

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 18/2011

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Akshya Kumar Champati, aged 45 years, S/o Late Gopinath Champati, resident of Cilli/Post - Chhatrapada, Via - Siko, Dist. - Khurda, Orissa.

.....Applicant

VERSUS

1. Union of India, represented through its Chief Post Master General, Orissa Circle At/PO- Bhubaneswar, Dist. -0 Khurda – 751001.
2. Sr. Superintendent of Post Offices, Puri Division, At/PO/Dist. – Puri, 752001.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.Behera, Sr. Counsel

Heard & reserved on : 10.1.2019 Order on :

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

"In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may graciously be pleased to quash Annexure A/7 & A/8 and further be pleased to direct the respondents to reinstate the applicant in service with all consequential service benefits including back wages."

2. The facts of the case are that the applicant, who was working as a Gramin Dak Sevak Branch Post Master (in short GDSBPM) in Chhatrapada Branch Post Office in Puri district w.e.f. 7.4.1995 was charge-sheeted by the respondent no. 2 vide Memo dated 13.9.2005 (Annexure-A/1) with 12 charges, without the list of documents. A corrigendum dated 20.1.2006 (A/2) was issued to rectify some details of the charge. Inquiry Officer (in short IO) was appointed. The applicant requested on 22.4.2006 for additional documents (A/6). The applicant was supplied a copy of the report of the IO on 9.5.2008 and submitted his reply on 21.5.2008. then the order of punishment dated 30.1.2009 (Annexure-A/7) was passed by the respondent no.2, removing the applicant from service. Being aggrieved, the applicant filed a petition dated 30.6.2009 before the respondent no. 1. It is stated in the OA that the

respondent no.1, without considering the points raised by the applicant, rejected the petition vide order dated 29.6.2010 (Annexure-A/8). The applicant has advanced the following main grounds in support of the OA:-

- (i) The preliminary inquiry report, based on which the charges were framed, was not supplied to the applicant, as stated in para 4.4 & 5.1 of the OA.
- (ii) Out of 34 witnesses cited by the respondents, only 6 witnesses (including 2 depositors out of 12) were produced before IO (para 4.3 & 5.2 of the OA).
- (iii) Statements taken during preliminary inquiry behind the applicant's back were relied by the IO, as stated in para 4.3 & 5.3 of the OA.
- (iv) The inquiry continued for years together violating the instructions of the D.G. Posts to complete the proceedings within 45 days (para 5.4 of the OA).
- (v) There is no misappropriation, but procedural irregularity. The punishment is too harsh against the applicant (para 5.6 & 5.7 of the OA).
- (vi) Respondent no. 1 while passing the order dated 29.6.2010 (A/8) failed to consider the points raised by the applicant (vide para 4.7 of the OA).

3. The counter filed by the respondents opposed the OA stating that the applicant during his tenure as GDSBPM Chhatrapada, committed fraud in 12 SB/RD accounts for total amount of Rs. 12,728. He was placed on put off duty vide order dated 10.5.2002 and was proceeded under the rule 10 of the GDS (Conduct and Employment) Rules, 2001 (in short 'rules'). After following due procedure, he was removed from service and then his petition was also rejected. The averments in the OA have been denied.

4. We have heard learned counsel for the applicant, who submitted that the applicant had deposited all the money alleged in the charge sheet on a date subsequent to the date of deposit alongwith the interest. He submitted that the contention that copy of the preliminary inquiry report was not supplied to the applicant, has not been denied in the counter, although the charge sheet was based on such report.

5. Learned counsel for the respondents, during hearing, reiterated the stand in the counter filed by the respondents and submitted that there is no violation of the procedure while passing the impugned punishment order.

6. The facts which are undisputed or established from record are that the applicant did not deposit amount of Rs. 12,728/- deposited by 12 account holders in their respective accounts on the same day of deposit and he had deposited these amounts with interest for delayed deposit. Hence, the charge against the applicant is for non-adherence to the department rules and failure

to maintain absolute integrity and devotion to duty as per the rule 21, has been mentioned in the Article of Charges. No allegation of misappropriation of government money or fraud has been alleged against the applicant as per the charges framed against him. It is also noticed that there is no instance of any past misconduct on the part of the applicant prior to the present charge-sheet has been mentioned in the impugned orders or in the counter filed by the respondents.

7. In the order dated 30.1.2009 (A/7) passed by the respondent no.2, it is stated as under:-

"Finally the Charged Official has submitted that his past service should be taken into consideration and he may be exonerated from the charges as the inquiry has not been held according to law and there is no loss to the department.

The undersigned, considering the facts and circumstances of the case, the submissions of the Charged Official and the foregoing discussions, is of the opinion that the aforesaid Sri Akshya Kumar Champati, GDS BPM Chhatrapada BO (under put off duty) in account with Siko SO is responsible for violation of the specific rules as alleged in each article of charge framed against him. As a public servant, the action of the aforesaid Sri Champati was expected to be honest, bona fide and reasonable. An act is not honest when it is not just and fair. The act is not bona fide when it is committed without due care and attention and that it is not reasonable when a fair and prudent person would not do it.

