

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.202/00106/2015

Jabalpur, this Friday, the 29th day of June, 2018

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

Kedar Bhatele, S/o Shri Ramdayal Sharma, aged 56 years,
Occupation Ex – Gramin Dak Sevak, R/o Ward No.10, Bhatele
Mohalla, Village Antri, Tahsil Chhinnore, District Gwalior (M.P.)
-Applicant

(By Advocate – Shri Alok Katare)

V e r s u s

1. Union of India through its Secretary, Post and Telegraph Department, Sansad Marg, New Delhi – 110001.
2. The Superintendent, Postal Department, Gwalior Division Morar, Gwalior Pin – 474006.
3. Asstt. Superintendent, Post Office (West) Gwalior (M.P.) Pin : 474001

- Respondents

(By Advocate – Shri Akshay Jain)

(Date of reserving order : 09.01.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant has filed this Original Application aggrieved by the order dated 24.01.2014 (Annexure A-1) passed by the respondent No.1, by which he has been removed from service and

also the order dated 10.11.2014 (Annexure A-2) passed by respondent No.2, by which the appeal preferred by the applicant against the order of punishment has been dismissed.

2. The applicant has sought for the following reliefs:

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

8.2 That, a writ order or direction may kindly be issued and the order dated 24.1.2014 Annexure A/1 passed by the respondent no.3 and the order Annexure A/2 dated 10.11.2014 passed by the respondent no.2 may kindly be directed to be set aside reinstating the applicant with backwages along with interest @ 12% per annum and other consequential benefits.

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

3. The brief facts of the case are that the applicant was appointed on the post of Gramin Dak Sevak (GDS) at Sub Post Office Antri on 05.12.1977. While discharging his duties, the applicant was served with a chargesheet (Annexure A-4), leveling three charges against him. After serving the chargesheet, Shri A.S. Rathore, Assistant Superintendent Post Office (Headquarter), Gwalior was appointed as Inquiry Officer and Shri N.L. Yadav was appointed as Presenting Officer. The Inquiry Officer submitted his report on 26.11.2013 (Annexure A-8) whereby with regard to the

charge of taking the amount from Sub Post Office, Antri and not depositing to the Post Office, Billaua and Chirpura was proved and the other charges with regard to forging the documents were not proved by the Inquiry Officer. The applicant submitted his reply to the enquiry report on 24.12.2013 (Annexure A-9). Thereafter, the Disciplinary Authority has passed the order of punishment dated 24.01.2014 (Annexure A-1) by which the applicant has been removed from service. The appeal preferred by the applicant has also been dismissed by the Appellate Authority vide order dated 10.11.2014 (Annexure A-2).

4. The main ground for challenging the impugned orders are that despite the request of the applicant for providing the documents, which are required to be put in his defence, however, no documents were provided to him. Hence, the prejudiced has been caused. Secondly, the applicant has submitted application dated 01.07.2010 (Annexure A-7), requesting the Inquiry Officer for change of defence assistant. But the same was refused on behalf of the Inquiry Officer. The another ground of challenge is that one Shri P.S. Shihhare, who was working on the post of Sub Post Master, was also served with the chargesheet and an FIR was

also registered for misappropriation of the amount and parlor departmental enquiry was also instituted. Though, Shri P.S. Shivhare was terminated from service, but in appeal the respondents have reinstated him. Thus, a different yardstick has been adopted in case of the applicant and Shri P.S. Shivhare, which is in gross violation of Article 14 and 16 of the Constitution of India. Furthermore, the applicant has submitted that the department has adduced two prosecution witnesses Dinesh and Ajmeri and their statements were recorded. However, neither the applicant nor his defence assistance were given any opportunity to cross-examine the said witnesses, which is totally in violation of principle of natural justice. Moreover, the Inquiry Officer vide Annexure A-8, has come to the conclusion that with regard to the charge of taking the amount from Sub Post Office, Antri and not depositing to the Post Office Billau was proved and other charges with regard to forging documents were not proved and despite the representation made by the applicant on 24.12.2013 (Annexure A-9), the Disciplinary Authority has not considered the reply. Furthermore, the Disciplinary Authority came to the conclusion that the charges are proved and has differed from the inquiry report

and no opportunity of hearing was provided to the applicant before passing the order of punishment.

