

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH, CHENNAI

OA/310/00457/2013

Dated this day of September, 2019

HON'BLE SHRI P. MADHAVAN , MEMBER (J)

and

HON'BLE SHRI T. JACOB, MEMBER(A)

M. Parthasarathy
No. 1/113, East Street,
Kattur B.O.,
Thanjavur Taluk and District
Pin – 614 019.

... Applicant

(By Advocate M/s R. Malaichamy)

Versus.

1. Union of India
Rep. by the Chief Postmaster General
Tamil Nadu Circle, Anna Salai,
Chennai 600 002.
2. The Postmaster General
Central Region (TN), Tiruchirappalli – 620 001.
3. Director of Postal Services
& Appellate Authority (Additional Charge)
Director of Postal Services
O/o. Postmaster General
Central Region (TN), Madurai 625 002.
4. Director of Postal Services (vacant)
Central Region (TN), Tiruchirappalli – 620 001.
5. The Senior Superintendent of Post Offices
Thanjavur Division, Thanjavur – 613 001.

...Respondents

(By Advocate Mr. S. Padmanaban)

ORDER

PER:- HON'BLE Shri T. JACOB, MEMBER (A)

The applicant has filed this OA seeking the following reliefs:

- "1. To call for the records of the 5th respondent pertaining to his charge sheet made in memo No.FIV/03/08-09 dated 24.07.2008 and his proceedings made in memo No. FIV/03/08-09 dated 30.04.2012, removing the applicant from (service) engagement and the order of the 3rd respondent which is made in memo No. STC/3-19/2012 dated 08.02.2013 and set aside the same; consequent to
2. direct the respondents to reinstate the applicant into service with all service benefits..."

2. The factual matrix of the applicant's case are as follows:

The applicant was appointed as Branch Postmaster, Kattur Branch Office in account with Vaduvur Sub Office w.e.f. 03.05.2002. While he was working as Gramin Dak Sevak (GDS BPM) Kattur BO, he was issued with a charge sheet under Rule 10 of Gramin Dak Sevak (Conduct and Employment) Rules, 2001 by the 5th Respondent in Memo No.FIV/03/08-09 dated 24.07.2008 for non-payment of withdrawal amount of Rs. 40,000/- to the depositor of SB account No.VDR 944739. He denied the charge against him. An inquiry under Rule 10 of GDS (C&E) Rules 2001 was conducted from 26.09.2008 to 30.11.2010. He was denied an opportunity to prove his innocence during enquiry. The Inquiry Officer concluded the proceedings in total violation of principles of natural justice and held that the charge against him was proved vide his report dated 07.01.2011. On receipt of the Inquiry Report, he submitted a representation to the 5th respondent stating that after taking a long time of 14 months, without considering the various points raised by him in reply to the inquiry report, he was removed from engagement vide proceedings dated 30.04.2012. He preferred an appeal

dated 13.06.2012 to the 4th respondent. The 4th respondent kept his appeal pending for several months without taking any steps. Therefore, he filed OA.23/2012 This Tribunal by order dated 04.01.2013 directed the 4th respondent to pass orders on his appeal dated 13.03.2012. But the 3rd respondent without any authority has rejected his appeal vide order dated 08.02.2013. Hence the applicant has filed this OA seeking the above reliefs on the following grounds:-

- a. The alleged charge against the applicant is the cheating of Rs.40,000/-. But there was no sanction issued to the depositor for the refund of alleged withdrawal of Rs.40,000/- made by the said Wahab on 15.02.2007.
- b. The said Wahab made a complaint only after three months and he is not a believable person since he has made deposit in fictitious names.
- c. The action of the Inquiry Officer as well as action of the 3rd and 5th respondents in removing the applicant from service is arbitrary and illegal.
- d. The 5th respondent in his statement of imputations opined that the applicant did not pay the withdrawal amount to the depositor. Hence, the charge sheet dated 24.07.2008 is itself liable to be set aside by this Hon'ble Tribunal.
- e. The 5th respondent in his letter addressed to the forensic department commended that he has suspicion over the Applicant with regard to withdrawal of amount from the depositor's account and thus, has expressed his opinion before proving the charge against the applicant.
- f. The 3rd respondent is not the competent authority to pass an order on the appeal preferred by the applicant. The 2nd respondent is the competent authority to pass order on

the appeal of the applicant. Hence, the order dated 08.02.2013 passed by the 3rd respondent is liable to be set aside by this Hon'ble Tribunal.

