

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No.260/00729 of 2014

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

Sudarsan Pradhan, aged about 58 years, S/o Lokanath Pradhan At/PO – Bindha, PS – Pipili, Dist. – Opuri at present removed from the post of GDSBPM bindha BO under Bhubaneswar Postal Division of Odisha **SUBSTITUTED BY** Bijayalaxmi Pradhan, aged about 53 years, Widow of Late Sudarsan Pradhan, At/Po. Bindha, Ps-Pipili, Dist. Puri.

.....Applicant

VERSUS

1. Union of India represented through DG, Post, Dak Bhawan, New Delhi – 110001.
2. Chief PMG, Odisha Circle, Bhubaneswar At/PO Bhubaneswar GPO – 751001, Dist. – Khurda.
3. Director, Postal Services, (HQ), At/PO – Bhubaneswar, Dist. – Khurda.
4. Senior Supdt. Of Post Offices, Bhubaneswar Division, Bhubaneswar – 751009, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.T.Rath, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 3.4.2019

Order on :18.04.2019

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

The OA was originally filed by Sri Sudarsan Pradhan (referred hereinafter as 'applicant') under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"(a) Quash the order of the Disc. Authority contained in Annexure A/11, Appellate order in Annexure

A/14 and revisionary order under Annexure A/16.

- (b) Direct the respondents to reinstate the applicant in service with all service benefits.
- (c) And pass appropriate order as may be deemed fit and proper in the facts and circumstances of the case."

The applicant expired during the pendency of the OA on 23.1.2018 and his wife was substituted vide order dated 28.02.2019

2. The facts of the case are that was appointed as Gramin Dak Sevak Branch Post Master (in short GDSBPM) in Bindha Branch Post Office (in short BO) through a due process of selection. The applicant after taking leave, was working as postman in different post offices at Bhubaneswar from time to time and as stated in the OA, he had last worked as a postman till 2010. He was placed on put off duty on 25.11.2010 by the Inspector of Posts under the rule 12 of the GDS (C&E) Rules, 2001. It is stated by the applicant that he could not have been put off duty as no disciplinary case was pending or contemplated against him. No charge-sheet was issued to the applicant till vide Memo dated 2.4.2013 (Annexure-A/4), the charges were served on him. The disciplinary authority appointed the inquiry officer (in short IO) who did not allow the applicant to engage a retired government servant as his defence assistant.

3. The Article I of the charges framed against the applicant are as under :

"Sri Sudarsahn Pradhan, GDS BPM, Bindha BO (now under put off duty) in account with Pipli SO, while working s such during the period from 11.6.81 to 25.11.10 had accepted Rs.248/- towards collection of RPLI premium for the month of May 2010 to Aug 2010 by issuing PLI02 receipt No.17 from Book No. 29066 from one Chhabi Behera and also had made relevant entry in the Premium Receipt Book (PRB) of RPLI policy No. R-OR-EA-72913 of the insurant Chhabi Behera.

Although, said Sri Pradhan had granted receipt for the amount received and had made relevant entry in the PRB he failed to impress the date stamp and to mention the policy number as required in the PLI-2 receipt. He also failed to impress the date stamp in the PRB. Said Sri Pradhan also failed to make entry of the transaction in the RPLI register against the date of collection and to take the amount in to BO account, he also failed to account for the amount collected vide PLI-2 receipt No.33 on 30.12.09, No. 19 on 30.3.10, No. 35 on 27.11.10 on the actual date of transaction in violation of instructions issued vide CO letter No. RPLI/1-15/Rlg-Corr/94 dated 7.8.2000 and circulated vide this office letter No. RPLI-4(Rlg) dated 9\8.8.2000 and Rule 133 & 134 of Rules for BOS (seventh edition) corrected upto 31st March 1986.

By the above act, the said Sri Sudarsan Pradhan failed to maintain absolute integrity and devotion to duty as required under Rule 21 of GDS (Conduct & Engagement) Rules, 2011."

