Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00416/2016

Bilaspur, this Friday, the 05th day of April, 2019

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

Maheshwar Ram Bhagat, S/o Chetu Ram Bhagat, presently unemployed, aged about 46 years, r/o Village Navapara Post Phundur Dilhari, Ambikapur, Chhattisgarh 497001 **-Applicant**

(By Advocate – Shri A.V. Shridhar)

V e r s u s

1. Union of India through the Secretary, Department of Posts and Telegrams, Dak Bhawan, Parliament Street, Delhi 110001.

2. Chief Post Master General, Chhattisgarh Division, GPO Building, Jaistambh Chowk, Raipur Chhattisgarh 492001.

3. Director Postal Services, Chhattisgarh Division GPO Building, Jaistambh Chowk, Raipur Chhattisgarh 492001.

4. Superintendent of Post, Raigarh Division, Station Road, Raigarh Chhattisgarh 496001 **-Respondents**

(By Advocate – Shri Vivek Verma)

(Date of reserving order : 01.04.2019)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the order dated 16.02.2015 (Annexure A-1), whereby the order dated 18.06.2013

(Annexure A-5) passed by the Appellate Authority, has been affirmed.

2. He has, therefore, sought for the following reliefs:

> "8.1 That, the learned Tribunal may kindly be pleased to quash the memo no F6-3/Lakhanpur/08-09 dated 17.10.2012 (Annexure A/3), memo No. Staff3-4/1/2013 dated 18.06.2013 (Annexure A/5) and memo no. Staff3-9/1/2014 dated 16.02.2015 (Annexure A/1).
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> 8.2 That, Cost of the Original application.
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> 8.3 Any other relief which the learned Tribunal deems fit and proper may be awarded."

3. Brief facts of the case are that the applicant, while working as Sub Postmaster (SPM), Lakhanpur, was served with a chargesheet vide memo dated 07.08.2009 under Rule 14 of the CCS (CCA) Rules, 1965 for misappropriation of the Government money. A departmental enquiry was conducted against him and the charges framed against the applicant were proved by the Inquiry Officer. Thereafter, the Disciplinary Authority awarded the punishment of 'removal from service' vide its order dated 17.10.2012 (Annexure A-3).

4. The applicant preferred an appeal on 26.11.2012 and the Appellate Authority, vide its order dated 18.06.2013 (Annexure A-5), has modified the punishment from 'removal from service' to ‘compulsory retirement’. Thereafter, the applicant preferred a revision petition on 23.12.2013 against the punishment of compulsory retirement to the respondent No.2, who has rejected the petition vide order dated 16.02.2015 (Annexure A-1). Hence this O.A.

5. The respondents have filed their reply and did not dispute the factual accuracy. It has been submitted by the respondents that during the period from 17.07.2008 to 05.01.2009, the applicant was absent from duty willfully without handing over charge of SPM w.e.f. 05.01.2009. Further, during the period from 24.12.2008 to 03.01.2009, he has not accounted the daily transaction carried out by him resulting shortage of Rs.40371.65. As such, the said amount was misappropriated by the applicant by keeping of shortage of cash.

6. The respondents have filed the details of various misappropriation of money by the applicant in different heads, total amounting to Rs.50246.65. It has been submitted that the applicant was served a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 vide office memo dated 07.08.2009 and the applicant was given 10 days’ time to submit the written defence before the authority.

7. The applicant submitted his reply on 14.08.2012. He was awarded ample opportunity to defend his case. The Inquiry Officer proved the charges levelled against the applicant. Therefore, the Disciplinary Authority imposed the punishment of removal from service vide order dated 17.10.2012, which was modified as compulsory retirement by the Appellate Authority vide order dated 18.06.2013. The applicant preferred revision against the order passed by the authorities and the same was rejected vide impugned order dated 16.02.2015.

8. Heard learned counsel for the parties and perused the pleadings available on record.

9. It is the case of the respondents that the applicant has misappropriated Government money under various heads and, therefore, he was imposed punishment of ‘removal from service’ after conducting a detailed enquiry. Subsequently, by taking a lenient view, the order of ‘removal from service’ was modified to ‘compulsory retirement’ by the Appellate Authority. This has been affirmed in revision.

10. During the course of argument, learned counsel for the applicant submitted that the applicant has voluntarily deposited the Government money and, therefore, neither the Government nor the depositors are put to any loss. He further submitted that it is only a temporary misappropriation for a short period on account of some unavoidable circumstances. Therefore, the punishment of compulsory retirement is disproportionate to the charges levelled against him.

11. We have given our thoughtful consideration to the entire matter.

12. It is well settled law that a Tribunal or court of law can interfere in disciplinary proceedings only on limited grounds. The Hon'ble Supreme Court has considered the issue of interference in disciplinary proceedings including penalty in a recent decision of **S.R. Tewari** vs. **Union of India & Another**, 2013 (3) SCT 461 and placing reliance on the cases of **B.C. Chaturvedi** vs. **Union of India & Others**, AIR 1996 SC 484; **High Court of Judicature at Bombay through its Registrar** vs**. Udaysingh S/o Ganpatrao Naik Nimbalkar & Ors**, AIR 1997 SC 2286 and **Government of Andhra Pradesh & ors** vs. **Mohd. Nasrullah Khan**, 2006 (1) SCT 588, it has been held that the Court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. Placing reliance on a number of decisions qua quantum of penalty, it has been held that the punishment imposed by the disciplinary authority or the appellate authority, unless shocking to the conscience of the Court, cannot be subjected to judicial review.

13. Keeping in mind our limited scope of judicial review, now we proceed to examine the facts of the present case.

14. It is an admitted fact by both the parties that during the departmental investigation, an amount of Rs.40,371/- was found short in the Government fund during the period in which the applicant was functioning as Sub Postmaster Lakhanpur. Similarly, different amounts of Rs.945/-, 264/- and 8674/- were found to be misappropriated by the applicant. Therefore, he was served with a chargesheet dated 07.08.2009 (Annexure A-2) under Rule 14 of the CCS (CCA) Rules, 1965, whereby as many as four charges were levelled against the applicant. After considering the reply submitted by the applicant, the Inquiry Officer was nominated to conduct an enquiry into the matter. The Inquiry Officer submitted his report on 20.06.2012 and all the charges levelled against the applicant were proved by the Inquiry Officer.

15. On careful reading of the material placed on record, it has become clear that the order passed by the Disciplinary Authority is based on evidence available on record including admission of guilt by the applicant while depositing the misappropriated amount of Rs.40,371/- on 11.02.2009 at Ambikapur Post Office. In regard to charge No.2, an amount of Rs.945/- was found to be deficient on 22.07.2008, while issuing receipt No.81 of Rs.1050/-. However, the applicant had only accounted Rs.105/-, which resulted in shortfall of Rs.945/- and the same was deposited by him on 26.09.2008. During the course of inquiry, the applicant admitted that he accepted the aforesaid amount which is subject matter of departmental inquiry from the depositor but did not credit it to Government account. Similarly, the applicant deposited the different misappropriated Government fund, as levelled in charges Nos.III & IV. This clear admission of the applicant is considered by Inquiry Officer as well as by Disciplinary Authority, while holding the applicant guilty of misconduct and, accordingly, punishment of 'removal from service' was awarded to the applicant. The Appellate Authority, though did not find any infirmity in the punishment order, however, considering the past services rendered by the applicant and his financial condition, had modified the punishment as 'compulsory retirement'. The same order has also been affirmed by the Revisionary Authority. Full opportunity of hearing was also given to the applicant. There is neither violation of principles of natural justice nor gross procedural error. Therefore, the impugned order passed by the Disciplinary Authority modified by Appellate as well as Reviewing Authority, cannot be held as perverse.

16. In the result, O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-