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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5551 of 2016**

1. Union of India, through Secretary in Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi 110 001.
2. Chief Post Master General, Chhattisgarh Circle, CPMG Office, MG Road, Raipur 492001 (Chhattisgarh)
3. Senior Superintendent of Post Offices, Raipur Division, First Floor of Ganj Post Office, Station Road, Raipur, Chhattisgarh 492001

---- Petitioner

Versus

Raj Kumar Sahu S/o Late Ramadhar Sahu, aged about 50 years, Acts Branch Post Master, Karli (Choti) 493662, District Dhamtari, Chhattisgarh.

---- Respondent

For Petitioner	: Shri Narendra Kumar Vyas, Assistant Solicitor General.
For Respondent	: Shri B.P.Rao, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Pritinker Diwaker, J.

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****20/03/2017**

1. This writ petition under Article 227 of the Constitution of India is by the Union of India. It challenges the order of the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter referred to as 'the Tribunal') interfering with an order of removal from service of the Respondent. Through that order, the Tribunal also granted full back-wages on reinstatement.
2. We have heard the learned Assistant Solicitor General and the learned counsel appearing for the Respondent quite in extensio.

3. The Respondent was working as Branch Post Master. He was governed by the Gramin Daksewa (Conduct and Engagement) Rules, 2001 (hereinafter referred to as 'the Conduct Rules'). The allegations levelled against him were that he had failed to credit amounts in the accounts of seven (7) account holders of National Rural Employment Guarantee Scheme (NREGS) and of having made only part credits and resulted temporary misappropriation. Following a proper enquiry with a proposal to impose major penalty, the Disciplinary Authority concluded the proceedings by imposing punishment of debarring the Petitioner from appearing in the departmental examination for promotion post for a period of one year and confining the intervening period of put off to put on allowance. The Petitioner-employee did not challenge that decision. Thereafter, the Revisional Authority initiated a *suo moto* revision proceedings and issued notice to the delinquent requiring him to show cause against imposing the punishment of removal from engagement with immediate effect. The delinquent showed cause. That was not accepted. He was removed from service. This led to the proceedings before the Tribunal.
4. Hearing the learned counsel for the parties and perusing the materials, we see that the learned Tribunal had adverted to and considered the relevant facts, factors, materials and had assimilated the evidence, inferences and conclusions arrived at by the Disciplinary Authority as well as the revisional authority. It did not interfere with the findings of the Disciplinary Authority because that was not challenged by the delinquent. Insofar as Revisional Authority's finding and consequential order for removal from service is concerned, the Tribunal held that the materials clearly showed that the seven witnesses who were examined in the disciplinary proceedings could not sustain any uncontroverted statement that the delinquent had deprived them of their money. They had actually given inconsistent statements as to

the credits and debits. This situation was appropriately weighed by the learned Tribunal and the decision of the Revisional Authority was upturned. To that extent, we do not find any jurisdictional illegality or infirmity in the decision of the Tribunal in terms of the provisions of the Administrative Tribunal's Act, 1985. We therefore decline to exercise our jurisdiction to that extent under Article 227 of the Constitution, at the instance of the Establishment.

5. However, we see that the learned Tribunal has treated the issue of back-wages as merely a consequential one and has stated that it is needless to say that the Petitioner is entitled to back-wages and all consequential benefits. We are sure that the law is firm to the effect that grant of back-wages is itself a mixed question of facts and law depending on the facts and circumstances of each case. It is also the settled principle of law that the quantum of backwages and rate of back wages and the circumstances under which the scales of back-wages may tilt, either in favour of, or against, the delinquent, has also to be independently considered by the judicial authority which decides on such an issue. The Tribunal has erred in law and in relation to jurisdiction on that issue. Therefore, we proceed to consider that aspect of the matter as well.
6. The delinquent was out of service for nearly five years by now. Having found that the order of reinstatement is in order, we have bestowed our anxious consideration as to what could be the reasonable back-wages. There is no material offered by the delinquent on the basis of which he could insist that he had no other sources of income and had not derived any other profitable mode of sustenance. Though, we are not equating this to an issue as to subsistence allowance, question as to grant of an order for back-wages has to be considered, bearing in mind different components relating to its quantification. On the scales of justices between the parties before us,

we are of the view that back-wages quantified and fixed at Rs. 50,000/- as a consolidated amount will render justice to the delinquent/Respondent as well as the writ petitioner-Establishment. We cannot but modify the decision of the Tribunal to that extent.

7. In the result, the writ petition is ordered confirming the order of the Tribunal directing reinstatement but vacating the other orders and directions. It is further ordered that the Establishment will release to the Respondent an amount of Rs. 50,000/- as consolidated amount towards back-wages for the period in question, within a period of one month from the date of receipt of a copy of this judgment.
8. Since the parties have informed this Court that the directions for reinstatement has not been effectuated, let that be done and readmission of the Respondent to service be effected without fail within a period of one month. Contempt of Court proceedings based on the order of Tribunal, if any pending, shall stand deferred for a period of 45 days from today so that the Establishment can report compliance of this judgment before that Tribunal.
9. The writ petition is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan,)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE