

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1048 OF 2006
WITH
CIVIL APPLICATION NO. 553 OF 2018
IN
WRIT PETITION NO. 1048 OF 2006**

Digambar Bhaurao Naik ...Petitioner
Versus
Union of India & Ors. ...Respondents

Mrs. Neeta Karnik for Petitioner.
Mrs. Neeta Masurkar with Mr. S. G. Thakur and Ms. Nieyaati
Masurkar for Respondent Nos. 1 to 3 – Union of India.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 06 JULY 2018**

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 10th day of October 2005 made by the Central Administrative Tribunal (CAT) dismissing Original Application No. 327 of 2004 instituted by the petitioner to question the penalty of removal from service imposed upon him by the respondent nos. 1 to 3 in pursuance of charge sheet served upon him while working as officiating Sub Post Master

Vakola, Mumbai. The charges against the petitioner mainly relate to the failure on his part to deposit amounts invested by the members of the public / MPK Agents. In their bank accounts and utilization of such amounts for his own purposes. The charges, are quite serious taking into consideration the position of trust held by the petitioner.

3] On receipt of charge sheet dated, 25th October 2001, the petitioner, addressed a response dated 3rd November 2001, in which, he substantially admitted the charges but offered some justification like excess workload on account of being required to man several positions single handedly.

4] However, since the disciplinary authority, was not satisfied whether the response dated 3rd November 2001 amounts to any categorical admission of the charges or not, the petitioner, was granted yet another opportunity to state clearly as to whether he accepts the charges or denies the same.

5] The petitioner in response, submitted a letter dated 3rd December 2001, which is transcribed verbatim for ready

reference.

*"Shri. D. B. Naik, (PA)
Andheri K.S. (P.O.) (Under Suspension)*

Date : 3/12/2001.

*To,
The Sr. Supdt. of PO's
Mumbai City North Division,
Mumbai 400 053*

Sub : Disciplinary proceedings against me.

*Ref: Your letter No. SSPN/DISC/ST/DBN/2001-02
dated 26/11/01.*

....

Respected Sir,

I am very much regretted if I written Improper wording's in my letter dt. 3.11.2001. As I know very well that, I, innocently but violated many rules of our department. And also shows dishonesty on responsible post. But, I already mentioned that I read carefully each articles, in your letter dated 25.10.2001 and took the lesson from you to do not behave improperly, hereafter. Also, work as per rule, maintain discipline and serve better to the member's' of public to washed out my dishonest and foolishness previously made at Vakola Post Office, which ultimately, may also creates bad impression to the department.

I fully admitted all charges, but, it is requested with folding hands to do not thrown out me from the department directly. As I am the only rasher in my family and now I am 36 years old. At this stage, there is no hope of another job. And also I am taking heavy loan/s from outside, which could not easily fulfilled, I have no other way, except this at present. I am already working 14 year's in this department. And I promised that I will remain faithful and loyal to the department, hereafter. I

know that I have done measure mistake, which should be heavily punishable. But, at last all depends on higher authorities.

Hoping, to be excused.

Thanking you,

*Yours Sincerely,
Sd/-
(D. B. NAIK)*

Wishing you, a happy new year."

6] Based upon the response dated 3rd December 2001, the disciplinary authority, held the charges leveled against the petitioner as admitted / proved and proceeded to impose penalty of removal from service upon the petitioner.

7] The petitioner's appeal was dismissed on 18th February 2002 and the revision was rejected as time barred by order dated 9th December 2003. The CAT, after detailed analysis, has dismissed the petitioner's OA No. 327 of 2004.

8] Ms. Karnik, the learned counsel for the petitioner submits that the respondent nos. 1 to 3 completely erred in avoiding holding enquiry into the charges levelled against

the petitioner once, the petitioner, by his letter dated 3rd November 2001, had not categorically admitted the charges in the charge sheet issued to him. She submits that the disciplinary authority was not at all justified in requiring the petitioner to submit any further response in order to ascertain whether the petitioner was indeed admitting the charges or not.

9] Ms Karnik submits that such further questioning by the disciplinary authorities constitutes variance with the procedures prescribed under the service rules and in effect amounts to exerting undue pressure upon the petitioner to admit his guilt when in fact, the petitioner, was neither guilty nor interested in admitting the charges levelled against him. She submits that on this ground itself, the proceedings stand vitiated and the penalty imposed upon the petitioner warrants interference.