g. Though the 3rd respondent has no power to pass an order on the appeal of the applicant, he has without considering the various points raised by the applicant rejected the appeal by an order dated 08.02.2013.

h. Prosecution side mostly relied on the Forensic Science Lab opinion. The report indicates that the signature in the disputed (SB-7) withdrawal form on both sides are not of the depositor. But the depositor deposed that he had signed in one side (right side) and not in other side. At this point the Disciplinary Authority stated that the disputed withdrawal form was not one obtained from the depositor. If it is so, it should have been included in the charge memo. This was also not exposed during the course of inquiry. The opinion of Forensic Department is only a guidance to decide a case but not accurate.

3. The respondents have filed reply statement. It is stated therein that on receipt of complaint dated 10.05.2007 from one Sri K. Wahab, depositor of SB Account No.944739 regarding fraudulent SB withdrawal for Rs.40,000/- on 15.02.2007, the case was enquired by the Inspector Posts, Mannargudi South Sub Division. The depositor of the said SB account denied payment of SB withdrawal of Rs.40,000/-. But the applicant stated that he paid the withdrawal amount of Rs.40,000/- to the depositor after obtaining his signature in the SB-7 voucher. In view of the contradiction, the case was referred to the forensic department for verification of the signature of the depositor wherein it was opined that the signature available in both sides of the SB-7 voucher are not owned by the depositor and also did not match with

the specimen signature of the applicant. The applicant was held responsible for fraudulent withdrawal of Rs.40,000/- and was placed under 'put off' duty w.e.f. 28.06.2008 (FN). A Charge Sheet under Rule 10 of GDS (C&E) Rules, 2001 was issued to him. During preliminary enquiry held on 26.09.2008, the applicant denied the charge. The Inquiry Officer after conducting enquiry submitted his Inquiry Report dated 07.01.2011 holding the charge against the applicant as proved beyond doubt. The Disciplinary Authority after perusing the Inquiry Report, the report of the forensic department, the representation of the applicant and other documentary evidences imposed the penalty of removal from engagement on the applicant with immediate effect vide Memo dated 30.04.2012. The applicant preferred an appeal dated 13.06.2012 against the order of the Disciplinary Authority. When the decision on his appeal was under progress, he filed OA.23/2013 before this Tribunal, wherein by order dated 04.01.2013, this Tribunal disposed of the said OA directing the second respondent to pass orders on his appeal. The appeal was considered and rejected by the third respondent on 08.02.2013. Hence the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder and the respondents have filed reply to the rejoinder.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. It is not in dispute that the applicant while working as GDS BPM Kattur BO was issued with a charge sheet under Rule 10 of GDS (C&E) Rules, 2001 by 5th Respondent vide Memo dated 24.07.2008 for non-payment of withdrawal amount of Rs.40,000/- to the depositor of SB account No.VDR 944739.

7. The Article of Charge against the applicant reads as follows:-

“Article-I

That the said Sri M. Parthasarathy while working as GDS BPM, Kattur BO accounted one SB withdrawal for Rs.40,000/- in respect of SB account No.VD.955739 on 15.2.2007, but he did not pay the withdrawal amount of Rs.40,000/- to Sri K. Wahab, depositor of the said SB account.

Therefore, it is imputed that Sri M. Parthasarathy while working as GDS BPM, Kattur BO failed to follow the provisions of Rule 134 of BO Rules, Sixth Edition (corrected up to 31.3.82) and thereby failed to maintain absolute integrity and devotion to duty as required of him in Rule 21 of GDS (C&E) Rules, 2001.”

8. The said charge was based on a complaint dated 15.02.2007 received from Sri K. Wahab, depositor of SB Account No.944739 regarding fraudulent SB withdrawal of Rs.40,000/-. Controverting the above statement the applicant had stated that he paid the above withdrawal amount to the depositor after obtaining his signature in the SB-7 Form. The case was referred to the Forensic Department for verification of the signature. The Forensic Department opined that the signature available in both sides of the SB-7 were not owned by the depositor and also did not match with the specimen signature of the applicant. The applicant was held responsible for fraudulent withdrawal and was placed under 'off duty' w.e.f. 28.06.2008 (FN).

9. It could be seen from the statement of the applicant dated 31.08.2007 given before the IP, Mannargudi South Sub Division that the depositor had stated that on 14.02.2007, he had put his signature in right side of SB-7. But during enquiry on 19.06.2008, he had stated that he had put his signature at the right side corner of SB-7 on 14.02.2007 and he did not fill up the SB-7. From this it is clear that the depositor signed only in one side of SB-7. The applicant had also

admitted that he obtained the signature of the depositor at the application side on 14.02.2007. It is also evident from the expert opinion of Forensic Science that the signature in the SB-7 in which the withdrawal was effected was not the one obtained from the depositor. Another important point is that the applicant himself had admitted that the SB-7 was filled up by GDSMD/MC. During confronting enquiry on 19.06.2008 the depositor had stated that he had put his signature in the right side corner and did not fill up the form. But during enquiry on 25.02.2010, for Question No.4, the GDS MD/MC had replied that while filling up the SB-7 on 15.02.2007, the depositor's signature was not available. This itself proves that the SB-7 used by the applicant is not the one which was signed by the depositor. Based on the report of the IO, Forensic Expert, the representation of the applicant and other evidence and documents, the disciplinary authority had imposed the penalty of removal from engagement on the applicant with immediate effect vide Memo dated 30.04.2012.

10. With regard to appeal, the learned counsel for the applicant contends that as per Rule 13(2) of GDS (C&E) Rules, 2011 “a Sevak may appeal against an order imposing on him any of the penalties specified in Rule 9 to the authority to which the authority imposing the penalty is immediately subordinate.” In the case of the applicant, the 3rd respondent is not the appellate authority as the Director Posts in the 2nd respondent region is kept vacant.

11. The learned counsel for the respondents would argue that when the post of Director of Postal Services, Central Region is vacant, the statutory powers relating to appeal does not automatically lie to the 2nd respondent. The 2nd respondent is the revising authority and not the appellate authority. The 2nd respondent has the power to dispose of the petitions and not

appeals. Similarly, the version of the applicant that the 3rd respondent has no authority to reject the appeal is also false. As the post of DPS-CR was vacant, the 3rd respondent was ordered to hold additional charge of the post of DPS-CR. Holding additional charge will not deprive the power of 3rd respondent to dispose the appeals. Hence disposal of his appeal by the 3rd respondent is in order. The DPS, Southern Region, Madurai who held additional charge of DPS, Central Region, Trichy is an officer of equivalent rank and he could exercise both administrative and financial powers of DPS, Central Region, Trichy. He was not appointed to hold only current duties as alleged by the applicant. Hence the 3rd respondent has correctly exercised administrative powers vested with the post of 2nd respondent and disposed of the appeal of the applicant.

12. We have to see whether the statutory power is conferred on the 3rd respondent who has been ordered to hold additional charge of the post of DPS-CR to act as the appellate authority, and if so, whether the order passed by the appellate authority is sustainable in the eye of law.

13. The contention of the applicant is that according to Rule 24 (1)(ii) of the CCS (CCA) Rules, 1965, where a Government servant is Group 'C' or Group 'D' may prefer appeal to the authority to which the authority making the order appealed against is immediate subordinate. Nowhere it is stated in the said Rule that when the incumbent post of Appellate Authority is kept vacant, then the statutory power to dispose the appeal comes under the purview of the next higher authority.

14. It is also the contention of the applicant in the OA that Rule 48 of Postal Manual Vol-III clearly prohibits execution of statutory power by the incumbent looking after current duties.

The said Rule reads as follows:-

“48. An officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledge incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament or Rules, Regulations and By-Laws made under various articles of the Constitution.

15. The learned counsel for the respondents has produced a copy of the order issued by the Chief Post Master General, Tamil Nadu Circle, Chennai vide Memo No.STC/1-3/2011 Vol.II dated 28.05.2012 authorizing Sri. V.S. Jayasankar, Director, Postal Services, Southern Region, Madurai, to hold the additional charge of Director, Postal Services, Central Region, Tiruchirappalli until further orders on transfer of Sri Lakshmikanta Dash, Director, Postal Services, O/o PMG, Central Region, Tiruchirappalli to Karnataka Circle, Bangalore. In pursuance of the said order, Sri V.S. Jayasankar has assumed charge as Director, Postal Services, Central Region, Tiruchirappalli and has disposed of the appeal in that capacity.

16. Admittedly the CPMG, Tamilnadu has issued instructions to the Director, Postal Services, Madurai to hold additional charge of the post of Director, Postal Services, Tiruchirappalli till a regular incumbent is posted there. The issue now for consideration is whether the in-charge Director, Tiruchirappalli can exercise the statutory powers of the regular Director, Postal Services, Tiruchirappalli to dispose of the appeal in a disciplinary case. The competent authority when authorizing the Director of Postal Services(DPS) to take additional charge of another region of identical post, the officer so authorized by virtue of the status of DPS has full authority available to DPS of the other region. This authority and power includes statutory powers as well. This authorization is not comparable to hold the “current charge” as in

the case of any officer sub-ordinate to the DPS, in whose case alone the substantial powers cannot be exercised. Thus, the appellate order is passed by the competent authority. The applicant has the legal right to challenge the order of the appellate authority before the PMG, Trichy on merit if he is so advised. The DPS Madurai has on the basis of authorization by the competent authority has rightly exercised the powers of appellate authority. Indeed, it is in pursuance of the order of the Tribunal in the earlier rounds of litigation. No legal bar, whatsoever, thus can be attributed in this regard. The submission of counsel of the applicant that in the case of contingency of a vacancy of the post of DPS, it is PMG who shall act as the appellate authority may hold good only when the post of DPS is vacant or any sub-ordinate authority being asked to perform the “current duties” of DPS in addition to his own and not when a DPS of another region authorized to take additional charge. The latter case would mean enlargement of territorial jurisdiction of the DPS to utilize all powers of the DPS.

17. The appellate authority relates to the post and not to the incumbent of the post. Hence in the appeal case of the applicant, the appellate authority is the Director of Postal Services. As DPS-SR held the additional charge of the post of DPS-CR, the 3rd respondent disposed of the appeal preferred by the applicant. This has been clearly mentioned in the appellate order also. The contention of the applicant that the statutory powers relating to the appeal automatically lie to the 2nd respondent when the post of DPS is vacant is not acceptable. There is no such rule also. The 3rd respondent was directed to hold additional charge of the post of DPS-CR and as such he was vested with administrative powers of the post of 4th respondent. The 2nd respondent is not the appellate authority to the applicant but revising authority. Hence disposal of appeal

by 3rd respondent is in order.

18. That apart, it is trite law that the scope of interference of this Tribunal with the punishment imposed in a disciplinary case is very limited. It is not the decision but the decision making process that has to be subjected to judicial scrutiny. In the instant case, no fault could be found on the decision making process. The applicant has been given due opportunity to explain his case. The enquiry has been conducted as per the procedure laid down under Rule 14 of CCS (CCA) Rules, 1965. Thus, principles of natural justice has been fully complied with. In so far as quantum of penalty is concerned, the Hon'ble Apex Court has time and again directed that the Courts/Tribunals should not interfere with the punishment imposed by the disciplinary authority unless the punishment so imposed is “shockingly disproportionate” to the charges proved against the delinquent.

19. In the conspectus of the above facts and circumstances of the case and the discussions hereinabove, we see no reason to interfere with the impugned orders of the respondents.

20. In the result, the OA is liable to be dismissed and is accordingly dismissed. No costs.

(T. JACOB)
MEMBER (A)

(P. MADHAVAN)
MEMBER (J)

.09.2019

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