Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH JABALPUR

Original Application No.296 of 2011

Jabalpur, this Tuesday, the 10th day of April, 2018

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

Anjali Sanyal, W/o Shri V.P.Sanyal, Date of birth 10.11.1948,
R/o House No. 130, Tikrapara, RDA New Colony,
Behind Nutan Centre, Raipur-492001 (C.G.) **-Applicant**
(By Advocate –Shri Vijay Tripathi)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Communication & Information Technology,
Department of Post, Dak Bhawan, 20 Ashoka Road,
New Delhi-110001

2. Chief Post Master General, Chhattisgarh Circle,
Raipur-492001 (C.G.)

3. Director, Postal Services,
O/o Chief Post Master General,
Chhattisgarh Circle, Raipur-492001 (C.G.) **- Respondents**

(By Advocate –Shri A.P.Khare)

(Date of reserving the order:-24.10.2017)

O R D E R

By Navin Tandon, AM

The applicant is aggrieved by the order of dismissal passed against her after a departmental enquiry.

2. The applicant was posted as Sub Post Master in Sunder Nagar Sub Post Office, Raipur. While she was working as such during the period from 28.08.2004 to 29.08.2005, it was alleged against her that she misappropriated the government money. She

was placed under suspension vide memo dated 22.11.2005 (Annexure R-1) and a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was issued to her on 28.11.2006 (Annexure A-3). After a full-fledged departmental enquiry, the enquiry officer held all the charges proved against her. A copy of the enquiry report was duly served upon the applicant. The disciplinary authority after considering all material imposed the penalty of dismissal from service upon the applicant vide order dated 27.10.2008 (Annexure A-1) and the applicant's appeal against the said punishment was also rejected vide order dated 29.07.2010 (Annexure A-2.

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

> **"**7(i) *Summon the entire relevant record from the respondents for its kind perusal.*
> *(ii) Quash and set aside the impugned orders dated 27.10.2008 Annexure A/1 and 29.7.2010 Annexure A-2 with all consequential benefits.*
>
> *(iii) Consequently, command the respondents to provide all consequential benefits.*
>
> *(iv) Award cost of the litigation in favour of the applicant".*

4. The applicant has submitted that during preliminary enquiry was also conducted by the enquiry officer wherein the statements of S/Shri Narottam Kurre and Janak Ram Nishad were recorded

behind the back of the applicant. Later on, these two witnesses were also examined in the course of regular enquiry. Order Sheets Nos.6, 7 & 8 would show that they have given false statements at the time of preliminary enquiry. Still the enquiry officer relied upon the statements of these witnesses which were recorded during preliminary enquiry. Thus, the enquiry officer conducted the enquiry de hors the rules and also violated the principles of natural justice.

4.1 The applicant further contended that Shri Ramesh Kumar Tandon, Postal Assistant, Branch Head Officer, Raipura and Dr.B.C.Lalwani were not allowed to appear as defence witnesses during the course of enquiry. It is stated that the deposition of Dr.Lalwani was must to prove the fact that the applicant was ill with effect from 01.02.2005 to 31.08.2005. Thus, reasonable opportunity of defence was not afforded to the applicant.

4.2 The applicant has also contended that she was not afforded one month's time, on medical grounds, to submit his representation against the enquiry report. Thus, the said action of the respondents is against the decision of the Hon'ble Supreme Court in the matters of (1993) 4 SCC 727.

4.3 The applicant has further contended that the two prosecution witnesses Shri Janak Ram Nishad and Shri Narottam Kurre before

the enquiry officer made it luminously clear that the applicant was not guilty of the charges alleged against her. However, the enquiry officer while proving the charges against the applicant has heavily relied upon the pre-recorded statements of these two persons, which were recorded behind the back of the applicant. Thus, the action of the enquiry officer, in relying upon the pre-recorded statement, without reading over the same during the course of regular enquiry is bad in law. In this context he has relied upon the order of Hon'ble High Court of Madhya Pradesh in the matters of **Raj Kishore** Vs. **Rewa Sidhi Bank,** 1989 MPLJ 530.

4.4 The applicant has further submitted that the correctness of the documents i.e. the signature of Shri Janak Ram Nishad was not examined by any handwriting expert, however, on the basis of his statement, she has been imposed with a harsh punishment of dismissal from service,

4.5 He has further contended that the applicant was due for retirement and had rendered long years of service with the respondents. Thus, the action of the respondents in imposing harsh punishment of dismissal from service just before few days of her retirement is bad in law and the same is liable to be quashed in view of the decision of the Hon'ble Supreme Court in 1999 AIRSCW 4911.

