

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 125/2012

Reserved on: 09.01.2019
Pronounced on: 16.01.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

Jagdish Prasad Suman s/o Nand Lal, by caste Suman, aged 35 yrs, r/o V.P.O. Dhanikasar, s.o. cable nagar, Kota, presently removed from as B.P.M. Dhanikasar B.O. under S.O. cable nagar post office, Kota.

...Applicant.

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through the Secretary to the Govt. of India, Department of post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief post master General, Rajasthan Circle, Jaipur-7.
3. Post Master General, Eastern Region, Ajmer.
4. Director, Postal Services, eastern region, Ajmer.
5. Senior Superintendent, post offices, Kota Dn. Kota.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

ORDER

Per: A.Mukhopadhaya, Member (A):

This Original Application, (OA), arises out of the penalty of removal from service imposed upon the applicant consequent upon his being held guilty of misappropriation.

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2. Briefly, the facts of the case are that as per the memo of charges issued to the applicant who was working as Gramin Dak Sevak, (GDS), at Dhanka Kasar, Post Office, Kota on 30.06.2008, (Annexure A/3), he received certain sums of money from a number of depositors for depositing the same in their Five Year Recurring Deposit Accounts. However, he failed to deposit the same in the Government Account on the date of receipt and these amounts were deposited much later with the delay ranging from 11 days to almost one year in some cases. After inquiry, the respondent authorities found the charges of misappropriation of the sums in question proved and imposed the penalty of removal from service on the applicant vide order dated 29.03.2010; (Annexure A/2). An appeal preferred by the applicant against this decision was also rejected by the Director, Postal Services vide his memo/order dated 22.02.2011; (Annexure A/1). Aggrieved by the abovementioned actions of the respondents, the applicant has filed this OA seeking the following relief:-

Relief

- 8.1 That by a suitable writ/order or direction the impugned order vide Annexure A/1 dated 22/2/2011 be quashed and set aside.
- 8.2 That by a suitable writ/order or direction the order of punishment i.e. removal from service dated 29/3/2010 along with the charge memo dated 3/6/2008 be quashed and set aside as the quantum of punishment is heavy in comparison of minor mistake.
- 8.3 That by a suitable writ/order or direction the respondents be directed to take the applicant back on duty with all the

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consequential benefits with effect from 29/3/2010.

8.4 Any other relief deemed fit.”

Interim Relief:-

That by a suitable writ/order or direction the respondents be directed:-

- A. Not to fill up the post of BPM Dhani Kasar (cable nagar) Kota.
- B. To take the applicant back on work provisionally.

2. In reply, the respondents contend that the misappropriations in question stand proved on record and that the applicant has accepted and thus admitted that he did deposit the amounts in question in the Government Account much later after their receipt from the account holders. They aver that the action that was taken against the applicant was decided upon after conducting a full inquiry under Rule 10 of the GDS (Conduct & Employment), Rules 2001. The inquiry report given by the Inquiry Officer in this case found the charges of misappropriation levelled against the applicant proved. Thereupon vide letter dated 16.02.2010, a copy of the inquiry report was served upon the applicant affording him an opportunity for submitting his representation/comments in the matter within 15 days of the date of its receipt; (Annexure A/13). The respondents contend that only after going through the whole case and due consideration of all the documents and representation submitted by the applicant, the Disciplinary Authority, (DA), came to a finding that the charges against him

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stood proved and it was only then that he was awarded the punishment of removal from service vide SSPO Kota's Memo No.F4-1/07-08 dated 29.03.2010; (Annexure A/2).

3. The respondents further stated that the applicant preferred an appeal dated 05.04.2010 against the DA's order of 29.03.2010 to the Director, Postal Services and that the Appellate Authority, after considering the relevant record, the appeal of the appellant and para wise comments carefully and dispassionately, held that due process had been followed in the case and that the punishment imposed upon the applicant was proportionate to the proved charges. The appeal was accordingly rejected vide order dated 22.02.2011; (Anenxure A/1).