5. In the reply, the respondents have submitted that the applicant, while working as GDS MC Bilaua Branch Post Office under Account Office Antri SO during 01.12.2007 to 14.02.2008, has misappropriated certain cash amount on 01.12.2007, 12.12.2007, 15.12.2007, 11.01.2008 and 18.01.2008 respectively from Antri SO for Bilaua BO. In the same manner, the applicant has misappropriated Rs.1,000/- on 09.02.2008 from Antri SO for Chirpura B.O. Similarly, on 13.12.2007, 11.01.2008, 18.01.2008 and 17.12.2007, the applicant has received the different amounts, which were meant to be handed over to Account Office, Antro SO. But, the same were not deposited/handed over.

6. It has been submitted by the respondents that for the above misappropriation of amount and act of the applicant, a chargesheet under Rule 10 of GDS (Conduct & Employment) Rules, 2001, was issued to the applicant on 24.03.2010. An enquiry was conducted and the Inquiry Officer has proved the charges levelled against the applicant. Consequently, the Disciplinary Authority has awarded

the punishment of removal from service on 24.01.201 (Annexure A-1). The appeal preferred by the applicant to respondent No.2, has been rejected vide Annexure A-2 order dated 10.11.2014.

7. It has been further submitted by the respondents that the Inquiry Officer has conducted the inquiry as per rules and given reasonable opportunity of hearing to the applicant during inquiry and no application bearing list of documents of defence, were received during inquiry. The application for nomination of defence assistant Shri Basudev Sharma was not entertained by the Inquiry Officer because the applicant failed to produce his consent. It has also been submitted that the applicant has confessed to receive the amount on different dates vide his explanation dated 28.02.2018 (Annexure R-2).

8. The respondents have further submitted that Shri P.S. Shivhare was awarded major punishment, i.e. compulsory retirement from service by the competent Disciplinary Authority. The applicant as well as Shri P.S. Shivhare was served chargesheet for major penalty. During inquiry, loss of Rs. 23,050/- came into light. Since Shri P.S. Shivhare has deposited the amount

voluntarily, therefore, he was awarded with the punishment of voluntarily retirement of service. Regarding the defence witnesses Shri Om Prakash and Rakesh Tiwari, it has been submitted that they were examined by the Inquiry Officer, according to Rule 14 (17) of CCS (CCA) Rules, 1965. Hence, Inquiry Officer has not violated any rule. Thus, it has been submitted that the punishment awarded by the Disciplinary Authority is legal.

9. We have heard the learned counsel for the parties and also gone through the documents annexed with the pleadings.

10. The charges against the applicant were that while working as GDS MC Bilaua Branch Post Officer, Antri, he has received different cash amounts during 01.12.2007 to 14.02.2008. which were meant to be handed over to Account Office Antri SO. However, the applicant has not handed over the same to the concerned Post Master and to suppress this act, he has manipulated the post office records.

11. The main thrust of challenge in this Original Application is that the applicant was never supplied with the documents asked by him vide his application filed at Annexure A-6 with the Original

Application. Further, one Shri P.S. Shihhare, who was working on the post of Sub Post Master was also served with the chargesheet on the same allegation. However, he was awarded the punishment of compulsory retirement from service, whereas the order of termination of the applicant has been affirmed by all the authorities.

12. On perusal of proceeding before the Inquiry Officer (Annexure R-1 collectively), we find that the no such application, as has been stated by the applicant, was filed during the inquiry. Therefore, the Inquiry Officer, after examining the defence witnesses and the documents placed before him has arrived to the conclusion that the charges leveled against the applicant are proved. In regard to application made by the applicant for nominating Shri Basudev Sharma as defence assistant, the respondents have categorically stated that since the applicant has failed to produce the consent of Shri Basudev Sharma, the application was not entertained by the Inquiry Officer. We also find from the inquiry report that reasonable opportunity of hearing was provided to the applicant to defend himself.

13. In regard to plea of the applicant that one Shri P.S. Shivhare, who was also charge sheeted alongwith the applicant on similar charges, was awarded the punishment of compulsory retirement, whereas the applicant has been awarded the punishment of removal from service, we may observe that there are many factors, which are vital in decision making process. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. The imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist.

14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of

misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.

{See: **UT of Dadra & Nagar Haveli v. Gulabhai M. Lad**, (2010) 5 SCC 775}

15. Considering the limited scope of judicial review to interfere in the disciplinary proceedings as also the facts and circumstances of the case, we do not find any illegality in the impugned order dated 24.01.2014 (Annexure A-1) passed by the Disciplinary Authority, which has been affirmed by the Appellate Authority in its order dated 10.11.2014 (Annexure A-2.).

16. In the result, the O.A is dismissed being devoid of any merit. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member