

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 354/2014

Date of Reserve : 22.03.2024

Date of Pronouncement : 09.04.2024

C O R A M :

HON'BLE MR. JUSTICE RAMESHWAR VYAS, MEMBER (J)

HON'BLE DR. AMIT SAHAI, MEMBER (A)

Naresh Kumar Ramawat S/o Sh. Punamchand Ramawat, aged about 28

[By Advocate:Mr. S.P.Singh]

V e r s u s

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Posts, Dak Tar Bhawan, New Delhi.
 2. Post Master General, Western Region, Jodhpur.
 3. Superintendent of Post Offices, Bikaner Division, Bikaner.
 4. Assistant Superintendent of Post Offices, South Sub Division, Bikaner.
-Respondents**

[By Advocate: Mr. K.S.Yadav]

O R D E R

Per Rameshwar Vyas, Member (J)

Being aggrieved by order dated 15.10.2013(Annex.A/2) passed by the disciplinary authority whereby the applicant was punished with removal from service of GDS MC and order dated 21.05.2014 (Annex.A/1) passed by the appellate authority confirming the punishment, the applicant, Naresh Kumar Ramawat, by way of filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985 prayed to quash and set aside the aforesaid orders issued by the respondent-department and to reinstate him in service with all consequential benefits.

2. The facts of the case are as under :-

The applicant was posted as Gramin Dak Sevak (Mail Career) [GDS (MC)] at Rajasthan Krishi Vishwavidyalaya Sub Post Office

Bikaner. One Sh. K.C. Chanwaria was posted as Sub Post Master. During inspection of Sub Post Office, an embezzlement was detected for which disciplinary proceedings were initiated against various employees. As per the Charge Memorandum dated 04.01.2011 (Annex.A/4) issued against the applicant, he assisted Sh. K.C. Chanwaria the then SPM, in committing the embezzlement while working as GDS MC. It is the allegation against the applicant that he kept in his possession the pass-books of the depositors and never returned counterfoil of the deposit slips to the account holders and thereby assisted Sh. K.C. Chanwaria, SPM to commit embezzlement to the tune of Rs. 1,25,350/- + Rs. 45,000/- and + Rs. 60,000/- respectively.

3. The second charge levelled against the applicant is with regard to filling of withdrawal form (SB-7) for Rs. 20,100/- of an account holder by the applicant whereas as per rules, he was not supposed to fill up the form.

4. Third charge levelled against the applicant is with regard making entries of deposits by various account holders of RD accounts showing the amount directly deposited by account holders as deposited through his wife who was a commission agent and thereby withdrawn commission causing monetary loss of Rs. 12,968/- to the government.

5. As per fourth charge, the applicant never reported unauthorised absence of Sh. K.C.Chawadia to the higher authorities. As per the prosecution case, the applicant's above acts were in contravention of the Gramin Dak Sevaks (Conduct & Employment Rules) Rules, 2001 [hereinafter referred to as "GDS Rules"]. It is pertinent to note that the SPM Sh. K.C. Chanwaria, the main accused for committing embezzlement to the tune of Rs. 20,65,739/-, committed suicide on the next day of inspection of the branch.

After conducting an inquiry, an inquiry report dated 01.03.2012 (Annex.A/5) was prepared wherein charges levelled against him were found not proved. After receiving the inquiry report, the disciplinary authority communicated a disagreement note to the applicant on 26.03.2012 (Annex.A/6) against which he made a representation dated 11.04.2012 (Annex.A/7). He also made some supplementary representations dated 05.08.2013 (Annex.A/8) and dated 13.08.2013 (Annex.A/9).

Vide order dated 15.10.2013 (Annex.A/2), the disciplinary authority i.e. the Assistant Superintendent Post Offices (South) Sub Division Bikaner, found the charges at Sl. No. 1, 2 and 3 proved against the applicant whereas charge No. 4 was found not proved. Considering the guilt of the applicant, a penalty of removal from service was passed against him.

6. An Appeal dated 31.10.2013 (Annex.A/11) filed against the order of the disciplinary authority was also rejected vide order dated 21.05.2014 (Annex.A/1). Being aggrieved by the order of the disciplinary authority as also of the appellate authority, removing him from service, the applicant has preferred this O.A. with a prayer to quash and set aside the above orders.

