

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CRICUIT SITTING: BILASPUR

Original Application No.203/00378/2015

Jabalpur, this Friday, the 10th day of May, 2019

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

A.K. Raja S/o Late Purushottam Singh Raja
Aged about 59 years
Ex. Sub Post Master, Byron Bazar (PO)
Raipur R/o L-1 Karmachari Society
Sector-3 Pandit D.D. Nagar, Raipur
Dist. Raipur PIN 492010

-Applicant

(By Advocate –**Shri A.V. Shridhar**)

V e r s u s

1. Union of India
Through: The Secretary
Ministry of Communication
Department of Posts,
Dak Bhawan
New Delhi 110001

2. The Director (Postal Services)
Chhattisgarh Circle
CPMG Office, M.G. Road
Raipur 492001 (CG)

3. The Sr. Superintendent of Post Offices
Raipur Division Station Road
Raipur 492001 (CG)

- Respondents

(By Advocate –**Shri Vivek Verma**)
(Date of reserving the order: 05.12.2018)

ORDER

By Ramesh Singh Thakur, JM:-

By filing the present Original Application the applicant has prayed for quashing & setting aside of the order dated 08.05.2013 (Annexure A/4) passed by the Senior Superintendent of Post Offices, Raipur Division, Raipur whereby the penalty of dismissal from service was imposed upon the applicant. He has also prayed for quashing & setting aside of the appellate authority order dated 31.07.2014 (Annexure A-6) whereby his appeal was rejected.

2. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 That, the Hon’ble Tribunal be pleased to allow the O.A. and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant’s grievance.

8.2 That, the Hon’ble Tribunal be pleased to set aside the Punishment Order dated 8.5.2013 (Annexure A-4) and Appellate Authority Order dated 31.07.2014 (Annexure A-6) in the interest of justice.

8.3 That, the Hon’ble Tribunal be pleased to pass an Order directing the Respondents to reinstate the

Applicant back in duties with all consequential benefits. Or

The Hon'ble Tribunal be pleased to modify the Punishment imposed on the applicant, taking into the gravity of alleged misconduct found against him, and length of service rendered by him in the interest of justice."

3. The brief facts of the case are that the applicant was posted as Sub-Post Master at Byron Bazar Post Office at Raipur from 09.08.2008 till 12.01.2010. He was placed under Suspension on 12.04.2010 contemplating Departmental Enquiry against him and was issued a detailed Major Penalty Charged Memorandum dated 30.12.2011, alleging therein that in connivance with Women Postal Agents namely Smt. Heena Nagpal, Ku. Santosh Nagpal Mr. Deepak Nagpal, the applicant committed various kinds of irregularities while discharging his official duties i.e. for the period from 17.12.2008 and 31.12.2009. The said postal agents has changed the Actual Monthly Amount of various RD accounts and entered the lesser amount in the Lot List though entered the correct amount in the respective pass

book and placed the same to the Post Office, to which the applicant without verifying the amount shown in Lot List and Pass Book, affixed the official post office stamp and his signature in the Pass Book. The applicant was alleged in connivance with the representative of Women Postal Agent caused misappropriation of Rs.1,35,300/-. On 04.12.2009, 05.12.2009 and 7.12.2009 the aforementioned postal agents has changed the Actual monthly amount of various RD accounts and entered the lesser amount in the Lot List though entered the correct amount in the respective pass book and placed the same to the Post Office, to which the applicant without verifying the amount shown in Lot List and Pass Book, affixed the official Post Office Stamp and his signature in the Pass Book. Thus, applicant was alleged in connivance with the representative of Women Postal Agent caused misappropriation of Rs.19800/-. Thus, it is alleged that applicant has misappropriated to the tune of Rs.1,55,100/-.

3.1 The applicant submitted his representation dated 03.01.2012 denying all the charges. The respondent-department appointed Shri A.K. Singh as Enquiry Officer and Shri J.S. Pardhi as Presenting Officer to conduct the departmental enquiry against the applicant on the said charges. The departmental enquiry was commenced from 02.03.2012 which was culminated by way of submitting enquiry report on 26.03.2013 (Annexure A/2) holding charges stood proved against the applicant. Thereafter the applicant submitted his representation dated 16.04.2013 (Annexure A/3) requesting to exonerate him from the charges leveled against him. Thereafter the disciplinary authority i.e. Senior Superintendent of Post Offices, Raipur vide its memorandum dated 08.05.2013 (Annexure A/4) imposed a punishment of dismissal from service. The applicant thereafter submitted his statutory appeal on 27.05.2013 (Annexure A/5) before the appellate authority i.e. the Director, Postal Services, Chhattisgarh Circle Raipur, which was rejected by the appellate authority vide

its order dated 31.07.2014 (Annexure A/6). Being aggrieved by the said order of the appellate authority, the applicant submitted his mercy petition before the Chief Post Master General Chhattisgarh Circle Raipur on 19.08.2014 (Annexure A/7). Thereafter the applicant approached this Tribunal by filing an Original Application No.203/750/2014 seeking for limited relief of direction for early consideration of his pending mercy appeal by Respondent No.2, which the applicant sought permission to withdraw the said O.A. with liberty to challenge the impugned punishment and appellate authority order before this Tribunal. The same was allowed vide order dated 20.11.2014 (Annexure A/8). Hence, this Original Application.

