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

\+ W.P.(C) 6385/2017

AMBIKA PRASAD ..... Petitioner

Through: Mr. Manish Goswami, Advocate

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Chiranjiv Kumar with Mr. Mukesh Sachdeva, Advocate for R-1,2 & 3.

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

O R D E R

% **02.08.2017**

1. The petitioner has preferred the present writ petition to assail the order dated 8th May, 2017 passed by the Tribunal in Original Application (OA) No. 1315/2013, whereby the petitioner's said Original Application-to assail the punishment imposed upon him pursuant to charge-sheet issued to him, has been dismissed. The petitioner was issued a charge memo dated 17th November, 2006 by the disciplinary authority under Rule 14 of the CCS(CCA) Rules, 1965. The articles of charges framed against the petitioner were as

follows :-

“<u>Article –I</u>

Shri Ambika Prasad, while posted as Sub Postmaster, Awagarh (Etah HO) during the period 21.6.2000 to 5.7.2002 did not call for the Pass Books from the depositors for crediting interest in respect of Savings Bank Account Nos. 1508366, 1511575, and 1513411. Had the said Shri Ambika Prasad called for the Pass Books for crediting interest in terms of provisions of Rule 75 of the Savings Bank Manual Volume I, the embezzlement in the Pass Books could have been detected and there had been no loss of Governmental/public money. Shri Ambika Prasad is, therefore, charged with violation of Rule 75 of the Savings Bank Manual Volume I and consequently the violation of Rule 3 (I)(i)(ii) of Central Civil Services (Conduct) Rules, 1964.

<u>Article II</u>

Shri Ambika Prasad while functioning as Sub-Postmaster, Awagarh by issue of Pass Books of Savings Bank A/C No. 1513258 to 1513260, showed a balance of 15 blank Pass Books in Savings Bank Stock Register on 06.10.2001. But on 06.10.2001 itself issued Pass Book of Savings Bank A/C No. 1513261 with deposit of Rs. 18,000/- which was not shown as having been issued on 06.10.2001, in the Savings Bank Stock Register. Thus, the said Shri Ambika Prasad issued the Pass Book in a wrong manner on 06.10.2001 in the name of the said depositor with account of Rs. 18,000/- and this amount of Rs.18,000/- was not taken into relevant accounts of the Post Office. Shri Ambika Prasad is, therefore, charged that by such an act he violated provisions of Rules 6 and 27 of the Savings Bank Manual Volume I and as a result he violated Rule 3(I)(i)(ii) of Central Civil Services (Conduct) Rules, 1964.

Article III

Shri Ambika Prasad, while posted as Sub Postmaster, Awagarh by receiving 100 bank Pass Books of S B Accounts on 07.02.2002 made an entry in the document list No. 05 dated 0-6.02.2002 showed an issued total 40 Pass Books in the Pass Book Stock Register on 04.02.2002, 07.02.2002 up to SB A/C Nos. 1511368 to 1511407 and the remaining were shown as 60. On 05.02.2002 and 07.02.2001, in the blank Savings Bank Pass Book Stock Register, by showing issue of pass books in respect of Savings Bank A/C No. 1512408, he wrongly showed a balance of 39 instead of 59 pass books. Thus, by omitting 20 pass books of Savings Bank Account, issued pass books from among these in respect of SB A/C. No. 1513433 on 26.02.2002 with deposit of Rs. 40,000/- but the said amount was not taken into Government accounts. On 26.03.2002, by showing fake withdrawal of Rs. 13,000/- a total balance of Rs. 27,000/- was shown in the pass book but the same was not taken into Government Account. It is, therefore, charged that the said Shri Ambika Prasad by his such an act, misappropriated Rs. 27,000/- of the said account as mentioned above, violating Rules 6,27 and 33 of Savings Bank Manual Vol. I and Rule 3(I)(i)(ii) of the CCS (Conduct) Rules, 1964.

