

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.33050 of 2013

M.P.No.1 of 2013

1. Union of India
rep. by Secretary to Government
Ministry of Communication
Department of Post
New Delhi - 110 001.
2. Post Master General
Western Region (TN)
Coimbatore - 641 002.
3. Director of Postal Training Centre
Madurai - 625 022.
4. The Superintendent of Post Offices
Pollachi Division
Pollachi - 642 001. ... Petitioner

vs.

1. The Central Administrative Tribunal
Rep. by its Registrar
High Court, Chennai - 104.
2. Mr. V. Anandan ... Respondents
Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records in O.A. No. 615 of 2010 dated 28.02.2013 on the file of the 1st respondent and quash the same.

For Petitioner : Mr. V.P. Sengottuvel, Sr. Counsel
for Mr. K. Mohanamurali
For Respondents : R1 - Tribunal
No Appearance for R2

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Writ Petition is to an order made in O.A. No. 615 of 2010 dated 28.02.2013, by which, the Central Administrative Tribunal, while setting aside the order dated 19.09.2006 passed by the Superintendent of Post Offices, Pollachi, vide proceedings in Memo No.F1/4-1/2002-2003, modified the punishment of dismissal from service, into that of stoppage of one increment for a period of five years with cumulative effect. The Tribunal has further directed that the second respondent shall not be eligible for any back wages for the period from the date of dismissal from service, to the date of reinstatement i.e., for the period during which he was out of service. The Tribunal has directed that the entire period would be counted for pension purposes alone. Further directions have been issued to the writ petitioner/ respondent herein, to comply with the aforesaid order within a period of three months from the date of receipt of a copy of the order made in O.A.No.615 of 2010.

2. Though the matter was adjourned on several occasions, there was no representation on behalf of the second respondent. Therefore, we are constrained to hear Mr.V.P.Sengottuvel, learned senior counsel for the writ petitioners and pass orders on the materials available on record.

3. Facts leading to the filing of the writ petition are as follows:

The second respondent was appointed as Postal Assistant with effect from 17.06.1997. While working as leave reserve Postal Assistant he was deputed to work as Sub Postmaster, Udumalpet South SO from 01.01.2003 to 07.06.2003. While working in the said capacity, a charge memorandum dated 26.08.2004 under Rule 14 of the CCS (CCA) Rules, 1965 has been issued, details of the same, are discussed later. Vide letter dated 20.09.2004, the second respondent has denied the charges. The Inquiry Officer submitted a report holding all the charges as proved. Further representation dated 31.08.2006 was made against the Inquiry Officer's report. Considering the inquiry officer's report, representation of the second respondent and material on record, the Disciplinary Authority, viz., the Superintendent of Post Offices, Pollachi Division, Pollachi, 4th respondent herein,

vide order, dated 19.09.2006, dismissed the second respondent from service.

4. The second respondent preferred an appeal dated 28.10.2006 to the Director of Postal Training Centre, Madurai, the 3rd petitioner herein. Concurring with the findings of the disciplinary authority, the appellate authority, for the reasons recorded, passed orders on 21.05.2007, upholding the punishment. The second respondent preferred a revision petition, dated 22.08.2007 to the Post Master General, Western Region, Coimbatore 641 002. By order dated 08.06.2009, the Revisional Authority rejected the revision petition.

5. Being aggrieved by the abovesaid orders, the 2nd respondent has preferred O.A.No.615 of 2010, before the Central Administrative Tribunal, Madras Bench, Chennai, for the following reliefs,

"(1) To call for the records of (i) the 4th respondent pertaining to his order which is made in Memo No. F1/4-1/2002-2003 dated 19.09.2006 (ii) the order of the 3rd respondent which is made in Memo No. STB/15-59/2006 dated 21.05.2007 and (iii) order of the 2nd respondent which is made memo No. VIG/11-10/08 dated 08.06.2009 and set aside the same consequent to,

(2) direct the respondents to reinstate the applicant with all service benefits; and

(3) To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

6. Before the Tribunal, the second respondent challenged the proceedings, stated supra, on the following grounds,

"(i) One R. Krishnasamy was added as prosecution witness during the middle of the inquiry and he was not cited as witness in Annex. IV to the charge sheet.

(ii) S. Jeevanraj and V. Manjuladevi did not submit any complaint regarding charges I & II and the department did not sustain any loss.

(iii) One A.S. Ramu, who was cited as witness was not brought before the inquiry officer and his deposition was not recorded for proving Ex.P.16 and hence Ex.P.16 could not be relied upon to prove charges I & II.

(iv) Jeevanraj and Manjuladevi had not identified their signatures during inquiry.

(v) Two withdrawals (i) Rs.30,000/- dated 05.06.2003 and (ii) Rs. 16,000/- dated 07.06.2003 were made in the presence of one Shri

K.A.Kalyanbavaradharajan, the then IPO Udumalpet subdivision who took inspection of the SO during 05.06.2003 to 07.06.2003. The applicant wanted the inspection report of 05.06.2003 to 07.06.2003, which was not submitted as additional documents, but he was deprived of the same."

7. In O.A.No.615 of 2010, the writ petitioners have filed a counter affidavit, contending inter alia, that there is no violation of the provisions of CCS (CCA) Rules, 1955. They further submitted that the 2nd respondent was permitted to have a defence assistant and he cross examined the witnesses. All the authorities have applied their mind, to the charges, defence of the 2nd respondent, finding of the enquiry officer and taking note of the gravity of the charges, sustained the penalty of dismissal from service.

8. Placing reliance on the decision of the Hon'ble Supreme Court in State of U.P. v. V.Manmohan Nath Sinha and another reported in 2009 8 SCC 310, contention has also been made that a power of judicial review is not directed against the decision, but confined to the decision making process and that in the absence of any procedural flaw, no interference was called for. The petitioners have further submitted that the two signatories, viz., Mr.A.S.Ramu and Mr.M.Kasi, from the forensic laboratory, have filed a report on 17.10.2003.

9. Contention has also been made that as Thiru.M.Kasi, Assistant Director, next in rank to Mr.A.S.Ramu, to the Scientific Officer and Document Expert, has been examined by the prosecution and cross examined by the Defence Assistant and that would be sufficient to prove the veracity of the report. For the abovesaid reasons, the writ petitioners have sought for dismissal of the Original Application.

10. Adverting to the above submissions, the Tribunal in O.A.No.615 of 2010, dated 28.02.2013, at Paragraphs 7 and 8, decided as hereunder:

"7. We have considered the submissions made by both sides. The main grievance of the applicant is that the respondents have placed heavy reliance on the forensic expert report and chosen to cite him as a witness. Since the said forensic expert was not present, the applicant could not get an opportunity to cross examine him. As the forensic expert report was the basis for his dismissal from service, the applicant should have been given opportunity to cross examine him. The learned counsel for the applicant also highlighted the fact that in the instant case, there is no loss caused to the department and the entire amount

involved in the alleged incident has been fully recouped to the Government.

8. In view of the foregoing discussion, we are of the view that the punishment of dismissal from service is disproportionate to the charges held proved against the applicant. It is true but for the inspection conducted by the respondents, the money would have gone undetected. However, when the alleged money has been recouped by the applicant, he has been denied the opportunity of cross examining the forensic expert, who gave his opinion, which is the foundation for the dismissal of the applicant from service, a more sympathetic view can be taken."

11. In such a view of the matter, the Tribunal held that the punishment of dismissal was too harsh and modified the same, into stoppage of increment for a period of three years with cumulative effect. The Tribunal directed reinstatement. Ultimately, at Paragraph 10, held as follows:

"10. We make it clear that the applicant shall not be eligible for any back wages for the period from the date of his dismissal from service to the date of reinstatement i.e for the period during which he is out of service. However, the entire period would count for pension purposes alone. The respondents are directed to comply with this order within a period of three months from the date of receipt of a copy of this order. O.A is disposed of as above."

12. Perusal of the order made in O.A.No.615 of 2010, dated 28.02.2013, impugned before us, shows that attention of the Tribunal was brought to the notice of conviction of the second respondent by the Criminal Court in C.C.No.134 of 2005 and the punishment of rigorous imprisonment of one year and a fine of Rs.3,000/- under Sections 409, 468 and 477 IPC for the commission of fraud in Udumalpet South SO Savings Account Nos.836360, 836567 and 836607, other than those taken up for the departmental action. Despite conviction, the Tribunal has modified the punishment of dismissal from service with that of stoppage of increment.

