

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No.290/00090/2014

Jodhpur, this the 09th August, 2019

Reserved on 19.07.2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Phula Ram S/o Shri Sawa Ram, aged 48 years, B/c Meghwal, R/o village Poshana, Tehsil Sayla, District Jalore, Rajasthan.

.....Applicant

By Advocate : Mr. Hemant Shrimali & Shri Harish Jangid.

Versus

- (1) The Union of India through the Secretary, Ministry of Communications, Departmental of Postal Services, Government of India, Dak Bhawan, New Delhi.
- (2) The Director, Post Master General, Office of Postal Services, Rajasthan Western Region, Jodhpur-342001.
- (3) The Superintendent of Post Offices, Sirohi Dak Mandal, Sirohi.
- (4) The Assistant Superintendent of Post offices, Head Post Office, Jalore.

.....Respondents

By Advocate : Mr. K.S. Yadav.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“(i) It is, therefore, most respectfully prayed that looking to the above mentioned facts and circumstances of the matter, the order dated 31.01.2011 (Annexure-A/1) passed by disciplinary authority and order dated 21.11.2013 (Annexure-A/7) passed by appellate authority may kindly be quashed and set aside and respondents may kindly be directed to reinstate the applicant on the post of GDS BPM along with all consequential benefits or pass any appropriate order or direction which this Hon'ble thinks fit in the interest of justice.”

2. Brief facts of the case as stated by the applicant are that the applicant was appointed on the post of EDBPM, Pantheri vide order dated 30.10.2001. Since his appointment, he was working as Gramin Dak Sevak, Shakha Dakpal, with utmost sincerity and honesty. On 15.01.2010, he was served with a charge sheet under Rule 10 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001. The sole charge levelled against him is that the applicant while working on the post of GDS Shakha Dakpal, Dhansa from 01.06.2009 to 12.06.2009, on 13.06.2009 during visit of Assistant Superintendent, Post Office, Jalore, at the time of physical verification of cash and postal tickets and on their calculation as per record of Branch, Rs.81097/- cash was found less. It is further submitted in the charge that the applicant accepted in its evidence on 13.06.2009 made before the Assistant Superintendent Post Office, Jalore, that he has misused the government amount for personal and house hold work. Accordingly, he violated Rule 11 of the Post Office Manual 7th Edition and Rule 21 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001. In reply to that the applicant submitted detailed representation on 25.02.2010 whereby applicant specifically rebutted the allegation allegations levelled against him. The applicant stated he was physically and mentally ill from 01.06.2009 and due to security reason, he took the cash amount to his house

on 12.06.2009 and on 13.06.2009 during visit of Assistant Superintendent, Post Office, he was not allowed by ASP to go his house and bring the amount. On 13.06.2009 the day was Saturday and on 14.06.2009 the day was Sunday. It is only on 15.06.2009 i.e. on the next day i.e. on Monday, the applicant deposited the entire amount and therefore the charge of misusing the Government money for personal and household work is baseless and away from truth. On the said denial of charges, an Inquiry officer was appointed on 30.03.2010 to inquire into the charge levelled against him. The Inquiry Officer afforded due opportunity of hearing to the presenting officer as well as defence nominee and after recording the statement of witness found the charges partly proved against the applicant and submitted his report before the Disciplinary Authority. It is relevant to mention here that the Inquiry Officer gave the finding that the Shakhia Dakpal may carry the cash in his personal custody to his residence and during inspection, same is to be submitted. But since the applicant was not given the due opportunity to produce the same on 13.06.2009, hence same was deposited on 15.06.2009. The Disciplinary Authority on receipt of inquiry report forwarded the same to the applicant with a direction to submit his representation within 15 days from the receipt of the same. Against which, the applicant submitted his representation wherein he stated that the statement recorded on 13.06.2009 by the Assistant Superintendent, Post Office was under duress and that he had requested the Assistant Superintendent, Post Office that he would go home and bring the cash which is kept in safe custody. It is further submitted that thereafter the

Disciplinary Authority without considering the facts and circumstances as well as the evidence recorded during the course of inquiry as well as the inquiry report, passed the impugned order dated 31.01.2011 whereby the applicant was removed from service (Annexure-A/1). The applicant submitted that on the same charge, an FIR was also lodged against the applicant at Police Station Sayla, Jalore and police authority after investigation filed the challan before the Court of competent jurisdiction under Section 409 IPC. The Trial Court after completion of trial, vide order dated 21.09.2012 acquitted the applicant from the charges levelled against him. It is further submitted that respect of his acquittal from the criminal court, the respondents did not pay any heed, therefore, the applicant preferred departmental appeal under Rule 13 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2000 before the Appellate Authority on 14.05.2013 (Annexure-A/4). In the meantime, criminal appeal was preferred by the State of Rajasthan against the order of the Trial Court Jalore dated 21.09.2012 was also dismissed by the District & Sessions Judge jalore vide judgment dated 11.07.2013. Thereafter, the applicant submitted departmental appeal on 21.09.2013 mentioning therein that the order passed by the learned District & Sessions Judge, Jalore may kindly be tagged with the departmental appeal and same shall be considered by the appellate authority. It is submitted that the appellate authority vide its order dated 21.11.2013 without considering the grounds raised by the applicant in his appeal dismissed the same in limine on the ground of delay (Annexure-A/7). Therefore, the applicant has filed the present OA for quashing and

setting aside the order dated 13.01.2011 (Annexure-A/1) passed by the Disciplinary Authority as well as the order dated 21.11.2013 (Annexure-A/7) passed by the Appellate Authority. The applicant has also prayed that he may kindly be reinstated to the post of GDS BPM with all consequential benefits.

3. In the reply, the respondents denied that the ASP did not allow the applicant to go home on 13.06.2009 and bring back the amount of Rs.81097/- for depositing the same in Post Office. It is further submitted that after due process of law and giving ample opportunity to the applicant the enquiry was conducted. It is also submitted that the applicant while working as GDSBPM in Patheri Branch Post Office, Jalore misappropriated Government money worth Rs.81097/- and only on visit of ASP, Jalore the said account was found short. The respondents denied the fact that the applicant was physically and mentally fit and he was not able to perform his duty, whereas he never applied for leave on the ground of illness and did even furnish a single application for leave on medical grounds. It is an afterthought story put by the applicant that he was not allowed to go home to collect the amount and deposit the same. It is further submitted that it was the duty of the applicant to produce complete cash and stamps during the visit by the visiting authority. Further, if the applicant kept the cash at his home then why he credited the amount in two instalments at Dhansa DSO under ACG-67 receipt No.13 for an amount of Rs.58,000/- and second vide receipt No.14 dated 15.06.2009 for an amount of Rs.23,097/- after 2 days hence the charges were framed as per available records. In fact,

the applicant himself had admitted in clear terms in his statement given to inspecting authority that cash amounting to Rs.81097/- had been used by him for his personal use and therefore the statement of the applicant that he was not allowed to go home cannot be believed. Even if the said amount was in the house of the applicant than he could have deposited the said amount at one instance but he had deposited the same in two different instalments which will be clear that the entire amount was not available with him but the same has been managed by him from somewhere. The applicant was provided full and due opportunity of hearing during inquiry and after hearing both side the charges levelled against the applicant has been proved in the enquiry report. It is submitted that question of allowing time to go to the place where the cash is kept for safe custody and bring the cash, arises only in the cases where there is pleadings made before by the GDS BPM concerned that the cash has been kept by him at home or other place for safety custody and accordingly he requires time for brining the same. The Disciplinary Authority after going through all the report and findings of the enquiry officer and on the basis of the representation of the applicant, passed an order of dismissal from service on 31.01.2011. Thereafter, the applicant preferred an appeal after a period of more than 2 years i.e. 14.05.2013 without giving sufficient cause or reason for the delay in submitting his appeal. The respondents also pointed out that the applicant had submitted a copy of his acquittal from the criminal Court but it is clear that the departmental enquiry is distinct from the criminal proceedings as there may not be same standard of proof to prove the charges in

departmental inquiry proceedings as in the criminal proceedings. Therefore mainly on acquittal in the criminal case, the question of reinstatement of the applicant does not arise and the applicant cannot claim the same as a matter of right. It was also pointed out that as per Rule 14 of GDS (Conduct and Engagement) Rules, 2011, an appeal against an order of punishment can be preferred within a period of three months of receipt of copy of punishment by the delinquent Sevak. In the present case, the order of the Disciplinary Authority was received by the applicant on 03.02.2011 but against the said order, appeal was preferred by the applicant only on 14.05.2013 i.e. after a period more than two years and that too without explaining any cogent/sufficient reasons in filing the same belatedly. Therefore, the Appellate Authority has rightly rejected the appeal on the ground of delay. The respondents therefore states that no interference is required from this Tribunal in impugned order passed by the Disciplinary Authority as well as Appellate Authority.

5. Heard Shri Hemant Shrimali, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for the respondents and perused the pleadings available on record.

6. Learned counsel for the applicant besides reiterating the facts mentioned in the OA states that the Inquiry Officer has not found charge fully proved but the same was found partly proved. He further pointed out that on 13.06.2009, the applicant was ready to go home to collect the Government money which he has kept for security purpose at his residence, but he was not allowed to go home and collect the said amount. As the next

day was Sunday, he has immediately deposited the said amount in two instalments on 15.06.2009. He further submitted that the Disciplinary Authority has erred in not considering his request to go home and allow him to deposit the said amount on 13.06.2009 itself. It has been further submitted that the statement given by the applicant on 13.06.2009 before the ASP was given under his pressure, and this fact was also not considered by the Disciplinary Authority while passing the impugned order. He further submits that merely depositing the said amount in two instalments by the applicant was found suspicious and the charges were held as proved accordingly. Therefore, holding the applicant guilty, is without any basis and justification. The Disciplinary Authority gravely erred in not considering the reply submitted by the applicant that applicant due to physical and mental illness gave the statement as dictated by the Assistant Superintendent Post Office and further he requested several times to permit him to go home but he was not provided such opportunity and as such, charge was partially found proved against the applicant by the inquiry officer. The Disciplinary Authority on the other hand, without assigning any reason disagreed with the finding of the inquiry officer and found the charge proved against the applicant only on the ground that he deposited the amount in two instalments. Therefore, the dismissal order passed by the disciplinary authority is liable to be quashed and set aside. He further submitted that the applicant authority have gravely erred in not considering the entire facts and circumstances of the matter and particularly the fact that on the same charge, criminal proceedings was initiated and applicant was

acquitted by the Court of competent jurisdiction. But, on the other hand, the Appellate Authority without adverting to merit of the case, dismissed the appeal solely on the ground of delay. Therefore the applicant prayed that in the interest of justice, the order passed by the Disciplinary Authority as well as Appellate Authority are liable to be quashed and set aside. In support of his arguments, he relied upon the following judgments:-

- (i). Shankar Dass v. Union of India & Anr. (Civil Appeal No.480(N) of 1973 decided on March 12, 1985), reported in (1985) 2 SCC 358.
- (ii) Hardeo Jat v. State of Rajasthan Y Ors. (SB Civil Writ petition No.2069/94 decided on 13.04.2005).
- (iii) Satya Narayan Mohata v. Central Bank of India & Ors. (SB Civil Writ Petition No.3484 of 1990 decided on 02.09.2005, reported in 2005 (9) RDD 3636 (Raj.).
- (iv) Bhopal Singh v. State of Rajasthan & Ors, (SB Civil Writ Petition No.5639 of 2003 decided on 26.07.2005) reported in (2005 (7) RDD 2590 Raj.
- (v) N. Sengodan v. Deputy Commissioner of Police & Anr. (WP no.2213 of 2007 decided on 29 March, 2010 of Madras High Court.
- (vi) Bheru Lal v. The Chairman, Udaipur Central Cooperative Bank Limited & Ors, (DB Civil Special Appeal (Writ) No.40/2009) decided on 29.07.2015 of Rajasthan High Court.
- (vii) Union of India v. CAT, Jodhpur Bench & Anr. (DB Civil Writ Petition No.2051/2015) decided on 20th July, 2015 of Rajasthan High Court.
- (viii) M/s Hindi Press vs. Regional Provident Fund Commissioner and others (CWP No.9752 of 2010, decided on 08.05.2013) of Punjab and Haryana High Court.
- (ix) Union of India v. CAT & Arn. (DB Civil Writ Petition No.7375/2010 decided on 20.02.2015 of Rajasthan High Court.
- (x) Roop Singh v. Punjab National Bank & Ors (Civil Appeal No.7431 of 2008 decided on 19.12.2008 of Supreme Court of India.

7. On the other hand, the learned counsel for the respondents while arguing the matter reiterates the facts mentioned in the reply and states that the applicant was afforded proper opportunity of hearing by the Enquiry Officer and further after following the due procedure, the penalty of dismissal from service has rightly been passed by the Disciplinary

Authority. He further submits that merely acquittal in criminal proceedings cannot give a ground for reinstatement of the applicant. In the departmental matter the acquittal in criminal case cannot be held to be a bar to hold departmental proceedings. He further submits that the question of misappropriation of money and admission of the same by the applicant before the Enquiry Officer is a very serious offence and further if the amount/ cash in question has been kept by the applicant in his residence for security purpose then he could have deposited the same on the very same day i.e. 13.06.2009 and merely making statement that he was not allowed by Assistant Superintendant of Post Office to go home to deposit the same is only an afterthought story. He further submits that the Assistant Superintendent of Post Office has not denied the applicant to go home whereas the fact is that he has admitted before the ASP that he has misused the Government money in his personal use. Further, there is no such application on record that the applicant has requested before the ASP to go to home for depositing the amount/cash in question. Further, the applicant has deposited the amount in two instalments on 15.06.2009, which clearly shows that the whole amount is not in his residence and after managing from somewhere he deposited the same. Therefore, the applicant has misappropriated the Government money for his personal use, which was proved by the Inquiry Officer in his inquiry report after affording reasonable opportunity of hearing to the applicant and the Disciplinary Authority has also rightly passed the impugned order. He further submits that since the appeal has been filed by the applicant after more than 2 years

delay, therefore, the appellate authority has rightly dismissed the appeal. In support of his arguments, learned counsel for the respondents relief upon the following judgments:-

- (i) Suraj Mal vs. Union of India (DB Civil Writ Petition No.4495/2008 decided on 29.07.2015 of Rajasthan High Court.
- (ii) Noida Entrepreneurs Association v. Noida & Orthers reported in SCC 2007 Vol. 10 page 385.
- (iii) Senior Superintendent of Post Offices v. Gopalan, reported in 1997 11 SCC page 239.
- (iv) Smt. Sheela Devi v. Union of India & ors (DBC Writ Petition No.2201 decided on 05.10.2010 of Rajasthan High Court.

8. Considered the rival submissions made by both the counsels and also perused the pleadings available on record as well as the judgments cited by learned counsels for both sides.

9. It is clear that on surprise visit of ASP, Jalore to Phanteri BO (Dhansa), during physical verification of cash and stamps, an amount of Rs.81097/- was found short. The applicant could not produce complete cash and stamps during the visit of the ASP, Post Office, Jalore and therefore it was observed that the applicant has misappropriated the Government money for his personal use, and for which a charge sheet under Rule 10 was issued to the applicant on 15.01.2010. After completion of oral inquiry by Inquiry Officer, the punishment order of removal from service was awarded by the Disciplinary Authority vide order dated 31.01.2011. The applicant, thereafter, preferred an appeal before the Appellate Authority, which was also dismissed by the Appellate Authority on the ground of delay. The

applicant therefore has approached this Tribunal for quashing and setting aside the order of the Disciplinary Authority as well as Appellate Authority.

10. We have also considered the judgment cited by both the sides. During the course of arguments learned counsel for the respondents heavily relied upon the judgment passed in Suraj Mal's case (*supra*) and submits that the same controversy has already been settled by the Tribunal as well as by Hon'ble High Court of Rajasthan. We have perused the said judgment and found that in that case pursuant to the departmental action taken by the respondents, the applicant was imposed a penalty of dismissal from service and appeal against the said penalty was also rejected. Thereafter, the applicant has filed the OA which was dismissed by the Tribunal in the year 2000. However, after a period of about seven years, the applicant has moved a fresh OA on the ground that since he has been acquitted from the criminal charge by the Trial Court, he should be reinstated. Therefore, the facts of that case are different from the facts of the present case, as in the present case the applicant has only filed one OA i.e. present and has not approached this Tribunal in earlier round of litigation whereas in the Suraj Mal's case, the controversy has already been decided by the Tribunal and denied to reopen the same on the ground of acquittal. Further in the present case the appeal of the applicant has not been decided on merit. Therefore, the facts and circumstances of this are different from the Suraj Mal's case.

11. It is settled law that the Tribunal while deciding the disciplinary matters cannot sit as an Appellate Court and cannot reopen the facts and evidence. Therefore we are not inclined to reopen the facts and evidence in

this case. However, it is the duty of the Tribunal/Court to see that there is no illegality, discrimination, malafide or procedure fault on the part of the respondents while deciding the disciplinary matters. In the present case, we note that the appeal of the applicant has been dismissed by the Appellate Authority only on the ground of delay. Further, it is also noted that the applicant was acquitted in the criminal case by the Trial Court, Jalore on 21.09.2012 and against that order, the criminal appeal was preferred by the State of Rajasthan which was also dismissed by the District & Sessions Judge Jalore vide judgment dated 11.07.2013. Thereafter, immediately the applicant submitted departmental appeal on 21.09.2013 mentioning therein that the order passed by the learned District & Sessions Judge, Jalore may kindly be tagged with the departmental appeal and same shall be considered by the appellate authority. But, it is seen that the Appellate Authority vide its order dated 21.11.2013 dismissed the appeal of the applicant without considering the grounds raised by the applicant in his appeal only on the ground of delay. Therefore, in our opinion, action of the Appellate Authority is not just and proper as the Hon'ble Supreme Court in catena of judgments have held that the matter should be decided on merit rather than technicalities. Further, the Courts/ Tribunal should have interfered in the cases where there is any illegality, procedure fault or mala fide are found in the action of the respondents while deciding the matters.

12. In view of the discussions made above, it is clear that the order of the Appellate Authority is not just and proper as the appeal of the applicant has been dismissed in limine on the ground of delay of 2 years in filing the

appeal. Therefore, order of the Appellate Authority dated 21.11.2013 (Annexure-A/7) is quashed and the Appellate Authority is directed to decide the appeal of the applicant afresh after affording an opportunity of hearing to him and also taking into consideration, the facts that the applicant has already been acquitted in criminal case for the same charges framed against him and further the punishment order imposed on the applicant from dismissal from service by the Disciplinary Authority is reasonable or not. The Appellate Authority is accordingly directed to pass a reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this order.

13. The OA is thus partly allowed with the above observations. No order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member