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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Dated**: 16th August, 2016.*

\+ W.P.(C) 987/2014 & CM No. 1987/2014

UNION OF INDIA & ANR. ..... Petitioners
Through : Dr. Ashwani Bhardwaj, Advocate.

versus

KAMLA DEVI ..... Respondent
Through : Mr. NS. Dalal, Mr.Aman Mudgal, Advocates.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (*ORAL*)

1. Present writ petition has been filed by the petitioners under Article 226 of the Constitution of India challenging the order dated 23rd August, 2013 passed by the Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which OA No.3765/2011 filed by the respondent herein was allowed.

2. With the consent of the parties, we set down the writ petition for final hearing and disposal. Some necessary facts required to be noticed for disposal of the writ petition are that the respondent was working with the petitioners as '*Gramin Dak Sewak*' (Branch Post Master) w.e.f. 27th March, 1991. On 19/02/2004, a charge sheet under Rule 10 of Gramin Dak Sewak (Conduct & Employment) Rules, 2001 for major penalty was issued against the respondent. Since the Articles of Charge would have

some relevance in deciding the issue in hand, thus, we deem it appropriate to reproduce the same:

Article I of Charge:

It is alleged against Smt. Kamla Devi that while working as GDS (BPM), Khera Khurd, Delhi, on 3.2.2001 received the pass book from Sh. Devender Kumar, depositor, (Saving Bank Account No.3147679) and after making entry in the Branch Post Office daily journal, sent the Passbook to the Post Office, Khera Kalan, Delhi, for seeking approval of withdrawal of Rs. 10,000/- by the depositor from his above account. But the said Smt. Kamla Devi did not give any receipt in lieu of pass book to the account holder. Further, Smt. Kamla Devi on 5.2.2001, after handling over the withdrawn money to the account holder did not return the pass book nor gave any receipt in lieu thereof to the account holder.

Therefore, Smt. Kamla Devi, violated instruction No. 20 printed under the heading "Shakha Dak Pal Aisa Karna Kabhi Na Bhule" in the Branch Post Office Instructions Book.

Therefore, by her above acts while working as Branch Post Master, Khera Khurd Post Office, she has failed to act with honesty, integrity and promptness and has therefore violated Rule 17 of the Extra Departmental (Service and Conduct) Rules, 1964 read with Rule 21 of *the Gramin Dak Sewak (Conduct and Employment) Rules, 2001.*

<u>Article II of Charge:</u>

It is alleged against Smt. Kamla Devi, that while working as GDS (BPM), Khera Khurd P.O. during 15.2.2001 to July, 2001, has entered the withdrawal of Rs. 10,000/- from account No.3147679 on 17.2.2001 in the Saving Bank Account Journal. But she did not send the Pass Book and withdrawal from dt. 15.2.2001 to the Account Officer after making endorsement on the back of daily accounts of the Khera Khurd Branch Post Office. Whereas, the depositor has alleged that neither he had gone to the Post Office on 15.2.2001 nor he had received Rs. 10,000/- by way of withdrawn amount. Therefore, it is alleged against Smt. Kamla Devi GDS (BPO), Khera Khurd (put-off duty) that she has violated Rule 33(1), 33(2) (1) and 33(6) of the Post Office Savings Bank Manual Vol.-1 and Rule 134 (4) of the Branch Office Manual, 7th Edition, by her above acts, while acting as Branch P.M., BPO, she failed to act with honesty, integrity and promptness, thus, violating Rule 17 of the Extra Departmental (Service and Conduct) Rule, 1964 read with Rule 21 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001."

3. Since the respondent denied the Articles of Charge, an inquiry was conducted against her. The Inquiry Officer submitted his report on 27th February, 2009 in which he held that charges levelled against the

respondent stood proved. A copy of the inquiry report was supplied to the respondent for submitting her representation. The respondent submitted her representation on 06.06.2009. On examining her representation, the Disciplinary Authority by an order dated 31st December, 2009, imposed a punishment of removal from service of the respondent. On 12.05.2010, the respondent preferred a revision petition against the said order which was dismissed on 17/06/2011. This led to the filing of an OA No. 3765/2011. The Tribunal allowed the OA filed by the respondent primarily on the ground that the petitioners had shifted the onus to prove the charge on the respondent rather than proving the same. The Tribunal was also persuaded to allow the OA on the ground that material documents were not supplied nor the material witnesses were examined during the enquiry.

4. Mr. Bhardwaj, learned counsel appearing for the petitioner submits that the order of the Tribunal is based on the assumptions and presumptions and is liable to be set aside. It is contended that the Tribunal has failed to appreciate that in a departmental inquiry, the charges are required to be proved on the preponderance of probability and in the present case, there was sufficient evidence on record to prove the charges against the respondent. Strong reliance has been placed by the counsel for the petitioner on the complaint of the complainant/Mr. Devender Kumar, who was examined as a witness and who proved his complaint. It is contended that the respondent was given an opportunity to cross examine the complainant/Mr. Devender Kumar, but the respoondent was unable to create a dent in her cross examination.