13. Being aggrieved by the orders of the Tribunal, the present writ petition has been filed, contending inter alia,

"(i) The Tribunal has failed to note that as per Rule 14 (sub Rule 15) of CCS (CCA) Rules 1965, "if it shall appear necessary before close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion allow the Presenting officer to produce evidence not included in the list given to the Govt. servant or may itself call for new

evidence or recall and re examine any witness". Accordingly the Presenting officer was allowed to produce a new witness namely Sri.R.Krishnasamy in the middle of the inquiry on 18.04.2006 which is admissible as per relevant provision. The Inquiry officer had given ample opportunity to the 2nd respondent to cross examine the said witness. This was not objected to by the 2nd respondent during the course of inquiry held on 18.04.2006, vide daily order sheet, dated 18.04.2006. Without objecting the introduction 'of the above witness at the appropriate stage of the inquiry, the argument of the 2nd respondent made at this stage is purely after thought and not acceptable.

(b) The Tribunal has failed to note that Sr.S.Jeevanraj in his statement, dated 16.6.2003 (Ex.P-7) has clearly stated that he gave SB withdrawal application for Rs.10,000/- only on 04.06.2003 and got Rs.10,000/- only on 05.06.2003. This statement (Ex.P-7) was identified by Sri.S.Jeevanraj and taken on record by the Inquiry officer without any objection by the 2nd respondent during the inquiry. The fraudulent withdrawal of Rs.16,000/- was established by SB-7 (Ex.P-25) ledger card (Ex.P-29) and long book (Ex.P-22). Non receipt of complaints from the depositors for the left out amount does not in any way absolve the 2nd respondent from the misappropriation of Govt .money. The contention of the 2nd respondent that the Department did not sustain any loss does not in any way disprove the charges framed against him and thus the punishment awarded to the 2nd respondent is in order and justified.

(c) The Tribunal has failed to note that .in the Departmental inquiry, Sri.A.S.Ramu and Sri.M.Kasi have been summoned to appear before the inquiry officer on 27.10.2005 to tender their evidence. Sri.A.S.Ramu did not attend the inquiry on 27.10.2005 though the Registered Letter No.2015, dated 15.10.2005, containing the summon of the Inquiry officer was taken delivery by the said Sri.A.S.Ramu, Scientific officer and Document Expert on 19.10.2005. Sri.M.Kasi, AD, who attended the inquiry on 27.10.2005 could not be examined as the charged official did not attend the inquiry. Both the above witnesses had again been summoned by the Inquiry officer to attend the inquiry on 28.12.2005. Sri.A.S.Ramu, Scientific Officer did not attend the inquiry. In his letter dated 21.10.2005 addressed to Inquiry officer and sent through Sri.M.Kasi. Asst Director; Sri.A.S.Ramu has stated as follows, "with reference to the summons, I may represent that as Tr.Kasi, Asst. Director summoned in the same inquiry is

going to speak about the same facts and file the report. I request that my evidence may kindly be dispensed with". A copy of the same is enclosed herewith for ready reference.

(d) The Tribunal has failed to note that Sri.Kasi, Asst Director, Forensic Sciences Department, Chennai 600004 was examined as state witness and subjected to cross examination by the defence on 28.12.2005. As Sri.A.S.Ramu had not attended the inquiry and requested the inquiry officer to dispense with his evidence since Sri.M.Kasi, Asst Director, Forensic Sciences Department would speak about the same fact and file the report, the evidence of Sri.A.S.Ramu was dispensed with by the Inquiry officer in the Departmental inquiry. The document cited at serial 27 of the Annexure -III of the charge sheet was jointly prepared and signed by Sri.M.Kasi, Asst Director and Sri.A.S.Ramu, Scientific Officer. Sri.M.Kasi, Asst Director, appeared as a state witness, identified the documents and tendered evidence. As such inquiry officer dispensed with the evidence of Sri.A.S.Ramu in the Departmental inquiry. As the report at serial 27 of the Annexure III of the charge sheet was jointly prepared by Sri.M.Kasi and Sri.A.S.Ramu, the evidence of Sri.M.Kasi, Asst Director who is qualified in Forensic Sciences and undergone special training in inspection of documents was found enough to identify the documents and to narrate the fact of the case as per the letter of Sri.A.S.Ramu, Scientific officer. Inasmuch as Sri.A.S.Ramu, Scientific Officer has opined that the evidence of Sri.M.Kasi, is enough as the facts of the case are one and the same and that the report was jointly prepared and signed by both of them and that Sri.M.Kasi, the co-author of the Document was examined and cross examined by defence, the argument of the defence the Forensic Expert was not subjected to examination by the inquiry officer is not correct. Further, Sri.M.Kasi, Asst. Director was cross-examined by the defence in the Departmental inquiry on 28.12.2005 and the defence had the opportunity to elicit the required points regarding the document in their favour.

