

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 24.02.2017	Date of pronouncing Judgment 28.03.2017
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THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.15682 of 2015

B.Pitchai .. Petitioner

Versus

- 1 Union of India
Rep. by the Chief Postmaster General
Tamil Nadu Circle
Anna Salai, Chennai-2.
- 2 The Director of Postal Services
Chennai City Region, Chennai-2.
- 3 The Senior Superintendent of Post Offices
Tambaram Division
Tambaram, Chennai-45.
- 4 The Registrar
Central Administrative Tribunal, Chennai-104... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 4th Respondent, which is made in O.A.No.190 of 2011 dated 13.03.2014 and quash the same, consequently to direct the Respondents 1 & 3 to reinstate the Petitioner into service with all service benefits.

For Petitioner : Mr.R.Malaichamy
For Respondents 1 to 3 : Mr.Venkataswamy Babu
SPC

ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)
The Writ Petition has been filed against the order passed by

the Central Administrative Tribunal, Madras Bench, in O.A.No.190 of 2011 dated 13.03.2014 dismissing the Application filed by the petitioner herein.

2. The petitioner while working as Sub-Post Master in the Department of Post was charge sheeted vide charge memorandum dated 13.03.2007 in relation to misappropriation of Recurring Deposit Accounts. The petitioner denied the charges and thereafter, an inquiry was held and initially Inquiry Report dated 19.09.2007 was submitted holding that the charges were proved against the petitioner. It appears that before the Inquiry Officer the petitioner accepted the charges and thereafter, the Inquiry Officer concluded against the petitioner. According to the petitioner, he was compelled to give such admission and therefore, he appealed to the Disciplinary Authority for conduct of fresh inquiry. However, the Disciplinary Authority accepted the request of the petitioner and ordered re-inquiry vide his proceedings dated 13.02.2008. However, the Disciplinary Authority appointed the very same Inquiry Officer and the petitioner once again under the compulsion admitted the charges levelled against him. Therefore, an Inquiry Report was submitted on 25.03.2008 holding the charges against the petitioner as proved. As against the Inquiry Report, the petitioner submitted his representation on 05.07.2008, however the Disciplinary Authority, the 3rd respondent herein without considering the representation, in proper perspective, removed the petitioner from service vide order dated 07.08.2008. Thereafter, an appeal was filed on 28.08.2008 to the second respondent herein, the Appellate Authority, which has been rejected by order dated 27.11.2008 and a Revision, filed against the order, dated 18.03.2009 was again rejected by the Revisional Authority vide order dated 29.11.2010. All the orders of the Disciplinary, Appellate and the Revisional Authority were impugned in the Original Application.

3. Before the learned Tribunal, it was contended on behalf of the petitioner that due to compelling circumstances with an assurance that his case would be viewed leniently, an admission was obtained from the petitioner. However, contrary to the assurance, he was eventually imposed with the harsh penalty of removal from service. According to the petitioner, he was not otherwise granted fair and equitable opportunity to put forth his defence in the inquiry and as such, the findings of the inquiry cannot be the basis of the impugned penalty. Per contra, it was contended on behalf of the official respondents that the charges levelled against the petitioner were very serious in nature i.e., misappropriation of public funds and the petitioner himself had admitted the charges and in fact, he explained the circumstances under which he committed the

irregularities and requested to exonerate him. In fact, the Disciplinary Authority was more than fair to the petitioner that by accepting his request, he ordered for re-inquiry. Once again, the petitioner, during the course of inquiry, admitted the charges without any condition and requested for lenient view. Since the charges were very serious in nature affecting the reputation of the Department and considering the integrity of the public servants, the Disciplinary Authority had rightly imposed the penalty of removal from service. The Appellate and the Revisional Authorities have rightly confirmed the imposition of impugned penalty. After taking note of the rival submissions, the learned Tribunal dismissed the Original Application as devoid of merits. The learned Tribunal has clearly found the charges established against the petitioner and the contention put forth on behalf of the petitioner did not call for any interference in the orders passed by the authorities concerned, in the matter of imposition of impugned penalty. As regards proportionality of the penalty was concerned, the learned Tribunal held that in cases involved in defrauding the public money, the minimum punishment imposed is only removal from service. In such view of the matter, the plea of dis-proportionality of punishment was held to be not maintainable as far as the instant case is concerned. As against the order passed by the learned Tribunal, the present Writ Petition is filed.

4. The learned counsel Mr.R.Malaichamy appearing for the petitioner would strongly contend that the statement obtained from the petitioner was on the basis of the assurance given on behalf of the Department that a lenient view would be taken in the matter. Only under those circumstances, the petitioner admitted and explained the circumstances, under which the so-called irregularities had taken place. Such admission cannot be construed to be on unmistakable terms and cannot be the basis for imposition of severe penalty of removal from service. This aspect has not been properly appreciated either by the Appellate or the Revisional Authority and therefore, confirmation of the impugned penalty thus call for interference from this Court. On the other hand, the learned counsel appearing for the official respondents would reiterate his submissions put forth before the learned Tribunal. According to him, the punishment imposed cannot be said to be disproportional to the gravity of the misconduct and therefore, no interference is called for.

5. Be that as it may, although there cannot be different opinion as regards the proportionality of punishment in regard to matters involving defrauding of public money, at the same time, the circumstances under which the irregularities had happened, has also to be seen. The petitioner, who admitted the incident, nevertheless had come with the explanation regarding

his son meeting with an accident and due to which, the petitioner had to take leave to look after his son. In his absence, according to him, the so-called irregularities had happened and only in order to assume moral responsibility, he had accounted for the same. Such an explanation, though may not wipe out the charges framed against him, may atleast dilute the severity of charges. Hence, We are of the view that the petitioner's continuance in the public service is not in public interest. However, the punishment of removal from service is little too harsh and instead of the removal from service, the petitioner may be imposed with the penalty of compulsory retirement.

6. We, therefore, direct the Competent Authority to impose the order of compulsory retirement on the petitioner with effect from the date he was removed from service and pass such consequential order, as the case may be, of modification of the penalty.

7. In view of the above finding, We hereby set aside the orders of the Disciplinary, Appellate and the Revisional Authority and also the order passed by the learned Tribunal in O.A.No.190 of 2011 dated 13.03.2014 only to the extent that the learned Tribunal upholding the proportionality of the punishment imposed on the petitioner. The official respondents are directed to pass orders in terms of the above directions within a period of three months from the date of receipt of a copy of this order and communicate the same to the petitioner.

8. With the above modifications and directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

To

- 1 The Chief Postmaster General
Union of India
Tamil Nadu Circle
Anna Salai, Chennai-2.
- 2 The Director of Postal Services
Chennai City Region, Chennai-2.

- 3 The Senior Superintendent of Post Offices
Tambaram Division
Tambaram, Chennai-45.
- 4 The Registrar
Central Administrative Tribunal, Chennai-104.

+1cc to Mr.Malaichamy, Advocate, S.R.No.19108
+1cc to Mr.Venkatasamy Babu SPC, Advocate, S.R.No.19383

mg (CO)
MD(20/04/2017)

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