7. It is the case of the applicant that an embezzlement to the tune of Rs. 20,65,739/- was committed by Sh. K.C. Chanwaria, SPM posted at Rajasthan Krishivishwa Vidhyalaya SPO. During the course of inspection on 02.06.2009 the said embezzlement was revealed. Sh. K.C. Chanwaria, SPM, committed suicide on very next day on 03.06.2009. FIR was not lodged by the Department which was mandatory.

As per the averments made by the applicant, he was a Mail Career in the said sub post office. It is pleaded that the inquiry officer did not find the charges as proved against the applicant and the disciplinary authority without taking into consideration the representation filed by the

applicant against the disagreement note awarded severe punishment against him.

8. The applicant pleads that charges levelled against him were rightly found not proved against him by the inquiry officer. To assail the impugned order, it is pleaded by him that he did not get opportunity to cross examine the two important witnesses, therefore, the charges based on their statement recorded during preliminary inquiry, cannot be said as proved. He had a legal right to cross - examine the witnesses but this opportunity was denied to him, violating his legal rights. The applicant was working as GDS and he had nothing to do with retaining the pass books to the account holders.

9. With regard to the second charge, it is pleaded that filling-up of form is not a misconduct. One of the grounds to challenge the impugned order is that the Forensic Science Laboratory (FSL), Chandigarh was not in a position to express any opinion on the basis of material supplied to it. FSL Chandigarh, had requested to provide more handwritings which were not provided to it. Therefore, FSL report was incomplete and cannot be relied upon. The applicant has nothing to do with the act of embezzlement. He did not get any commission for the deposits made through his wife. No loss has been caused to the government. The respondents issued the chargesheet in a whimsical manner arbitrarily. Applicant was not extended an opportunity to inspect the documents. The punishment does not commensurate with the gravity of the offence and it is disproportionate. In view of these facts, the applicant prayed to allow the O.A.

10. In the reply it is averred that during investigation, it was found that late Sh. K.C. Chanwaria had accepted deposits in accounts of postal life insurance but did not account-for the same. He also made withdrawals from SB accounts fraudulently. During the investigation, the applicant was identified as a co-offender as he facilitated the main offender in

committing fraud by filling up withdrawal form SB-7. The applicant also kept the pass book of the account holders in his custody. He also included the direct deposits in RD accounts in the list indicating that the amount was deposited through his wife Smt. Rekha Ramawat and thereby, got illegal commission from the RD holders depositors in the name of his wife Smt. Rekha Ramawat. The applicant was appointed as a GDS MC at RKVV Post Office on 22.02.1996 and since then he was continuously working up to 11.08.2009. The applicant did not keep him confined to his own duties but collected the pass books from the account holders to fill up deposit slips, withdrawal forms and effected transactions on behalf of the account holders.

It is averred that the lists of Mahila Pradhan Kshetriya BachatYojna Agent (MPKBY) were not prepared by Smt. Rekha Ramawat. It was the duty of the applicant to handover the counter foils of deposit slips along with the pass book, to its account holders and he should not have retained the pass book in his custody. The disciplinary authority has mentioned the reasons for his disagreement against the conclusions of the inquiry officer.

11. The applicant had filled-up fake withdrawal forms in the absence of the depositors and through this illegal act he had committed a fraud. It is further averred that when the amount of instalments credited directly with SPM, how it was included in the list of MPKBY agents earning 4% commission. The applicant has received gratification in the form of commission in the name of his wife. Contradicting the allegations levelled by the applicant, the respondents prayed to dismiss the O.A.

12. The applicant filed a rejoinder reiterated the stand taken in the main O.A.

13. Heard learned counsel for the parties and perused the material available on record.

14. Learned counsel for the applicant submitted that in the SPO RKV, Bikaner, embezzlement of government money was committed by SPM Sh. K.C. Chanwaria and not by applicant. The department did not file any FIR against the persons who committed the offence. Sh. K.C. Chanwaria committed suicide on the very next day on disclosure of the embezzlement in the branch. No allegation has been levelled against the applicant for committing fraud or misappropriation of the amount of the branch. After the inquiry the applicant was found not guilty by the inquiry officer. Disagreeing with the findings arrived at by the inquiry officer, the disciplinary authority found the applicant guilty without any evidence. The applicant has been held guilty on the basis of statements recorded during the preliminary inquiry.