Article IV

Shri Ambika Prasad while functioning as Sub Postmaster, Awagarh, opened a fake MIS A/C. No. 10020560 in the name of Shri Prempal Singh and Smt. Shanti Devi with Rs. 73,000/- but the said amount was not taken into Government account. An amount of Rs. 540/- was shown as payment of interest to the depositor on 02.05.2002 but the said amount was also not taken into account as payment. On 26.03.2002, as per Stock Register of MIS pass books, there were 25 blank pass books of MIS Accounts after issue of pass book of MIS A/C No. 10020560 on 26.03.2002 by getting issued from MSY pass book A/C fictitiously and misappropriated Rs. 73,000/- of the said account. It is, thus, charged that the said Shri Ambika Prasad by such an act violated provisions of Rules 6,27 and 158 of the Savings Bank Manual Vol. I and as a result violated Rule

3(I)(i)(ii) of Central Civil Services (Conduct) Rules, 1964."

2. Since the charges were denied by the petitioner, a regular departmental inquiry was ordered. The Inquiry Officer made his report dated 5th May, 2008, finding that Article Nos. I, II and IV of the charges were not proved, while Article III of the charges was partially proved.

3. Upon perusal of the Inquiry Report, the disciplinary authority issued a disagreement note dated 21st May, 2008 to the petitioner, requiring him to make his representation. The petitioner submitted his representation on 9th July, 2008. Upon consideration of his representation, the disciplinary authority passed an order dated 28th July, 2008 holding the petitioner guilty of all the four charges and imposed a penalty of withholding of annual increment for a period of three years, without cumulative effect and also ordered for recovery of Rs. 2,08,000/- from the Petitioner by deducting Rs. 5,000/- per month from his pay.

4. Aggrieved by the penalty order, the petitioner preferred OA No. 793/2009, before the Tribunal which was disposed of, by directing the Appellate Authority to deal with his appeal. The Appellate Authority disposed of the appeal on 31st March, 2009 and took a lenient view, despite there being no merit in the appeal. While the punishment of recovery of departmental loss of Rs.2,08,000/- maintained, the penalty of withholding of annual increments for a period of three years, without cumulative effect, was set aside.

5. Once again, the petitioner approached the Tribunal by filing OA No. 1858/2009, challenging both the orders passed by the disciplinary authority, and the appellate authority. The same was disposed of on 23rd November,

2009. The Tribunal remitted the matter back to the disciplinary authority for being reconsidered from the stage of receipt of the representation of the applicant to the disagreement note. The Tribunal granted three months time for passing a final order.

6. In compliance with the order of the Tribunal, the disciplinary authority again considered the petitioner's representation to the Inquiry Officer's report and disagreement note and the materials available on record. The disciplinary authority passed a fresh order on 19th February, 2010, reiterating the finding that the petitioner was guilty of misconduct, and held that all the charges made against him were proved. However, considering his past long service in the department, a lenient view was taken and recovery of Rs.2,74,597.00 in 54 instalments of Rs.5,000/- each was directed, the last instalment No.55 being of Rs.4,597/-. It was also directed that his next one increment for three years be also stopped, with cumulative effect.

7. Once again, the petitioner preferred a departmental appeal on 15th March, 2010. While the said appeal was pending, the appellate authority proposed to enhance the penalty imposed by the disciplinary authority, and accordingly issued a notice dated 23rd January, 2012, calling upon the petitioner to show cause as to why the penalty as imposed by the disciplinary authority on him be not enhanced to *"removal from service"*. The petitioner submitted his representation on 17th February, 2012. The appellate authority considered the petitioner's appeal and the representation and passed the order dated 16th July, 2012 upholding the order passed by the disciplinary authority on 19th February, 2010. At the same time, he withdrew the show cause notice dated 23rd January, 2012 proposing

enhancement of penalty to *"removal from service"*.

