

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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OA No.290/000299/2013 Pronounced on : 10.07.2019
(Reserved on : 01.07.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Kishan Lal, S/o Sh. Birbal Ram, aged about 41 years, R/o Village & Post Raneri, via Phalodi, District Jodhpur, Rajasthan, Ex GDS BPM, Post Raneri District Jodhpur, Rajasthan.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Director, Postal Services, Office of Post Master General, Rajasthan, Western Region, Jodhpur, Rajasthan.
3. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.

RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav, for R1 to R3.

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ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "i) By an appropriate writ order or direction impugned order dated 30.11.2012 at Annexure A1, and if during the pendency of the case any order on appeal pending before respondent no.2 is passed against the applicant be declared illegal and be quashed and set aside as if they were never passed against the applicant.
- ii) By an order or direction respondents may be directed to reinstate the applicant in service from the date of removal along with all consequential benefits including arrears of pay and allowances etc along with 12% interest per annum."
- iii) By an order or direction respondents may be directed to produce entire record of enquiry proceeding before the Hon'ble Court.
- iv) By an order or direction exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- v) Any other relief which is found just and proper be passed in favor of the applicant in the interest of justice.
- vi) That by an appropriate order or direction impugned appellate order dated 20.08.2013 at Annexure A1/a be declared illegal and be quashed and set aside."

2. This OA has been made against the impugned order No.F9-1/9-10/SP/2, dated 30.11.2012 (Annexure A1) passed by respondent no.3 wherein the applicant has been removed from service and impugned appellate order no.STA/WR/44-A/17/2013, dated 20.08.2013 (Annexure A1(a)) passed by respondent no.2 wherein the appeal has been dismissed.

3. The factual matrix of the case is that the applicant was initially appointed on the post of GDS BPM with effect from 27.12.1991. The applicant was issued memo of charge-sheet dated 20.11.2009 (Annexure A2) under Rule 10 of GDS Rules, 2001 with the allegation that while working on the post of GDS BPM at Raneri Post Office on 04.06.2009 made entry in BO daily account in receipt account of Rs. Five Lac and send to accounts office Phalodi but in branch office

accounts, the said amount of Rs. 5 lakhs has been deleted and balance dated 04.06.2009 has been reduced. 2nd and 3rd charge is not seeing and not acknowledging the receipt of Difference account in different dates as mentioned in charge no.2 and 3 in treasure's book of Phalodi SO and failing in reporting the non-entering / advising the remittance of cash in BO slips by Raneri SO to Phalodi SO and higher authorities. After receiving the charge sheet by the applicant vide letter dated 24.11.2009 (Annexure A3), denied the charges and requested for enquiry into the charges. Thereafter, respondent no.3 vide letter dated 31.08.2010 (Annexure A4) appointed Enquiry Officer and Presenting Officer to enquire into the matter. Thereafter, enquiry was conducted by Enquiry Officer and submitted the same before respondent no.3 who vide letter dated 29.02.2012 (Annexure A5) along with enquiry report forwarded to applicant and asked to submit representation within 15 days from the date of receipt of the above letter. Against the said enquiry, applicant submitted the representation dated 15.03.2012. Thereafter, on receipt of representation dated 15.03.2012, respondent no.3 vide impugned order dated 30.11.2012 (Annexure A1) removed the applicant from service without considering the evidence on record and the charge sheet leveled against the applicant.

4. It is further stated in the OA that the impugned order at Annexure A1 dated 30.11.2012, applicant filed an appeal dated 19.12.2012 (Annexure A6) before respondent no.2 that the charges documentary evidence and the evidence of prosecution witnesses as

well as the rule position with articles of charges clearly stated that entire evidence led during the course of enquiry including the documents were not considered and just proved the charges and requested the respondent no.2 to set aside the order of removal from service and impart justice to him. The order of removal has been passed against the applicant on the charges other than mentioned in the charge sheet rather on the extraneous charges. He made reminder dated 19.01.2013 (Annexure A7), 19.02.2013 (Annexure A8) and 21.03.2013 (Annexure A9), but of no vain. Respondent no.2 without considering the points raised in the memo of appeal and without any application of mind has rejected the appeal vide impugned order dated 20.08.2013 (Annexure A1(a)).

5. In the written statement filed on behalf of respondents, it has been stated that that applicant was served with a Memo of charges under GDS Rules (G&E) 2001 vide SSPOs Jodhpur Memo No.F9-1/20-10-11, dated 10.11.2009. After detailed inquiry and on the basis of findings of inquiry report the applicant was punished with penalty of removal from service vide SSPOs Jodhpur F0-1/09-10/Supp/2, dated 30.11.2012. The applicant has preferred an appeal dated 19.12.2012 against impugned order dated 30.11.2012 before respondent no.2. The said appeal has been decided by the Appellate Authority on 20.08.2013, but the applicant filed OA without waiting for decision on appeal by the appellate authority. The OA may be dismissed on this ground at once that he has not exhausted all the departmental channels of appeal. The applicant during the course of inquiry of Phalodi fraud case has admitted in his self

written statement dated 25.06.2009 that he had made correction in BO accounts. In that while working as GDS BPM Raneri (Phalodi) he had shown Rs.5, 00,000/- on 04.06.2009 in BO accounts and BO daily account of Raneri BO in receipt side and dispatched the BO daily account to Phalodi LSG SO which was his account office but after dispatch of BO daily accounts he made corrections in BO accounts and reduced the balance of BO by Rs.5,00,000 by deleting the entry of Rs.5,00,000/-.

6. It has further been mentioned that a fraud to the tune of Rs.1.97 crore was committed by Shri Arjun Ram Bishnoi SPM, Phalodi and Shri Pancha Ram Bishnoi, the then P.A. (TR) Phalodi. The said fraud was detected on 04.06.2009 and the applicant by his act and omission facilitated the above two main offends. Amount of Rs.5, 00,000/- was not remitted by Phalodi LSG so to Raneri BO on 04.06.2009 accordingly the applicant should have not taken this amount in to account of his BO but he has taken into account this amount without receipt of cash and thereafter, on the same day, he deleted the entry of receipt of cash without any reason in BO account. On implementation of MGNREGA the department is obliged to provide cash to the state authorities for payment of MGNREGAs labourers in a time bound manner. Therefore, to meet the requirement and on placing of demand of cash by GDSBPMs in rural areas, the cash as per demand placed by them is remitted by various mode by their account office. The Raneri BO falls under account jurisdiction of Phalodi LSG SO. Sometimes, the cash is being sent by cash/mail overseers and sometimes collected in person from their

account office by GDSBPM. **But in this matter, no cash was remitted by accounts office i.e. Phalodi LSG SO but acknowledged falsely by the applicant to adjust and defrauded amount by SPM/Treasurer Phalodi.** The question arises as to why he had taken into account of BO on 04.06.2009 and why he had deleted the entry of receipt on the same day. The allegation was clearly based on documentary evidence and witnesses and also admitted by the applicant in his written statement dated 05.06.2009 and 25.06.2009 and the allegation leveled was proved during course of inquiry beyond doubt and he was punished appropriately by disciplinary authority keeping in view gravity of offence.

7. It is further added that although the applicant has not pocketed Rs.5,00,000/- directly but he has facilitated the main two offenders of Phalodi fraud case by acknowledging false cash. The applicant was well aware with the conspiracy of main offenders that they are misappropriating Govt. cash by showing false remittance but the amount did not report the facts to his higher authorities and in influence of them he had acknowledged Rs.5, 00,000/- falsely and thus he supported the main offenders and facilitated them to commit fraud which had gone to the tune of Rs.1.97 crores otherwise it would have been detected at an earlier stage.

8. Heard Shri S.K. Malik, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for respondents no.1 to 3 and perused the pleadings and documents placed on record.

9. The factual matrix of the case is that the applicant was initially appointed on the post of GDS BPM with effect from. 27.12.1991. The applicant was issued memo of charge-sheet dated 20.11.2009 (Annexure A2) under Rule 10 of GDS Rules, 2001 with the allegation that while working on the post of GDS BPM at Raneri Post Office on 04.06.2009 made entry in BO daily account in receipt account of Rs. Five Lac and send to accounts office Phalodi but in branch office accounts, the said amount of Rs. 5 lakhs has been deleted and balance dated 04.06.2009 is reduced. The charge sheet does not mention any of these above irregularities happened on 04.06.2009 nor any of such irregularities was high-lighted during the process of inquiry.

10. The 1st charge has made it out that Shri Kishan Lal as BPM at Branch Raneri on 04.06.2009 made an entry of receipt of Rs.5 lakhs by hand cash and this entry appears at column 3. The detailed accounts entries also mentioned Rs.5 lakhs as received from accounts office after issuing these detailed accounts. It is alleged that Shri Kishan Lal, deleted the entry of Rs.5 lakhs and showed the closing balance as Rs.1,14,234/- only. This has been admitted by him on 05.06.2009. The 2nd charge provides details of accounts on various dates in the years 2008-2009 which was found to be erroneous. It has been stated that report on the erroneous account entries was not sent by Shri Kishan Lal to the accounts office at Phalodi. Thereby violating Rule 168 and Rule 37 of GDS Rules. The 3rd charge reiterates the fact that on the 4th of June, Phalodi had issued a slip which has been received in Raneri Post Office. The 4th

charge relates to the narration by the witnesses who appeared in the inquiry conducted by the Inquiry Officer.

