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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3226 OF 2005

B.B. Shirsat ...Petitioner

Vs.

1) Union of India
Through The Chief Post Master, General.
2) The Post Master, General, Aurangabad Division.
3) The Director of Postal Services, Aurangabad Region
C/o The Post Master General,
Aurangabad-431 002.
4) The Senior Superintendent of Post Officer,
Nashik Division, Nashik-422 001.

..Respondents

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Mr. Sunip Sen a/w Prabhakar M. Jadhav for Petitioner
Mr. Y.S. Bhate a/w Mr. M.R. Prajapati for Respondents.

CORAM: R.M. BORDE AND
A.S. GADKARI, JJ.

Reserved on: 13th January 2017.
Pronounced on : 15th February 2017.

JUDGMENT (PER A.S. GADKARI, J.):-

1] By the present petition under Article 226 of the Constitution of India, the petitioner has questioned the correctness of the Order dated 10th

September 2004 passed by the Central Administrative Tribunal, Bombay Bench, Mumbai in Original Application No.729 of 2002, dismissing the said Original Application thereby confirming the Order of dismissal of the petitioner from service by an Order dated 25.9.2001 passed by the Respondent No.4-Disciplinary Authority i.e. the Senior Superintendent of Post Offices, Nashik Division, Nashik.

2] Heard Shri Sen, the learned counsel for thepetitioner and Shri Y.S. Bhate for the respondents at length and also perused the entire record produced before us.

3] The petitioner joined the services in the Postal Department of the respondents on 21.3.1963. The petitioner was working as a Sorting Postman in the Industrial Estate Pose Office, Nashik during the period from 1.12.1990 to 22.12.2000. That on 8.9.2000 the petitioner was ordered by Smt. P.V. Mahajan, Sub-Post Master of Industrial Estate Post Office to convey two cash bags containing remittance of Rs.1,00,000/- and Rs.93,000/- respectively. Mr. M.B. Chandwade, Senior Postman was asked to accompany the petitioner as an escort. The petitioner received the said two cash bags from Shri R.S. Kadam, Treasurer of the Industrial Estate Post Office, Nashik. The petitioner and Mr. Chnadwade were suppose to carry the said two bags to Nashik Head Office and hand it over to the

Treasurer Shri R.P. Shelar and obtain the signature of the Treasurer in his receipt book. The said remittance was noted in the Sub-Office Account of the Industrial Estate Post Office dated 8.9.2000. The Senior Post Master of Head Office, Nashik was supposed to collect the remittance noted in the Sub-Office daily account of the Industrial Estate Post Office dated 8.9.2000 with the remittances as per the Rules prescribed under the Postal Manual. As the above two remittances noted in the Industrial Post Office dated 8.9.2000 were not received by the Senior Post Master, Nashik Head Office, the Senior Post Master initiated immediate enquiry. The preliminary inquiry made with the petitioner revealed that though he had accepted the above two cash bags, he did not hand it over to the Treasurer, Shri R. P. Shelar of Nashik Head Office. The record discloses that, when the petitioner attended his duty on 9.9.2000 at the Industrial Estate Post Office, it was revealed that the colleague of the petitioner namely Shri M.B. Chandwade, Senior Postman did not attend the duty. During the course of the preliminary enquiry, as was ordered by the Senior Post Master, Nashik Head Office, the statement of the petitioner came to be recorded on 9.9.2000 by Shri B.N. Dhokale, A.S.P., West Sub-Division, Nashik. In the said statement the petitioner stated that on 8.9.2000 in the evening, he was directed to carry the said two cash bags for remittance to Nashik Head

