

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01539/2018

DATED THIS THE 05th DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Chowdaiah
 S/o Late Hutchaiah
 Aged 59 years
 Ex-GDS BPM/DP
 Ambadahalli BO
 a/w Honganur SO-562 138
 (Now removed from service)
 Residing at Ambadahalli
 Channapatna Taluk
 Ramnagara District-562 138.Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Posts
Dak Bhavan
New Delhi-110001.
2. The Postmaster General
Bengaluru (HQ) Region
Bengaluru-560001.
3. The Superintendent of Post Offices
Channapatna Division
Channapatna-562 160.Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.SC for CG)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The case of the applicant is that while working as GDS BMP/DP at Ambadahalli
 BO in Channapatna Division, the applicant was placed on 'put off' duty w.e.f.

16.6.2011 in contemplation of disciplinary proceedings. Thereafter, the disciplinary proceedings were initiated against him by issuing a memo dtd.27.4.2012 framing 7 articles of charge and proposing to hold inquiry against him under Rule 10 of GDS (C&E) Rules, 2011(Annexure-A1). The gist of the charge against the applicant was that (a) he has failed to pay the RD closure amount of Rs.3939/- on 3.12.2010 to Smt.Gowramma, the RD account holder, (b) he has failed to pay a money order of Rs.1200/- to Sri Kempaiah though the same was shown as paid on 14.6.2011, (c) he has failed to pay a money order of Rs.1200/- to Sri.Thirumala Raya though the same was shown as paid on 14.6.2011, (d) he has failed to pay a money order of Rs.1200/- to Smt.Chikkamma though the same was shown as paid on 14.6.2011, (e) he has failed to pay a money order of Rs.1200/- to Sri.Hutchaiah though the same was shown as paid on 14.6.2011, (f) he has failed to pay a money order of Rs.1200/- to Sri.Chikka Madegowda though the same was shown as paid on 14.6.2011 and (g) he has failed to pay a money order of Rs.1200/- to Sri.Giriyappa though the same was shown as paid on 14.6.2011. The articles of charge also disclose the fact that he has voluntarily remitted Rs.7200/- to Post Office Account on 15.6.2011. The applicant denied the charge in his reply dtd.10.8.2012. The 3rd respondent appointed one Sri C.Ramanath Babu, Asst.Suptd. of Posts(R) as the Inquiring Authority vide order dtd.10.9.2012 and he has submitted his report on 7.5.2015 holding that all the articles of charge were proved against the applicant. The 3rd respondent vide letter dtd.18.5.2015 enclosing a copy of the inquiry report directed the applicant to submit his representation, if any within 15 days(Annexure-A2). However, the applicant did not submit his representation to the inquiry report. Thereafter, the 3rd respondent by order

dtd.28.9.2015(Annexure-A3) imposed the penalty of removal of the applicant from engagement with immediate effect. Then the applicant submitted a revision petition against the said order to the Chief Post Master General(CPMG) on 4.6.2016 explaining the reason for the delay in submitting the petition and raised several grounds and requested to set aside the penalty and reinstate him in to the engagement(Annexure-A4). Instead of considering by the CPMG, the revision petition has been considered by the 2nd respondent who has rejected the same by order dtd.19.3.2018 confirming the order of the 3rd respondent(Annexure-A5).

2. The applicant submits that both the orders at Annexure-A3 & A5 are arbitrary and have been passed without application of mind and relying on legally inadmissible evidence. There is no substance in article No.1 of the charge as the depositor Smt.Gowramma has admitted before the Inquiry Officer(IO) that she has received the amount. The records disclose that the amount was paid to her in presence of her husband at her residence. It was reflected in the BO records that the amount was paid on 3.12.2010 because the advance receipt given by the account holder bears the said date. The amount was paid to her after verification of the records. A few minor discrepancies in her deposition before the IO have been blown out of proportions to impute misconduct on the applicant. The fact remains that she was paid the amount in question and she has no complaint against the applicant. The IO relied on the statement alleged to have been made by the witness during the preliminary inquiry before the investigating official, disregarding her deposition in the course of regular inquiry to arrive at his erroneous conclusion. The IO without appreciating the evidence properly, held that the article No.1 charge has been proved against the applicant.

3. The applicant further submits that the articles 2 to 7 of the charge are not at all serious in nature and in fact these articles are ridiculous. The allegation is that the applicant did not make payment of 6 money orders of Rs.1200/- each to the respective payees though it was shown on records that the amounts have been paid on 14.6.2011. All these money orders were dtd.3.6.2011. It is also alleged in the imputations of misconduct that the applicant has voluntarily remitted Rs.7200/- to the Post Office on 15.6.2011. On 12.6.2011, being Sunday, the post office was not working and on 13.6.2011 there was an inspection in the post office. A cursory glance at the sequence of events establish that the allegations made against him are ridiculous, for there was a delay of one day or a part of the day in making payment of money orders. In spite of this, the investigating officials got it recorded in the preliminary inquiry that the applicant has used the money for his personal use and the 2nd & 3rd respondents are of the view that the applicant deserves the penalty of dismissal from service. The payees in respect of the articles No.3 & 4 viz Sri Thirumala Raya and Smt.Chikkamma had expired and hence they were not available for the inquiry. Still the IO has held that the articles of charge were proved and his reasoning has been accepted by the 3rd & 2nd respondents. The IO while discussing the evidence in respect of article No.4 of the charge states that Smt.Chikkamma was shown as paid on 14.6.2011. He further states that the above prosecution witness has not appeared before the IO to tender 'his' evidence despite several notices issued to him to the last known residential address. The IO has not bothered to know whether it is 'he' or 'she'. It is equally surprising to know what is the purpose of sending registered letters to last known address of the person who is not alive. There is absolutely no application of mind by the IO and equally by the 3rd & 2nd respondents. The IO

has created further confusion in respect of the charge than giving findings on each articles of charge. The conclusions of the IO, 3rd & 2nd respondents are based on conjectures, surmises and not based on evidence on record. The articles of charge lack material particulars, inconsistent and are vague. The IO has failed to discuss the evidence properly and disregarded the submissions made by the applicant in his defence. The applicant remitted the amount at the behest of the officials of Postal Department. This has been wrongly construed by the IO and the DA that the remittance of the amount by the applicant amounted to admission of his guilt. The revision authority has failed to consider the petition in accordance with Rule 18 of the GDS (C&E) Rules, 2011 in as much as he failed to consider as to whether the inquiry was held in accordance with the rules, if so whether the findings are based on the evidence, whether the penalty imposed is excessive etc. and pass a reasoned order. The revision authority has mechanically endorsed the view of the 3rd respondent without arriving at the conclusions with an independent mind. The penalty imposed on the applicant is disproportionate to the misconduct alleged. There is no justification for the initiation of disciplinary proceedings against the applicant for the inadvertent lapses in the course of employment terming the same as misconduct. Accordingly, he filed the present OA seeking the following relief:

- i. *To quash the (a) Order No.F/3-1/2011-12 dated at Channapatna the 28.09.2015, issued by the respondent No.3, Annexure-A3 and (b) Order No.BGR/Vig/15-11/2016 dated at Bengaluru-560001 the 19.03.2018, issued by the respondent No.2, Annexure-A5.*
- ii. *Direct the respondents to reinstate the applicant in his original post with all consequential benefits and continuity of service including full pay and allowances treating the period of 'put off' duty as the period spent on duty.*

4. The respondents, on the other hand, have submitted in their reply statement that the applicant while working as GDSBPM/DP, Ambadahalli BO a/w Honganur SO was placed under put off duty by ASP, Channapatna Sub Division vide his letter dtd.15.6.2011 in connection with alleged non payment of Money Orders and the same was ratified by the office on 27.6.2011. At the time of visit of ASP, Channapatna Sub Division to the Ambadahalli BO for annual inspection on 13.6.2011, he had noticed some of the MO paid vouchers which are kept with the applicant with the LTMs of alike nature. Suspecting some foul play, ASP enquired with some of the payees who denied the payment. On questioning, the applicant accepted that he has not paid the money order amount to the actual payees and admitted his mistake by giving statement(Annexure-R2). Further he voluntarily credited Rs.7200 under UCR on 15.6.2011 at Honganur SO being the amount misused by him in connection with non payment of MOs(Annexure-R1). During the Past Work Verification of the applicant, another case of non payment of RD closure to the depositor was also reported by the ASP, Channapatna Sub Division in the said BO. The disciplinary action under rule-10 of GDS (C&E) Rules 2011 was initiated against the applicant vide Memo dtd.27.4.2012 for his lapses. The request of the applicant to avail the services of Defence Assistant was considered. He had requested for supply of documents and the same were supplied to him on 30.7.2012. Then he denied the articles of charge framed against him. After completion of inquiry, the IO submitted his report dtd.7.5.2015 holding all the charged as proved. The applicant submitted representation in the IO's report on 30.5.2015(Annexure-R3). Whereas, in para-4(iii) of OA, he submits that he has not submitted representation on the inquiry report. The applicant many times since from the initial stage of disciplinary proceedings up to the stage

of filing revision petition told lies. This is one such example. The DA on going through connected records, IO's report, representation of the applicant and the incidences that occurred since from preliminary hearing stage till the completion of inquiry and also bias petition against the IO which was not admitted by the competent authority etc. felt that the continuance of applicant in the department is detrimental to the interest of service and the image of the department. Considering all these aspects, the proceedings was issued on 28.9.2015 with the imposition of penalty of removal from engagement vide memo dtd.28.9.2015. The applicant had not submitted appeal against the orders of DA but preferred revision petition vide his representation dtd.4.6.2016 which was rejected vide PMG's memo dtd.19.3.2018. These orders are passed by the concerned authorities keeping in view the misconduct of the applicant and the findings of the Inquiry Authority.

5. The respondents submit that Smt.Gowramma, the RD account holder in her statement dtd.19.7.2011 and 28.7.2011 and Sri.Thammaiah, the husband of Smt.Gowramma in his statement dtd.6.2.2012 categorically denied the payment of RD closure amount in respect of account No.11702361 held by Smt.Gowramma on 3.12.2010. If the applicant was so honest in his work, necessity of recording the statements of Smt.Gowramma and Sri Thammaiah would not have arisen. During the course of inquiry, Smt.Gowramma on 23.3.2013 had replied that she had received the amount two years back without mentioning the exact date of payment i.e. 3.12.2010 and has told that she had received the amount at her residence which sufficiently proves that the applicant had not paid the same at the PO on 3.12.2010 as per Rule 137 of Rules for Branch Offices. Moreover, she told in reply to the question No.3 of the IO that

she did not remember who had paid the amount at her residence. This clearly shows that the BPM who is well known to the villagers has not paid the amount at her residence also. Smt.Gowramma has identified the signature on the statement recorded by Mail Overseer on 28.7.2011 and 19.7.2011 which are documentary proof highlighting the complaint of non receipt of Rs.3939/- by the depositor. From the say of Smt.Gowramma during inquiry, it is proved beyond doubt that the petitioner has not paid the amount of Rs.3939 on 3.12.2010 either at PO or at the residence of Smt.Gowramma and violated the provisions of Rule 137 of Rules for Branch Offices (6th Edition). The poor and illiterate villagers who are well spooned by the petitioner are so confused and obviously they were not able to remember the exact date which had occurred 2 years back. Charge relates to non payment of closure amount to the depositor on the date on which it was shown as paid as per the BO records. If at all they have received the amount on later date is also an offence. As per the provisions of the Rules, he should pay the amount on the date on which it was shown as paid. Many extraneous issues put forth by the applicant are just to deviate the things from the main issue.

