

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3769 OF 2015

Dattatray Govind Jadhav,
age 52 years, occ. Formerly working
GDSBPM Subhashwadi BO,
(in account with Tilaknagar, SO),
Tq. Shrirampur, Dist Ahmednagar,
r/o Subhashwadi Via Tilak Nagar,
Tq. Shrirampur, Dist Ahmednagar ..Petitioner

Versus

- 1] The Assistant Superintendent
of Post Offices,
Shrirampur Division, Shrirampur,
District Ahmednagar,
- 2] Superintendent of Post Offices,
Shrirampur Division, Shrirampur,
District Ahmednagar,
- 3] The Director of Postal Services,
Pune Region, Pune,
- 4] The Postmaster General,
Pune Region, Pune-1 ..Respondents

Mrs. R.R.Mane, Advocate for petitioner
Mr. S.B.Deshpande, ASG for respondent nos 1 to 4

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

**DATE OF RESERVING
THE JUDGMENT : 12.6.2018**

**DATE OF PRONOUNCEMENT
OF THE JUDGMENT : 25.6.2018**

J U D G M E N T : (PER SUNIL K. KOTWAL, J.)

Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing.

2. The order passed by the Central Administrative Tribunal, Bombay Bench, Mumbai, in Original Application No. 191 of 2010, upholding the order of dismissal from service of the petitioner, passed by respondent no.2 disciplinary authority and confirmed by respondent nos. 3 and 4, appellate and reviewing authorities, is challenged in the present petition.

3. Petitioner used to work as Branch Post Master in the year 2005 at Subhashwadi (Tilak Nagar). Departmental inquiry was initiated against the petitioner for the allegations that being Branch Post Master he received amount of Rs.9,645/- from three different depositors in between 19.3.2005 to 15.6.2005 and instead of crediting the said amount into the account of depositors, he misappropriated the said amount of depositors.

4. Respondent no.1 held inquiry into the matter and after giving opportunity of hearing to the petitioner submitted inquiry report and thereby exonerated the petitioner of all the charges. However, respondent no.2 disciplinary authority did not agree with the conclusion drawn by the inquiry officer and after having recorded his disagreement, after issuing notice to the petitioner and after affording opportunity to submit explanation to the petitioner, respondent no.2 held the petitioner

guilty of grave misconduct and imposed major penalty of dismissal from service.

5. The said order was challenged by the petitioner before respondent no.3 appellate authority as well as before respondent no.4 reviewing authority. However, the order of dismissal of the petitioner, passed by respondent no.2, was upheld by appellate and reviewing authorities.

6. Being aggrieved, Original Application No. 191 of 2010 was preferred by the petitioner before the Central Administrative Tribunal, Bombay Bench, Mumbai (hereinafter referred to as, 'the CAT'). The said application was dismissed and the order passed thereon is challenged in the present Writ Petition.

7. Heard strenuous arguments advanced by Mrs. R.R.Mane, learned counsel for the petitioner and learned Assistant Solicitor General for the

respondents.

8. Learned counsel for the petitioner submits that the disciplinary authority as well as the appellate and the reviewing authority did not properly appreciate evidence recorded by the inquiry officer, while holding the petitioner guilty. She also submits that even learned member of the CAT erroneously appreciated the evidence placed on record during the course of departmental inquiry. She points out that the three depositors did not support the department at the stage of recording of their evidence in the departmental inquiry.

9. The quantum of punishment imposed by respondent no.2 is also assailed by learned counsel for the petitioner on the ground that the punishment is shockingly disproportionate. She has pointed out that only amount of Rs.9,645/- is proved to be misappropriated by the petitioner, which is

subsequently deposited by the petitioner, and therefore, neither the Government nor the depositors are put to any loss. She submits that it is only a temporary misappropriation for a short period.

10. Learned counsel for the petitioner prays for imposing lesser punishment to the petitioner, which will be proportionate to the act of misconduct. She placed reliance on following judgments :

- (1) H.L.Gulati vs Union of India and Others [(2015) 12 SCC 408]
- (2) Chitraveer Singh vs Nagar Panchayat, Jewar [(2014) 16 SCC 305]
- (3) Shobha Sinha vs State of Bihar and others [(2013) 16 SCC 456]
- (4) State of M.P. Vs Hazarilal [AIR 2008 SC 1300]
- (5) Judgment of Division Bench of this Court in Writ Petition No.4469 of 1998, dated 30.7.2010

11. Learned Assistant Solicitor General for the respondents supported the order passed by the respondents and the CAT. He submits that, as the petitioner was indulged in misappropriation of public money, the punishment of dismissal from service was appropriate punishment.

12. We have gone through the orders passed by the learned Member of the CAT and respondent nos. 2 and 4. We have perused the copies of deposition of the witnesses.