The witnesses did not turn up for evidence during the inquiry. However, relying upon their previous statement the applicant has been found guilty. It is a cardinal principle of natural justice that delinquents should be given the opportunity to cross examine the witnesses whose statement is to be used against the delinquent. It is further contended that the handwriting expert report being incomplete, the respondents committed illegality in relying upon such a report. The FSL report has also not been proved in accordance with law. It is also submitted that respondents failed to indicate the rule which prohibits GDS to fill-up the form of the account holders. It is submitted that the applicant has not played any role in the payment of commission to his wife who was working as an agent of the post office. In view of this, learned counsel for the applicant prayed to allow this O.A.

15. On the contrary, learned counsel for the respondents submitted that the applicant violated the provisions of the Rules. The applicant used to keep passbooks of the account holders with himself. He also used to fill-up the withdrawal form and deposit slips in his handwriting and kept counter foil with himself.

Learned counsel for the respondents submitted that the wife of the applicant was working as a Mahila Pradhan Abhikarta (MPA). The applicant used to write details of commission on the allottee along with pay in slip as per rules. He cannot take agency in the name of his relatives. Being a single handed post office, the applicant was working along with SPM. The duties of the applicant included so many activities. No procedural irregularity has been committed by the inquiry officer and the disciplinary authority in concluding the inquiry and finding the applicant guilty for the charges levelled. The appeal filed by the applicant against the order of the removal was decided by the appellate authority as per rules.

16. Having regard to the submissions made by learned counsel for the parties and the material available on record, it emerges that in the matter in hand, embezzlement to the tune of Rs. 20,65,759/- was committed in the KVV Branch SPO Bikaner where the applicant was working as GDS. Charges against the applicant have been framed not for committing embezzlement by him but was with regard to violation of provisions of the GDS Rules facilitating the then SPM Sh. K.C. Chanwaria to commit embezzlement. It is pertinent to note that Sh. K.C. Chanwaria committed suicide on the very next day of revelation of this scam on 03.06.2009. It is also pertinent to note that the department has not lodged any FIR in the police regarding the embezzlement committed in the RKV Branch at Bikaner. Rather the department deemed it appropriate to inquire the matter at its own level.

17. The fact that no criminal case against the applicant was filed and as also looking the nature of charges levelled against the applicant in the charge memo dated 04.01.2011 (Annex.A/4) it may be inferred that the respondents did not treat the applicant as a person who committed embezzlement, therefore he has been charged with violation of the provisions of the GDS Rules.

18. As per articles of charge No. 1 framed against the applicant, he retained unauthorisedly the pass books of the account holders with him. The inquiry officer in its report dated 01.03.2012 (Annex.A/5) did not find the charge as proved against the applicant for the reason that both the account holders Sh. Farooq and Ms. Nazma Bano did not turn up before the inquiry officer and in the absence of their statement this charge was not found proved against the applicant. However, the disciplinary authority vide order dated 15.10.2013 (Annex.A/3) was of the view that it makes no difference whether the witnesses appeared before the inquiry officer or not. As per the opinion of the disciplinary authority statements given by above witnesses in the preliminary inquiry can be used against the applicant.

19. In our considered opinion, the statement recorded during the preliminary inquiry cannot be used against the delinquent official unless and until it is proved during regular departmental inquiry against the delinquent after giving an opportunity to the delinquent to cross examine the witnesses. As per statement of charges, the applicant retained with him pass books of the account holders viz. Sh.Farooq and Ms. Nazma Bano and did not return the counter foils to them after the transaction. In the absence of statement of Sh.Farooq and Ms. Nazma Bano, this charge has been found proved by the disciplinary authority, this finding is also against the basic principles of the service jurisprudence, therefore, the findings of the disciplinary authority with regard to charge No. 1 is against the law and is liable to be quashed and set aside.

Charge No. 2 is with regard to filling up the form of account holders of SB Account No. 740301 which after FSL examination was found in the handwriting of the applicant.

As per the inquiry report (Annex.A/5), this SB Account No. 740301 is in the joint name of Sh. Shiv Bhagwan and Ms. Maina but they have not been made witnesses. With regard to disputed writing

marked on the withdrawal form as question No. 9 and No. 10, no opinion has been given by the handwriting expert. Expert's opinion has been given with regard to question No. 11 which is also not complete.

20. As per order of the disciplinary authority dated 15.10.2013 (Annex.A/2) the report of the Forensic Science Laboratory (FSL), Chandigarh, is sufficient to prove the charge against the applicant. As per report disputed writing on the withdrawal form marked as question No. 11 is in the handwriting of the applicant.

After considering the findings of the disciplinary authority, we are of the view that the handwriting expert report is only a corroborative piece of evidence meaning thereby without any substantive evidence against the delinquent official the report has no evidentiary value. In addition to it the report of the handwriting expert is required to be proved by the person who made the report. The delinquent has also a right to cross examine the handwriting expert to contradict his evidence. It is also pertinent to note that the evidence of the handwriting expert is not conclusive proof of evidence rather it is a very weak type of evidence. In view of this the disciplinary authority committed grave error by observing that the FSL report alone is sufficient to prove the charge against the applicant and evidence of the account holders is not required. The observations made by the disciplinary authority are against the well settled legal principles of law.

Inquiry officer also was of the opinion that no rule has been indicated whereby a GDS was prohibited to fill up the form. In view of this the inquiry officer did not find this charge as proved against the applicant.

21. The respondents failed to show any provision prohibiting the GDS to fill up the form of the account holders. The respondents failed to reveal that filling up the form of an account holder by a GDS has helped the main offender to commit embezzlement of the money of the account

holder causing loss to the government that too without the statement of the account holders. In the result, we are inclined to quash and set aside the findings of the disciplinary authority with regard to the article of charges at Sl. No. 2 levelled against the applicant.

22. As per charge No. 3, the applicant wrongfully entered some deposits directly made by the account holders showing them deposited by his wife who was MPKBY and in this way, he withdrew commission of Rs. 12,968/- in a wrongful manner.

This charge was also not found proved by the inquiry officer, whereas, the disciplinary authority while disagreeing with the conclusion arrived at by the inquiry officer found this charge as proved against the applicant on the ground that there is sufficient evidence to establish that the entries were in the writing of the applicant and he in connivance with the SPM withdrawn amount of commission causing loss to the government.

It is pertinent to note that no charge has been framed against the applicant to the effect that the agency obtained by his wife was not in accordance with rules. The respondents failed to show any material which discloses that any action was taken against the applicant for running the agency by his wife. The respondents also failed to establish that the amount of commission was withdrawn by the applicant. It is relevant to mention that the entries allegedly made in hand-writing of the applicant were sent for examination to hand-writing expert but as per report, the handwriting expert did not opine that the entries were in the handwriting of the applicant.

23. It is also important to note that no notice was issued to applicant or his wife regarding any irregularity committed by them with regard to running of agency by applicant's wife in violation of any rule. It is not factually correct on the part of the disciplinary officer to opine that since

account holders directly deposited the amount in the post office and applicant entered the transaction on behalf of counterfoil, he is guilty for the charge framed against him. In our considered view unless and until it is proved that entries were made by the applicant, this charge cannot be proved against him. In view of this we are of the opinion that the disciplinary authority committed grave error in finding this charge proved against the applicant.

24. So far as the charge No. 4 is concerned, the same has not been found proved by the inquiry officer as also by the disciplinary authority.

Though, we are not appellate authority over the orders passed by the appellate authority, however, when the disciplinary authority's order is against the well settled principles of law and is also against the principles of natural justice, we certainly have a right to quash and set aside the same.

25. In the result, the findings of the disciplinary authority with regard to charge No. 1, 2 and 3 framed against the applicant vide chargesheet dated 04.01.2011 (Annex.A/4) are quashed and set aside. Resultantly, the punishment order dated 15.10.2013 (Annex.A/2) passed by the disciplinary authority as well as the order of the appellate authority dated 21.05.2014 (Annex.A/1), are quashed and set aside.

The respondents are directed to reinstate the applicant within a period of three months from the date of receipt of a copy of this order . The period from the date of removal to the date of reinstatement shall be counted as continuity in service, however, he shall not be paid any salary for the above period during which the applicant remained out of service. There is no order as to costs.

(AMIT SAHAI)
Member(A)

(RAMESHWAR VYAS)
Member (J)