The charges at Article II are the charge of improper accounting of RPLI premium as in Article-I charges, amounting to Rs.62, Rs.60 and Rs.61 relating to the month of June 2010. The Article III charges are regarding similar improper accounting of RPLI premium amounting to Rs.264 as in Article-I charges, relating to the month of July 2010 to August 2010. The Article IV charges are for improper accounting of RPLI premium like Article-I charges, amounting to Rs.220 relating to the month of May 2010 to August 2010. The applicant on receipt of the charge memo did not admit the charges and requested to be heard in person vide his letter dated 8.4.2013 (Annexure A/5).

4. The IO appointed to inquire into the charges, issued a notice for having the first sitting of enquiry meeting on 1.6.2013 (Annexure A/6). The following letter was submitted by the applicant to the IO :

"Hon'ble Sir,

As per your notice served to me for attending the Inquiry today, I am to bring your honour's kind attention by

the following few lines for your further decision on the above subject.

That sir, First I may kindly be permitted to submit this written application may be considered as my Statement before proceeds on today's Inquiry. I am to mention here that I am unable to appoint any AGS to plead in my favour as everybody to whom I meet claimed money at higher side to which I am unable to apy from my scanty income. As such I feel in my mind not to proceed in future inquiry in my case letting my Appointing Authority to decide my fate, whether to reinstate me in the post of GDSBPM or, in any post after considering my prayer.

- 1) That Sir, I have been serving in this department as GDS BPM, Bindha BO from 11.6.1981 and during my entire service nothing Black spot has been seen except the cases, enlisted in the recent charge sheet.
- 2) That sir, the delay in crediting premiums in RPLI cases, as detailed in charge sheet, was mainly due to not maintaining proper accounts neither by me nor by my substitute, because of my regular engagement to work in Postman cadre at Bhubaneswar.
- 3) That sir, against non crediting of premiums in RPLI cases, I felt my negligence in maintaining proper records and accordingly credited due premiums under UCR, as per the directions of the then Inspector, South Sub Division but due to such negligence of duty, i have been put on suffering being place me under put off duty from 26.11.2010 i.e. about last 3 years, in which 75% of my allowances has been lost along with my good will and trustiness for the postal department.
- 4) That sir, during my RPLI agency work in addition to my BPM duty, I have shown my performances to the department by collecting a good number of RPLI policies and acco3ringly i stood in second position in RPLI collection as BPM, for which even if I am under put off duty the department vide its letter No. PLI-RPLI/Misc/2012-13 dated 13.8.12 has considered me to continue as an RPLI agent, by allotting me a new code No. OIGD-7205 (Licence No. BBSR/414/2012) validated up till 27.6.2015.

In the aforesaid circumstances, my future depends with you and on the final decision of my Appointing Authority and as such I have decided not to proceed in the Inquiry from today onwards. With this I remain sir.

Yours faithfully
(Sudarsan Pradhan)
(Under put off duty)
Bindha"

He also submitted another letter dated 13.6.2013 (Annexure A/9) stating that he was working as a Postman, Mancheswar and other placed in Bhubaneswar on daily wage basis from 2007 to 30.7.2010

and during this period his nominee/substitute had worked at Bindha BO and they have committed the irregularities due to inadequate knowledge relating to RPLI works. As soon as the applicant came to know about the marks it was made good and he also took the responsibility for the irregularities committed by his nominee. He specifically submitted that the charges levelled against him were actually committed by his nominee out of their ignorance. He also submitted that such type of mistake was not committed during his long service career.

5. Thereafter the respondent No.4 who is the Disciplinary authority in this case (in short DA) has passed the order dated 6.8.2013 stating that applicant's representation dated 13.6.2013 addressed to the IO has the admission of the charges. It was stated that the copy of the enquiry report dated 24.6.2013 was sent to the applicant and after considering the report of the IO and other records, the DA has recorded the following findings :

"It is no denying a fact that the said Sri Sudarsan Pradhan collected RPLI premia from the insurants for deposit in Policies No. R-OR-EA-72913, R-OR-EA-73708, R-OR-EA 147177 & R-OR-EA 73276 held by Chhabi Behera, Rama Majhi, Sadasiba majhi & Kamali Dei respectively as already depicted in the foregoing paras. He failed to take the amount so collected in to BO account on the dates of collection of the premia. The concerned insurants in their written statements as enlisted in Annexure III appended to the memo of charges have very clearly stated that they have entrusted the money towards the RPLI premia to the said Sri Sudarsan Pradhan. The PLI-2 receipts issued are also without date stamp impression of the office and date of collection under the initial of the GDS BPM which clearly vindicates the ulterior motive of the GDS BPM to swindle away the money so collected without crediting it to public exchequer. The image of the Department got a serious heating in the eyes of the esteemed customers and sent a negative message to others. Such an action on the part of the GDS BPM works as a disincentive to garner the customer confidence to increase the business of the Department."

