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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5729/2017

SUDHIR KUMAR

..... Petitioner

Through: Mr. Kedar Yadav and Mr. Harkaran Singh, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Virender Pratap Singh Charak & Ms. Shubhra Parashar, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **11.07.2017**

1. The petitioner has preferred the present writ petition to assail the order dated 13.05.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.2411/2014. The Tribunal, by the impugned order, has dismissed the said Original Application preferred by the petitioner.

2. The petitioner has been chargesheeted and departmentally proceeded. The Inquiry Officer gave his report exonerating the petitioner. The Disciplinary Authority, however, did not agree with the findings returned by

the Inquiry Officer and issued his disagreement note on 15.02.2012. In the said disagreement note, the Disciplinary Authority set out his reasons for his tentative disagreement. The petitioner was called upon to make his representation, which he did. After considering the same, the Disciplinary Authority passed the order of removal of the petitioner from service on 27.04.2012. The said order has been placed on record and is a detailed order.

3. The petitioner then preferred a revision petition under Rule 29 of the CCS (CCA) Rules, 1965, which too was rejected on 24.09.2013. The appeal preferred by the petitioner under Rule 23 of the CCS (CCA) Rules, 1965 was also dismissed on 02.01.2014 by the Director Postal Services. The Tribunal has not found any infirmity in the departmental proceedings held against the petitioner, and consequently, dismissed the Original Application.

4. The submission of learned counsel for the petitioner is that there was no evidence against him led in the inquiry to conclude that the charges against him were proved.

5. At this stage, we may set out the articles of charge framed against the petitioner.

> *"Shri Sudhir Kumar, (S/o Shri Tara Chand Makkar), Postman, (U/S) Mehrauli P.O., New Delhi-110030 while working at Delhi Cantt P.O., New Delhi-110010 during the period 2007-2009 is alleged to have misused the Credit Cards by stealing the Speed Post Articles from the Post Office addressed to different addresses sent by the Syndicate Bank. Shri Suneel Tiwari, Brahmos Aerospace Ltd., 16, Carriappa Marg, Kirby Place, Delhi Cantt, New Delhi-110010 made a complaint to the*

SPM, Delhi Cantt P.O. New Delhi – 110010 vide letter dated 17.03.2009, on receipt of Global Credit Card Statement showing the outstanding of Rs.39,112/-, stating that as per the delivery status of Speed Post Article through website the SPA no.EK 353814963 IN dated 17.02.2009 was shown to have been dispatched to Delhi Cantt P.O. on 20.02.2009 but he had not received the said Speed Post Article. The complainant was informed by the SPM Delhi Cantt P.O. vide letter no. DC/SP/08-09 dated 17.03.2009 stating that the said article was received but its further disposal is not available. The Chief Manager Syndicate Bank, Corporate Office, Bangalore made a complaint to the PMG, Speed Post GPO Bangalore with a copy to Postmaster, Delhi Cantt P.O. alleging non receipt of the above said Speed Post Article contained the credit card no. 4090310000070629 issued in the name of Shri Suneel Tiwari.

Again a complaint was received from the Chief Manager, Syndicate Bank, Bangalore regarding non delivery of Speed Post articles and subsequent misuse of six Credit Cards amounting to the tune of Rs.2,69,624.89 along with the six credit card statements requesting to find out to whom these were delivered and the miscreant who has misutilized the credit card. Enquiries made have revealed that the credit card no.4090310000048492 issued in the name of Smt. Sarla Chillar sent by Syndicate Bank through Speed Post Article No. EK 345977545 IN dated 11.07.2008 a/t Brig Om Prakash, No.3/27, Arjun Vihar, Delhi Cantt, New Delhi-110010 received at Delhi Cantt P.O. on 14.07.2008 was issued to the Postman which was delivered to the spouse (Smt. Sarla Chillar) of the addressee. But the spouse of the addressee has accepted the receipt of the Speed Post Article u/r contained the credit card in the name of her husband and denied to have received the credit card in her name. The Syndicate Bank has reported that an amount of Rs.58,636/- against this credit card has been misused.

The card no.4090310000048468 sent through Speed Post Article No.EK 345977559 IN dated 11.07.2008, Credit Card no.4090310000045639 sent through Speed Post Article No. EK 342150389 IN dated 13.06.2008, Credit Card no.

4090310000048302 sent through Speed Post Article No. EK 345977029 IN dated 10.07.2008 and Credit Card no. 490300000130606 sent through Speed Post Article no.EK 346165551 IN dated 14.04.2008 by the Syndicate Bank have been misused for an amount of Rs.14344.00, Rs.57861.75, Rs.52611.14 and Rs.47060.00 respectively as mentioned in the complaint by the Chief Manager, Syndicate Bank, Bangalore.

During enquiry it was found that the credit cards issued in the name of Smt. Sarla Chillar and Shri Suneel Tiwari have been used mostly in Gurgaon and near its area where the said official is residing. Most of the amount was found spent in Petrol Pump etc. There is a strong similarity in the shape and style of letter "S" between the signatures made on the attendance register by the said official and signatures made on the shopping/transactions receipts in the name of Smt. Sarla and Shri Suneel. Similar case was also taken place at Hauz Khas P.O. when the said official was working at Hauz Khas P.O., New Delhi-110016. Shri Surender Pal, P/A has also stated in his written statement dated 13.05.2010 that same incident was taken place at Hauz Khas P.O. during the year 2003-2004 and the said official used to attend the office early daily and before time for sorting work and was keeping sight over the dak pertaining to other beats. One Speed Post Article was theft/lost which was containing credit card and subsequent misutilization on 03.06.2004 at Hauz Khas P.O. pertaining to Shri Suraj Singh (now retired) Beat No.5. The Ex-official had clearly showed his doubt on Shri Sudhir Kumar, Postman in his complaint dated 16.06.2004 and requested to enquire in to this case. The said Sh. Sudhir Kumar, Postman remained absent unauthorizedly from duty immediately after this incident. For this act of his behaviour, the said official was proceeded against under Rule-14 of CCS (CCA) Rules, 1965 vide memo no.B6/5/Hauz Khas PO dated 01.04.2005 where the charges levelled against him were proved by the Inquiry Officer.

A similar incident regarding non receipt of Speed Post Article contained Credit Card was taken place at Delhi Cantt P.O. during the year 2007, from June 2008 to February 2009 *while the said official was working as Postman. There is a correlation between the case of theft and misuse of credit card from Speed Post Article happened in Hauz Khas P.O. and Delhi Cantt P.O.*

The said official, while working at Delhi Cantt P.O. in beat no.16 had delivered two Speed Post Articles, contained Passports to the addressees, which pertained to beat No.8 without the knowledge of the concerned Postman Shri Rajender Singh. Shri Meer Singh, P/A, Speed Post Delivery had made/reported this matter to The SPM Delhi Cantt P.O. vide his letter dated 08.04.2009. The SPM, Delhi Cantt P.O. had reported this matter to Divisional Office stating that the said Postman has become habitual to interfere in other beats. Shri Babu Lal, the then Postman, Delhi Cantt P.O. also stated in his written statement that Shri Sudhir Kumar asked him to give Passport of his beat by transferring to his beat for delivery. Sh. Meer Singh, the then Speednet P/A has stated in his w/stt dated 21.08.2009 that he has full doubt that Shri Sudhir Kumar, Postman has stolen the SPA no. EK 353814963 IN dated 17.02.2009 and misused the credit card contained in the article. Shri Ram Mehar, Postman, Delhi Cantt P.O. has also confirmed in his w/stt dated 17.05.2010 that one complainant approached Delhi Cantt P.O. and alleged that some one misued his credit card and did shopping mostly from a petrol pump in Gurgaon. It is further noticed that after his transfer from Hauz Khas P.O. to Delhi Cantt P.O. no such case of theft and misuse of credit card from speed post article has taken place. On the above said incidents/points it is evident that the said official has stolen and misused the credit cards contained in the Speed Post Articles pertaining to other beats.

By doing so, Shri Sudhir Kumar, (S/o Shri Tara Chand Makkar), Postman, (U/S) is alleged to have failed to maintain absolute integrity, devotion to duty and behaved in a manner of unbecoming of a Govt. Servant in contravention of Rule-3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964."

6. The Inquiry Officer recorded statements of several witnesses. As

aforesaid, he held that the charges against the petitioner were not proved. While issuing the disagreement note, the Disciplinary Authority observed that the Inquiry Officer had not taken into account the statements made by several witnesses in the inquiry proceedings. In the disagreement note itself the Disciplinary Authority set out the evidence recorded during the course of the inquiry on the basis of which he tentatively disagreed with the finding returned by the Inquiry Officer.

7. The submission of learned counsel for the petitioner is that apart from the statements made by the witnesses, there were no corroborative facts & circumstances to connect the petitioner with theft of the speed post articles containing credit cards and misuse of the stolen credit cards for amounts aggregating to Rs.2,69,624.89/-.

8. Having heard learned counsel for the petitioner and perused the record, we cannot agree with the submission of learned counsel for the petitioner.

9. It is well-settled that the standard of proof adopted in departmental proceedings is on the basis of preponderance of probabilities. The penalty order passed against the petitioner shows that the Disciplinary Authority has taken into account the evidence led before the Inquiry Officer, and on a cumulative appreciation of the said evidence, it cannot be said that the conclusion of the petitioner's guilt reached by the Disciplinary Authority could not have been reasonably reached by him. There was sufficient evidence on record to establish the guilt of the petitioner upon preponderance of probabilities. Firstly, there was the complaint of the Chief

Manager, Syndicate Bank about non delivery of the speed post articles and subsequent misuse of the six credit cards amounting to Rs.2,69,624.89. Secondly, the said credit cards had been received at Delhi Cantt PO where the petitioner was working during the relevant period i.e. 2007-09. Thirdly, the credit card holders had reported that they had not received the credit cards in the speed post envelopes. Fourthly, the credit cards of Sarla Chillar and Sunil Tiwari had been used mostly in Gurgaon and nearby areas where the petitioner was residing. Fifthly, the handwriting of the petitioner – particularly in the manner and style in which the letter "s" was written between the signatures made by the petitioner, and on the shopping/ transaction slips in the name of Sarla and Sunil were very similar. Pertinently, a similar incident took place even at Haus Khas PO when the petitioner was working at the said PO. There was also evidence that the petitioner was habitual in interfering in the work of other postal staff in their beats. Pertinently, an ex-official of the postal department had raised a doubt against the petitioner in his complaint dated 16.06.2004 and requested for an inquiry into the case involving the stealing and misutilisation of credit cards from Haus Khas PO. The petitioner also remained absent unauthorisedly immediately after the said incident. Thus, there was co-relation between the theft and misuse of credit cards from speed post articles which happened at Haus Khas PO and Delhi Cantt PO. It was also in evidence that after transfer of the petitioner from Haus Khas PO, no such case of theft of credit card from the speed post articles had taken place at Haus Khas PO. Certainly, the case is not one of no evidence. The endeavour of learned counsel for the petitioner to discuss the evidence and argue that the same has not been correctly appreciated by the concerned authorities cannot be permitted. In our view, the petitioner has got away very lightly and he should have been proceeded criminally as well, since his misconduct may have amounted to criminal breach of trust which is a very serious offence.

10. For the aforesaid reasons, we find absolutely no merit in this petition.

11. Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 11, 2017

B.S. Rohella