11. It appears from a perusal of the details in the charge sheet that the case made out is not one of embezzlement or misappropriation of funds but of carelessness in the maintenance of the accounts. In the State of Haryana Vs. Om Prakash, Constable in Civil Appeal No.89 of 1979, decided on 11.04.1990, the Hon'ble Supreme Court has taken a view that punishing authority is not entitled to take into consideration the alleged conduct of fabrication while imposing the punishment of reduction in rank. It has also seen that as per the GDS rules, the GDS BPM is not authorized to pass transactions in the Post Office accounts beyond the limit of Rs.10,000/- per transaction. In the present case, the amount of Rs.5 lakhs was stated to have been for disbursal of payments through the Raneri Branch Post Office. The statutory provision under which the Branch Post Master who is a departmental authority was given this authority has not been clearly stated.

12. The case made out is that GDS BPM Shri Kishan Lal, applicant facilitated that misappropriation of funds by the Post Office, Phalodi by making the entry in the PO Diary Account of having received Rs.5 lakhs on 04.06.2009 and having sent it to the Accounts Officer, Phalodi. It may be mentioned that no charge of conspiracy between the applicant GDS and the staff at PO Phalodi has been mentioned anywhere in the charge sheet. The punishment of removal from service is disproportionate and not commensurate. Applicant's counsel relies on case law in the case of **Union of India & Ors. Vs.**

Dwarka Prasad Tiwari, in Civil Appeal No.4454 of 2006 with No.4455 of 2006, decided on 12.10.2006; [(2007) 1 SCC (L&S) 135].

13. While it would appear that the application of the GDS Rules, 2001 by could have been better, the fact remains that the re-appreciation of evidence is not permissible as has been stated in various judicial pronouncements. Learned counsel for the applicant submitted that the applicant has challenged the issue of memo of charge sheet dated 20.11.2009 (Annexure A2). The grounds adduced by the learned counsel for the applicant during his submissions are as follows:-

(A) The applicant has been punished for misconduct which has not been detailed in the charge sheet it is not the case and embezzlement of misappropriation of funds but merely where there is carelessness in the manner in which the accounts have been maintained. Case relates: **State of Haryana Vs. Om Prakash, Constable** in Civil Appeal No.89 of 1979, decided on 11.04.1990; [(1990)14 Administrative Tribunals Cases 823].

(B) The learned counsel for the applicant mentioned that the punishment has been awarded based on Preliminary Inquiry only.

(C) He mentioned that the inquiry report was not a reasoned report and as it should have also been the review by the Appellate Authority were not reasoned reports. Case relates: **Anil Kumar Vs. Presiding Officer and Ors.** in Civil Appeal No.4692 (NL) of 1984, decided on 08.05.1985.

(D) The learned counsel for the applicant also made out the case that evidence which was equally supporting of the case of the applicant has been omitted by the Inquiry Officer and there has been no application of mind of the Inquiry Officer and the Disciplinary Authority.

(E) The production of evidence by the Inquiry Officer and which the punishment has been based it is not adequate for awarding punishment under GDS Rule 10. Case relates: **Roop Singh Negi Vs. Punjab National Bank & Ors.** in Civil Appeal No.7431 of 2008, decided on 19.12.2008; [(2009) 2 SCC 570. The contents of the evidence have not been co-related adequately.

(F) It is, therefore, an extra departmental employee as such the applicant is not subject to CCS (CCA) Rules under which he has been proceeded against but only subject to the GDS Rules.

(G) The GDS BPM is not authorized to pass transactions in the Post Office accounts beyond limit of Rs.10,000/- per transaction. As such the alleged misappropriation of Rs.5 lakhs on the basis of which he has been awarded punishment for removal from service is not understandable.

(H) No case of embezzlement has been made out by the respondent department but only that of irregularity in the manner in which accounts have been maintained and entries have been passed. Not being an accounts expert of GDS BPM is not expected to be perfect in this field. In view of this, a punishment and other penalty was given is not justifiable.

(I) The case made out is that GDS BPM Shri Kishan Lal, applicant facilitated that misappropriation of funds by the Post Office, Phalodi by making the entry in the PO Diary Account of having received Rs.5 lakhs on 04.06.2009 and having sent it to the Accounts Officer, Phalodi. It may be mentioned that no charge of conspiracy between the applicant GDS and the staff at PO Phalodi has been mentioned anywhere in the charge sheet.

(J) The punishment of removal from service is disproportionate and not commensurate that the alleged lack of devotion of duty in the matter. Applicant's counsel relies on case law i.e. **Union of India & Ors. Vs. Dwarka Prasad Tiwari**, in Civil Appeal No.4454 of 2006 with No.4455 of 2006, decided on 12.10.2006; [(2007) 1 SCC (L&S) 135].

(K) Final ground taken by the applicant is that the Appellate Authority has got beyond the facts in a colourable exercise of powers. The respondents agree that the applicant Kishan Lal is not main culprit who is alleged to have facilitated the conspiracy for fraud of Rs.197 Crores. In this regard, counsel for the applicant relies on judgment of **R.P. Bhat Vs. Union of India & Ors.**, in Civil Appeal No.3165 of 1981, decided on 14.12.1982; [1986(1) SLR 775].

14. Learned counsel for the respondents on the other hand submitted that the irregularity committed and bonafide statement has been admitted by the applicant. The charge sheet as detailed that the applicant by changing the figures in the Branch accounts, but not in the headquarters account at Phalodi. The respondents stated that this continued for years and applicant has committed the fraud. The respondents further stated that the punishment has been made as per Rule 10 of the GDS Rules applicable to the current

applicant and all procedural requirements stipulated under Rule 10 have been complied with.

15. Heard both the parties and perused the materials placed on record. While it may appear that the punishment meted out in this and other similar cases may be excessive the fact remains that the relevant rules have been applied under due procedure. As regards the appreciation of evidence in the process of enquiry it is relevant to recall the Rulings of the Apex Court in the matter.

SUPREME COURT RULING REGARDING REAPPRECIATION OF EVIDENCE:

At this juncture, it would be relevant to refer to the judgment of Hon'ble Supreme Court in the case of Government of Tamil Nadu vs. A. Rajapandian reported in 1995 (1) SCC 216, wherein it was held as under:-

"4. The Administrative Tribunal set aside the order of dismissal solely on re-appreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by reappreciating the evidence and reaching a finding different than that of the inquiring authority.

8. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities

because we are of the view that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the inquiring authority.

16. Further Rule 9 of the GDS(Conduct & Employment) Rules, provides the following punishments upon the GDS :-

Rule 9 GDS Rules, 2001:

Nature of penalties

- (i) Censure;
- (ii) Debarring of a Sevak from appearing in the recruitment examination for the post of Postman and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding three years;
- (iii) Debarring of a Sevak from being considered for recruitment to Group 'D' for a period not exceeding three years;
- (iv) Recovery from Time Related Continuity Allowance of the whole or part of any pecuniary loss caused to the government by negligence or breach of orders;
- (v) Removal from employment which shall not be a disqualification for future employment;
- (vi) Dismissal from employment which shall ordinarily be a disqualification for future employment.

17. Having been party to a conspiracy to defraud the Government to the tune of Rs 1.97 crores, we feel that the punishment awarded to the applicant is neither excessive nor it is disproportionate.

18. Even the Hon'ble Apex Court in the case of Regional Manager, U.P.S.R.T.C. Etowah & Ors. Vs. Hoti Lal & Another (2003(2) J.T. Page 27) where the State had suffered only a loss to the tune of Rs.16/- on account of the fact that conductor was carrying ticketless passengers and certain old and used tickets were found from his possession, the Hon'ble Court has held that It is not only the amount involved but the mental set up, the type of duty performed and

similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable.

19. The Hon'ble Apex Court in the case of S.R.Tewari versus Union of India (2013(7) SCC Page 417) has reiterated that The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. 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.

20. Recently, the Hon'ble Apex Court in the case of Union of India versus P.Gunasekaran (2015 (2) S.C.C. Page 610) in para's 12, 13 & 20 has held as follows:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second

court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

13. Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

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20. Equally, it was not open to the High Court, in exercise of its jurisdiction under [Article 226/227](#) of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the

conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanliness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc.

In short, it depicts sterling character with firm adherence to a code of moral values. The guidelines enunciated in the judgment above are as relevant and useful for adjudication of Departmental Proceedings in Tribunals as they are for High Courts. If we consider the guidelines laid down by the Hon'ble Apex Court in the case of P.Gunasekaran (supra), we cannot fail but conclude that the instant case does not merit any interference by us as no aspect of this case qualifies for an intervention by the Tribunals. In the instant case, the enquiry has been conducted by following due process of law, there are no procedural lapses or irregularity and the principles of natural justice are not violated in any manner.

21. Given the facts and the relevant particulars of this case, as discussed in the preceding paragraphs, we are not inclined to intervene in this matter. In our view, the enquiry conducted by the respondents, the orders of the disciplinary authority, and appellate authority and seem to be in order and do not deserve any interference. The OA is accordingly dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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