

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.02.2017

Delivered on: 03.03.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and

The Honourable Mr. Justice V.PARTHIBAN

W.P.No.15689 of 2015

1 P.Jagadeesan Petitioner

Versus

1. Union of India
rep. by the Senior Superintendent
of Post Offices,
Madurai Division, Madurai 625002

2. Assistant Superintendent of
Post Offices & Ad-hoc Disciplinary Authority
Madurai (N) Sub Division,
Madurai 625 002

3. The Registrar
Central Administrative Tribunal,
Chennai-600 104 Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to order of 3rd respondent which is made in O.A.No.917 of 2011 dated 13.08.2013 and consequently direct the respondents 1 and 2 to reinstate the petitioner into service with all attendant benefits.

For Petitioners: Mr. R.Malaichamy

For Respondents: Mr.Venkataswamy Babu,SPC
for R1 & R2

R3 : Tribunal

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order, dated 13.08.2013 passed by the learned Central Administrative Tribunal (in short, 'the Tribunal'), Madras in O.A.No.917 of 2011 dismissing the original application filed by the petitioner herein.

2. The petitioner was working as Gramin Dak Sevak Mail Deliverer/Mail Carrier (in short, GDS MD/MC). He was charge sheeted under Rule 10 of the Department of Posts Gramin Dak Sevaks (conduct and Employment Rules, 2011 (in short, 'DPGDS Rules') by a charge memo dated 02.08.2007. Three articles of charges were levelled against the petitioner relating to misappropriation of amounts due to money order payees. As the charges having been denied by the petitioner, an inquiry was ordered. Before the departmental inquiry, the concerned money order payees have deposed that they have received the value of money order i.e. in respect of two articles of charges. As regards the 3rd charge was concerned, by the time, the concerned money order payee had died. In view of the circumstances, the Inquiry Officer, vide his report dated 1.6.2009, held that the charges were not proved against the petitioner. However, the Disciplinary Authority, the second respondent herein, disagreed with the findings of the Inquiry Officer vide disagreement note dated 11.07.2009 and directed the petitioner to submit his representation on the disagreement proceedings.

3. The petitioner submitted a detailed representation on 6.8.2009 in support of Inquiry Officer's findings and notwithstanding the same, the second respondent imposed the penalty of removal from service on the petitioner vide his proceedings dated 8.9.2009. Aggrieved by the same, the petitioner had preferred an appeal on 28.9.2009 and on 22.10.2009 to the first respondent. The first respondent by his proceedings, dated 25.2.2011 rejected the appeal. Against the order of penalty and confirmation of the appeal, the petitioner approached the learned Tribunal, seeking to set aside the said orders and also for reinstatement into service.

4. Before the learned Tribunal, it was contended on behalf of the petitioner that in spite of the fact that the Inquiry Officer found the charges not proved, the Disciplinary Authority, without giving adequate and proper reasons, disagreed with the findings of the Inquiry Officer. The disagreement by the Disciplinary Authority was not on the basis of any evidence

which was let in in the inquiry, but on the basis of his own surmises and conjecture. The petitioner, in fact, had given a detailed representation against the disagreement of the Disciplinary Authority and it was further contended on behalf of the petitioner that the Appellate Authority himself has not considered the appeal in proper perspective, but rejected the same mechanically without due examination and proper application of the issues raised in the appeal.

5. Per contra, it was contended on behalf of the official respondents that the charges levelled against the petitioner was very serious in nature which was nothing but misappropriation of public funds payable to hapless money order payees and the fact of non-payment of money order was accepted by the petitioner during the course of preliminary hearing and in such view of the matter, the Disciplinary Authority took a conscious decision to disagree with the findings of the Inquiry Officer and eventually found him guilty of the charges and imposed the penalty of removal of the petitioner from service and the said penalty was not disproportionate to the gravity of the misconduct said to have been committed by the petitioner and that the Appellate Authority had considered the appeal in terms of service Rules and hence, there cannot be any justification for allowing the prayer as sought for by the petitioner.

6. After taking note of the submissions of the parties, the learned Tribunal dismissed the Original Application filed by the petitioner, as devoid of merits.

