

Ladda(PS).

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5506 of 2008

The Union of India
The Union of India, through
The Director of Postal Services,
Pune Region Office of the
Post Master General, Pune Region.
Pune – 411 001.

..Petitioner.

Vs.

Shri Hanmant Nivrutti Karade
Residing at New Mhada Colony,
L-68, Sadar Bazar, Satara-415 001.

..Respondent.

Mr. Y.S. Bhate a/with Mr Upendra Lokegaonkar i/by Mr Jaydeep S.
Deo for the Petitioner.
Mr. Abhay Thorat for the Respondent.

CORAM : ANOOP V. MOHTA AND
A.S.GADKARI, JJ.

RESERVED ON : 18th NOVEMBER, 2016
PRONOUNCED ON : 6th December, 2016.

JUDGMENT:- (PER A.S. GADKARI,J)

1) By the present petition under Article 226 of the Constitution of India, the petitioner, Union of India, through the Director of Postal Services, Pune Region has questioned the correctness of the order dated 7th May, 2008 passed by the Central Administrative Tribunal,

Bombay Bench, Mumbai in Original Application No. 395/2007 thereby quashed and set aside the Appellate Authority and Revisional Authority's orders dated 31st March, 2006 and 27th July, 2006 respectively and restored the penalty order dated 5th October, 2005 issued by the Disciplinary Authority with further directions/modifications.

2) The facts giving rise to the present petition can briefly be enumerated as under :

(i) The respondent was appointed as a Postal Assistant through the process of open recruitment on 25th May, 1992.

(ii) When the respondent was working as the Postal Assistant, he was temporarily engaged as PL/VPP Clerk at Karad Head Office. As VPP Clerk the respondent had delivered on 24th July, 2004 VPP No. 306878 dated 15th July, 2004 to the addressee and collected the value of the parcel amounting to Rs.5822/-. However, the respondent did not credit the amount to the Government account on 24th July, 2004 by M.O. in lieu of the VPP delivered. That, similarly on another occasion i.e. on 25th August, 2004 the respondent delivered VPP/EPP No. 74534 dated 20th August, 2004 to the addressee and collected the value of parcel amount of Rs.5513/-.

Though under the Postal Rules the respondent was obliged to credit the amount of Rs. 5513/- to the Government account by issuing M.O. on the same day in lieu of cash receipt of delivery of VPP, but he made entry of M.O. in the register of VPP received for delivery against the concerned entry of VPP No.74534 on 9th September, 2004. Thus, as far as the second VPP is concerned, the respondent credited the said amount in the Government account belatedly after about 15 days i.e. on 9th September, 2004.

(iii) After the inquiries were initiated against the respondent, he deposited an amount of Rs.11,644/- with the Department on 20th January, 2005 under a covering letter. The record further reveals that on 24th February, 2005, the respondent further deposited an amount of Rs. 649/- vide receipt No. 38 of Book No. KL 4434 on account of amount of penal interest in respect of the said VPPs.

(iv) The Department thereafter decided to conduct inquiry against the respondent and accordingly a charge-sheet was served upon him on 28th May, 2005. The respondent submitted his representation on 11th June, 2005. In his representation dated 11th June 2005 the respondent denied the charges levelled against him. During the course of the said Inquiry, the respondent by his letter

dated 14th September, 2005 admitted the mistake committed by him in its totality. In the said letter dated 14th September, 2005, he stated that mistakes were committed due to family problems and other pressing circumstances and/or needs and sought benevolent consideration from the Inquiry Officer. In view of the admission given by the respondent, the Inquiry Officer therefore stopped the further inquiry. After taking into consideration the representation and the admission given by the respondent by his letter dated 14th September, 2005 the Disciplinary Authority felt that an opportunity to retain the respondent in the services should be given with a hope that he may show improvement in his behaviour in future. The Disciplinary Authority therefore under the powers vested in it vide Rule 12 (2) of the Central Civil Services Rules, (Classification, Control & Appeal) Rules, 1965, (for short CCS (CCA) Rules, 1965) ordered to reduce the pay of the respondent by two stages i.e. from Rs.4600 to 4400 in the pay scale of Rs.4000-100-6000 for a period of two years with cumulative effect from 1st January, 2006. It was further directed that during the period of reduction, the respondent was not to earn increments of pay.