Office by Smt. P.V. Mahajan, Sub-Post Master, Industrial Estate Post Office, Nashik and Shri M.B. Chandwade was directed to be an escort to the petitioner. The petitioner informed that as he was of old age and was not keeping good health, after taking custody of the said two cash bags, Shri Chandwade told him that he will do the needful and will convey the remittances.. As the petitiioner was was having good faith and trust in Shri M.B. Chandwade, he handed over the said two bags to Shri Chandwade for its remittance to Nashik Head Office That Shri Chandwade thereafter collected the said two cash bags from the petitioner for its onward transmission to Nashik Head Office. When the petitioner attended his duty on the next day at about 9.30 a.m., Smt. P.V. Mahajan, Sub-Post Master of Industrial Estate Post Office informed him that yesterday's remittance was not received at Nashik Head Office. In the said statement recorded by Shri B.N. Dhokale on 9.9.2000, the petitioner admitted to reimburse the loss of Rs.1,93,000/- caused to the Departmental if Shri Chandwade would not credit the said amount in the Government Treasury, as the petitioner claimed responsibility for the said amount.

The record further discloses that Smt. P.V. Mahajan, Sub-Post Master of the Industrial Estate Post Office, Nashik thereafter lodged a complaint dated 9.9.2000 with the Sarkarwada Police Station informing the police that the two sealed cash bags containing Rs.1,93,000/- respectively were handed over to the petitioner, Sorting Postman and Shri M.B. Chandwade, Senior Postman after obtaining their acquittance in cash book for conveyance to Nashik Head Office. That the said cash bags were not received at Nashik Head Office till evening. Out of the said two person, the petitioner returned in the evening of 8.9.2000 and attended the duty on 9.9.2000, but Shri M.B. Chandwade did not attend the duty on 9.9.2000 and therefore it was requested to enquie into the matter.

4] The record further discloses that after receipt of the said complaint from Smt. P.V. Mahajan, Sub-Post Master of the Industrial Estate Post Office, Nashik on 9.9.2000 itself, the Senior Inspector of Police, Sarkarwada Police Station issued a Police Note to all the concerned for searching of missing person namely Shri Madhukar Chandwade giving the description of Mr. Chandwade and mentioning the facts as narrated by Smt. P.V. Mahajan. That on 11.9.2000 Smt. P.V. Mahajan, Sub-Post Master lodged the first information report with the Satpur Police Station, Nashik against the petitioner and Mr. M.B. Chandwade alleging that on 8.9.2000 the petitioner and Shri M.B. Chandwade were handed over the possession of two cash bags containing Rs.1,93,000/- for depositing it with the Head Office, Nashik, however, the said amount was misappropriated by them.

After a few days, the dead body of Shri M.B. Chandwade was found at Shirdi and as per the record, he committed suicide. After completion of the investigation, the police filed chargesheet in the competent Court of jurisdiction.

5] In view of the fact that, the petitioner failed to deposit the said amount of Rs.1,93,000/- with the Head Office at Nashik, the respondent No.4 initiated enquiry against the petitioner as contemplated under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for violation of the provisions of Rule 3(1)(i) and (ii) of the Central Civil Services (Conduct) Rules, 1964 and issued a chargesheet on 15.1.2001 in that behalf. The petitioner denied the charges. The respondent No.4 i.e. the Disciplinary Authority thereafter appointed an Enquiry Office to conduct the enqury against the petitioner. The petitioner filed his reply and participated in the enquiry proceedings. The Presenting Officer examined four witnesses in support of the case of the Department namely (1) Smt. P.V. Mahajan, Sub-Post Master of Industrial Estate Post Office, Nashik, (2) Shri R.S. Kadam, Treasurer of Industrial Estate Post Office, (3) Mr. R.P. Shelar, Main Treasurer, Nashik Head Office and (4) Shri B.N. Dhokale, A.S.P., West Sub-Division, Nashik who had recorded the statement of the petitioner dated 9.9.2000 during the course of the preliminary enquiry as per the directions of Senior Post Master. The petitioner also examined a witness namely Shri R.G. Sarode as a defence witness.

6] The Enquiry Officer after concluding enquiry, submitted his report dated 9.8.2001 to the Disciplinary Authority i.e. Respondent No.4. The Enquiry Officer has recorded his finding that, in view of the assessment of the evidence, he came to the conclusion that the charge framed against the petitioner is fully proved. The Disciplinary Authority after taking into consideration various documents on record and the representation of the petitioner, by its Order dated 25.9.2001, ordered that the petitioner should be dismissed from Government service with immediate effect.

7] Feeling dissatisfied by the order of dismissal dated 25.9.2001, the petitioner preferred an appeal with the Respondent No.2 which came to be rejected by an Order dated 26.4.2002. The petitioner being aggrieved by the Order dated 25.9.2001 passed by the Disciplinary Authority and Order dated 26.4.2002 passed by the Appellate Authority rejecting his appeal, preferred Original Application No.729 of 2002 before the Central Administrative Tribunal, Bombay Bench, Mumbai. The Central Administrative Tribunal by its Order dated 10.9.2004 was pleased to dismissed the said Original Application. The record discloses that the petitioner thereafter preferred a Review Petition bearing No.88 of 2004 in Original Application No.729 of 2002 which has also been dismissed by the Central Administrative Tribunal by its Order dated 22.2.2005. The petitioner has therefore impugned the said Orders dated 10.9.2004 passed in Original Application No.729 of 2002 and Order dated 22.2.2005 passed in Review Petition No.88 of 2004 in the present petition.

The present petition is admitted by this Court by its Order dated 9.6.2005.

8] As stated earlier, in pursuance of the first information report lodged by Smt. P.V. Mahajan, Sub-Post Master, Industrial Estate Post Office, Nashik, the police after completion of investigation had submitted a chargesheet against the petitioner under Section 409 of the Indian Penal Code. The Chief Judicial Magistrate, Nashik after conducting a full fledged trial, by its Judgment and Order dated 28.8.2009 was pleased to acquit the petitioner of the offence punishable under Section 409 of the Indian Penal Code. In its Judgment and Order dated 28.8.2009, the learned Chief Judicial Magistrate has recorded a finding that, the evidence led by the prosecution including the witnesses namely Smt. P.V. Mahajan (PW-2), , Shri R.S. Kadam (PW-3) and Shri B.N. Dhokale, A.S.P., West Sub-

Division, Nashik (PW-4) created strong suspicion in the mind of the Court about the dominion of the petitioiner over the property i.e. cash of Rs.1,93,000/- in the capacity of public servant as a postman. It has been further held that, the prosecution failed to prove entrustment or dominion of the cash amount with the petitioner for the simple reason that the deceased Shri M.B. Chandwade was a Senior Postman and his absence from duty and consequent suicidal death legitimately raises suspicion about his guilty conscious. The learned Chief Judicial Magistrate has further held that, the appearance of signature of the petitioner in the record of the post office itself would not be sufficient to believe that there was entrustment equally to the petitioner along with deceased Shri Chandwade. That the circumstances, that the Senior Postman deceased Shri Madhukar Chandwade did not resume duty, not informed the complainant (i.e. PW-2) nor informed any reason of his absence and above all the suicidal death, and resumption of duty of the petitioner on the next date speaks volumes. The learned Chief Judicial Magistrate after evaluating the entire evidence on record was pleased to acquit the petitioner.

9] Shri Sen, the learned Counsel, appearing for the petitioner submitted that, as the petitioner has been acquitted by the learned Chief Judicial Magistrate by its Judgment and Order dated 28.8.2009, therefore the petitioner deserves to be reinstated in the service with all consequential reliefs. In support of his contention, the learned counsel relied upon the decision of the Supreme Court in the case of *G.M. Tank Vs State of Gujrat reported in (2006) 5 SCC 446*. He further submitted that once it is proved beyond reasonable doubt that the petitioner was never having dominion over alleged cash amount, the punishment/penalty of dismissal from service is totally disproportionate and needs to be reviewed by this Court. In support of his contention, he relied upon the decision of the Supreme Court in the cases namely (1) *Union of India & Anr. Vs. G. Ganayutham reported in (1997) 7 SCC 463* (2) *Chairman-Cum Managing Director, Coal India Ltd & Anr. Vs. Mukul Kumar Choudhari & Ors. reported (2009) 15 SCC 620*. He lastly submitted that the impugned orders may be set aside and the present petition may be allowed.