7. The learned Tribunal has accepted the contentions put forth by the official respondents in toto particularly, in view of the fact that the admission of the charges by the petitioner during the course of preliminary inquiry and also statements of witnesses recorded during the preliminary inquiry. The learned Tribunal dismissed the contention of the petitioner stating that the statements of the witnesses who turned hostile during the inquiry, ought to have been evaluated based on overall facts and circumstances of the case. In the light of the conclusions above, the Original Application came to be dismissed. As against the said decision of the learned Tribunal, the present Writ Petition has been filed.

8. Shri R.Malaichamy, learned counsel appearing for the petitioner would contend that the disagreement by the Disciplinary Authority is bereft of evidence which is available on record and also the subsequent punishment imposed by the Disciplinary Authority was only on the basis of the statement made by the petitioner during the course of preliminary inquiry. In support of his contentions, the learned counsel relied upon a decision of the Hon'ble Supreme Court in "Nirmala J. Jhala

versus State of Gujarat & another" reported in CDJ 2013 SC 216, stating that the report of the preliminary inquiry will lose its significance/importance once the regular inquiry is initiated by issuing charge-sheet to the delinquent. In the instant case, the reliance placed by the Disciplinary Authority and the learned Tribunal on the statement recorded during the preliminary inquiry, which in view of the fact that a regular inquiry had been initiated and concluded, cannot be valid in the eye of law and such reliance cannot be the basis for imposition of penalty.

9. The learned counsel appearing for the official respondents would reiterate his contentions made before the learned Tribunal.

10. We have given our anxious consideration to the rival submissions of the learned counsel for the parties. We are of the view that in the instant case, during the duly conducted departmental inquiry, there was no evidence available for sustaining the charges framed against the petitioner. However, considering the fact that the strict rule of evidence cannot be applied in the matter of departmental inquiry, it can be concluded that there was some piece of evidence for establishing the charges levelled against the petitioner. As rightly concluded by the learned Tribunal that in the departmental inquiry, what has to be seen is overall facts and circumstances of the case. In such view of the matter, the final conclusion reached by the Tribunal, cannot be faulted with.

11. Be that as it may, as regards the imposition of penalty of removal from service is concerned, the Tribunal has not appreciated the proportionality of punishment with reference to the slender piece of evidence, was only available for establishing the charge. Even otherwise, in the absence of clear and unambiguous evidence against the petitioner, the imposition of penalty of removal from service can be construed to be little harsh when no other aggravating circumstances were brought forth by the official respondents. In the absence of aggravating circumstances, it is to be seen whether any other punishment can be given to the petitioner in the place of removal from service.

12. After having given our anxious and serious thought as to what punishment is to be imposed on the petitioner, we feel it appropriate to impose the penalty of reduction of the petitioner's pay to the minimum of time scale of pay in the place of impugned order of removal from service. The modified penalty shall take effect from 08.09.2009, on which date, the order of removal from service was passed by the Disciplinary Authority.

13. In view of the modification of the penalty now imposed, the impugned orders impugned in the Original Application and also the order passed by the learned Tribunal in the Original Application are hereby set aside. The official respondents are directed to pass consequential orders in the light of the above observation, reinstating the petitioner into service with effect from 08.09.2009 by fixing his pay to the minimum time scale of pay. The petitioner shall earn increment thereafter in the normal course. It is made clear that the petitioner is not entitled to arrears of pay and allowances that may flow consequent to the reinstatement order. The pay should be fixed on notional basis and the petitioner is entitled to all other service benefits. The official respondents are directed to pass the orders within a period of three months from the date of receipt of a copy of this order. It is also made clear that this Court, having considered the peculiar circumstances of the present case, passed the order and hence, it cannot be cited as a precedent.

The Writ Petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Senior Superintendent,
of Post Offices,
Madurai Division, Madurai 625002
2. Assistant Superintendent of
Post Offices & Ad-hoc Disciplinary Authority
Madurai (N) Sub Division,
Madurai 625 002
3. The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

+1cc to Mr.Venkataswamy Babu, Advocate Sr.13908
+1cc to Mr.R.Malaichamy, Advocate Sr.13782

W.P.No.15689 of 2015

pvs[co]
srg 27/03/2017