8. Consequently, the petitioner approached the Tribunal once again by preferring the O.A. in question.

9. The submission advanced by the petitioner before the Tribunal, which is also the submission advanced before us, is that the order passed by the appellant authority is a non-speaking order. The submission is that the petitioner's grounds of appeal contained in his appeal dated 15th March, 2010 have not been considered by the appellate authority. He further argued that he had been acquitted in the criminal case (Crime No. 937/2008) under Sections 406/409 and 420 IPC, with respect to the opening of fake MIS A/Cs and misappropriation of Rs.73,000/- vide judgment dated 25th May, 2011 passed by the learned Judicial Magistrate.

10. He also urged that the contributory negligence on the part of the petitioner, if any, which had lead to loss to the Government was not assessed by the authority concerned in a realistic manner.

11. The Tribunal did not agree with said submissions, and dismissed the OA. The Tribunal held that it does not sit as an Appellate Court, to re-appreciate the evidence led in the departmental inquiry. The Tribunal cannot substitute its own opinion, even if a different view is possible for the view taken by the competent authority. The Tribunal also recounted the limited grounds on which it may interfere with the order imposing penalty.

12. The Tribunal held that it could not be said that the competent authority had acted with mala fide or that it was a case of "no evidence" against the petitioner. The Tribunal also held that though the appellate authority had not discussed the submissions of the appellant, as set out in the appeal in detail, but in view of the fact that the appellate authority had

agreed with the findings of the disciplinary authority and upheld the said order, it could not be held that the appellate authority had not applied its mind.

13. Reliance was also placed in this regard in ***Ram Kumar Vs. State of Haryana, AIR 1987 SC 2043, S. N. Mukherjee Vs. Union of India, AIR 1990 SC 1984 & State Bank of Bikaner & Jaipur and Others Vs. Prabhu Dayal Grover, AIR 1996 SC 320,*** wherein it was held that the need for recording of reasons is greater in a case, where the order is passed at the original/trial stage but the Appellate or Revisionary Authority need not give separate reasons if it agrees with the reasoning of the disciplinary authority in the order under challenge and affirms the same.

14. The Tribunal also noted the submissions of the petitioner that the appellate authority had proceeded on the assumptions that the Inquiry Officer had proved all the charges against the petitioner, whereas, the Inquiry Officer had exonerated the petitioner in respect of three out of four charges and that only one charge, namely, charge No. III had been partially proved. The Tribunal held that the observations of the appellate authority, in effect, had to be read in conjunction with the fact that the disciplinary authority had issued a disagreement note and considering the petitioner's representation, had come to a categoric conclusion that all the four charges be proved against the petitioner.

15. In para 18 of the impugned order, the Tribunal has set out in its own words the crux of the case against the petitioner and the same reads as follows :-

> "*the applicant was working as Sub Post Master, Awagarh S.O. Shri Amar Singh, Postal Assistant, was working*

under him. Because of the lapses on the part of the applicant, Shri Amar Singh, working as Postal Assistant, under the applicant, committed fraud and misappropriated Rs. 2,08,000/- from different accounts. As per the Memo No. INV/4-4/29-2004, dated 18.10.2006, which was brought to our notice during the course of hearing, the sanction of the competent authority was conveyed for restoration of the defrauded amount to the respective accounts of different depositors, subject to recovery/writ off. The said Memo dated 18.10.2006 as no bearing on the departmental proceedings initiated against the applicant and the orders passed by the departmental authorities therein., it has been averred by the applicant in paragraphs 4.1 and 4.2 of the OA that after the fraud was detected, Shri Amar Singh, P.A., Awagarh S.O. was murdered, and the charge memo was issued against him. It is, thus, apparent that when one of the delinquents passed away, the Department proceeded only against the other delinquent, i.e. the applicant. No departmental proceeding could have been initiated against the said Shri Amar Singh, P.A. Awagarh S.O. In the disciplinary proceedings initiated against the applicant, the charges having been held to have been proved, the impugned order of punishment has been passed by the DA for recovery of the loss caused to the Government on account of fraud. Mr. Basab Sengupta, the learned counsel appearing for the applicant, has not brought to our notice any material in support of his submission that the DA and AA have failed to assess in a realistic manner the contributory negligence on the part of the applicant for the loss caused to the Government on account of fraud that took place in the Sub-Post Office. Awagarh, while the applicant was working as Sub Post Master."

