IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2840 OF 2007

Arun s/o Laxmikantrao Aadhe,
Age : 45 years, Occu. Nil,
R/o c/o P.S. Dalal, Saraswatinagar,
Parbhani, District Parbhani **PETITIONER**

VERSUS

1. The Union of India,
   Department of Posts,
   through the Superintendent of
   Post Offices, Nanded

2. The Senior Superintendent of
   Post Offices, Dhule

3. The Director Postal Services,
   Aurangabad

4. The Secretary,
   Ministry of Communication,
   Department of Posts,
   Dak Bhavan, New Delhi – 110 001 **RESPONDENTS**

Mr. Pradeep Deshmukh, advocate for the petitioner
Mr. D.G. Nagode, Assistant Solicitor General
for the respondents

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 12^{th} September, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Heard the learned counsel for the petitioner and the learned Assistant Solicitor General, representing the respondents.

2. The petitioner has challenged the judgment and order dated 2nd December, 2005, passed in Original Application No. 428 of 2005 by the Central Administrative Tribunal, Bench at Mumbai ("Tribunal", for short), whereby the order dated 13th September, 2002, passed by the Appointing Authority of the petitioner imposing the penalty of his removal from service came to be upheld.

3. The petitioner was working as Treasurer-II, a Group C employee, in the Head Post Office at Parbhani. He was governed by the Central Civil Services Rules. It was alleged that on 31st December, 1996, he misused the Government amount of Rs.77,928/-, kept shortage in postage and revenue stamps which were part of the cash balance of Parbhani Head Post Office. He further misused the Government amount of Rs.614/-, being the sale proceeds of salable publications of Parbhani Head Office. While functioning as Treasurer-II in Parbhani

Head Office, during the period from 6th December, 1996 to 31st December, 1996, he did not supply the postage/ revenue stamps to the Post Offices of Kalamnuri, Hingoli, Gangakhed, Basmatnagar and Naya Mondha of Parbhani, in full, to meet their requirements. He was charged for failing to maintain absolute integrity and devotion to duty and thereby committing misconduct as contained in Rule 3 (1) (i) and (ii) of the Central Civil Services (Conduct) Rules of 1964.

4. A regular departmental enquiry was initiated against the petitioner. Memorandum dated 4th June, 1997 to that effect was served upon him with the articles of charges, statement of imputations of misconduct/ misbehaviour in support of articles of charges, the list of the documents and the list of the witnesses. The petitioner was given an opportunity of hearing. The Enquiry Officer examined six witnesses, who were cross-examined by the petitioner. The Enquiry Officer found the petitioner guilty of the above mentioned charges. Accordingly, he submitted his report to the Disciplinary Authority of the petitioner. The Disciplinary Authority supplied copy of the enquiry report to the petitioner vide letter dated 28th January, 2002 and called upon him

to make representation or submission, if any, against the findings recorded against him in the enquiry report, within fifteen days from the receipt of that letter. After considering the representation of the petitioner, the Disciplinary Authority accepted the enquiry report holding the petitioner guilty of the above mentioned charges. The Disciplinary Authority then referred the papers of enquiry to the Appointing Authority of the petitioner for passing of the final order. The Appointing Authority of the petitioner accepted the enquiry report and passed the final order on 13th September, 2002, inflicting the penalty of removal of the petitioner from service with immediate effect.

5. The petitioner filed departmental appeal under Rule 23 of the Central Civil Services (Class, Control & Appeal) Rules, 1965 ("Rules of 1965", for short). The Appellate Authority extended the petitioner an opportunity of hearing and ultimately, dismissed the appeal, vide order dated 18th February, 2003.

6. The petitioner filed Original Application No.428 of 2005, challenging the order passed by the Appointing Authority removing him from service as well as the order passed by the Appellate Authority. The

Tribunal, after considering the rival contentions of the parties, did not find any force in the contentions of the petitioner. The Tribunal, therefore, dismissed the Original Application vide order dated 2nd December, 2005, which is under challenge in this writ petition.