5. Counsel for the petitioner also submits that all the documents available with the petitioner were produced in the inquiry and non production of any document would not render the case as 'a no evidence case', when the complainant had appeared as a witness and he proved his complaint. It is also contended that hand-writing was not examined by any Expert and as such, no report was available in that regard and in case, the respondent was desirous to examine the hand-writing, she could have produced such a witness in her defence. It is also contended that the Tribunal has failed to appreciate that the money withdrawal form was not available with the petitioner and neither such a document was produced or relied upon by the petitioner. Although, in ground f of para 3 of the petition, the petitioner has raised the plea that the learned Tribunal had failed to appreciate that the money withdrawal from was not available and no such document was either produced or relied upon by the petitioners in proving the allegations, but, Mr.Bhardwaj, submits that in fact, the pass book and the acknowledgment slip were not available with the petitioners. It is also contended that mere violation of principles of natural justice would not vitiate the inquiry report unless, the respondent was able to prove the prejudice which has been caused to her.

6. Mr. Dalal, learned counsel appearing for the respondent submits that simply by producing the complainant would not prove the case against the respondent, as no independent witness was produced to prove the guilt of the respondent. Counsel submits that a proper foolproof system is placed in the post office and not that a withdrawal form was handed over to the respondent without following a proper procedure. Mr. Dalal submits that a withdrawal form is handed over to the

Accountant, who would thereafter, examine the account of the holder of the withdrawal form and after making necessary entry and satisfying himself with regard to the identity of the person, match his/her signatures and thereafter on ascertaining whether, the amount was available, he would initial the withdrawal form and then hand over the same to the *Gramin Dak Sevak* i.e. Branch Post Master, who is then expected to compare the signatures on the withdrawal form with the signatures on the account opening form and in case, the same tallies, the withdrawal form is again counter signed and then handed over to the Cashier, who will then ask the Presenter of the withdrawal form to counter sign the same and then the money is released.

7. We have heard the learned counsel for the parties and considered their rival submissions. The respondent had challenged the disciplinary proceedings on the following grounds, as noticed by the Tribunal:

(i) The chargesheet was issued with a predetermined mind and bias against the applicant by the DA.

(ii) The applicant was not afforded a fair and reasonable opportunity to defend herself.

(iii) The respondents had failed to produce all the listed documents mentioned in the chargesheet. Certain documents asked for by the applicant were not supplied causing great prejudice to her defence.

(iv) The statements of the prosecution witnesses do not prove the charges against the applicant.

(v) No independent evidence was produced in the inquiry to support the charges.

(vi) The IO's report is biased and is not based on assessment

of evidence produced in the inquiry.

(vii) The DA also failed to consider all the points raised by the applicant in her representation.

(viii) The Revisionary Authority (RA) failed to apply his mind to the points raised by the applicant in the revision petition.

(ix) The penalty of removal from service is too harsh and disproportionate to the alleged misconduct."

8. At this stage, it would be useful to reproduce the observations made by the learned Tribunal in paras 7.3 & 8 of the impugned judgment

> *"7.3.We have gone through the IO's report and we find that the IO has held the charges to have been proved only on the basis of the statement of the complainant. Other than this the only evidence that has come against the applicant is that all the state witnesses who have merely affirmed that a complaint had been received from Sh. Devender Kumar against the applicant alleging misappropriation of Rs.10,000/- from his Savings account. In our opinion, the conclusion arrived at by the IO after analyzing the evidence that had become available in this inquiry cannot logically be arrived at. We are aware that in judicial review reappraisal of the evidence should not be done as the Courts cannot act as Appellate Authority and substitute their judgment for that of the DA. Yet in this case we find that the IO has reached to a conclusion in this inquiry report which does not logically follow from the appraisal of the evidence as neither the complainant nor any of the state witnesses have said anything that proves the charge as against the applicant.*

8. In our opinion there is also merit in the contention of the applicant that the IO has shifted the onus on the applicant to disprove the charges against her. This is obvious from the reading of the inquiry report in which the IO has observed as follows:-

The CO and even could not submit any evidence/document to show that the signature on the withdrawal form (SB-7) are of Sh. Devender Kumar depositor of this SB/AC.

Thus, instead of proving the charge against the applicant the IO has concluded that the applicant has failed to disprove the charge against her clearly assuming that the applicant is guilty until and unless she proves otherwise."