But the aforesaid Sri Champati has not been honest, bona fide and reasonable in his action in the instant case and he has failed to maintain absolute integrity in violation of Rule-21 of GDS (Conduct & Employment) Rules, 2001. Therefore, he deserves to be awarded with an exemplary and deterrent punishment for the sake of justice commensurate with the gravity of offence. Accordingly, I Sri N.Behera, Sr. Supdt. Of Post Offices, Puri Division, Puri consider that Sri Akshya Kumar Champati, GDS BPM Chhatrapada BO in account with Siko SO is not a fit person to continue in service and hereby award the penalty of removal from service on the said Sri Akshya Kumar Champati, GDS BPM Chhatrapada BO in account with Siko SO (under put off duty) under Khurda HO with immediate effect."

8. The respondent no.1, while considering the Revision petition, has passed the order dated 29.6.2010 (A/8), which states as under:-

"I have gone through the case in a great detail. I find that the disciplinary authority had dealt with most of the points raised by the petitioner. I also find that the rules of the department have been followed by the Inquiry Officer and the Disciplinary authority,. The charges have been proved based on documentary evidences and the submission of various witnesses. The corrigendum issued by the Disciplinary Authority is only to correct the typographical error and not to change materially or correct any charges. The petitioner has stated that he had requested for all the supporting documents for submission of his written representation. From the file it is seen that no such representation was given by the petitioner. The petitioner was given full opportunity to peruse all the listed documents as per rules during the enquiry. The submission of the petitioner, that in absence of the witnesses, most of the charges cannot be accepted, is not tenable. It is seen from the disciplinary proceedings that all the contentions raised by the petitioner have been answered properly by the Disciplinary Authority. I find that all the charges have been substantiated and the petitioner was afforded with adequate opportunity to defend himself. The petitioner has not alleged any bias or prejudice by the officer who made preliminary enquiry. He cannot now take the plea that the statement admitting his guilt and the amounts credited at various times and

the entries made in the documents and vouchers of the BO were made at the instigation of the ASPOs i/c, Khurda Sub Division or the Mail Overseer. He cannot also deny that he had resorted to crediting the amounts received from various depositors at a later date.

The submission made by the petitioner that the punishment is not commensurate with the gravity of the lapses levelled against is not correct. The fact that the petitioner was appointed in a post which inspires maximum trust by the depositors who are normally illiterate and poor, and who see the petitioner as a representative of the Government of India and the fact that he had abused the trust placed on him both by the department and by the poor depositors, have been taken into account while deciding on the quantum of punishment. The petitioner had, by committing various frauds in dealing with the small amounts deposited with him by the poor and illiterate villagers who see him as the face of the Department of Post has been blatantly abused by the petitioner. The frauds committed by the petitioner have affected the reputation of the department in the BO village.

I find that the punishment has been commensurate with the gravity of the offence committed by the petitioner and there is no cause for intervention by me. Therefore, I, Hilda Abraham, Chief Postmaster General, Orissa Circle, Bhubaneswar-751001, hereby reject the petition."

9. From the findings recorded by the respondent no.1, it appears that the preliminary inquiry report has been considered by the authorities while deciding the case. The applicant has averred in para 4.4 and 5.1 of the OA that he was not supplied with a copy of preliminary report, which has not been specifically contradicted by the respondents. Hence, it is clear that copy of the preliminary inquiry report was not supplied to the applicant, although it was taken into account while deciding the quantum of punishment on the applicant.

10. Although the issue of past misconduct was raised by the applicant as mentioned in the order dated 30.1.2009 and dated 29.6.2010, but the same was not considered at all by the respondents while passing these impugned orders. It is clear that while deciding the punishment of removal from service, the respondents have not taken into account the past misconduct of the applicant. Since nothing adverse has been mentioned about the conduct of the applicant (except for the allegations mentioned in the charge-sheet) in the impugned order or counter, it is clear that there is no past misconduct reported against the applicant prior to the charge-sheet dated 13.9.2003. there is also the aspect delay in finalizing the proceedings, which has been raised by the applicant in para 4.8 of the OA. This has not been contradicted or denied/replied in the counter. Although the charge-sheet was issued on 13.9.2003, the disciplinary authority passed the order of punishment on 30.1.2009 which is after more than five years from the issue of charge-sheet and no explanation for such a delay is available on record.

11. We take note of the fact that in the case **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, while examining the scope of judicial review in disciplinary proceedings, has held as under:-

"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 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 proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. 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. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

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A review of the above legal position would establish that 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, cannot 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/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."

12. In the case of **Deputy Commissioner KVS vs. J. Hussain, reported in AIR 2014 SC 766**, it was held by Hon'ble Apex Court as under :

"When the charge 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 charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. 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 disciplinary required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of 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."

13. In view of the case laws and the reasons mentioned above, we are not able to accept the decision of the respondent no. 1 as mentioned in the order dated 29.6.2010 'that the punishment imposed has been commensurate with the gravity of the offence' committed by the petitioner' and based on the material on record, we are of considered opinion that the quantum of punishment imposed against the applicant is shockingly disproportionate to the gravity of charges as established against him.

14. In the circumstances, we set aside and quash the impugned order dated 29.6.2010 and remit the matter to the Respondent no.1 to reconsider the matter as per law in the light of above discussions and dispose of the petition of the applicant by passing a fresh speaking and reasoned order by imposing any punishment other than dismissal and removal from service as per the provisions of law, within two months from the date of receipt of a copy of this order.

15. The OA is allowed as mentioned above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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