(e) The Tribunal has failed to note that the specimen signatures of Sri.S.Jeevanraj and Smt.Manjuladevi in Ex.P-20, Ex.P-21, Ex.P-27 and Ex.P-28 were obtained and attested by Sri.K.Kalyanavaradharajan (PW-7) who has identified the above documents in the Departmental inquiry. Further in Ex.P-21, the 2nd respondent has signed as Sri.Jeevanraj and in Ex.P-28, the 2nd respondent signed as V.Manjuladevi. Therefore the question of identifying the signature by the

depositors Sri.Jeevanraj in Ex.P-21 and Manjuladevi in Ex.P-28 will not arise. It is true that Sri.K.Viswanathan has signed as witness in Ex.P-27 was not inquired. But this will not make sea change in inquiry in proving the articles of charge.

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(g) The Tribunal has failed to note that in the charge sheet memo framed against Sri.V.Anandan, the letter No.Doc.355/2003, T.No.5639/2003, dated 17.10.2003 and T.No.5639/2003 Doc.355/2003, dated 17.10.2003 of the Director, Forensic Science Department, Chennai in 3 cases along with enclosures and reasoning sheets in 5 sheets have been' cited as documents at Sl.No.27 of Annexure III and the authors of' the documents Sri.A.S.Ramu, MSc., B.L., DEL., FICS., Scientific Officer and Document Expert, Office of the Director of Forensic Sciences Department, Chennai 600 004 and Sri.M.Kasi, M.Sc Asst Director Forensic Sciences Department, Chennai 600 004 have been cited as witnesses in Annexure IV.

(h) The Tribunal has failed to note that the 2nd respondent in his official position as SPM, Udamalpet South SO made forged withdrawals and utilised the Govt money thereby tarnished the image of the Department before the eyes of members of public. Merely recouped the amount by the 2nd respondent will not absolve him from the frauds committed by him.

.....

(j) The Tribunal has miserably failed in rendering a finding, that the whole of allegations are based on the Forensic expert but he was not called as witness and opportunity for cross examination was not given to the 2nd respondent thereby reduce the punishment in view of non examination of Forensic expert and for not giving an opportunity for cross examination. In this regard, it is submitted that in the charge sheet memo framed against Sri V.Anandan, the letter No.Doc.355/2003, T.No.5639/2003, dated 17.10.2003 and T.No.5639/2003 Doc.355/2003, dated 17.10.2003 of the Director, Forensic Science Department, Chennai in 3 cases along with enclosures and reasoning sheets in 5 sheets have been' cited as documents at Sl.No.27 of Annexure III and the authors of' the documents Sri.A.S.Ramu, MSc., B.L., DEL., FICS., Scientific Officer and Document Expert, Office of the Director of Forensic Sciences Department, Chennai 600 004 and Sri.M.Kasi, M.Sc Asst Director Forensic Sciences Department, Chennai 600 004 have been cited as witnesses in Annexure IV.

(k) The Tribunal has failed to note that 'the in

the Departmental inquiry, Sri.A.S.Ramu and Sri.M.Kasi have been summoned to appear before the inquiry officer on 27.10.2005 to tender their evidences. Sri.A.S.Ramu did not attend the inquiry on 27.10.2005 though the Regd letter No.2015 dated 15.10.2005 containing the summon of the Inquiry officer was taken delivery by the said Sri.A.S.Ramu, Scientific officer and Document Expert. Sri.M.Kasi who attended the inquiry on 27.10.2005 could not be examined as the charged official did not attend the inquiry. Both the above witnesses had again been summoned by the Inquiry officer to attend the inquiry on 28.12.2005. Sri.S.Ramu, Scientific officer did not attend the inquiry. In his letter dated 21.10.2005 addressed to inquiry officer and sent through Sri.M.Kasi. Asst. Director Sri.S.Ramu has stated as follows" with reference to the summons, I may represent that as Tr.Kasi, Asst. Director surnmoned in the same inquiry is going to speak about the same facts and file the report. I request that my evidence may kindly be dispensed with". A copy of the same is enclosed herewith for ready reference.

