

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.21129 of 2015

S.Porappanasamy .. Petitioner

Versus

- 1 Union of India
Rep. by the Postmaster General
Western Region, Tamilnadu
Coimbatore - 641 002.
- 2 The Director of Postal Service
Western Region, Coimbatore-641 002.
- 3 The Senior Superintendent of Post Offices
Erode Division, Erode-638 001.
- 4 The Registrar
Central Administrative Tribunal
Chennai Bench
High Court Compound
Chennai-600 104.

.. 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 relating to the Impugned Order passed by the Central Administrative Tribunal, Chennai Bench (4th Respondent herein) in O.A.No.1092 of 2012 dated 18.03.2015 and to quash the same as being illegal and consequently, direct the respondents 1 to 3 to reinstate the petitioner in service with continuity of service, with back wages and with all other attendant and consequential benefits.

For Petitioner : Mr.K.M.Ramesh
For Respondents 1 to 3 : Mr.A.Kumaraguru
CGSC

ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

The Writ Petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1092 of 2012 dated 18.03.2015 dismissing the Original Application filed by the petitioner herein.

2. The petitioner was appointed as GDS Messenger on 10.03.1997. Thereafter, he was transferred and posted as GDS Branch Postmaster in April 2005. By order dated 11.02.2010, he was placed under Put Off Duty and subsequently, vide charge memorandum dated 18.03.2010, the petitioner was charged with certain acts of misconduct as contained in the said charge memorandum. The essence of the charge memorandum was that the petitioner, while discharging his duties, has misbehaved with one member of public when he has approached for closing a Recurring Deposit Account and that he failed to carry out instructions by the superior and also he attempted to bring outside interference with ulterior motive.

3. The petitioner in response to the charge memorandum submitted his explanation denying the charges. However, not satisfied with the explanation, an inquiry was conducted and a report was submitted on 30.11.2010 holding that all the charges were proved. The third respondent, who was the Disciplinary Authority, accepted the finding of the Inquiry Officer and imposed the punishment of removal from service with immediate effect on the petitioner vide his proceedings dated 28.01.2011. Thereafter, the appeal preferred by the petitioner to the Appellate Authority, the second respondent herein, was rejected vide order dated 10.09.2011 and the Review Petition, thereafter, was also rejected by the first respondent herein vide proceedings dated 21.08.2012. All these orders were impugned in the proceedings before the learned Tribunal.

4. Before the learned Tribunal, on behalf of the petitioner, it was contended that there was no fair and reasonable opportunity afforded to him while defending himself in the inquiry, by not providing additional documents and witnesses as demanded by him. It was further contended that the charges levelled against him did not relate to misappropriation or any serious charge involving corrupt practices, and therefore, the punishment awarded to him was highly excessive and disproportionate and it cannot be sustained in law.

5. Per contra, it was contended on behalf of the official respondents that a fair and equitable opportunity was afforded to the petitioner and the additional documents demanded by the petitioner were of no relevance and therefore, the Inquiry Officer rightly rejected the claim of the petitioner and the additional witnesses demanded by the petitioner were also not connected with the charges and therefore, there was no need to

summon those witnesses as demanded by the petitioner.

6. After taking note of the submissions, the learned Tribunal dismissed the application as devoid of merit. The learned Tribunal relied on the decisions reported in 2009 (8) SCC 310 in the case of ''State of Uttar Pradesh ..vs.. Manmohan Nath Sinya'' holding that the power of judicial review is not directed against the decision, but is confined to the decision making process, and the Court should not sit in judgment on the merits of the decision. It also held that it is not open to the Courts to re-appreciate and re-appraise the evidence let in before the inquiry and examine the findings recorded by the Inquiry Officer as a Court of Appeal and should reach its own conclusion. By following the ratio laid down by the Hon'ble Supreme Court of India, a similar application in O.A.No.464 of 2009 came to be dismissed by the learned Tribunal.

7. While dismissing the impugned application, the learned Tribunal has also held that awarding of the penalty of removal from service was on the basis of the reasoned and speaking orders. As against the order passed by the learned Tribunal, the present Writ Petition is filed.

8. The learned counsel Sri.K.M.Ramesh appearing for the petitioner strenuously contended that no fair opportunity has been afforded to the petitioner in the departmental inquiry and therefore, the impugned penalty cannot be sustained in law. He also equally contended that the charges not involving corrupt practices or fraud and the same cannot entail harshest penalty of removal from service. There is considerable force in the contention of the learned counsel appearing for the petitioner that in the matter of awarding of penalty, it is imperative on the part of the authorities concerned to take into consideration of the facts and circumstances of the case, since removal from service is one of the severest of penalties provided under the rules, the same cannot be imposed as a matter of routine, without proper application of mind. In the instant case, though it appears that the charges have been proved in duly constituted inquiry, but the charges as such cannot result in imposition of severe penalty of removal from service.

9. We gave our anxious consideration to all the materials on record and the pleadings and the submissions made on behalf of the parties.

10. We are of the considered view that the imposition of penalty of removal from service vide proceedings dated 28.01.2011 is too harsh in the circumstances of the case to be sustained. Therefore, We deem it fit to replace the penalty of removal from service into one of reduction of pay of the petitioner to the minimum of the pay scale and the said punishment shall come into effect from the date of imposition of the order of removal from service. We also make it clear that the petitioner is not entitled to arrears of pay and allowances from the date of imposition of penalty to the date of

implementation of our order on the principle of 'no work, no pay'. The pay of the petitioner has to be notionally fixed during the said period. Thereafter the petitioner would be entitled to earn the annual increments as admissible to him.

11. In view of the above modification of the penalty, We set aside the impugned orders, which were part of the Original Applications and also set aside the order of the learned Tribunal passed in O.A.No.1092 of 2012 dated 18.03.2015 only to the extent of upholding by the learned Tribunal of the punishment of removal from service is concerned.

12. The Writ Petition stands allowed as above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Postmaster General
Union of India
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ppa (CO)
RS (25/04/2017)