

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.24080 of 2016

Y.Prabakaran

... Petitioner

-Vs-

1. Union of India,
Rep.by the Postmaster General,
Chennai City Region,
Chennai - 600 002.
2. The Superintendent of Post Offices,
Kanchipuram Sub-Division,
Kanchipuram - 631 501.
3. The Assistant Superintendent of Posts,
Kanchipuram Sub-Division,
Kanchipuram - 631 501 & Ad-hoc
Disciplinary Authority.
4. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

... Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent Tribunal pertaining to the order which is made in O.A.No.822 of 2012 dated 04.09.2015 and quash the same, consequent to direct the respondents 1 to 3 to re-instate the petitioner into service with all attendant benefits.

For Petitioner

:

Mr.R.Malaichamy

For Respondent Nos.1 to 3

:

Mr.V.P.Sengottuvel
Standing Counsel
R4 - Tribunal

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present writ petition for a Writ of Certiorarified Mandamus, to call for the records of the order passed by the fourth respondent / Tribunal, in O.A.No.822 of 2012, dated 04.09.2015 and to quash the same and direct the respondents 1 to 3 to re-instate the petitioner into service with all attendant benefits.

2.The petitioner herein while working as Gramin Dak Sevak Mail Deliverer/Mail Carrier (GDS MD/MC), Perattur Branch, Ikkadu Sub Office, Kanchipuram, was served with a charge memo dated 18.07.2011. Four charges were framed against the petitioner and they are:

"Article-I

That the said Shri.Y.Prabakaran, while working as GDSMD/MC, Perattur BO a/w Ikkadu SO, did not paid the MO No.8511/1024 dt 07-05-08 of Tiruvallur HO for Rs.400/- which was entrusted to him along with cash for effecting payment to the payee Smt.Pattammal w/o Nagan, Petattur Colony on 24-05-08, but shown as paid to the payee on 24-05-08 in the Post Office records and misappropriated the value of the above money order. Thus it is imputed that the said Shri.Y.Prabakaran GDSMD/MC Petattur BO a/w Ikkadu SO failed to observe the provisions of Rules 121(2) read with preamble note under the head postman in chapter III of Postal Manual Volume VI part III sixth edition and the provisions of Rules 10(1) of Branch Office Rules and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of GDS (C&E) Rules 2001.

Article-II

That the said Shri.Y.Prabakaran, while working as GDSMD/MC, Perattur BO a/w Ikkadu SO, did not paid the MO No.8511/1732 dt 07-05-08 of Tiruvallur HO for Rs.400/- (four hundred only) which was entrusted to him along with cash for effecting payment to the payee, Smt.Kalvi w/o Aruldoss, Perattur on 24-05-08, but shown as paid to the payee on 24-05-08, in the Post Office records and misappropriated the value of the money order. Thus it is imputed that the said Shri.Y.Prabakaran GDSMD/MC Perattur BO a/w Ikkadu SO failed to observe the provisions of Rules 121(2) read with preamble note under the head postman in chapter III of Postal Manual Volume VI part III sixth edition and the provisions of Rules 10(1) of Branch Office

Rules and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of GDS (C&E) Rules 2001.

Article-III

That the said Shri.Y.Prabakaran, while working as GDSMD/MC, Perattur BO a/w Ikkadu SO, did not paid the MO No.8510/940 dt 07-05-08 of Tiruvallur HO for Rs.400/- (four hundred only) which was entrusted to him along with cash for effecting payment to the payee Smt.Rajathi w/o Rajendran, Perattur Village on 24-05-08, but shown as paid to the payee on 24-05-08 in the Post Office records and misappropriated the value of the above money order. Thus it is imputed that the said Shri.Y.Prabakaran GDSMD/MC Perattur BO a/w Ikkadu SO failed to observe the provisions of Rules 121(2) read with preamble note under the head postman in chapter III of Postal Manual Volume VI part III sixth edition and the provisions of Rules 10(1) of Branch Office Rules and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of GDS (C&E) Rules 2001.

Article-IV

That the said Shri.Y.Prabakaran, while working as GDSMD/MC, Perattur BO a/w Ikkadu SO, did not paid the MO No.1498-29 dt 08-05-08 of EXPTL SO TN 1790 for Rs.400/- which was entrusted to him along with cash for effecting payment to the payee Smt.Chellammal w/o Durai, Perattur on 22-05-08, but shown as paid to the payee on 22-05-08 in the Post Office records and misappropriated the value of the above money order. Thus it is imputed that the said Shri.Y.Prabakaran GDSMD/MC Perattur BO a/w Ikkadu SO failed to observe the provisions of Rule 121(2) read with preamble note under the head postman in chapter III of Postal Manual Volume VI part III sixth edition and the provisions of Rules 10(1) of Branch Office Rules and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of GDS (C&E) Rules 2001."