10] Ms Karnik submits that failure to hold enquiry amounts to violation of not only the service rules but also the constitutional guarantee in Article 311(2) of the Constitution of India. She submits that as it is there is

material on record that the petitioner was posted at a place where the entire work load had been thrust on him. She points out that the petitioner was required to discharge the duties of three officials and therefore there was reasonable and valid explanation for the delay in depositing the amounts in the investors account. She submits that such explanation has not at all been considered by the disciplinary authority.

11] Ms Karnik submits that in case the disciplinary authority was not satisfied with the defense of the petitioner, then, it was necessary for the disciplinary authority to hold enquiry so that the petitioner would have had an opportunity to make good such defence. Ms Karnik submits that by treating the letters dated 3rd November 2001 and 3rd December 2001 as unqualified admissions, the disciplinary authority, has acted in excess of jurisdiction and has caused miscarriage of justice.

12] Ms Karnik submits that there has been no proper assessment on the quantum of punishment by any of the authorities. For all these reasons, Ms Karnik submits that the

impugned judgment and order made by the CAT is liable to be set aside and the reliefs applied for by the petitioner in his Original Application, made absolute.

13] Ms Masurkar, the learned counsel for the respondent nos. 1 to 3 submits that the letter dated 3rd December 2001 is quite clear and constitutes admission of all the charges set out with clarity in the charge sheet issued to the petitioner. She submits that in any case, the charges levelled against the petitioner were entirely borne out from documentary evidence on record. There was no justification in virtually misappropriating the investors amount in the post office and even attempting to make private investments with such amounts. Ms Masurkar submits that there is no error whatsoever in the impugned judgment and order and therefore the present petition may be dismissed.

14] Rival contentions now fall for our determination.

15] According to us, there was nothing wrong in the disciplinary authorities requiring the petitioner to clarify as to whether his response dated 3rd November 2001 to the

charge sheet dated 25th October 2001 amounts to admission of the charges or not. Such requirement, cannot be construed even remotely as exertion of any undue pressure or coercion. In fact, from the perusal of the response dated 3rd November 2001, it is clear that the petitioner, had not seriously denied the charges levelled against him. Although, the petitioner had stated that there was an overload and therefore, mistakes have taken place, the disciplinary authorities rather than let any ambiguity persist, merely required the petitioner to clarify as to whether the response dated 3rd November 2001 can be taken as admission of the charges or not.

16] The petitioner, had option of denying the charges if, the petitioner, was confident that the petitioner has not indulged into any of the acts stated in the charge sheet. Instead, the petitioner, make response dated 3rd December 2001, which has been transcribed earlier. From said response, it is very clear that the petitioner, admitted charges levelled against him but pleaded for mercy. In paragraph 2 of the response dated 3rd December, 2001, this is what the petitioner has stated :

"I fully admitted all charges, but, it is requested with folding hands to do not throw out me from the department directly."

17] In view of the aforesaid, the CAT was quite right in concluding that there was no further necessity of holding any enquiry into the charges levelled against the petitioner. Even otherwise, the charges mainly relate to late deposit of the amounts invested / deposited by the members of the public / agents with the post office. These charges stand proved by virtue of the documents on record. Perhaps, realizing this position, the petitioner, chose not to contest the charge sheet but admit the charges in the fond hope of some lesser punishment. Ultimately, even the respondent nos. 1 to 3 have only imposed upon the petitioner the penalty of removal from service, which, is ordinarily not a disqualification for further employment. Were the petitioner to be dismissed from service, then, such dismissal would amount to disqualification for government service.

18] There is nothing disproportionate in the penalty imposed upon the petitioner. Perusal of the charge sheet indeed indicates that the charges levelled against the petitioner were very serious. The petitioner was holding a

position of trust. If indeed, there was any overload, the petitioner, was required to bring this fact to the notice of his superiors. However, this cannot be an excuse for virtually playing with public funds, which are to be held in trust by the post office.

19] For the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

20] Civil application no 553 of 2018 does not survive and is disposed of accordingly.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA