

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****Pronounced on : 07.05.2019****Reserved on : 29.04.2019****OA No. 062/01121/2017****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Sham Lal Dabgotra aged about 58 years, son of late Sh. Des Raj, resident of Ghas Mandi, Sujanpur, District Pathankot, presently posted as IRM SK Sorting, Srinagar, GPO Kashmir, Group B.

.....Applicant

BY ADVOCATE: **Sh. Dheeraj Mahajan****Versus**

1. Union of India through the Secretary to Government of India, Department of Posts, Sansad Bhawan, New Delhi.
2. The Chief Post Master General, Jammu and Kashmir Circle, Jammu Tavi-180016.
3. Director Postal Services, Jammu and Kashmir Circle, Jammu-180012.
4. Senior Superintendent of Post Office, Jammu Division, Jammu.
5. Superintendent Railway Mail Service, JK Division, Jammu-180012.

.....Respondents

BY ADVOCATE: **Sh. Sanjay Goyal****ORDER****MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant is an Inspector Post Office who was charge sheeted on 29.04.2016 under Rule 16 of the CCS (CCA) Rules, 1965. Applicant submitted

reply to the impugned charge sheet. Applicant in the OA admits the lapses for which the charge sheet was issued and also admits that he regretted the act for which he was proceeded against. The charge sheet was issued by the Head of Division where the applicant was working when the misconduct came to notice and the charge sheet was finalised by the 5th respondent under whose administrative control the applicant was working.

2. Applicant argues that he tendered an unconditional apology and hence no punishment should have been awarded. He also admits that no Savings Bank Time Deposit (TD) passbook was checked during the annual inspection of Bainsta Branch Post Office Udampur in the years 2008 and 2009.

3. The articles of charge levelled against the applicant were proven beyond doubt and the applicant was visited with the punishment of stoppage of next increment for a period of 22 months and recovery of Rs. 15,000.

4. The prayer of the applicant is for quashing Annexure A-3 punishment order and quashing recovery of Rs. 15000. The third prayer of the applicant is for setting aside the order of the appellate authority dated 16.08.2017 dismissing his appeal on the ground of delay.

5. The respondents in the reply statement place on record the details of three earlier occasions in which the applicant was proceeded against under Rule 16 of CCS(CCA) Rules 1965, and two earlier occasions in which the applicant was proceeded against under Rule 14 of the CCS (CCA) Rules. As the applicant was to retire shortly, the punishment was awarded under Rule 16 so as not to have a long-term or permanent impact.

6. The respondents submit that for the minor penalty under which the applicant was proceeded against, the Superintendent of Post Offices is the

competent disciplinary authority to impose one of the minor penalties specified under Rule 11 of CCS (CCA) Rules, 1965. To confirm this fact, the respondents made a statement that the fifth respondent who is the Superintendent of Post Offices is competent to impose penalty specified in sub-rule (i) to (iv) of Rule 11 of CCS (CCA) Rules, 1965. Hence, the submission of the applicant that punishment was imposed by a non-competent officer is not supported. Respondents also place on record Schedule of Administrative Powers of Officers for imposing punishment under CCS (CCA) Rules, 1965 which forms a part of form 3 of Postal Manual.

7. Heard learned counsel for the applicant and respondents and carefully perused the pleadings on record.

8. We perused the documents placed on record and the pleadings and note that there were two misconduct on the basis of which the applicant was proceeded against. The first was that the applicant did not follow the instructions issued for inspection of a Branch Post Office (BPO) and secondly, he did not strictly go by the inspection questionnaire issued for inspection of a Branch Post Office. Applicant conducted the inspection of Bainsta Branch Post Office for two consecutive years, 2008 and 2009. Applicant failed to check even one Time Deposit (TD) pass book, a fact which the applicant has himself admitted in his reply submitted to the chargesheet. The purpose of inspection is to ensure that, the Branch Post Office which are generally located in small villages and remote areas are performing their work as per rules vis-a-vis the services made available to the public, and also detect irregularities or frauds committed by the employees, in this case, the Branch Post Master. The accounts in Branch Post Offices are generally opened by persons of limited means under the assurance that their

money will be safe with the Post Office which is an institution of the Government of India, and has an all pervasive presence in the country. During the course of inspection, he was required to test check and inspect the savings banks accounts which include the Time Deposit accounts, call the investors with the pass books in order to check that the sum of money shown in the Post Office ledger and in the passbook of the investors match. This is a time tested method of ensuring that the entries made in the pass book of the depositor do not show any difference vis-a-vis the entry made in the office records. Since the two records are maintained by two persons i.e. the depositor and the Postmaster, separately, it would be necessary to do a test check to match the records during inspection so that fraudulent entry on the part of either can be detected and proceeded against timely. A difference noted during inspection is a red alert to show that the Postmaster is indulging in fraud vis-a-vis the public who is investing their hard earned money as savings the post office.

9. In the matter argued before us, there was a misappropriation of public money by Branch Postmaster Bainsta of a total sum of Rs. 6,09,474 from various savings bank and other financial deposits including time deposits accounts standing in the BPO. This misappropriation had been committed in the period July 2007 to February 2012. This misappropriation also included an amount of Rs. 45,000 from TD Account No. 450332 on 29.09.2009 for which the applicant has been proceeded against as he was the authority who inspected the post office in the years 2008 and 2009. The depositor of the TD account had tendered an amount of Rs. 50,000 for deposit in his account, but only Rs. 5000 was accounted for in his account maintained in the Branch Post Office and in the government account. In the passbook of the account holder, the amount of

deposit was over-written to make it appear as Rs. 50,000 for the depositor. Thus, the Branch Postmaster has misappropriated an amount of Rs. 45,000 of a member of a public. Had the inspection been conducted in a manner as indicated in the inspection report, such a mis-match of deposit entered in the pass book available with the depositor and the ledger maintained by the Branch Postmaster would have been noticed. Had the applicant who was the inspecting authority, noticed and recorded the mis-appropriation of Rs. 45000 in one account, the larger misappropriation of Rs. 6,09,474 from various savings accounts could have also been averted. Had he recorded the same and proceeded against the Branch Postmaster in the year 2008 when he made the first inspection, or even in 2009 when he made the second inspection of the post office, this fraud would not have extended upto the year 2012. The system of checks and balances created through the instrument of inspection has been violated by the applicant. Because the Postmaster was not proceeded against during the inspection, he was encouraged to further aggravate the act of defrauding the public deposits to the tune of Rs. 6(+) lakhs.

10. As long as the applicant is working in a certain post and is given a definite task to be completed, the applicant was responsible through inspection, to ensure the safety of money invested by members of the public in the post office. Applicant is not a new entrant to the respondent department and had rendered 36 years of service. Even if one does not take into account the earlier occasion of Rule 14 and Rule 16 charge sheet, the charges in the impugned order are in itself serious enough, to proceed against the applicant. Hence, even independently looking at the charge sheet in this OA, we find that it is a matter of defrauding of public money which is serious enough to be proceeded against.

The members of the public place their money in the Post Office with the trust that it will be safe in the hands of the Government. Anybody whose action results in misplacement of this trust, is liable to be proceeded against.

11. The argument that since the applicant has admitted the charges levelled and hence, the punishment imposed should be lenient is not acceptable. The charge of mis-appropriation of the money of the public by a person, over whom applicant had inspection powers, is not to be looked at leniently. The respondents rightly point out that the applicant should have been the watchdog of both the public who invest the money and the post office official who is responsible for the safe custody of the money.

12. The respondents also submit that in view of the applicant's history of being charge sheeted on several occasions in the period 2008-2017, the conduct of the official was also under a cloud. Hence, the matter is not one where a person with an absolutely clean record is seeking the relief of setting aside of all the charges and the punishment awarded thereon. The misappropriation of public money and manipulation of record by the Branch Postmaster Bainsta should have come to the notice of the applicant during the inspection of the office in two consecutive years 2008 and 2009. The purpose of an inspection is to ensure that the post office is functioning as required and laid down under the post office procedure and in accordance with the stipulated rules detailed in the Post Office Manual, and subsequent working instructions issued. This is not only a case of misconduct on the part of the applicant, but a case where faith and trust imposed by the public in the post office, was negated and adversely impacted due to the fraud committed.

13. That no action has been taken against the accused namely, the Branch Postmaster, is negated by the respondents who submit that 2 FIRs under Sections 409, 420, 467, 468, 471, 477 and 477 (A) RPC have been lodged against the principal accused and the matter is subjudice in the court of Session Judge Udhampur in respect of 1st FIR, and under investigation with the police in respect of 2nd FIR.

14. Judicial review is not directed against a decision, but is directed against the decision making process. The question of choice and quantum of punishment is within the jurisdiction and discretion of the disciplinary authority, reviewing authority and appellate authority. The sentence has to generally suit the offence for which a person has been examined. In this case, we observe that doctrine of proportionality has not been violated or exceeded. We find nothing irrational or perverse in the inquiry or the punishment, which are the generally recognized grounds of judicial review. Judicial review is not an appeal from a decision, but review of the manner in which a decision is made. Generally a judicial authority, in disciplinary matters does not sit in judgement on the correctness of the decision, providing the doctrine of proportionality has not been violated. We find this is not attracted in this OA.

16. The jurisdiction of the Tribunal to interfere with disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with findings of the Inquiry Officer or the competent authority when they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent official is conferred on the competent authority either by an Act or legislature or rules made under the proviso of Article 309 of the Constitution. If there has been an inquiry

consistent with the rules and in accordance with the principles of natural justice, and the punishment meets the ends of justice, the need for judicial interference is minimal. If the penalty imposed can lawfully be imposed, and is imposed on a proved misconduct, the Tribunal generally has no power to substitute its own discretion on that of the competent authority. The Tribunal also cannot interfere if the conclusion of the Inquiry Officer or the competent authority is based on evidence, such as is adduced in a departmental inquiry. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings.

17. We do not find that the punishment awarded is inconsistent with rules of natural justice or is in violation of statutory rules prescribing the mode of inquiry, and this is also not a case which is based on no evidence.

18. From the foregoing discussion, we do not find any merit in this OA or find any justification to show leniency, and accordingly dismiss the same. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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