9. As far as the question relating to Hand-writing Expert is concerned, a copy of the Disciplinary proceedings which was forwarded to the respondent has been placed on record. As per this report, the documents mentioned at serial nos. 2, 3, 4, 5, 6, 7, 8, 13, 14 and 15 at Annexure '3' of the Charge were not produced by the petitioners for reasons best known to them. The inquiry proceedings also suggest that the CO submitted a list of additional documents. Finding the same to be relevant, the Inquiry Officer had directed the PO to produce the following documents:

" 1. Forensic science/handwriting expert report in r/o withdrawal form for Rs. 10000/- dated 15-2-2001 of SB A/C no. 3147679 of Khera Khurd GDBO.

2. Pass Book receipt acknowledgment book of Khera Khurd BO for Feb'01.

3. Inspection Report of Khurd BO the year 2001.

4. Order Book containing visit remarks of Mail Overseer."

10. Out of four documents, two documents i.e. the Inspection report of Khera Khurd GDBO of the year 2001 and order book containing visit remarks of Mail overseer were produced. But with regard to the Forensic science/Hand-writing Expert report, it was stated that the same was not available, while the pass book receipt, acknowledgement book was assured to be supplied shortly. The relevant part of the Disciplinary proceedings read as under :

"<u>*Reasons for not taking over the documents*</u>

The documents mentioned at Sl. No. 2,3,4,5,7,8, (SB-7) dated 05/06-2001 & 03/05-02-2001), 13,14 & 15 of annexure III of the charge were not produced by the prosecution for the reasons best known to them.

The CO submitted a list of additional documents, Being the relevant documents, the PO was directed to produce the documents demanded by CO on 9-7-2004, The detail of such demanded additional documents were as under:-

1. Forensic science/handwriting expert report in r/o withdrawal form for Rs. 10000/- dated 15-2-2001 of SB A/C no. 3147679 of Khera Khurd GDBO.

2. Pass Book receipt acknowledgment book of Khera Khurd BO for Feb'01.

3. Inspection Report of Khurd BO the year 2001.

4. Order Book containing visit remarks of Mail Overseer.

Out of the said 4 demanded additional documents, the PO produced two original documents of SI. No. 3 & 4 as Inspection Reports of Khera Khurd GDVI for the year 2001 and order book containing visit remarks of Mail Overseer. The other document as Forensic science/Hand writing expert report of SI. No. 1 was reported as not available and the Pass Book receipt acknowledgment book of Khera Khurd GDBO for Feb 01 of SI, No.2 wqs assured to be supplied shortly. The original additional documents so produced were shown to the CO and the copies of the same were supplied to her. The status of the remaining documents were also informed to her."

11. It is only during the course of hearing that it has been brought to our notice that no Hand-writing Expert was appointed and thus, there was no question of placing the report on record. While in the proceedings, as we have extracted herein above, the stand of the petitioner herein was that this report was not available. During the course of hearing, it was admitted before us that the pass book receipt, acknowledgement book of Khera Khurd, BO for February, 2001, though available was not produced. The stand taken at that time was that it would be produced at a later stage and later on, it was stated that the record was not available. The proceedings would show that the documents sought to be relied upon in the charge sheet at Annexure '3' were not produced by the petitioner herein. The documents sought by the respondent, though found to be relevant by the Inquiry Officer and

directed by the Inquiry Officer to be produced, were actually not produced.

12. From the record and the proceedings placed on record, we find that none of the main witnesses were produced by the petitioners herein and to rely simply on the submissions of the complainant would not prove the charge against the respondent and thus, the Tribunal has rightly allowed the OA.

13. It would be useful to refer to the case of ***Roop Singh Negi Vs Punjab National Bank,*** reported at 2009(2) SCC 570

"para 10.*Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said* *confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."*

14. Having regard to the nature of serious charges, simply by producing the complainant, in our view, cannot prove the charges against the respondent. The independent witnesses have neither been produced nor examined. To hold the respondent guilty only on the basis of the evidence of complainant would be highly unsafe.

15. We find force in the submissions made by learned counsel for the respondent that the material documents were not produced during the course of inquiry. The Inquiry Officer revealed that the respondent had sought production of documents, which were mentioned in the list of documents provided along with the Charge sheet. The documents being the Withdrawal Form, on the basis of which, the amount was withdrawn, Passbook receipt, Acknowledgement book of Khera Khurd PO for February, 2001. The aforesaid documents, if produced, the respondent would have been able to prove her innoscence. We also find that the Tribunal has rightly held that the petitioners did not prove the charges against the respondent as there was no independent evidence produced in the inquiry to corroborate the charges leveled against the respondent.

16. For the reasons stated above, we find no infirmity in the order of the Tribunal and hence, the instant writ petition is hereby dismissed.

17. The writ petition and the application are dismissed in the above terms.

G.S.SISTANI
(JUDGE)

I.S.MEHTA
(JUDGE)

AUGUST 16, 2016
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