(1) The Tribunal has failed to note that Sri.Kasi, Asst Director, Forensic Sciences Department, Chennai 600004 was examined as state witness and subjected to cross examination by the defence on 28.12.2005. As Sri.A.S.Ramu had not attended the inquiry and requested the inquiry officer to dispense with his evidence since Sri.M.Kasi, Asst. Director, Forensic Sciences Department would speak about the same fact and file the report, the evidence of Sri.A.S.Ramu was dispensed with by the inquiry officer in the Departmental inquiry. The document cited at Serial 27 of the Annexure-III of the charge sheet was jointly prepared and signed by Sri.M.Kasi, Assistant Director and Sri.A.S.Ramu, Scientific Officer. Sri.M.Kasi, Assistant Director appeared as state witness, identified the documents and tendered evidence. As such inquiry officer dispensed with the evidence of Sri.A.S.Ramu in the Departmental inquiry. As the report at Serial 27 of the Annexure III of the charge sheet was jointly prepared by Sri.M.Kasi and Sri.A.S.Ramu, the evidence of Sri.M.Kasi, Asst' Director who is qualified in Forensic Sciences and undergone special training in inspection of documents was found enough to identify the documents and to narrate the fact of the case as per the letter of Sri.A.S.Ramu, Scientific Officer. In as much as Sri.A.S.Ramu, Scientific Officer has opined that the evidence of Sri.M.Kasi is enough as the facts of the case are one and the same and that the report was

jointly prepared and signed by both of them and that Sri.M.Kasi, the co-author of the Document was examined and cross examined by defence, the observation of the Hon'ble CAT that Forensic Expert was not subjected to examination by the inquiry officer appears to be insufficient in delivering the order.

(m) The Tribunal has failed to note that Sri.M.Kasi, Asst Director was cross examined by the defence in the Departmental inquiry on 28.12.2005 and the defence had the opportunity to elicit the required points regarding the document in their favour. Further it is to submit that in the criminal case filed against the said Sri.V.Anandan (case No.134/2005) Sri.A.S.Ramu, Forensic Expert appeared as state witness No.7, identified the document and tendered evidence. This has been discussed in page No.9 of the judgement, dated 02.07.2008 in case No.134/2005 by Judicial Magistrate No.1, Udamalpet. As per the judgement, the said Sri.V.Anandan was awarded with one year rigorous imprisonment and fine of Rs.3000/-."

14. In support of the above contentions, Mr.V.P.Sengottuval, learned Senior Counsel appearing for the petitioners took this Court through the evidence of Mr.K.A.Kalyanavaradarajan, the then Inspector of Police, Udamalpet Sub Division, and the evidence of Mr.M.Kasi, Assistant Director, Forensic Sciences, Chennai and submitted that the charged official had cross-examined the abovesaid witnesses and declared that no re-cross examination was required. He therefore submitted that the contention of the respondent that no opportunity was provided to cross-examine, has to be rejected and that there was no violation of the principles of natural justice.

15. We have gone through the examination in chief and cross, by the 2nd respondent. Inasmuch as the said forensic expert has been examined and also cross-examined by the 2nd respondent, the question of examination of other witnesses, does not arise. We are of the considered view that suffice that the Assistant Director of Forensic Sciences, has been examined in the enquiry proceedings.

16. Yet another reason assigned by the Tribunal, for interfering with the order of dismissal from service, is that the alleged money had been recouped by the 2nd respondent. Articles of charges and findings are extracted hereunder:

"Article I: Shri.V.Anandan while working as SPM, Udamalpet, South SO, during the period from 01.01.2003 to 07.06.2003 has taken the withdrawal amount of Rs.30,000/- in SB account No.836333 on 05.06.2003,

without the knowledge of the depositor Shri.S.Jeevanraj, violating the provisions of Rule 33 (5) of PO SB Manual Volume I and thereby failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Finding: It is, therefore imputed that Shri.V.Anandan, LRPA, Udamalpet HO while working as SPM, Udamalpet, South SO, has failed to observe the provisions of Rule 33(5) of PO SB Manual Volume I and thereby failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article II: Shri.V.Anandan while working as SPM, Udamalpet, South SO, during the period from 01.01.2003 to 07.06.2003 has taken the withdrawal amount of Rs.16,000/- in SB account No.836523 on 07.06.2003, without the knowledge of the depositor Smt.V.Manjuladevi, violating the provisions of Rule 33 (5) of PO SB Manual Volume I and thereby failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Finding: It is, therefore imputed that Shri.V.Anandan, LRPA, Udamalpet HO while working as SPM, Udamalpet, South SO, has failed to observe the provisions of Rule 33(5) of PO SB Manual Volume I and thereby failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article III: Shri.V.Anandan while working as SPM, Udamalpet, South SO, during the period from 01.01.2003 to 07.06.2003 has failed to credit into account a sum of Rs.200/- (Rupees two hundred only) being the repayment of withdrawal tendered by Smt.T.Dravidaselvi, MPKBY Agent for depositing into RD account No.725466 of Smt.P.Renuka on 15.03.2003, violating the provisions of Rule 10(1), read with Rule 106, 114 of PO SB Manual Volume I and Rule 103 of FHB Volume I and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Findings: It is, therefore, imputed that Shri.V.Anandan, then SPM, Udamalpet, South SO, has failed to observe the provision of Rule 10(1), read with Rule 106, 114 of PO SB Manual Volume I and Rule 103 of FHB Volume I and thereby failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article IV: Shri.V.Anandan, LRPA, Udamalpet HO,