13. The learned counsel for the petitioner assailed the correctness of finding of fact arrived by disciplinary authority and appellate as well as reviewing authority. It cannot be ignored that while exercising the powers of judicial review over such matters in writ jurisdiction, this Court cannot sit as appellate authority. Re-appreciation of evidence is not permissible under law. In **"Sayyed Rahmuddin vs Director General, CSIR and others"**, reported in **(2001 (9) SCC 575)** the Apex Court held that the conclusion or findings of fact arising in any disciplinary inquiry can be interfered with only when there is no material for the said conclusion or that the conclusion cannot be that of reasonable man. However, in the case at hand, after

going through the material placed on record, it has become clear that the order passed by respondent no.2 is based on evidence available on record including admission of guilt by the petitioner while depositing the misappropriated amount on 15.6.2005 at Tilak Nagar post office. In that statement given in writing the petitioner categorically admitted that he accepted different amounts which is subject matter of departmental inquiry from the depositors but did not credit it to Government account. He accepted his mistake and requested for pardon. In that statement he also admitted that he voluntarily deposited the so called misappropriated amount. This clear admission of the petitioner is considered by disciplinary authority as well as by respondent nos. 2 and 3, while holding the petitioner guilty of misconduct. Full opportunity of hearing was also given to the petitioner. There is neither violation of principles of natural justice nor gross procedural error. Therefore, the impugned order passed by

disciplinary authority upheld by appellate as well as reviewing authority, so also the order passed by learned Member of the CAT cannot be held as perverse.

14. Now, while considering the legality of quantum of punishment imposed by disciplinary authority, we cannot ignore trite law that the Wednesbury's principle of unreasonableness is substituted by doctrine of proportionality. A useful reference can be made to the judgment of the Apex Court, in the case of **"State of M.P. & others Vs. Hazarilal"** (AIR 2008 SC 1300), wherein the Apex Court in para 12 has observed thus :

" Furthermore the legal parameters of judicial review has undergone a change. Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality.

[See : Indian Airlines Ltd. Vs. Prabha D. Kumari (2007 AIR SCW 103 = ((2006) 11 SCC 67); State of U.P. vs. Sheo Shanker Lal Srivastava (2006 AIR SCW 1149 = ((2006) 3 SCC 276), and M.P. Gangadharan and another vs. State of Kerala and others (2006 AIR SCW 3120 = AIR 2006 SC 2360)]. "

15. Recently, in the case of **"Chief Executive Officer, Krishna District Co-operative Central Bank Ltd. and another vs K. Hanumantha Rao and another"**, reported in [2017 (4) Mh.LJ. 484], the Supreme Court observed that :

" It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority/employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes."

16. In view of above settled position of law, if the circumstances of present case are examined, it emerges that the misappropriation committed by the petitioner was of amount of Rs. 9,645/-. The said amount is subsequently deposited by the petitioner on 15.6.2005. Thus, as pointed out by learned counsel for the petitioner, it was a temporary

misappropriation and neither the Government nor any depositor is put to any loss. No previous misconduct is established against the petitioner during his long service tenure since 1.7.1983.

17. Thus, considering these peculiar circumstances and unblemish service rendered by petitioner since 1.7.1983 till 2005, applying the doctrine of proportionality, we are fully satisfied that the punishment of dismissal from service is shockingly disproportionate, which struck to the conscience of the Court.

18. In view of above discussion, definitely lesser punishment like compulsory retirement from service should have been imposed by respondent no.2 disciplinary authority.

19. Now question arises whether High Court can reduce the punishment and impose lesser appropriate

punishment to the petitioner?. In the case of "**Chief Executive Officer, Krishna District Co-operative Central Bank Ltd.**" (cited supra), the Apex Court observed that :

" It is not the function of the High Court to impose a particular punishment even in those cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. "

20. In view of above referred trite law, this Court cannot reduce the punishment imposed by disciplinary authority, but for the same the matter needs to be remitted to respondent no.2 disciplinary authority for reconsidering the imposition of other appropriate lesser punishment than dismissal or

removal of service against the petitioner, such as compulsory retirement or otherwise. It follows that this petition deserves to be partly allowed.

21. In the result, we pass following order.

(i) The Writ Petition is partly allowed.

(ii) The impugned orders, passed by respondent nos. 2, 3 and 4, as well as the order passed by the Central Administrative Tribunal, Bench at Bombay, in Original Application No. 191 of 2010 are quashed and set aside.

(iii) The matter is remanded to respondent no.2 disciplinary authority for reconsideration of quantum of punishment imposed against the petitioner, by taking into consideration the above observations of this Court, within a period of three months from the date of this order.

(iv) Rule is made absolute in above terms.

(v) Parties shall bear their own costs.

[SUNIL K. KOTWAL, J.] [S.V.GANGAPURWALA, J.]