7. The learned counsel for the petitioner submits that the departmental enquiry was not initiated against the petitioner by his Disciplinary Authority. According to him, the Senior Superintendent of Post Offices was the Appointing Authority of the petitioner. Therefore, as per Rule 12 (2) (b) of the Rules of 1995, the Senior Superintendent of Post offices was the Disciplinary Authority. However, the departmental enquiry has been initiated against the petitioner by the Superintendent of Post Offices, Nanded, who was neither the Appointing nor the Disciplinary Authority of the petitioner. He further submits that the impugned order, removing the petitioner from service ought to have been passed by the Senior Superintendent of Post Offices, Nanded Division, Nanded. However, it has been passed by the Senior Superintendent of Post Offices, Dhule, who was holding additional charge of the post of Superintendent of Post Offices, Nanded. Therefore, according to him, the

impugned order, removing the petitioner from the service is not legal.

8. The learned counsel for the petitioner further submits that the petitioner was not in exclusive custody of the postage stamps and publications. The Post Master also was the joint custodian of the postage stamps and publications. The postage stamps and stationary were being kept in lock and key and one of the keys used to be with the Post Master. He submits that though the Post Master was jointly responsible for shortage of postage stamps and publications, he has been set scot-free. The Post Master was equally responsible for shortage of postage stamps and publications. The petitioner was assured that in case the shortage of postage stamps and publications is made good by him, no action would be taken against him. Believing that assurance, prior to initiation of the departmental enquiry, he deposited the entire amount of Rs. 78,542/-, which was the subject matter of the charges levelled against him, without admitting that he was responsible for shortage of postage stamps and publications. However, only because he deposited that amount, he was subjected to the disciplinary enquiry and ultimately,

came to be removed from the service.

9. The learned counsel for the petitioner submits that the petitioner never indulged in any misbehaviour or misconduct. The postage stamps and publications were being verified periodically. No shortage was noticed at any time prior to 31st December, 1996. The petitioner has been punished for the misdeeds of the Post Master, who was jointly responsible to account for the stock of postage stamps and publications, being the joint custodian. The learned counsel, therefore, submits that the penalty imposed against the petitioner may be set aside and the impugned judgment and order passed by the Tribunal may be quashed and set aside. In the alternative, he submits that the petitioner did not indulge in any misconduct prior to 31st December, 1996. He had sincerely rendered services in the Department of Posts since the year 1988. His service record is unblemished. He has the responsibility of his family. The amount which was required to be deposited for making good the loss of the Government had been deposited by him much prior to initiation of departmental enquiry. In the circumstances, the punishment of removal of the petitioner from service would be harsh, illogical and

would shock the conscience of the Court. He, therefore, submits that the said punishment may be reduced and the petitioner may be inflicted lesser penalty of compulsory retirement.

10. The learned Assistant Solicitor General (A.S.G.), appearing for the respondents submits that the charges levelled against the petitioner were serious. He was given full opportunity of defending himself before the Enquiry Officer as well as the Disciplinary Authority. The principles of natural justice have been duly followed by the Enquiry Officer. The evidence of the witnesses as well as the documents produced on record clearly disclose that the petitioner committed the misconduct as mentioned in the charges levelled against him. The petitioner has been rightly ordered to be removed from the service considering the serious nature of the charges proved against him. The Tribunal has rightly considered the facts as well as the evidence on record and has rightly confirmed the said penalty. He prays that the writ petition may be dismissed.

11. The petitioner, admittedly, is a Group-C employee. As seen from the order dated 4^{th} August, 1988, the Senior Superintendent of Post offices is the

Appointing Authority of the petitioner. As per Rule 12 (2) (b) of the Rules of 1965, the Appointing Authority or the Authority specified in the Schedule would be the Disciplinary Authority of the petitioner. Accordingly, as per the Schedule, Part-I, Item No. 14, the officer of Group "A" of Indian Postal Services will also be the Disciplinary Authority of the petitioner besides the Appointing Authority. The learned A.S.G. submits that the Superintendent of Post Offices being a Group "A" officer, was competent to initiate the disciplinary proceedings against the petitioner. He, therefore, submits that the authority of the Superintendent of Post Offices, Nanded to initiate the disciplinary proceeding against the petitioner cannot be questioned. He further submits that the authority of the Superintendent of Post Offices to initiate the disciplinary proceedings against the petitioner was not challenged by the petitioner before the Enquiry Officer, the Appointing Authority, the first Appellate Authority or even before the Tribunal. Therefore, according to him, this challenge taken up by the petitioner for the first time before this Court, is not sustainable.

12. We find substance in the contention of the

learned A.S.G. In view of Rule 12 (2) (b), read with Schedule Part-I Item No.14 of the Rules, the Superintendent of Post Offices being the Group “A” officer, was quite competent to act as the Disciplinary Authority of the petitioner and to initiate disciplinary proceedings against him. Moreover, the petitioner never challenged the authority of the Superintendent of Post Offices to initiate the disciplinary proceedings against him either before the Enquiry Officer, or the Appellate authorities or even before the Tribunal. As such, the contention challenging the authority of the Superintendent of Post Offices to initiate disciplinary proceedings against the petitioner, for the first time before this Court, cannot be entertained.

13. There is no dispute that the Senior Superintendent of Post Offices was the Appointing Authority of the petitioner. The impugned final order removing the petitioner from service has been passed by the Senior Superintendent of Post Offices, Dhule, who was holding additional charge of the Senior Superintendent of Post offices, Nanded. The contention of the learned counsel for the petitioner that the incharge Senior Superintendent of Post Offices was not

competent to pass the final order is sans substance. The Senior Superintendent of Post Offices, Dhule, who was looking after the work of Senior Superintendent of Post Offices, Nanded, because the later officer was not on duty, was quite competent to pass the final order in the disciplinary proceedings initiated against the petitioner. Moreover, the authority of the in-charge Senior Superintendent of Post Offices to pass final order inflicting penalty on the petitioner has been challenged for the first time before this Court and such belated challenge cannot be entertained.

14. About the merits of the matter, it would be sufficient to state that the petitioner was extended full and fair opportunity of hearing by the Enquiry Officer, the Disciplinary Authority, the Appointing Authority and the first Appellate Authority. The evidence recorded by the Enquiry Officer has been scrutinized properly by him. The fact that the petitioner deposited the entire amount, which was required to be recovered for making good the loss caused to the Government, itself indicates that the petitioner accepted the liability that was fixed against him even prior to initiation of the disciplinary proceedings.

The Tribunal has rightly considered the facts as well as the evidence on record and has rightly confirmed the findings recorded by the Enquiry Officer, holding the petitioner guilty of the above mentioned charges. We do not find any perversity in the said findings. We hold that the charges levelled against the petitioner have been duly proved and he has been rightly held guilty of the said charges. To that extent, the impugned judgment and order passed by the Tribunal do not call for any interference.

15. The only question that remains to be considered is about the quantum of penalty imposed against the petitioner. There is no dispute that the petitioner was appointed on 4th April, 1988 in the Postal Department. There is nothing on record to show that there was any allegation of misconduct/misbehaviour on the part of the petitioner during the period from 1988 till 1996. It is only in December, 1996 that the shortage of postage stamps and publications was noticed when he was working as the Treasurer-II in Head Post Office at Parbhani. From the stand taken by the petitioner, the Post Master was joint custodian of stamps and publications. He has come with a specific case that one of the keys of the

lock blocking the said stamps, publications, etc. used to be with the Post Master. Therefore, according to him, he was not in exclusive custody of the postage stamps, publications, etc. Though this contention of the petitioner has not been accepted by the Enquiry Officer, we are of the view that some concession ought to have been given to the petitioner on this count. The petitioner had deposited the entire amount in respect of the shortage of postage stamps, publications, etc. even prior to initiation of the disciplinary enquiry. This was certainly a mitigating circumstance in favour of the petitioner, which should have been considered while fixing the quantum of penalty. It seems that this fact has not been considered while passing the impugned orders. In our view, in the circumstances of the present case, the penalty imposed against the petitioner removing him from service would be rather harsh and illogical. We, therefore, think fit to modify the final order by reducing the penalty of removal from service to compulsory retirement as mentioned in Rule 11 (vii) of the Rules. In our view, this penalty would be quite adequate in the circumstances of the present case.

16. The Writ petition is liable to be allowed

partly. The impugned order is liable to be modified. In the result, we pass the following order:-

O R D E R

(i) The Writ Petition is allowed partly.

(ii) The impugned order dated 13th September, 2002, holding the petitioner guilty of the charges levelled against him is maintained as it is.

(iii) The impugned order inflicting penalty against the petitioner, removing him from service, is modified and instead, he is imposed the penalty of compulsory retirement as mentioned in Rule 11 (vii) of the Central Civil Services (Class, Control and Appeal) Rules, 1965.

(iv) Rule is made absolute accordingly.

(v) No costs.

[**SANGITRAO S. PATIL**] [**SUNIL P. DESHMUKH**]
JUDGE **JUDGE**

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