents to revise its Order dated 28.2.2013 regarding grant of 2nd MACP to the Applicant w.e.f. 25.11.2008 when he completed 20 years of service.

4. The applicant has contended that he was neither involved in any manner in the alleged irregularities as levelled against him, rather with his own efforts the loss amount was recovered from the concerned account holder. Therefore, there was no financial loss caused to the Government.

4.1 The applicant has further contended that he was placed under suspension from 03.07.2008 to 01.08.2008. He was denied full pay and allowances for the period of suspension, by impugned order dated 09.12.2013 (Annexure A-13) although after conclusion of departmental enquiry only minor penalty of withholding of one increment without cumulative effect was imposed upon him.

4.2 The applicant has also contended that in terms of OM dated 16.02.2004 the departmental enquiry ought to have been concluded within a period of 6 months from the date of appointment of enquiry officer, however, in his case, the respondents had taken a time of more than 3 years to complete the departmental enquiry. Therefore, the respondents can not deny him the benefits of financial upgradation from

due dates. Therefore, the impugned order dated 23.1.2014 (Annexure A-15) passed by the respondents rejecting his appeal is liable to be quashed.

5. The respondents have submitted that the applicant was holding responsible post of Sub Postmaster, Shankar Nagar SO, whose responsibility was to supervise the office work and provide his fullest devotion for smooth functioning of the Post Office. Since the applicant did not perform his duties in accordance with the rules, which resulted excess withdrawal over deposit in Account No.54872. As soon as the case came into light the depositor was asked to deposit the excess withdrawal made by the depositor. But, this does not lessen the misconduct committed by the applicant. After holding full-fledged departmental enquiry, the enquiry officer held the charges as proved. A copy of the enquiry report was duly served upon the applicant. After considering all material, the disciplinary authority imposed the penalty of withholding of one increment without cumulative effect vide its order dated 14.10.2011 (Annexure A-5). The appeal and revision-petition submitted by the applicant were rejected vide speaking orders dated 05.11.2012 (Annexure A-7) and 9.10.2013 (Annexure A-9) respectively. Therefore, the applicant is not entitled for any relief sought for by him in this Original Application.

6. Heard the learned counsel of both parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. As regards the applicant's contention that for the period suspension from 03.07.2008 to 01.08.2008 he should be paid full pay and allowances as only minor penalty was imposed after conclusion of disciplinary proceedings, we find that the Department of Personnel & Training OM No. 11012/15/85 Estt.(A) dated 3rd December, 1985 [reproduced as Administrative Instruction No.3 below FR 54-B in Swamy's compilation on FR SR Part-I (22nd Edition 2013)] stipulates that the period of suspension is to be treated as duty if only a minor penalty is imposed. It was ordered that if the departmental proceedings against a suspended employee for the imposition of a major penalty finally end with minor penalty, the period of suspension is to be treated as wholly unjustified in terms of FR 54-B and the employee concerned should be paid full pay and allowances from the period of suspension by passing a suitable order under FR 54-B. The spirit of the order is that if the disciplinary proceeding ends only in minor penalty, even the suspension is unjustified and the government servant is entitled to treat the period of suspension as the period spent on duty for all purposes. Therefore, there is no justification in not treating the period of suspension of the applicant as duty for all purposes. Accordingly, the impugned order dated 9.12.2013 (Annexure A-13) is liable to be and is quashed herewith. The respondents are directed to grant him the difference of pay and allowances for the

period of suspension, within a period of one month from the date of communication of this order.

8. As regards the other prayer of the applicant of quashing the orders passed by the disciplinary, appellate and revisionary authorities are concerned, we find that the charge levelled against the applicant has been fully proved and the applicant has failed to point out any illegality or irregularity in the conduct of enquiry against him. The principles of natural justice were duly complied with by the competent authority while passing the order of punishment.

9. The law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in the matters of **B.C.Chaturvedi Vs. Union of India**, (1995) 6 SCC 749, 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.***

(emphasis supplied by us)

10. Since the applicant has failed to point out any procedural illegality or irregularity in conduct of the departmental enquiry held against him, we are of the considered view that there was no violation of principles of natural justice and accordingly the impugned orders passed by the disciplinary, appellate and revisionary authorities are not liable to be quashed.

11. As regard the prayer of the applicant for advancing the date of his financial upgradation under the MACP, we find that after conclusion of

the departmental enquiry minor penalty of withholding of one increment was imposed upon the applicant vide order dated 14.10.2011, which was effected from 01.07.2012 to 30.06.2013. On 28.02.2013 the applicant was granted 2nd MACP w.e.f. 01.07.2013. DOPT's O.M. No. No.22034/5/2004-Estt (D) dated 15.12.2004 provides that a Government servant, on whom a minor penalty of withholding of increment etc. has been imposed, should be considered for promotion by the Departmental Promotion Committee which meets after the imposition of the said penalty and after due consideration of full facts leading to imposition of the penalty, if he is still considered fit for promotion, the promotion may be given effect after the expiry of the currency of the penalty. Thus, in view of the clear rule position, the applicant is also not entitled for benefit of financial upgradation from an earlier date.

12. In the result, the Original Application is partly allowed with the directions as contained in Para 7 above. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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