10] Shri Y.S. Bhate, the learned Counsel appearing for the respondents vehemently opposed the petition and submitted that it is not the amount of money misappropriated that becomes a primary factor for awarding the punishment, on the contrary, it is the loss of confidence which is a primary factor to be taken into consideration. That when a person is found guilty from misappropriating employer’s funds, there is nothing wrong in the employer losing confidence or faith in such a person and awarding punishment of dismissal. He further submitted that the act of the petitioner was either dishonest or was so negligent that the petitioner herein was not fit to be retained in the services and there is no place for generosity or misplaced sympathy on the part of the judicial forum and thereby interfere with the quantum of punishment. In support of its contention, he relied upon two decisioins of the Supreme Court namely (1) *U.P. State Road Transport Corporation Vs. Suresh Chand Sharma reported in (2010) 6 SCC 555* and (2) *Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane reported in (2005) 3 SCC 254*. He therefore prayed that the present petition may be dismissed.

11] It is the trite position of law that the two proceedings i.e. the criminal trial and departmental enquiry are entirely different. They operate in different fields and have different objectives. That whereas object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to dealt with the delinquent departmentally and to impose penalty in accordance with the service rules. That strict rules and procedure would not apply to the departmental proceedings. The degree of proof which is necessary to order a condition is different from the degree of proof necessary to record the condition of delinquency. The rule relating to the appreciation of the evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, it cannot be convicted by Court of law. On the other hand, in the departmental enquiry the penalty can be imposed on the delinquent officer on the finding recorded on the basis of 'preponderance of probability'.

12] The Supreme Court in the case of G.M. Tank Vs. State of Gujarat & Ors.(supra) in para-30 and 31 has held as under:

> ***"30]*** *….It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying*

upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31] *In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the* *employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."*

13] The record of the present case reveals that the witnesses in the departmental enquiry and in the criminal trial were common. That, while lodging the complaint dated 9.9.2000 with the Sarkarwada Police Station, Nashik, Smt. P.V. Mahajan, Sub-Post Master has specifically and categorically stated that the petitioner returned in the evening on 8.9.2000, however, Shri M.B. Chandwade did not attend duty on 9.9.2000 and requested to enquire into the matter. In the preliminary enquiry which was directed to be conducted by the Senior Post Master, Nashik Head Office on 9.9.2000, the incriminating statement of the petitioner came to be recorded by Shri B.N. Dhokale, A.S.P., West Sub-Division, Nashik wherein also the petitioner has categorically stated that in the evening of 8.9.2000, he along with Shri Chandwade collected the said cash from the Industrial Estate Post Office and as he was not feeling well, Shri Chandwade assured him to do the needful i.e. to remit the said cash with Nashik Head Office. That he attended duty on the next day i.e. 9.9.2000, however, Shri Chandwade did not attend the duty. In that statement the petitioner has nowhere accepted the guilt of misappropriation of the funds and has simply stated that he will credit the said amount if Shri Chandwade fails to credit it. It further appears to us that as Mr. Chandwade did not deposit the said amount with the Nashik Head Office on the next day i.e. 9.9.2000, an immediate enquiry was directed to be conducted by the Senior Post Master, Nashik Head Office and the petitioner was forced to give the said statement before Shri Shri B.N. Dhokale, A.S.P., West Sub-Division, Nashik who conducted the said enquiry.

14] As stated earlier, Smt. P.V. Mahajan, Sub-Post Master has lodged the first information report on 11.9.2000 thereby naming petitioner and Shri M.B. Chandwade as the suspected accused persons. In this background it is necessary to note that the chargesheet issued to the petitioner for departmental enquiry on 15.1.2001 is absolutely silent about the presence and/or accompaniment of Shri Chandwade on 8.9.2000 while accepting the said cash. There is clear finding recorded by the Chief Judicial Magistrate after conducting a full-fledged trial, that the prosecution has failed to prove the dominion and/or possession over the said cash by the petitioner. The police could not recover the cash amount from the deceased Shri M.B. Chandwade. It may be noted that, if the petitioner would have committed the alleged misappropriation of the amount, then the petitioner perhaps would not have attended the duty on the next day. It further appears to us from the record, that Mr. M.B. Chandwade committed suicide out of remorse or repentance of the acts of omission or commission committed by him and his dead body was found after a few days at Shirdi. As stated earlier, a chargesheet dated 15.1.2001issued by the respondent No.4 is absolutely silent about the presence or escort of Shri Chandwade which was allegedly provided to the petitioner. It is further to be noted here that the respondent-department also did not take any care to provide adequate security and/or police escort with the petitioner while carrying the alleged cash as per the postal rules. It clearly appears to us that as the department failed to recover the cash either from Shri Chandwade or from the petitioner, the petitioner has been made as scapegoat in the entire episode.

15] In the premise, the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have committed an error in reaching to the conclusion that the petitioner has committed misappropriation of the Government funds. Therefore in our considered view, the charge framed as contemplated in Rule 3(1)(i) of the Central Civil Services (Conduct) Rules, 1964 is not proved by the respondents against the petitioner. There is no evidence on record to hold that the petitioner being Government servant has failed to maintain absolute integrity during the course of service.

16] Once we hold that the respondents have failed to prove the charge as contemplated under Rule 3(1)(i) of the Central Civil Services (Conduct) Rules, 1964, the other charge which is framed against the petitioner under Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964 i.e. the petitioner failed to maintain devotion to duty, needs to be examined. In view of the consistent case of the petitioner since beginning that, as he was not feeling well on 8.9.2000 and after taking custody of the said two cash bags, Shri Chandwade assured him that he would do the needful of conveying the remittance to Nashik Head Office and petitioner by relying on the words of Shri Chandwade who was his colleague did not accompany him to the Head Office, is according to us proves the said charge of not maintaining devotion to duty, as contemplated under Rule Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964. It appears that the petitioner has failed to take proper care in assisting Mr. Chandwade in depositing the said cash with the Head Office.

17] As stated earlier, the charge under Rule 3(1)(i) of the Central Civil Services (Conduct) Rules is not proved against the petitioner however the other charge under Rule 3(1)(ii) of the said Rules is proved, the question remains for our consideration is, whether the punishment/penalty inflicted upon the petitioner is proportionate to the charge proved against him.

18] In view of the settled position of law, ordinarily we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment, however, in view of the facts and circumstances of the present case, this exercise may not be proper. It is to be noted here that, on the date of dismissal of the petitioner from the service i.e. 25.9.2001, the petitioner had almost completed 37 years in services and was at the fag-end of the service. A further period of about 16 years have been lapsed in judicial proceedings. The petitioner was aged about 72 years when the present petition was filed in the year 2005 and as of today he is about more than 83 years of age. After taking into consideration the peculiar facts and circumstances of the present case and the entire evidence on record, we are of the considered view that the penalty/punishment imposed by the Disciplinary Authority on the petitioner for a charge under Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules is grossly disproportionate and requires interference by this Court. The Tribunal, in our view, has also failed to appreciate the aforestated vital aspect of the present matter.

19] In our considered opinion, the ends of justice would be met if the petitioner is directed to be retired compulsorily from the service from

25.9.2001 by allowing him to avail all retiremental benefits such as pension etc.

20] In view of the above, the Orders dated 10.9.2004 passed in Original Application No.729 of 2002, dated 22.2.2005 passed in Review Petition No.88 of 2004 by the Central Administrative Tribunal and Order of dismissal dated 25.9.2001 by the respondent No.4 are quashed and set aside. The petitioner shall stand retired compulsorily from the service of respondents with effect from 25.9.2001 and the respondents are directed to issue necessary orders in that regard within 15 days from today. The petitioner shall be entitled for all consequential benefits in pursuance of this Order.

21] The Petition is allowed in the aforesaid terms. No costs.

(A.S. GADKARI,J.) **(R.M. BORDE, J.)**