3.The petitioner was required to submit his written statement of defence and also to state whether he desires to be heard in person. He has acknowledged the receipt of the charge memo and submitted a representation dated 25.07.2011 asking for certain documents and they were furnished. In his reply dated 18.08.2011 to the charge memo, he has admitted all the charges. He has also put forth a case in the reply that he has lost the Money Order amounts which he kept in his pocket during his journey by a sub-urban train to Chennai on the evening of 24.05.2008 and as such, it was only on account of the loss of

money that the delay occurred in the delivery of money to the payees concerned. He seeks leniency to be shown to him. He has also expressly stated that he did not want to have any oral enquiry. In spite of it, enquiry was ordered to be held by appointing an Inquiry Officer.

4. The Inquiry Officer held the preliminary enquiry on 30.09.2011. The petitioner appeared before the Inquiry Officer and admitted all the charges. On the basis of admission, the Inquiry Officer held the charges proved. He sent his report to the Disciplinary Authority.

5. A copy of the report of the Inquiry Officer dated 30.09.2011 was sent to the petitioner on 05.10.2011, with a direction to submit his representation. In response, the petitioner submitted a representation dated 18.10.2011, wherein, he pleaded for leniency. The Disciplinary Authority after due consideration of the entire records passed the final order. He awarded the punishment of removal from service on 30.11.2011.

6. Aggrieved by the order of the Disciplinary Authority, the petitioner preferred an appeal before the second respondent / Superintendent of Post Offices, Kanchipuram, for setting aside the punishment. The Appellate Authority did not find any reason to modify the order and hence, he has rejected the appeal. Thereafter, the petitioner preferred a revision before the Postmaster General/first respondent. In the revision, he pleaded for a lesser punishment and in the alternative he prayed for de novo enquiry. In the revision, the petitioner has pressed into service a new plea that he was prevailed upon by the Inquiry Officer to sign on the dotted lines and thus came into existence the admission of charges. The Revisional Authority did not find any justification for ordering de novo enquiry. He confirmed the order of the Disciplinary Authority.

7. Thereafter, the petitioner filed O.A.No.822 of 2012 before the Central Administrative Tribunal, Chennai, assailing the order of removal dated 30.11.2011 passed by the third respondent as confirmed by the Appellate Authority as well as the Revisional Authority. The Application was dismissed holding that the order of punishment of removal from service did not warrant interference. Undeterred the present Writ Petition has been filed against the order passed by the Central Administrative Tribunal, Chennai.

8. Even though the petitioner has taken several pleas in his affidavit filed in support of the Writ Petition, the learned counsel for the petitioner confined his arguments to the

question of admission of the charges and the quantum of punishment.

9.The learned counsel for the petitioner would contend that the so called admission on the basis of which the finding of guilt was rendered could not be construed as admission inasmuch as he has been made to sign the admission and he did not sign on his own volition. He calls upon this Court in the alternative to consider the representation as his explanation for the belated payment of Money Orders.

10.The learned counsel for the respondents would submit that this Court is not concerned with the correctness of the findings of fact on the basis of which administrative orders are passed. In this connection, he relied upon the decision of the Supreme Court rendered in Apparel Export Promotion Council vs. A.K.Chopra [1999 (1) SCC 759, wherein it has been held that "it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, is directed not against the decision, but is confined to the examination of the decision-making process".

11.Admittedly, there is delay in delivery of the Money Orders. In his reply dated 30.08.2011 to the charge memo, the petitioner has stated as follows: "I have gone through the Articles of charges with the copies of listed documents. I wish to submit that I admit the charges. I request the Hon'ble Ad-hoc Disciplinary Authority to kindly take a lenient view taking into account the following factors:" In his representation dated 30.09.2011, submitted before the Inquiry Officer, he has said thus: "I admit all the 4 articles of charge without any reservation and beg to be excused taking into account the reasons furnished in my letter dated 30.8.2011 addressed to the Ad-hoc Disciplinary Authority. I do not want any further inquiry in this case."

12.In accordance with the procedure, the Inquiry Officer fixed a date for preliminary hearing on 30.09.2011. The petitioner appeared before the Inquiry Officer. A perusal of the daily order sheet dated 30.09.2011 would reveal that the Inquiry Officer read over all the four charges to the petitioner and explained in Tamil. The Inquiry Officer further asked the

petitioner as to whether he admits or denies all the charges. The petitioner made an unconditional admission of all the charges. The Inquiry Officer recorded the admission and other answers given by the petitioner in writing and obtained signature of the petitioner on the daily order sheet. In view of the unconditional admission of all the charges, the Inquiry Officer held that all the four charges levelled against the petitioner have been proved.

13. The daily order sheet of the Inquiry Officer is a running record of all events during the course of enquiry. It has been signed by the Inquiry Officer, Presenting Officer and the charged employee. It is an authentic record of the proceedings of the enquiry. A careful scrutiny of the daily order sheet would show that the petitioner was afforded all reasonable opportunities and there is nothing to indicate that he was prevailed upon to sign on dotted lines.

14. It is pertinent to note that the petitioner in his further representation dated 18.10.2011, would state thus "I admitted the articles of charges made against me in memo No.ADA/01/2010/Perattur dated 19-7-2011 from your office in my defence dated 30-8-2011 and requested to pardon me taking lenient view taking into account the factors mentioned in my defence. I admitted the articles of charge before the IO also on 30-9-2011 and requested to be pardoned, and therefore, the IO also has held that all the articles of charge have been proved in view of the fact that I admitted the charges before him also. Therefore, I accept the report of the IO. But I request the honoured Ad-hoc disciplinary authority to kindly look into the following points and pardon me by taking a lenient view".

15. The questions and answers in the preliminary enquiry forming part of the daily order sheet coupled with the admission made in the above mentioned written representations dated 30.08.2011, 30.09.2011 and 18.10.2011 of the petitioner would clearly establish that the disciplinary proceedings have been gone through in accordance with the procedure contemplated by law. The petitioner has made voluntary admission of all the charges. The admission will fit in the description of "clear admission" notwithstanding the explanation of the petitioner which suffers from lack of materials to support it. The admissions are strikingly clear and unambiguous.

16. In Vice-Chairman, Kendriya Vidyalaya Sangathan and another vs. Girdharilal Yadav [2004 (6) SCC 325], it has been held that facts admitted need not be proved. In Himachal Pradesh Road Transport Corporation and another vs. Hukam Chand [2009 (11) SCC 222], it has been held that if there is an admission

of misconduct, or an employee pleads guilty in respect of the charge, there is no need for holding an enquiry. The contention of the learned counsel for the petitioner that before ever a major punishment is imposed on the employee, an enquiry is sine qua non. It may be pointed out that the contention of the learned counsel for the petitioner deserves only to be rejected in view of the decisions cited supra. Viewed in the light of these decisions, we hold that disciplinary proceedings were held against the petitioner in accordance with law and we do not find any reason to interfere with the concurrent findings of fact recorded by the Departmental Authorities and also by the Central Administrative Tribunal, Chennai.

17. Coming to the question of quantum of punishment, the learned counsel for the petitioner would submit that the punishment of removal from service is disproportionate to the misconduct. In *Apparel Export Promotion Council vs. A.K. Chopra* [1999 (1) SCC 759], it has been held "what punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court." In *Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh* [2006 (6) SCC 187], misappropriation of Rs.360.95 was held to be a grave act of misconduct and the punishment of dismissal from service was upheld. In *Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane* [2005 (3) SCC 254], "when an employee is found guilty of misappropriating corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such an employee and awarding punishment of dismissal."

18. It is candidly clear from the above decisions that it is very much in the domain of the disciplinary authority to determine the quantum of punishment and impose it. A close reading of the above decisions would reveal that in almost identical circumstances, the disciplinary authorities had imposed punishment of dismissal. In the case on hand, the disciplinary authority has considered it fit and proper to impose the punishment of removal of service, having regard to the totality of the facts and circumstances of the case. The Appellate Authority and also the Revisional authority for their part have concurred not only with the findings of the disciplinary authority but also the quantum of punishment awarded. The conclusion reached by the hierarchy of the authorities has obtained the seal of approval from the Central Administrative Tribunal, Chennai. The relationship of the employer and employee is based upon the mutual trust and confidence. There is a need for preserving the image and reputation of the institution, namely, the Postal Department. In

these circumstances, for the reasons stated supra, we find that the punishment of removal from service as confirmed by the different authorities provided under law, warrants no interference by this Court.

19.In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Postmaster General,
Union of India,
Chennai City Region,
Chennai - 600 002.
2. The Superintendent of Post Offices,
Kanchipuram Sub-Division,
Kanchipuram - 631 501.
3. The Assistant Superintendent of Posts,
Kanchipuram Sub-Division,
Kanchipuram - 631 501 & Ad-hoc
Disciplinary Authority.
4. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

+1cc to Mr.R.Malaichamy, Advocate, S.R.No.60606

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.60616

W.P.No.24080 of 2016

MSM(CO)
CA(15/11/2016)