4.6 He further contended that the punishment imposed upon the applicant is excessive harsh and is disproportionate to the alleged misconduct. In this context he has relied upon the decision of Hon'ble Supreme Court in the matters of **Kailash Nath Gupta** Vs. **P.N.B,** (2003) 9 SCC 480.

4.7 The applicant has also contended that he had also demanded copies of certain documents for her defence, but the same has not been provided to her by the enquiry officer. The Hon'ble Supreme Court in catena of judgment has held that if the documents are demanded by the delinquent employee by showing reasons, the same should be invariably be supplied by the enquiry officer. In this regard, he has relied upon the judgments reported in (1986) 3 SCC 229, (1995)1 SCC 404, (1998)6 SCC 851 and (2007)1 SCC 338.

4.8 The applicant has further contended that the appellate authority has also failed to assign reasons and passed a non-speaking order while rejecting the applicant's appeal. Therefore, the same is bad I law in view of the decisions of the Hon'ble Supreme Court in the matters of **Ram Chander** Vs. **Union of India** and others, (1986) 3 SCC 103, and (2006)11 SCC 147.

5. The respondents in their reply have submitted that after conducting disciplinary enquiry, the enquiry officer held the

charges proved against her. A copy of the enquiry report was duly served upon the applicant on 25.09.2008, and the applicant was allowed 15 days time to submit her reply. Instead of submitting reply to the charge sheet, she asked for further time on the ground of illness. However, the disciplinary authority did not agree with her request and passed the order dated 27.10.2008 (Annexure A-1) imposing the penalty of dismissal from service. The appeal submitted by the applicant was also dismissed vide order dated 29.07.2010 (Annexure A-2) by a reasoned order.

5.1 The respondents have further submitted that Shri Janak Ram Nishad is the holder of SB A/c No.902800. The applicant passed withdrawal for Rs.40,000/- on 18.08.2005 from the above said account, without passbook and signature verification. Shri Narottam Kurre, was the Branch Postmaster, Raipura. To show this transaction as of Raipura Post Office, the applicant forced him to fill the form S.B.7 off dated. There was no record of the transaction related to the said account number in the B.O. daily account dated 17.08.2005. During investigation, Shri Janak Ram Nishad, account holder admitted that neither he had signed any withdrawal form nor he had done any transaction dated 18.08.2005. The respondents have stated that these two witnesses were the important witnesses

of charge-I. They were examined during the departmental enquiry in presence of the applicant and his defence assistant.

5.2 The respondents have further submitted that during the regular enquiry the prosecution witnesses Shri Narrottam Kure BPM and Shri Janak Ram Nishad, Account Holder, have admitted their statements recorded at the time of preliminary enquiry. During the enquiry Shri Janak Ram Nishad has denied the signature on both the sides of SB-7. He also denied to fill up the SB-3 form for withdrawal of Rs.40,000/-. Hence, the opinion of signature expert was not obtained.

5.3 The respondents have further submitted that no medical certificates were received in the office. On 01.06.2005 (Annexure R-II) the applicant had applied for Earned Leave from 20.06.2005 to 13.07.2005 (total 24 days) on the ground of marriage of her daughter, and after availing leave she joined her duties on 14.07.2005 (Annexure R-IV).

5.4 Shri Ramesh Tandon and Dr.B.C.Lalwani were not allowed as defence witnesses, as the evidence of both the witnesses was not relevant with the case.

5.5 The respondents have also submitted that a copy of the enquiry report was sent to the applicant on 24.09.2008, which was received by her on 25.09.2008. On the forwarding letter of the

enquiry report it was mentioned that she may represent within 15 days. Instead of submitting her representation, she requested for one month's more time by producing medical certificate dated 06.10.2008. On 15.10.2008 the applicant was duly informed that no justification was found to give extra time for submitting representation. However, the applicant did not submit any representation. She was only passing the time because she was due for retirement on superannuation on 30.11.2008.

5.6 The respondents have also stated that not only on the basis of the signature of Mr.Janak Ram Nishad, but there were witnesses and documents which were proved against the applicant and on all these basis the punishment of dismissal from service was awarded to the applicant by the disciplinary authority. The documents desired by the applicant were not relevant with the case. Hence, it was not allowed.

5.7 The appellate authority has passed the reasoned order after considering the applicant's appeal. If the applicant was not satisfied with the order, he would have preferred a petition to the Member(P) against the appellate order, but the applicant did not do so. Since during the course of enquiry the applicant was given adequate opportunity to defend her case, the action of the department is fair, reasonable and as per rule and in order.

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

7. We find that the charge-sheet issued against the applicant contained three articles of charge.

7.1 Article-I of the charge, framed against the applicant was that she shown remittance of Rs.40,000/- from Sunder Nagar SO to Raipura BO duly entered in the office copy of BO slip without using carbon copy, but she had not remitted that amount. On receipt of BO Daily account from Raipura BO on 18.08.2005, she shown Rs.40,000/- as remittance received from accounts office in the receipt column of BO daily account dated 17.08.2005 and in the payment column Rs.40,000/- shown as SB withdrawal and adjusted the amount later on, whereas the BO daily account is prepared by the Branch Post Master and no any transaction or entry by the account office is allowed. To hide the action of fraud the applicant had passed withdrawal for Rs.40,000/- from SB A/c No.902800 account holder Shri Janak Ram Nishad on 18.08.2005 without passbook, and this withdrawal shown in transaction in Raipura BO and SB-7 got filled up from Shri Narottam Kurre, BPM Raipura. In the BO daily account dated 17.08.2005, there was no any transaction shown in S.B.A/c No.902800 by the Branch

Postmaster. The applicant has passed the withdrawal without passbook and verification of signature. She had also noted the said amount in S.B. long book as withdrawal on 18.08.2005. During investigation, the depositor informed that he has not signed the withdrawal form and he has not done any transaction on 18.08.2005, which has been proved by the enquiry officer during investigation.

7.2 Article-2 of the charge framed against the applicant was that on 28.05.2005 the applicant had noted Rs.37,493/- as deposit in S.B.Long Book, but she took into account Rs.36,493/- only as SB deposit. After analysis of Article-2 of the charge-sheet framed against the applicant in charge sheet, it has been proved that on 28.05.2005 the applicant had noted Rs.37,493/- as deposit in S.B.Long Book, but she took into account Rs.36,493/- only as SB deposit. In this way Rs.1,000/- was less in S.B.Account. It was during departmental enquiry held that she had taken less amount Rs.1,000/- in account on 28.05.2005 and thus, the amount was misappropriated by her.

7.2 Article-3 of the charge framed against the applicant was that the applicant had received amount of PLI premium and NSC release fees and also issued ACG-67 receipt and PLI premium receipt, but she had not taken into account total of Rs.364/- of PLI

Premium & NSC release fees. After analysis of Article-3 of the charge sheet, framed against the applicant it had been proved that the applicant has received amount of PLI premium and NSC release fees and also issued ACG-67 receipt and PLI premium receipt, but she had not taken into account total of Rs.364/- of PLI Premium & NSC release fees and it was misappropriated by her.

8. We find that it has been found by the authorities that the applicant had done all these misconducts intentionally and she had also tried to hide the wrong deed by trying to change the record but she did not succeed in her attempt. Since she had misappropriated the Government money for which the penalty of dismissal from service was imposed by the competent authority.

9. It has been the contention of the applicant that the enquiry officer relied upon the pre-recorded statements of S/Shri Narottam Kurre and Janak Ram Nishad, which were recorded behind the back of the applicant, without reading over the same during the course of regular enquiry. This is bad in law in view of the law laid down by Hon'ble High Court of Madhya Pradesh in the matters of **Raj Kishore** Vs. **Rewa Sidhi Bank,** 1989 MPLJ 530. We find that in the instant case both these witnesses were duly examined during the course of regular enquiry and during the course of regular enquiry they have admitted their statements recorded during the

preliminary enquiry. Therefore, the applicant had full opportunity to rebut their evidence during the course of regular enquiry. In this view of the matter, there was no irregularity and illegality while relying on the evidence of these two witnesses by the enquiry officer and, therefore, the decision of **Raj Kishore** (supra) is not applicable here.

10. As regards the contention of the applicant that the enquiry officer had not permitted examination of two witnesses namely Shri Ramesh Tandon and Dr.B.C.Lalwani, and that some of the documents asked for by the applicant were not supplied to him, we find that these issues were also raised by the applicant in his appeal and the appellate authority has duly considered these issues and has stated in Para 5 of his order that since the enquiry officer during the course of enquiry did not find these documents and witnesses related to the case, he had not permitted the same, which is as per rules.

11. As regards the contention of the applicant that she was not afforded further time of one month, on medical grounds, to submit his representation against the enquiry report and, therefore the said action of the respondents is against the decision of the Hon'ble Supreme Court in the matters of (1993) 4 SCC 727, we find that the appellate authority has already examined this point in his order

dated 29.07.2010 (Annexure A-2) and has stated that in stead of submitting any representation against the enquiry report, the applicant had submitted the medical certificate after 11 days from the date of receipt of the enquiry report. Since 15 days' time was sufficient, the decision taken by the enquiry officer after considering the facts of the case was correct.

12. 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)

13. Thus, in view of the settled legal position that neither the technical rules of Evidence Act nor of proof of fact or evidence as

defined therein apply to disciplinary proceedings, the adequacy of evidence or reliability of evidence cannot be examined by us, as contended by the learned counsel for the applicant. In the instant case, the disciplinary as well as appellate authorities have very elaborately dealt with each and every objection raised by the applicant during the course of enquiry as well as at the appellate stage.

14. On the question of proportionality of punishment, we may observe that the Hon'ble Supreme Court in the matters of **Kendriya Vidyalaya Sangthan** Vs. **J. Hussain**, (2013) 10 SCC 106 has held thus:

> **"(7).** When the charge is proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department or establishment where he works, as well as extenuating circumstances, if any exist.
>
> **(8).** The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the

penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See *UT of Dadra & Nagar Haveli* v. *Gulabhia M. Lad* (2010) 5 SCC 775) ***In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities***.

(9). ***When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play.*** It is, however, to be borne in mind that this ***principle would be attracted***, which is in tune with the doctrine of *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] rule of reasonableness, ***only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary.*** This principle of proportionality was propounded by Lord Diplock in *Council of Civil Service Unions* v. *Minister for the Civil Service* 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)in the following words: (AC p. 410 D-E)

> "… Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. This is not to say that further development on a case by case basis may not

> in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'."

(10). An imprimatur to the aforesaid principle was accorded by this Court as well in *Ranjit Thakur* v. *Union of India*. (1987) 4 SCC 611 Speaking for the Court, Venkatachaliah, J. (as he then was) emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words: (SCC p. 620, para 25)

> "*25.* … The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

(11). To be fair to the High Court, we may mention that it was conscious of the narrowed scope of the doctrine of proportionality as a tool of judicial review and has stated so while giving lucid description of this principle in the impugned judgment. However, we are of the view that it is the application of this principle on the facts of this case where the High Court has committed an error while holding that the punishment was shocking and arbitrary. Moreover, while interfering therewith, the High Court has itself prescribed the punishment which, according to it, "would meet the ends of justice", little realising that the Court cannot act as a disciplinary authority and impose a particular penalty. Even in those cases where it is found that the punishment is disproportionate to the nature of charge, the Court can only refer the matter back to the disciplinary authority to take appropriate view by imposing lesser

punishment, rather than directing itself the exact nature of penalty in a given case.

(12). Here in the given case, we find that the High Court has totally downplayed the seriousness of misconduct. It was a case where the respondent employee had gone to the place of work in a fully drunken state. Going to the place of work under the influence of alcohol during working hours (it was 11.30 a.m.) would itself be a serious act of misconduct. What compounds the gravity of delinquency is that the place of work is not any commercial establishment but a school i.e. temple of learning. The High Court has glossed over and trivialised the aforesaid aspect by simply stating that the respondent was not a "habitual drunkard" and it is not the case of the management that he used to come to the school in a drunken state "regularly or quite often". Even a singular act of this nature would have serious implications".

15. In the instant case, the appellate authority in his order has also dealt with the issue of proportionality of punishment and has held that though the word "misappropriation" has not been used in the charge sheet, it does not reduce the gravity of the offence and, therefore, the penalty imposed upon the applicant was appropriate keeping in view the gravity of the offence.

16. Thus, considering the facts of the present case and the discussions made hereinabove, the various contentions raised by the applicant, referred to in para 4 above, have no force and therefore they are rejected. Similarly, the reliance of various decisions cited by the applicant referred to hereinabove, in support of those contentions, are also not applicable here, particularly

keeping in view of the decisions of the Hon'ble Supreme Court in the matters of **B.C.Chaturvedi** (supra) and **J.Hussain** (supra).

17. Thus, considering all pros and cons of the matter and the settled legal position, as narrated above, we do not find any merit in this Original Application.

18. In the result 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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