16. The submission of learned counsel for the petitioner before us, once again is that the appellate authority has passed a cryptic order without dealing with the grounds of the appeal and contends that the Appellate Authority ought to have passed a detailed speaking order dealing with all the

grounds raised by the petitioner in his Appeal. In support of his plea, the learned counsel has also drawn our attention to the grounds of appeal taken by the petitioner in his appeal dated 15th March, 2010. He has also referred to the governmental instructions dated 1st October, 1980 laying down guidelines for dealing with departmental appeals by the appellate authority.

17. Learned counsel for the petitioner further submits that there was a substantial delay in initiation of the disciplinary proceedings inasmuch as the incident related to the year 2002 whereas the inquiry was initiated in the year 2006, by when Mr. Amar Singh- who was the main person who had defaulted the amount had passed away. He therefore contends that grave prejudice was caused to him due to non-availability of Mr. Amar Singh, who according to him, had committed the fraud without any knowledge and collusion of the petitioner.

18. We have heard learned counsel for the parties and with their assistance perused the entire record.

19. Having examined the Appellate order as well as the Disciplinary Authority, we find that the Appellate Authority has dealt pointwise with the grounds raised by the Petitioner in his appeal, though briefly. In our view, once the Appellate Authority was agreeing with the conclusions arrived at by the Disciplinary Authority, there was no requirement to give elaborate reasons in the order dismissing the appeal. In our view, the instructions dated 1st October, 1980, on the subject of departmental appeals, on which much reliance has been placed by the learned counsel for the Petitioner, cannot be read to mean that the Appellate order should be a detailed speaking order. The instructions cannot be seen in isolation and have to be read in the context of facts of each case. In the present case, once the

Appellate Authority was agreeing with the reasoning of the Disciplinary Authority, no such necessity to record detailed reasons can be held to be mandatory. We are fortified by the decision of the Hon'ble Supreme Court on this aspect wherein the Apex Court has in the case of ***M/s Subhash Aggarwal Agencies vs. M/s Bhilwara Synthetics Ltd. & Others*** (1995) 1 SCC 371 while dealing with an appellate order passed in arbitration proceedings held in Para 24 as under:-

> "32. In the case on hand, the appellate tribunal has confirmed the award in the manner set out as above. When the Tribunal upheld the award dated 19.7.1983 of the sole Arbitrator, it stands to reason that it has come to be confirmed for the same reasons as prevailed with the sole arbitrator. To insist upon such reasons to be repeated by the appellate authority will only be superfluous. An arbitration procedure should be quick. Such proceedings cannot be equated to court proceedings nor do they partake the character of trial. To insist upon the appellate tribunal to furnish reasons for its confirmatory order is not warranted."

20. There is no merit in the submission urged on behalf of the Petitioner that because of delay in initiation of the enquiry, he was gravely prejudiced due to the death of Sh. Amar Singh in the intervening period as we find that the charges against the Petitioner have been duly proved in the departmental proceedings upon appreciation of evidence. It is a settled legal position that the role of the Court as also that of the Tribunal, while exercising power of judicial review, is very different from that of an Appellate Authority and the Courts are not expected to re-appreciate the evidence, which job is best left to the Disciplinary and the Appellate Authority alone. We find no perversity in the conclusions drawn by the Disciplinary Authority or the order passed by the Appellate Authority.

21. There is no merit in the writ petition and the same is dismissed with no order as to costs.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 02, 2017/P