while working as SPM, Udumalpet, South Class III SO, effected false claim of MPKBY Agents commission of Rs.80/- on 28.04.2003, by inserting a deposit of Rs.2,000/- made by the depositor of RD account No.727243 at the counter, in the MPKBY Agent's list submitted by Smt.J.Indirani. Thus, it is imputed that Sri.V.Anandan has violated Rule 9(1) of DG's instructions contained in letter No.107-16197-SB, dated 31.03.2000, 17.04.2000, 05.05.2000, 29.08.2000 and 11.09.2000 and thereby, failed to maintain absolute integrity and devotion to duty as required by Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Findings: Thus, it is imputed that Shri.V.Anandan, has violated Rule 9(1) of DG's instructions contained in letter No.107-16197-SB, dated 31.03.2000, 17.04.2000, 05.05.2000, 29.08.2000 and 11.09.2000 and thereby failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964."

17. When the articles of charges, with imputations of forgery, fraudulent withdrawal, failure to credit amount into an account, have been proved by oral and documentary evidence, merely because the amount was recouped, that would not absolve the 2nd respondent from the misconduct. We are of the view that the Tribunal has committed an error, by absolving the 2nd respondent from grave acts of misconduct.

18. Yet another aspect, which the Tribunal has failed to consider is that the respondent has been convicted by a Criminal Court in C.C.No.134 of 2005 and awarded with the punishment of rigorous imprisonment of one year and a fine of Rs.3,000/- under Sections 409, 468 and 477 IPC for the commission of fraud in Udumalpet South SO Savings Account Nos.836360, 836567 and 836607, other than those taken up for the departmental action. When the 2nd respondent has been convicted by a Criminal Court, it would be in appropriate on the part of the Tribunal, to order modification of the penalty and allow a convicted person, to continue in service.

19. In Union of India v. G.Ganayutham reported in 1997 (7) SCC 463, the Hon'ble Supreme Court summed up the legal position relating to proportionality and at Paragraphs 31, held as follows:

31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was

illegally or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards....."

20. In State of Meghalaya and others Vs. Mecken Singh N.Marak, reported in (2008) 7 SCC 580 at paragraph Nos.14 to 17, the Hon'ble Supreme Court held as follows.

"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. 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. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee

holds the position of trust where honesty and integrity are in-built 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.

.....

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

21. In *Chairman cum MD, Coal India Limited v. Mukul Kumar Choudhuri* reported in 2009 (8) MLJ 460 (SC), after referring to a catena of decisions on the proportionality, the Hon'ble Supreme Court, at Paragraph 26, held as follows:

"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

22. In Lucknow K.Gramin Bank (Now Allahabad, U.P.Gramin Bank) & Anr., Vs. Rajendra Singh, reported 2013 (12) SCC 364, on the Doctrine of Proportionality, at paragraph No.16, the Hon'ble Supreme Court, summarised as follows :

"16. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.

The principles discussed above can be summed up and summarized as follows:

(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

(b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;-

(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."

23. We are of the view that a convicted employee should not be directed to be re-instated in service, with any modification

in penalty. On the facts and circumstances of this case, we are unable to subscribe to the views of the Tribunal.

24. Going through the material on record, we are of the view that there is no procedural irregularity in the order of the Superintendent of Post Offices, Pollachi, vide proceedings in Memo No.F1/4-1/2002-2003, dated 19.09.2006, dismissing the 2nd respondent from service. Act of forgery and other acts of misconduct have been proved. Interference with the order of penalty by the Tribunal, is not tenable.

25. In view of the above, the Writ Petition is dismissed, setting aside the order of the 1st respondent in O.A.No.615 of 2010, dated 28.02.2013. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm
To
The Registrar
Central Administrative Tribunal
High Court,
Chennai - 104.

+lcc to Mr.V.P.Sengottuvel, Advocate, S.R.No.68378

nm(CO)
md(04/01/2017)

सत्यमेव जयते

W.P.No.33050 of 2013

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