The DA passed the punishment of removal of the applicant from engagement as GDS at Bindha BO.

6. The applicant filed an appeal dated 10.9.2013 (Annexure A/13) to the Appellate Authority, respondent No.3 who considered the appeal and dismissed the same vide order dated 5.12.2013 (Annexure A/14). Thereafter the applicant submitted a further appeal to the respondent No.2 dated 16.1.2014 which was disposed of vide order dated 7.4.2014 (Annexure A/16) by the respondent No.2 stating the following :

"I have carefully gone through the petition, brief history of the case, parawise comments, charge sheet, defence representation of the petitioner, IO's Report, Punishment order, appellate order and other related records.

On careful examination of the case, it is observed that the charges brought against the petitioner have been admitted by him before the IO and the PO in the first sitting of the Inquiry on 1.6.13 and the IO submitted its report dated 24.6.13 proving all the charges against the petitioner.

As regards the point of non involvement of the petitioner in the fraud due to his working as postman on daily wage basis in different post offices during the period of fraud, it is seen that there is no written proof/record in the divisional Office to provide that the petitioner was working as a postman on daily wage basis providing substitute in his place during the period of occurrence of fraud. The petitioner during inquiry should have taken this plea before the IP and supplied the proof to that effect. But the petitioner unconditionally admitted the charges. From the SSPOs BBSR division letter dated 4.10.13 it is clear that the petitioner had not worked on daily wage basis as a postman after 24.4.10 engaging his substitute. The period of occurrence of fraud stretches from 25.4.10 to 24.11.10. if at all the petitioner had engaged substitute in his place without the knowledge of the authority, then that is another misconduct committed by the petitioner. The argument of the petitioner in citing of the DG(P) instructions (4) below Rule 7 of GS (Conduct & Employment)Rules, 2011 is not applicable in this case in view of the fact that the petitioner had not engaged any substitute in his place after 24.4.10 with the knowledge of his authority as is evident from the SSPOs Bhubaneswar letter No. B/RTI-71/13 dated 4.10.13. In other words, the petitioner was on duty during the occurrence of fraud. The petitioner also failed to supply proof to that effect before the IO. The petitioner has tried to conceal his own fault by saying that his substitute has committed the fraud instead of him. Hence this argument of the petitioner is not convincing and acceptable at all.

Secondly, as regards the point raised regarding statements of the insurants relied upon by the appellate authority, the appellate authority is in no way wrong in relying on those statements as it is clearly mentioned in the first para of page 4 of the punishment order of the disciplinary authority.

The petitioner submits that he informed the IO about his inability to provide an AGS due to his poor financial condition and owned the responsibility of the fault/fraud committed by his substitute but the IO and the disciplinary authority did not like to take his submissions into account and imposed the harsh punishment of removal from service. This argument is not correct and has not base at all. The petitioner had been given due opportunity to take the assistance of AGS to defend himself during the inquiry and the petitioner failed to avail that. Therefore prosecution cannot be blamed for that action of the petitioner. The petitioner was quite aware of his misconduct and therefore he unconditionally admitted the charges before the IO.

In view of the above discussion, I have come to the conclusion that the petitioner has not done his duty properly as a GDSBPM of the post office. No new arguments have been advanced by him in the petition before the reviewing authority for consideration. I feel that the punishment imposed is not disproportionate. In fact, the petitioner by committing fraud, has utilized the public money for his personal gain. I therefore find no ground to interfere with the orders of the disciplinary as well as the appellate authority."