(v) The record further reveals that the Director of Postal

Services, Pune Region Pune (Appellate Authority) by exercising its powers under Rule 29 (1) (v) of the C.C.S (CCA) Rules, 1965 sought to enhance the penalty imposed on the respondent by the Disciplinary Authority. He, therefore, issued a show cause notice to the respondent. The respondent submitted his representation to the Appellate Authority. In his representation the respondent has submitted that he belong to a backward community i.e. the lowest strata of the society and because of the attending circumstances which were beyond his control, he did not deposit the amounts of the said VPPs in a stipulated period. The respondent also sought leniency from the concerned authority.

(vi) That the Appellate Authority after taking into consideration the various aspects of the matter ordered that the respondent be removed from service with immediate effect vide its order dated 31st March, 2006

(vii) That feeling aggrieved by the order passed by the Appellate Authority, the respondent preferred a revision petition before the Chief Postmaster General, Maharashtra Circle, Mumbai. The Revisional Authority in exercise of the powers conferred to it under Rule 29 (1) (v) of CCS (CCA) Rules, 1965 rejected the

revision petition by its order dated 27th July, 2006.

(3) The respondent being aggrieved by the orders of removal from service for and for seeking reinstatement in the service, preferred Original Application No. 395/2007 before the Central Administrative Tribunal (for short “the Tribunal”) Bombay Bench, Mumbai. The Tribunal after hearing the parties to the said Original Application No. 395/2007 by its order dated 7.5.2008 was pleased to quash and set aside the orders passed by the Appellate Authority and Revisional Authority dated 31st March, 2006 and 27th July, 2006 respectively and directed the petitioner to restore the penalty order dated 5th October, 2005 passed by the Disciplinary Authority. The Tribunal has directed that the Respondent be reinstated with continuity of service and all other consequential benefits subject to the penalty order dated 5th October, 2005. The Tribunal, however, has further directed that the Respondent will not be entitled to any back wages for the period from the date of his removal till the date of his reinstatement or till the expiry of the the period of two months from the date of passing of the said order dated 7th May, 2008 by the Tribunal, whichever is earlier. The said order is impugned herein.

(4) The petitioner being dissatisfied and aggrieved by the said order has preferred the present petition as stated earlier on 8th July, 2008. This Court by its order dated 3rd December, 2008 has admitted the present petition and granted stay to the impugned order passed by the Tribunal.

(5) Mr Bhate, the learned counsel appearing for the petitioner submitted that the learned Members of the Tribunal erred in recording a finding in respect of the deposit of the VPP amount by the respondent. He further submitted that the finding recorded by the Tribunal that the respondent has deposited double amount for one VPP is incorrect. He further submitted that it is alleged against the respondent that, he misappropriated the amounts of the Government is a serious allegation and therefore the Tribunal has wrongly come to the conclusion that the Appellate Authority has made to deposit double than the amount in question is incorrect. He further submitted that the findings recorded by the Appellate Authority and Revisional Authority in their orders dated 31st March, 2006 and 27th July, 2006 are legally correct and proper and needs no interference at the instance of the Tribunal. He submitted that the Disciplinary Authority and the Tribunal both have committed grave

error in accepting the contention of the respondent thereby directing him to be reinstated in the services with all other consequential benefits and with other directions. He therefore prayed that present petition may be allowed and the order passed by the learned Members of the Tribunal dated 7th May, 2008 may be quashed and set aside.

