In the High Court of Judicature at Madras

Dated: 01.09.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.7095 of 2015

G.K.Palani ..Petitioner

Vs.

1. The Central Administrative Tribunal,
   Madras Bench represented by its Registrar,
   High Court Campus,
   Chennai - 600 104

2. The Union of India rep. By its
   The Post Master General,
   Chennai City Region,
   Chennai - 600 002

3. The Director of Postal Services,
   Chennai City Region,
   Chennai - 600 002

4. The Senior Superintendent of
   Post Offices,
   Vellore Division,
   Vellore - 632 001 ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in O.A.No.118 of 2010 dated 22.08.2012 and quash the same and direct the Respondents 2 to 4 to reinstate the Petitioner in service with all attendant benefits.

For Petitioner	:	Mr.P.Mohanraj
For Respondent		
No.1	:	Tribunal
Nos.2 to 4	:	Mr.K.Gunasekaran SCGSC

O R D E R

[Order of the Court was delivered by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ of Certiorarified Mandamus praying for passing of an Order by this Court relating to the Impugned Order dated 22.08.2012 of the 1st Respondent/Central Administrative Tribunal, Chennai in O.A.No.118 of 2010 and to quash the same.

2.The 1st Respondent/Central Administrative Tribunal, Madras Bench while passing the Impugned Order in O.A.No.118 of 2010 (filed by the Writ Petitioner/Applicant) on 22.08.2012 at Paragraph No.10 had observed the following and resultantly dismissed the Original Application:-

> " 10. The applicant has behaved in a fraudulent manner and indulged in malpractices. But for the surprise inspection the illegal action of the applicant would have gone unnoticed. It is not in dispute that money was withdrawn from the accounts of depositors without following the specific procedure in that regard. The fact that the applicant has remitted the amount after it was detected goes to prove that there are infractions of law for which the applicant alone is responsible. This is a grave misconduct and in case like this the punishment of removal of the applicant, a GDS in the respondent department, cannot be said to be disproportionate."

3.Assailing the correctness of the Order dated 22.08.2012 in O.A.No.118 of 2010 passed by the 1st Respondent/Central Administrative Tribunal, Madras Bench, the Learned Counsel for the Petitioner/Applicant submits that the Impugned Order of the 1st Respondent is liable to be set aside on the ground that the 1st Respondent/Tribunal had not gone into the various grounds raised by the Petitioner against the order of his removal. Furthermore, the 1st Respondent/Tribunal had only stated that the Petitioner was provided with full opportunity to participate and defend his case and the procedure was followed.

4.The Learned Counsel for the Petitioner contends that even in a case where full opportunity was provided to an employee to defend his case and that the disciplinary procedure was followed, a judicial forum is to consider whether the conclusion arrived at by the Departmental Authorities are sustainable in the Eye of Law. Moreover, it is the stand of the Petitioner that the 1st Respondent/Tribunal had not gone into the details of the case, especially when there was no material at all to sustain the punishment, then, the Impugned Order of the 1st Respondent/Tribunal is not valid in Law.

5.According to the Learned counsel for the Petitioner, it was represented before the 1st Respondent/Tribunal that the concerned depositors viz., Lalitha and Padma admitted their signatures found on the withdrawal forms and that they had also admitted that they put two signatures while making deposit in one month.

6.Yet another plea taken on behalf of the Petitioner is that the findings of the Enquiry Officer were not based on legal acceptable evidence and the imposition of major punishment awarded to the Petitioner based on the said perverse findings could not stand the scrutiny of Law.

7.The Learned Counsel for the Petitioner projects an argument that the Petitioner had stated in O.A.No.118 of 2010 that the remittance of deposit amounts by him under UCR during course of primary investigation had influenced the mind of the Appellate Authority. Further that, he had lodged a complaint on 31.07.2004 stating that the SDI (P), Walajapet, one P.Krishnamurthy, Investigation Inspector threatened him to credit the amount under UCR and only based on such threat and coercion, he had remitted the amount. In fact, the said complaint was sent by registered post, but, no action was taken on the said complaint.

8.The Learned Counsel for the Appellant takes a plea that the Petitioner's complaint dated 31.07.2004 is important piece of evidence going to the root of the matter and that the Disciplinary Authority, Appellate Authority and the Review Authority had not at all considered these vital aspects. That apart, the 1st Respondent/Tribunal also had not considered these aspects.

9.The Learned Counsel for the Petitioner submits that the Accounts Controlling Officer, Walajapet, HSG-II, Sub-Post Office had permitted all the Branch Postmasters to independently allow savings withdrawals up to Rs.2,000/- at Branch Offices and as such, the withdrawal of Rs.1,150/- allowed by the Petitioner was within the said limited and indeed, there was no need for him to obtain an approval from the Sub-Postmaster.

10. Lastly, it is the contention of the learned counsel for the Petitioner that the very fact that the two depositors had not questioned the Petitioner when he obtained a signatures in SB-7 would clearly unerringly point out that they were aware that two signatures were required for withdrawal of cash from Savings Bank Account, but, the 1st Respondent/Tribunal had not considered these aspects while passing Impugned Order in question.

11.Per contra, it is the submission of the Learned Counsel for the Respondents that the Petitioner was working as Branch Post Master, Gudimallur BO a/w Walajapet SO in Arakonam Division and the Inspection of the office was taken up by Assistant Superintendent of Post Offices, Ranipet Sub Division on 10.12.2003 and that on verification of R.D.Pass Book, Account No.1164026 was opened in the name of Smt.Lalitha and a part of withdrawal of Rs.1,150/- was deducted in the Account, which came to the notice.

12. The Learned counsel for the Respondents brings it to the notice of this Court that on inquiries, the depositor denied to have withdrawn the amount and on investigation carried out by the

Sub-Division Inspector, SDI(P), Walajapet sub-division. It was found that the Petitioner had taken part in the withdrawal of aforesaid amount without the knowledge of the depositors. Also that, as per verification carried out by the SDI(P), Walajapet Division, it transpired that the petitioner had indulged in similar withdrawals in some more accounts.

13.The Learned Counsel for the Respondents after conclusion of preliminary investigation, disciplinary action was initiated against the Petitioner in terms of Rule 10 of GDS (C&E) Rules, 2001 in Memo No.F1/IV/2/03-04/R-10 dated 28.03.2005 by the Superintendent of Post Offices, Arakkonam Division in respect of two 'Articles of Charge' and after providing all opportunities and after suppling copy of the Inquiry Officer's report and after obtaining representation from the Petitioner, 'Penalty of Removal' from service was modified by the Senior Superintendent of Post Offices, Vellore Division in Memo No.SSP/Dlgs/07 dated 28.09.2007, who was appointed as an 'Adhoc Disciplinary Authority'.

14.The Learned counsel for the Respondents submits that the Petitioner has filed an Appeal dated 06.12.2007 against the Imposition of Penalty of Removal imposed upon him and that the said Appeal was rejected by the 3rd Respondent/The Director of Postal Services, Chennai Region as per Memo bearing No.VIG/APP/2-3/08/CCR dated 10.09.2008. Even the Revision Petition dated 10.10.2008 filed by the Petitioner was taken into account and ultimately was rejected by the 2nd Respondent/Postmaster General, Chennai City Region as per Memo No.VIG/Pet/1-3/09/CCR dated 21.05.2009.

15.The sum and substance of the contention advanced on behalf of the Respondents is that Penalty of Removal from Service was imposed upon the Petitioner in respect of specific two Articles of Charge and after observing all necessary formalities. Moreover, only by way of speaking Orders, the Appeal Petition and the Review Petition were rejected by the Authorities Concerned .

16.This Court has heard the Learned Counsel appearing for the Parties and noticed their contentions.

17.It is to be relevantly point out that the scope of 'Judicial Review' is 'Limited'. In fact, in the decision of Hon'ble Supreme Court in State of West Bengal V. Atul Krishna Shaw and Another (AIR 1990 Supreme Court at Page 2205), it is held that in a quasi-judicial proceeding, the Court/Tribunals would be slow to interfere with the findings of facts unless such findings are based on no evidence or beset with surmises or conjectures.

18.It cannot be gainsaid that the 'Judicial Review' is not an 'Appeal' from a decision but a 'Review' of the manner in which the decision was arrived at as per decision of Supreme Court in B.C.Chaturvedi V. Union of India and others (1995) 6 Supreme Court Cases at Page 749. Also that, the power of "Judicial Review" is to be exercised to ensure that a person receives fair treatment in the hands of the concerned authorities.

19. Coming to the aspect of the concept of the Principles of 'Natural Justice', it is to be mentioned that the said 'Natural Justice' is a form of Justice in its abstract moral sense as distinct from a legislation or from a statute or from a decision by a Court of Law. As a matter of fact, the Principles of 'Natural Justice' are not the edicts of a statute.

20.It is to be borne in mind that ordinarily a Court of Law, ought not to interfere with an Disciplinary Authority Order/Decision unless the same suffers from arbitrariness bristles with procedural impropriety or shocking its conscience. However, if the punishment imposed is just and fair one and also not shockingly disproportionate to the gravity of misconduct committed, a Court of Law cannot interfere with a decision arrived at by the Disciplinary Authorities Concerned.

21.Continuing further, if a delinquent employee commits misconduct relating to misappropriation of public money and the same is established in the domestic enquiry proceedings, the punishment of dismissal could not be termed as an excessive or arbitrary or illogical or perverse one in the considered opinion of this Court.

22.As far as the present case is concerned, the Assistant Superintendent of Post Offices, (ASPOs), Ranipet Sub-Division, during the inspection on Gudimallur Branch office on 10.12.2003 while verifying the pass book of RD Account No.WLJ1164026 opened in the name of Smt.Lalitha found that a part of withdrawal of Rs.1,150/- was deducted from the account on 10.09.2003. Apart from that depositor disown the withdrawal mentioning that she was a semi-literate and had not withdrawn any part amount. Also that, the Petitioner had admitted in his statement on 12.12.2003, when further enquiries were carried by the Sub-Divisional Inspector, Walajapet Sub-Division, on 12.12.2003, that he took part withdrawal of a sum of Rs.1,150/- without the knowledge of the depositor using blank SB-7 form obtained from the depositor with a signature on both sides.

23.It comes to be known that the Petitioner while serving as Branch Postmaster, Gudimallur BO, on 10.09.2003 had withdrawn a sum of Rs.1,150/- fraudulently from R.D. Account WLJ 1164037 opened in the name of Smt.Padma without her knowledge and passed the said part withdrawal himself without obtaining approval from the Account Office, viz.,Walajapet SO.

24.Added further, the Petitioner had suppressed the deposit sum of Rs.50/- received from the depositor Smt.Lalitha on 08.11.2003 for the month of November, 2003 and it was not credited into the Post Office Account. Likewise, he, after receiving a sum of Rs.50/- from the depositor, Padma during the last week of November, 2003 for the month of November, 2003 had suppressed the same and had not credited the said amount into the Post Office

Account. Therefore, the Petitioner was found to have not followed the ingredients of Rule 33 of POSB Manual, Volume I and Sub Rule (2) of Rule 133 of Rules for Branch Offices, Seventh Edition (Reprint) and resultantly that discussion failed to maintain absolute integrity and devotion to duty in terms of Rule 21of GDS (C&E) Rules 2001.

25.It is to be noted that a Court of Law cannot sit in the seat of the Disciplinary Authority/Administer to determine whether any other reasonable conclusion or course of action could have been taken in the circumstances. But, certainly a Court of Law can approve the decision taken by the Authorities concerned when the same does not suffer from any material irregularity or patent illegality in the Eye of Law. In this connection, it is to be remembered that if the Impugned Order of dismissal is a perverse one illegal one, then a Court of Law is bound to interfere to prevent an aberration of justice and in furtherance of substantial cause of justice.

26.In the instant case on hand, although, the Petitioner has come out with a plea that two depositors had not questioned him when he obtained a signatures in SB-7, it cannot be lost sight of the said depositors were semi-literate and in this regard the Petitioner cannot take advantage of the same. Further he had withdrawn the money from the accounts of two lady depositors without following the due procedure. Only after detection, the Petitioner had chosen to remit the amount and his conduct of remitting the amount certainly is an adverse circumstance, which clearly goes against him for the fraudulent withdrawal of the amounts belonging to the depositors. The petitioner is squarely to be blamed and his conduct in this regard is a malevolent one as opined by this Court.

27.Suffice it for this Court to point out that the Petitioner had indulged in malpractice of fraudulent withdrawal of amounts belonging to the two depositors and for the said misconduct, the punishment of removal imposed upon him, on the basis of facts and circumstances is not a disproportionate one. Per contra, the punishment of 'Removal' is a just, fair and valid one to meet the ends of justice. Viewed in that perspective, the Writ Petition fails. In the result, the Writ Petition is dismissed. Consequently, the impugned order dated 22.08.2015 passed by the 1st Respondent/ Central Administrative Tribunal, Madras Bench in O.A.No.118 of 2010 is affirmed by this Court for the reasons assigned in this Appeal.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ssd

To

1. The Central Administrative Tribunal,
   Madras Bench represented by its Registrar,
   High Court Campus,
   Chennai - 600 104

2. TheUnion of India rep. By its
   The Post Master General,
   Chennai City Region,
   Chennai - 600 002

3. The Director of Postal Services,
   Chennai City Region,
   Chennai - 600 002

4. The Senior Superintendent of
   Post Offices,
   Vellore Division,
   Vellore - 632 001

+1 cc to Mr.K.Gunasekaran, Advocate, sr.47364

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