4. The respondents in their reply have submitted that the applicant was posted as Sub-Post Master at Byron Bazar Sub Post Office Raipur from 09.08.2008 to 12.01.2010. He was suspended on 12.04.2010 and charge sheet issued vide SSPO's Raipur dated 30.12.2011 for

misappropriation of government money of Rs.135300/- and Rs.19800/-. The applicant submitted representation dated 03.01.2012 and departmental enquiry was initiated on 02.03.2010 after inquiry officer and presenting officer was appointed as per departmental rule. The inquiry officer submitted his inquiry report dated 26.03.2013 and a copy was sent to the applicant vide letter dated 03.04.2013. The applicant submitted his representation to the disciplinary authority who after considering the said representation, inquiry report and all relevant documents, awarded punishment of 'Dismissal from service' vide memo dated 08.05.2013. The applicant thereafter submitted appeal to the appellate authority which was rejected vide office memo dated 31.07.2014. The applicant submitted petition before the revisionary authority i.e. Chief Post Master General Chhattisgarh Circle Raipur against the punishment order which was also rejected vide memo dated 08.09.2015. The applicant has misappropriated a huge amount of Government money i.e.

serious nature of offence. The punishment given by the disciplinary authority is equal to ratio of misconduct. Therefore the applicant is not entitled for any relief.

5. The applicant has submitted his rejoinder to the reply filed by the respondents. It has been submitted by the applicant that regarding the allegation of misappropriation of Government money, the evidence led in the departmental enquiry has not been proved. The applicant has relied upon the judgment passed by Hon'ble Supreme Court in the matters on Chandradhar vs. Gauhati Bank AIR 1967 SC 1058 wherein it has been held that mere entries from the postal accounts or mere copies thereof are not sufficient to charge person with liability except where person concerned accepts correctness of entries. No person can be charged with liability merely on the basis of entries, even where such entries were entered in the books and are kept in regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of accounts in order that a person may

be charged with liability thereunder. The applicant further submitted that the enquiry officer and disciplinary authority has went beyond the scope of the charge sheet and has taken other irregularities committed by said Postal Agents and even after recovery of loss amount from the said postal agents, the applicant was placed under prolonged suspension followed by punishment of dismissal from service. It has been specifically submitted by the applicant that in the departmental enquiry all the prosecution witnesses have clearly deposed that they received their deposited amount without sustaining any loss and they have no complaint against applicant and pointed out the names of said MPK/Postal Agents. The entire enquiry held against applicant was without any complaint or without any claim against the applicant which indicates that applicant was not involved in the said irregularities. Therefore the punishment imposed on the applicant is totally disproportionate.

6. We have heard the learned counsel for both the parties and perused the pleadings and documents attached with the Original Application.

7. From the pleadings it is clear that the charge sheet dated 30.12.2011 (Annexure A/1) has been served upon the delinquent and the applicant has made the representation. Thereafter the respondent-department has appointed the inquiry officer and presenting officer. Departmental enquiry was completed. A copy of inquiry report vide order dated 03.04.2013 was made available to the applicant. In the said inquiry report, in the conclusion, the inquiry officer has concluded that both the charges were proved against the applicant. The applicant had submitted his representation dated 16.04.2013 to disciplinary authority. Ultimately the disciplinary authority vide Annexure A/4 dated 08.05.2013, has imposed punishment of dismissal from service. The applicant submitted his appeal against the order of dismissal from service vide Annexure A/5 dated 27.05.2013. The

appellate authority after considering the points raised by the applicant, has rejected the appeal vide Annexure A/6 dated 31.07.2014 and the penalty passed by the disciplinary authority was upheld. Though the applicant has raised some of the points in the appeal i.e. no proper appreciation of statement of witness, satisfactory and unblemished services of 33 years, but the appellate authority has considered each and every aspect regarding the points raised by the applicant. This is very clear as per Annexure A/6. In the said Annexure at Page 83 of the O.A., there is reference of those points and in the conclusion portion, the appellate authority has decided those points and ultimately upheld the punishment awarded by the disciplinary authority. Moreover, the applicant has failed to point out any prejudice caused to the applicant or any violation of natural justice or any contravention of the statutory rules as per Central Civil Services (Classification, Control and Appeal) Rules, 1965.

8. The Hon'ble Supreme Court in the matters of ***Union of India and another vs. B.C. Chaturvedi***, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 has held as under:

“12. 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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18. 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.”

9. Though the applicant has placed on record the acquittal order passed by 2nd Additional Sessions Judge, Raipur in Criminal Appeal No.79 & 85 of 2016 qua the applicant but the settled law is that in the disciplinary proceedings, for proving the charges is on the basis of preponderance of probability on evidence with proceedings, the charges against the applicant has been duly proved and the inquiry officer has dealt with the statement of witnesses and evidences on record in detail. In Annexure A/2, the inquiry officer has dealt with all the

defense put forth by the applicant at Page 41 to 43 of the inquiry report. The said finding of the inquiry officer has been accepted by the disciplinary authority and the penalty has been imposed. Moreover, the appellate authority has dismissed the appeal by upholding the punishment passed by the disciplinary authority.

10. In view of the above, we are of the view that there is no ambiguity or illegality in the action of the respondent-department.

11. Resultantly, this Original Application is dismissed.
No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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