(6) Mr Thorat, the learned counsel appearing for the respondent per contra, vehemently opposed the petition and submitted that as a matter of fact the respondent has made alleged loss good by making payment of Rs.11644/- by his covering letter dated 20th January, 2005 and has also subsequently deposited an amount of Rs.649 on account of penal interest. He submitted that thus the petitioner's Department never suffered any permanent monetary loss. He further submitted that the respondent was removed from service since 31st March, 2006 and in the last more than 8½ years the life of the respondent has become miserable as it is very difficult for him to survive. He submitted that after taking into consideration various attending circumstances of the present case, the Disciplinary Authority at the first instance and subsequently the learned Members of the Tribunal have passed equitable orders

which need not be interfered and/or disturbed by this Court in the interest of justice. He therefore prayed that the present petition may be dismissed.

(7) We have perused the entire record made available before us. The record reveals that the respondent though delivered on 24.7.2004 VPP No. 306878 dated 15th July, 2004 and collected value of parcel amount of Rs.5,822/-, did not issue M.O. on the same day, as necessary under the Postal Rules. Similarly, the respondent on subsequent occasion i.e. on 25th August, 2004 delivered VPP/EPP No. 74534 dated 20th August, 2004 to the addressee and collected the parcel amount of Rs.5513/- and instead of issuing M.O. on the same day as per the Rules, deposited the said amount with the Government by issuing M.O. on 9th September, 2004 i.e. 15 days belatedly. Thus, it clearly appears from the record that as far as the second VPP is concerned, the respondent deposited the said amount by way of M.O. belatedly after 15 days i.e. on 9th September, 2004.

(8) It is by now settled position of law that, more than one penalties can be visited upon a charged official but if one of the penalties so imposed is recovery of pecuniary loss, then the other penalty has to be suitably tempered by being toned down so as to

make it bearable to the charged official.

The learned Members of the Tribunal has held that the enhancement of penalty by the Appellate Authority, ordering removal of the respondent under Rule 11 (8) of the said Rules is clearly in violation of Rule No. 108 of Volume III of Posts and Telegraphs Manual laid down by the P & T Department. The Tribunal after relying on the ratio laid down by the Supreme Court in the case of *B.C. Chaturvedi Vs. Union of India* reported in 1996 SCC (L&S) 80 has held that, if the punishment imposed is highly disproportionate to the alleged misconduct committed by the respondent it would shock the judicial conscious of the Court. It further held that the penalty imposed by the Appellate Authority imposing extreme penalty of i.e. removal from service was excessive and grossly disproportionate to the misconduct of the respondent.

(9) In the peculiar facts and the circumstances of the present case, it clearly appears to us that the punishment imposed upon the respondent by the Appellate Authority and affirmed by the Revisional Authority by its orders dated 31st March, 2006 and 27th July, 2006 respectively was grossly disproportionate and excessive. The record reveals that the respondent is the only bread earner of

his family and hails from the lower strata of the society. At the cost of repetition, it is to be noted here that though the respondent had caused loss to the petitioner-Department, it was of temporary in nature and by his letter dated 20th January, 2005 the respondent has made the said loss good and has also paid penal interest of Rs.649/- on the said belated deposit of payment. We are of the view that an opportunity to show the improvement in the behaviour in future must be given to the respondent.

(10) In view of the above, we are of the considered opinion that the orders passed by the Appellate Authority and Revisional Authority dated 31st March, 2006 and 27th July, 2006 are totally unreasonable and arbitrary and cannot be sustained in the eyes of law. It clearly appears to us that the impugned order dated 7th May, 2008 passed by the learned Members of the Tribunal is an equitable order and the view taken therein is just right and proper. We see no error, illegality or perversity in the said impugned order to interfere with in our writ jurisdiction under Article 226 of the Constitution of India. Petition is accordingly dismissed with no order as to costs.

(A.S. GADKARI, J.)

(ANOOP V. MOHTA, J.)