6. The respondents further submit that Article 2 to 7 relates to non-payment of money orders to the payees on 14.6.2011. The date of payment shown as 14.6.2011 in the charge sheet is the date on which the money orders which were seized by the investigating officer and were incorporated in the BO daily account dtd.14.6.2011 of Ambadahalli BO. In this daily account only all the money orders which were shown as paid to the payees without actually paying are mentioned on the rear side of the BO daily account. Immediately, the investigating officer contacted the payees who denied the payment of money order to them. The applicant voluntarily accepted his guilt and credited the amount of Rs.7200/-

under UCR 15.6.2011 being the amount misused by him. No one has forced him to credit the amount. It is an afterthought that the applicant has taken a new turn to deny the charges. The standard proof in a departmental oral inquiry is that of preponderance of probability and not proof beyond reasonable doubt and findings on each articles of charge by the IO. During the course of inquiry, the payees in respect of Article-3 & 4 though expired at the time of examination of witness, their version taken at the time of investigation was taken into consideration by the IO based on the documentary, circumstantial and oral evidences adduced. The IO has carried out the inquiry as per the departmental rules laid down and there is no deviation of any procedure by the IO. The decision taken by the disciplinary authority and revision authority is in order and based on the provision of rulings for the violation of misconduct by the applicant. Being senior GDS in the department and one who was able to write and read in regional language denying his own statements shows the cleverness of the applicant who does not have moral right to accept his wrong doings and it shows his utmost dishonesty. Further the statements were personally written by the applicant in his own hands. Hence, the question of not understanding or denying the contents is out of context. Making false allegation on the officers without any valid substance to corroborate his contention does not have any credence value. After issue or charge sheet, he had made numerous representations to DA and Circle Office just to prolong the inquiry and during the course of inquiry also, by raising unwanted issues, it was prolonged for more than two years. The respondents have cited the orders of this Tribunal in OA.No.880/2013 dtd.26.8.2014(Annexure-R4), OA.No.1351/2015 dtd.29.8.2016(Annexure-R5)

and OA.No.416/2016 dtd.13.3.2017(Annexure-R6) in support of their contentions and stated that the OA being devoid of merit is liable to be dismissed.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The applicant has filed written arguments note. The issue in this case is in a very small compass. The applicant while functioning as GDS BPM/DP at the Branch Office had failed to pay the RD closure amount of Rs.3939 to Smt.Gowramma, the holder of the RD account and there are six other cases of the applicant not having paid the Money Order amount to the actual payees but has shown as paid at the time of inspection by superior officials. He had also given a statement vide Annexure-R1 admitting the guilt and requesting permission to credit the amount and giving similar letters admitting his guilt vide Annexure-R2. The applicant even during inquiry confirms that the signature in the statement is his but denies the content of these letters. In the case of the first charge, the person to whom the RD amount was supposed to have paid has given a statement that it was not paid at the time of preliminary enquiry by the superior officials but later during the disciplinary proceedings would turn around and say that in fact the money was paid to her, witnessed by her husband. As recorded by the inquiry officer, this RD account holder has given contradictory statements and could also not specifically cite as to the exact date on which the amounts were paid. The inquiry officer rightly came to the conclusion that with an ostensible purpose to save the applicant, the amount had been admitted to have been paid to her, even though in the original statement, the same was denied. In all such proceedings, due to the nature of the relationship existing in the area of operation of the persons maintaining the post office, it is found that the statements were retracted at a later stage stating that the amount was in fact

paid. Similarly, persons like the applicant when caught after committing any wrong, admit that a mistake has been committed and also remit the amount of malfeasance, but later claim no culpability on their side. As we have held in any number of cases before, the Postal Department runs a service in thousands of villages and while discrepancies are noticed with regard to temporary or permanent misappropriation, the matter has to be handled as a serious offence since otherwise, the reputation of the department and trust which ordinary villagers place on the department will be tarnished. The applicant was given enough opportunity to defend his case and based on the documentary evidence, it is clear that the OA lacks merit and it is therefore, dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexure-A1: Copy of the memo dtd.27.4.2012

Annexure-A2: Copy of the letter dtd.18.5.2015 with the inquiry report dtd.7.5.2015

Annexure-A3: Copy of the order dtd.28.9.2015

Annexure-A4: Copy of applicant's revision petition dtd.4.6.2016

Annexure-A5: Copy of the order dtd.19.3.2018

Annexures with reply statement:

Annexure-R1: Copy of letter dtd.15.6.2011

Annexure-R2: Copy of statements given by the applicant

Annexure-R3: Copy of the representation

Annexure-R4: Copy of the order in OA.880/2013

Annexure-R5: Copy of the order in OA.1351/2015

Annexure-R6: Copy of the order in OA.416/2016