7. It is stated in the OA that no reasonable opportunity was provided to the applicant and the impugned orders violated the principles of natural justice and that the punishment as per the impugned order is disproportionate to the gravity of charges alleged against the applicant. The DG Posts' letter dated 20.3.1971 (Annexure A/18) has been referred, wherein it is provided that the prosecution of the GDS for the offence committed by his nominee is not permissible unless it is established that the GDS had conspired with his nominee to commit the crime. Therefore, it is stated in the OA that the punishment against the applicant for mistakes committed by the nominee, is not be sustainable. It further stated that the IO's finding that the applicant has admitted the charges, are not correct. The applicant claimed that his expression of inability to proceed with the inquiry was due to paucity of fund and

in arranging a serving employee as defence assistant, since the IO did not allow the engagement of a retired Government servant as defence assistant of the applicant.

8. The Counter filed by the respondents upon notice did not dispute the facts stated that the proceedings were initiated against the applicant under the rule 10 of the GDS (Conduct & Engagement) Rules, 2011 (in short 'rules') vide Memo dated 2.4.2013 on account of irregularity and misappropriation. It is stated that the applicant in his written statement of defence dated 8.4.2013 denied the charges after which the IO was appointed for inquiry. It is stated in the Counter (para 4) as under:-

"During the first sitting of inquiry, the said Sri Sudarsan Pradhan (Applicant) admitted all the charges levelled against him before the Inquiring Authority and Presenting Officer and represented in writing that no further inquiry should be held against him. Taking the submission of the applicant, the Inquiring Authority declared the inquiry closed."

The IO submitted his inquiry report dated 24.6.2013 to the disciplinary authority narrating the unconditional admittance of the charges by the applicant and the punishment of the removal from service was ordered by the disciplinary authority vide order dated 6.8.2013 (Annexure-A/11).

9. It is stated in para 4(4) of the Counter that the applicant was put off and his TRCA at the rate of 25% was drawn for first 90 days from 26.11.2010 till 23.02.2011 and the same payment was extended from 24.2.2011 onwards vide Memo dated 3.1.2012 (Annexure- R/1 & R/2). For the entire period of put off duty, the sanction at the rate of 25% of TRCA was in force. The delay in issue of the charge-sheet was explained in para 4(5) of the Counter due

to delay in inquiry of "all the 550 receipts misused by the applicant along with all other relevant records / documents and collection of statements from the insurants for which some time was consumed and charge sheet was issued on 2.4.2013 and finalized on 6.8.2013."

10. Vide para 4(11) & (12) of the Counter, it is stated that the applicant is responsible for the wrongs committed by the substitutes and that the respondents have not allowed any leave to the applicant after 24.4.2010 to work as postman and it is not on record that he had functioned as postman after 24.4.2010. It is also stated that the respondents have followed the due procedure as laid down under the rules.

11. The applicant has filed Rejoinder to the Counter stating in para 4 that the IO did not permit him to engage a retired government servant and asked for a working government servant as defence assistant. Regarding averments payment of ex-gratia compensation during the put off period in para 4(4) of the Counter, it is stated that it was not paid to him from 24.2.2011 for more than 10 months till it was sanctioned on 3.1.2012 and that there is no provision under the rules for the applicant to apply for the revision of the ex-gratia compensation. It is stated that although he was entitled for 37.5% of the TRCA as compensation from 24.2.2011, but the same was not paid to harass the applicant financially and mentally. It was further stated in para 10 of the Rejoinder that "the contents of the Annexure-A/8, A/9 & A/10 cannot be treated as admittance of misappropriation by the applicant himself. As the applicant has not himself misappropriated

any RPLI premium, the Respondents have considered the applicant to continue as RPLI Agent and granted licence No BBSR/414/2012 vide letter No PLI-RPLI/Misc/2012-13 dated 13.8.2012 even during the put off duty of the applicant."

12. Regarding the contention in the Counter that the applicant was not engaged as postman after 24.4.2010, the applicant in para 14 of the Rejoinder has pointed out to a letter dated 10.6.2014, a reply under RTI Act (copy at Annexure-A/17A), stating that the applicant was allowed to work as DW Postman in Ashoknagar MDG from 27.7.2009 till 24.8.2010.

13. We have heard learned counsels for both the parties. No written submissions have been filed by the parties.

14. The following issues are to be decided in this case :

- (i) Whether the alleged irregularity/misappropriation was committed by the applicant or by his nominee or substitute.
- (ii) Whether the applicant has admitted the charges or not.
- (iii) Whether there is any violation of the rules by the authorities.
- (iv) Whether the applicant is entitled for any relief in this OA.

15. Regarding the issue no. (i) of para 14, it is stated in para 5 (8) of the OA that as per the RTI information obtained by the applicant from the Postmaster, Ashoknagar Post Office vide letter dated 10.6.2014 (Annexure-A/17A) that the applicant had worked as a postman in that post office till 24.8.2010. This averment in para 5(8) of the OA has not been contradicted specifically by the respondents who, in their Counter, have stated that as per their

record, the applicant had not worked as postman after 24.4.2010. But in view of the letter dated 10.6.2010 (A/17A) which has not been contradicted or explained in the Counter, it is clear that the applicant had worked as Postman in Ashoknagar Post Office till 24.8.2010. It is seen from the charge-sheet that the allegation against the applicant related to the premium of RPLI from the month of May, 2010 to August, 2010 and since during that period the applicant was working as Postman in Ashoknagar post office as per the letter dated 10.6.2014 (Annexure-A/17A), the nominees/substitutes of the applicant in Bindh BO had committed the irregularity, not the applicant. From the pleadings, it is seen that no document has been furnished by the respondents to contradict the claim of the applicant in this regard or to prove that during the period mentioned in the charge sheet, the applicant was working in Bindha BO. Hence, the irregularities alleged in the charge sheet dated 2.4.2013 have been committed by the nominee of the applicant and the issue no. (i) of para 11 is answered accordingly.

16. Regarding the issue no. (ii) of para 14 on admission of charges by the applicant before the IO, it is seen that in para 4 of the Counter that in the written statement of defence submitted by the applicant in reply to the charge sheet, the charges were not admitted by the applicant. Hence, the IO was appointed. The IO, in his first sitting on 1.6.2013 came to a conclusion based on the letter dated 1.6.2013 of the applicant (Annexure-A/8) that he has admitted the charges unconditionally and closed the inquiry without taking up the inquiry further. But the IO did not notice

that in the written statement of defence, the applicant had denied the charges. The letter dated 1.6.2013 has been extracted in para 4 of this order, in which the applicant has taken the responsibility for the irregularities committed by his nominee, which cannot be taken as **unconditional admission of the charges**. In this letter he mentioned about his past performance on RPLI and that the delay in crediting the RPLI amount was mainly due to not maintaining proper account by his nominee because of his engagement as Postman at Bhubaneswar. Regarding his request not to continue the inquiry, it is mentioned in the letter that this was due to his inability to engage AGS was due to his inability to pay for the service of the AGS. We are of the view that the letter dated 1.6.2013 cannot be treated as unconditional admission of the charges by the applicant and the issue no. (ii) of para 14 is answered accordingly.

17. The rule 10 of the GDS (Conduct & Engagement) Rules, 2011 prescribes the procedure for imposing penalty on a GDS. It states as under:-

"10. Procedure for imposing a penalty.-

(1) No order imposing a penalty shall be passed except after -

(a) the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make: and

(b) such representation if any, is taken into consideration by the Recruiting Authority:

Provided that the penalty of dismissal or removal from engagement shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges:

Provided further that where it is proposed after such enquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry."

18. It is seen from above provisions of the rule 10 that it is mandatory on the part of the authorities to ensure that the charges against a GDS is proved after an enquiry in which he is to be given a reasonable opportunity of being heard in respect of those charges before imposing the penalty of removal from engagement and the penalty imposed should be on the basis of the evidence adduced. In this case the IO did not ask the presenting officer to produce the evidence in support of the charges after receiving the letter dated 1.6.2013 (A/8) from the applicant, which he accepted as unconditional admission. Only on the basis of the letter dated 1.6.2013, the IO concluded that the charges were established, ignoring the fact that the applicant in his reply to the charges had not admitted the charges. As discussed in para 16 above, the letter dated 1.6.2013 cannot be accepted as unconditional admission of charges in view of the contention of the applicant in this letter that there was delay in crediting the amounts in question by his nominee (not by him). From the letter dated 1.6.2013 it is not revealed that the applicant is accepting all the allegations unconditionally. He is only admitting the delay in crediting of the amounts in question. In view of his written statement of defence to the disciplinary authority earlier and his contentions in the letter dated 1.6.2013, it was a mistake on the part of the authorities to treat it as unconditional admission of charges. The IO has failed to verify the sustainability of the charges with reference to the evidence as required under the rule and has failed to provide a

