

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/1168/2013

Reserved on: 21.10.2019

Pronounced on: 31.10.2019

Between:

P. Balaramaiah, S/o. P. Bhasker Rao,
Aged about 41 years, GDS/Branch Postmaster
(Removed from service), Pedapuluguvaripalem BO,
a/w. Karlapalem SO, Tenali Division, Guntur District.

... Applicant

And

1. The Chief Postmaster General,
A.P. Circle, Hyderabad.
2. The Postmaster General,
Vijayawada Region, Vijayawada.
3. The Director of Postal Services,
Vijayawada Region, Vijayawada.
4. The Superintendent of Post Offices,
Tenali Division, Tenali, Guntur Division.

... Respondents

Counsel for the Applicant ... Mr. M. Venkanna

Counsel for the Respondents ... Mr. K. Venkateswarlu, Addl. CGSC

CORAM:

Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Mr. B.V. Sudhakar, Administrative Member

ORDER
{As per B.V. Sudhakar, Administrative Member}

2. The OA has been filed challenging the penalty of removal imposed on the applicant by the respondents.
3. Brief facts which deserve mention are that the applicant while working as GDS/BPM in the respondents organisation was issued a charge memo dt. 7.6.2006, for committing temporary/ permanent fraud in certain saving accounts. Besides, a criminal case was also filed against the applicant in the competent court vide CC No. 381/06. The applicant was acquitted in the criminal court. Despite acquittal in the criminal case applicant was proceeded on disciplinary grounds and removed from services on 31.10.2008. Applicant made an appeal against the order of disciplinary authority on 19.12.08. While the appeal was pending, respondents have issued notification on 2.12.2009 to fill up the vacancy caused due to the removal of the applicant as GDS/BPM. Aggrieved, applicant filed OA 21/2010 before this Tribunal, wherein respondents were directed to fill up the vacancy only on provisional basis and the selected candidate be informed that in case the applicant succeeds in the OA, the provisional appointment of the selected candidate would cease. The appeal of the applicant was rejected on 15.3.2010. Aggrieved, the OA has been filed.
4. The contentions of the applicant are that when he has been acquitted in a criminal case it was not fair on the part of the respondents to proceed against him on disciplinary grounds and remove him from

service. As per GDS (Conduct & Employment) Rules, 2001, the vacancy caused due to the dismissal/ removal of a GDS employee has to be filled up on a provisional basis.

5. Respondents in their reply statement have rebutted the contentions of the applicant by stating that the applicant has committed temporary fraud/ permanent fraud in Post Office SB/ RD accounts to the extent of Rs.64,483.50. The applicant has credited the defrauded amount to the Government account on different dates in 2005 – 2006. Applicant was put off duty and issued charge memo dt. 7.6.2006 with five articles of charge. Enquiry under Rule 10 of GDS (C&E) Rules was conducted and all the charges were held as proved. Based on the enquiry report, disciplinary authority awarded the penalty of removal on 31.10.2008. Applicant did not prefer appeal within the stipulated period of 3 months i.e. by 02.12.2009. Therefore, respondents issued a notification to fill up the vacant post since applicant has not filed the appeal within the prescribed time period. Aggrieved, applicant filed OA 21/2010 wherein respondents were directed to fill up the post on provisional basis and inform the selected candidate accordingly. Later, applicant's appeal dated 19.12.2008 was considered and rejected by the appellate authority in compliance with the orders of this Tribunal in OA 21/2010. The fraud amount being considerable a criminal case bearing No.71/2005 was filed before the competent court wherein the applicant was finally acquitted on 1.10.2007. Applicant has filed the present OA without exhausting the alternative remedy available. Applicant could have made a revision petition to the Post Master General or Chief Post Master General. The

disciplinary action against the applicant was initiated for frauds committed in five Post Office Savings Bank / RD accounts, whereas police case was registered in respect of two Post Office Saving Bank Accounts which are not shown in the charge memo. Therefore, the proceedings before the criminal court and disciplinary proceedings are not one and the same. The respondents have cited judgments of the Hon'ble Supreme Court in support of their contentions. They also filed a reply statement quoting Rule 128 (D) of Postal Manual Vol. II in support of their decision in imposing the penalty of removal.

6. Heard learned counsel for the applicant. None for the respondents. We have perused the pleadings and material on record.

7(I) The applicant while working as GDS/BPM was involved in temporary/ permanent misappropriation of Post Office SB/ RD Accounts. Respondents filed criminal case before the competent court which was numbered as CC No. 381/2006, citing fraud done in two savings account. Simultaneously, they also initiated disciplinary action by detailing the fraud committed by the applicant in other accounts which have not been cited in the criminal case. The competent court has acquitted the applicant in the criminal case. The applicant claims that since he has been acquitted by the criminal court, it was not fair on the part of the respondents to remove him from service by initiating disciplinary proceedings. The respondents in their reply statement submitted that the accounts indicated in the criminal case and those in the disciplinary proceedings are totally different. Applicant has not chosen to rebut this averment by filing a rejoinder. Therefore, the submission of the

applicant does not hold water for the simple reason that the accounts mentioned in the criminal case and the disciplinary proceedings are totally different. Besides, charge in the criminal proceedings has to be proved beyond reasonable doubt, whereas in discipline proceedings it is sufficient if the charges are proved based on preponderance of probabilities. In fact, the legal principle is well settled to the extent that even in case an employee is acquitted in criminal case, the employer is not forbidden to proceed with the disciplinary proceedings. In the present case, the accounts mentioned in the disciplinary proceedings and the criminal case, which are alleged to have been misappropriated by the applicant, are totally different. Therefore, the contention of the applicant that since he has been acquitted in the criminal case, the respondents removing him from service in the disciplinary proceedings is irregular and illegal is not maintainable. Moreover, the applicant has been dealing with public money. Post offices run based on the trust the public have in the institution. Though the applicant has credited the defrauded amount, but his action has severely dent the reputation of the post office in the eyes of the public.

II. Besides, applicant has also made an appeal to the appellate authority who has rejected on sustainable grounds. Taking appropriate disciplinary action is in the domain of the disciplinary authority. Courts cannot interfere if the disciplinary action is initiated and penalty is imposed based on evidence, rules and is not arbitrary. Further, the punishment imposed should not be shockingly disproportionate calling for any interference. In the present case, applicant committed a fraud and

after conducting an inquiry, giving reasonable opportunity to the applicant to defend himself, the penalty has been imposed. The action of the respondents was, therefore, as per rules and law. Hence, Tribunal cannot come to the rescue of the applicant as observed by the Hon'ble Supreme Court in the following cases:

(A) **In Parma Nanda Vs. State of Haryana & Ors, 1989 (2) SCC 177:**

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

(B) In the *Administrator, Union Territory of Dadra & Nagar Haveli vs. Gulabhai M. Lad*, in Civil Appeal No. 3933 of 2010:

"8. The scope of judicial review in disciplinary matters has come up for consideration before this Court time and again. It is worthwhile to refer to some of these decisions. In the case of B.C. Chaturvedi v. Union of India and Others this Court held:

"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. In Director General, RPF and Others v. Ch. Sai Babu, this Court stated the legal position thus :

"6.Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works. ""

(C) In *the State Bank of India vs. Samarendera Kishore Endow* 1994 (1) SLR 516:

"10. On the question of punishment, learned Counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court -- or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made." In other words the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court".

Even Rule 128(D) of the Postal Manual Vol. II supports the decision of the respondents in imposing the penalty. Rule is extracted hereunder:

"...While the court may have held that the facts of the case did not amount to an offence under the law, it may well be that the competent authority in the departmental proceedings might hold that the Government servant was guilty of a departmental misdemeanour and he had not behaved in the manner in which a persons of his position expected to behave."

III. Further, respondents also rely on order of this Tribunal in OA No. 341/2012 involving similar facts and circumstances as in the present case. The said OA was dismissed by this Tribunal vide order dt. 15.06.2015. Having gone through the said Order, we find that the facts in the said OA are similar to that of the present OA. Therefore, the said decision is binding on us, as held by the Hon'ble Supreme Court in Sub-Inspector Rooplal vs Lt. Governor, (2000) 1 SCC 644, as under:

“Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. “

IV. Therefore, in view of the aforementioned facts and based on rules and law, the action of the respondents is appropriate and we do not find any reason to interfere in the matter on behalf of the applicant. Hence, the OA being devoid of merit is dismissed. No order as to costs.

**(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER**

**(MANJULA DAS)
JUDICIAL MEMBER**

Dated, the 31st day of October, 2019

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