4. Finally, the respondents have drawn the attention of this Tribunal to its decision in a similar matter in OA No.440/2004 vide order dated 15.07.2009, (Annexure R/1), in which this Tribunal had upheld the removal of a Postal Department employee from service because of similar misappropriation.

5. Learned counsels for the parties were heard and the material available on record was perused.

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6. Learned counsel for the applicant drew attention to D.G., P & T letter No.151/4/77-Disc.II, dated 16.01.1980 in which it has been directed that while it may not be necessary to follow the provisions of Rule 14 of CCS (CCA) Rules, 1965, literally in the cases of ED Agents, it would be desirable to follow the provisions of that rule in spirit. Learned counsel contends that the substantive requirements of adhering to the principles of natural justice in conducting the inquiry in this case were not fulfilled. In specific terms, he drew attention to the fact that while the list of witnesses proposed for substantiating the departmental case did not include one Shri P.K.Jain, the said Shri Jain was examined as a witness during the inquiry in question. Applicant's counsel also argued that since the sums in question,(Rs.700/- and Rs.1100/-), were small and since the sums had been duly deposited in the Government Account with penal interest being paid in the former case, no substantive pecuniary loss had accrued to the respondents and viewed in this context, the penalty of removal from service was excessive and unjustified.

6. *Per contra*, counsel for the respondents cited sub rule (15) of Rule 14 of the CCS (CCA) Rules which reads as under:

“(15). If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-

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examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

7. Learned counsel for the respondents argued that in view of the specific provision of the rule cited above, there remains no force in the applicant's allegation of fair and due process not being followed in this matter.

8. Counsel for the respondents drew attention to the fact that the misappropriations committed by the applicant related to as many as seven occasions on which sums received were not immediately deposited in the Government Account as evidenced by the memo of charges itself and argued that the sheer number of such infractions showed that the actions of the applicant were deliberate and not some kind of bonafide error.

9. Citing the order dated 19.07.2018 of the Jaipur Bench of the Rajasthan High Court in **Union of India & Others vs. Alok Kumar** in DB Civil Writ Petition No.16043/2010, learned counsel for the respondents argued that while the inquiry process in this case had been comprehensive and exhaustive, this tribunal **"cannot take over the functions of the disciplinary authority"** and that as affirmed by the Apex Court in **H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal vs. Gopi Nath & Sons**, "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself." Counsel for the respondents also stated that the order of the Hon'ble

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Supreme Court in the case of **Mihir Kumar Hazara Choudhury vs. Life Insurance Corporation and Another** (2017) 9 Supreme Court Cases 404, in which it had been held that an employee where he **“deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer”**; (Para 26 of the order refers). He further cited the Apex Court’s findings in Para 27 of the same order to the effect that **“there is no defence available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority”**; (Para 27 of the order refers). Finally, he pointed out to this Court that the Apex Court had held in the cited case that the quantum of punishment, where the departmental proceedings were conducted strictly in accordance with law, was appropriate. In this case also, looking to the seriousness of the charges involved the penalty of removal could not be said to be disproportionate or excessive.

10. It is undisputed in this case that certain sums of money as detailed in the memo of charges, (Annexure A/3), were indeed received by the applicant well before he deposited them in the Government Account and that this by inference, amounts of

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misappropriation of depositor/Government funds. The applicant's explanation protesting his bonafides is also not completely credible in view of the repeated infractions; (i.e. 7 times as marked in the memo of charges and accepted in factual terms by the applicant). Given this position, we find that the judgments/orders referred to by the learned counsel for the respondents, i.e. Union of India & Others vs. Alok Kumar, (supra), of the Rajasthan High Court, Mihir Kumar Hazara Choudhury (supra) and H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal (supra) of the Apex Court also cover the facts of this case and are applicable to it. There is also nothing on record to indicate that the applicant has not been afforded due opportunity in accordance with the principles of natural justice to represent his case before the respondent authorities and there is no reason to infer that the process followed by the respondents, or that the decision they arrived at after due process or again that the punishment imposed in this case are unjustified.

11. In the result, we find this OA devoid of merit and it is accordingly dismissed.

12. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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