reasonable opportunity to the applicant to defend the charges before deciding prematurely to close the inquiry on the first day itself. It shows a biased mind of the IO that the applicant was guilty of the charges and hence, it is clear that the report of the IO that the charges were proved and consequential punishment order of the disciplinary authority, are not based on the evidence and without allowing reasonable opportunity to the applicant to defend himself. The issue no. (iii) is answered accordingly.

19. Regarding the issue no. (iv) of para 14 of this order, it is clear from the discussions above that the impugned punishment order dated 6.8.2013 (Annexure-A/11) and hence, the order of the Appellate authority dated 5.12.2013 (Annexure-A/14) and the order of the Revisionary authority dated 7.4.2014 (Annexure-A/16) violated the provisions of the rules. We take note of the limited power of the Tribunal in disciplinary proceedings as per the law laid down by Hon'ble Supreme Court in catena of cases. In the case of **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, Hon'ble Apex Court, while examining the scope of judicial review in the 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."

20. As per the judgment of Hon'ble Apex Court in the case of **Deputy Commissioner KVS vs. J. Hussain, reported in AIR 2014 SC 766**, it was held 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."

21. In this OA, the charges have not been established by the IO after taking into account the letter dated 1.6.2013 of the applicant which was wrongly accepted by the IO as unconditional admission of charges by the applicant, without examining the evidence on record. Even the contention of the applicant that the irregularities were committed by his nominee, not by him was not ascertained from the records by the IO, who proceeded as if he had pre-judged the issue even before conducting the inquiry as per law. Hence, there is gross violation of the provisions of the GDS (Conduct & Engagement) Rules, 2011 by the authorities, for which, the impugned punishment orders are not at all sustainable in the eyes of law. Moreover, the allegation related to delay in crediting the amounts by the applicant's nominee as stated in the letter dated 1.6.2013, which is not contradicted based on evidence by the IO or the disciplinary authority. There is nothing on record if the applicant was punished any time in the past for any misconduct. Therefore, the punishment of removal from the engagement imposed on the applicant is considered by us to be shockingly disproportionate to the charges against the applicant as contended by the applicant in para 5(10) of the OA.

22. The approach of the respondents towards the applicant can be seen from the way the applicant was put off duty for more than two and half years before serving the charge sheet against him. The reason furnished that the delay is due to conducting the preliminary inquiry prior to framing of charges is not a satisfactory explanation. Hence, the delay in serving the charge sheet is not attributable to the applicant. In such circumstances, the competent authority was duty bound to revise the ex-gratia compensation from 25% of TRCA to 37.5% of TRCA under the provisions of the rule 12(3) of the GDS (Conduct & Engagement) Rules, 2011. Instead, the respondents have stated in the Counter that the applicant did not move the authority for enhancement of the ex-gratia during put off duty, although there is no such provision under the rule 12. Such explanation of the respondents reflects the manner in which this case has been dealt by the respondents.

23. In the circumstances as discussed above, the impugned punishment order dated 6.8.2013, 5.12.2013 and 7.4.2014 respectively at Annexure A/11, A/14 and A/16 of the OA are not sustainable under the provisions of the GDS (Conduct & Engagement) Rules, 2011. We, therefore, set aside and quash these impugned orders. Normally, the matter would have been remitted to the respondents to conduct a fresh inquiry as the report of the IO is not in accordance with the rules. But since the applicant has already expired on 23.1.2018, no fresh inquiry is possible in this case. Hence, we direct the respondents to treat the entire period from the date when the applicant was placed on put off duty and the date when the applicant was removed from engagement as

GDS, as duty as per the rules and pay the arrear TRCA and extend other consequential benefits to the legal heirs of the applicant as per law, within a period of three months from the date of receipt of a copy of this order.

24. The OA is allowed in terms of paragraph 23 above. In the circumstances, we also impose a cost of Rs. 5,000/- (five thousand) on the respondents payable to the legal heirs of the applicant.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER (ADMN.)

BKS

