



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.08.2018

CORAM :

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**THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

W.P(MD)No.16535 of 2013 and
M.P.(MD) No.1 of 2013

O.Kumaresan

... Petitioner

vs.

1. The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai 600 104
2. Union of India,
Rep. By the Director of Postal Services
Office of the Post Master General
Southern Region,
Madurai - 625 020
3. The Senior Superintendent of Post Offices
Madurai Division,
Madurai - 625002
4. The Assistant Superintendent of Post Offices,
Melur Sub Division,
Melur,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent in OA No.1486/2012 dated 12.12.2012 quash the same and consequently direct the respondents 2 to 4 herein to reinstate the petitioner in service with all consequential and monetary benefits.

For Petitioner : Mr.D.Sivaraman

For Respondents: Mr.S.Jeyasingh

**O R D E R****(Order of the Court was made by T.RAJA, J.)**

This Writ Petition has been filed challenging the impugned order dated 12.12.2012 passed by the first respondent Tribunal in O.A.No.1486/2012 declining to interfere with the order of removal from service.

2. Learned counsel for the petitioner submitted that finding no instructions, he has returned his brief to the client/petitioner herein and therefore, he may be allowed to withdraw from the case. But, we are not able to find any justification to accept his request for withdrawal of his participation as a lawyer for the petitioner in the present case, for the reason that when the writ petition was filed against the impugned order dated 12.12.2012 passed by the Central Administrative Tribunal, Madras, in 2018, allowing him to withdraw will cause delay. Therefore, we requested the learned counsel to proceed with the matter.

3. Learned counsel for the petitioner would submit that originally, a charge memo dated 21.10.2010 was issued against the petitioner containing two articles of charges, which are given as under:

"Shri.O.Kumaresan while working as GDS BPM, Chockalingapuram BO, a/w Kottampatti SO on 14.11.2008 kept Rs.47/- short in the BO cash balances of Chockalingapuram BO during the inspection of the BO by the Asst Supdt of Pos, Mellur Sub Division. The said Shri.O.Kumaresan has admitted the above irregularity in his statement dated 14.11.2008 given before the Asst Supdt of Pos, Melur Sub Division. Thus it is imputed that the said Shri.O.Kumaresan by his above act contravened Rule-11 of Rules for Branch Offices (Seventh Edition) and thus failed to maintain absolute integrity and devotion to duty as required of him in Rule 21 of GDS (Conduct & employment) Rules 2001.

Shir. O.Kumareasn while working as GDS BPM, Chockalingapuram BO, a/w Kottampatti SO during the period from 23.08.2004 to 14.11.2008 had not brought the deposits and withdrawals made by Smt.D.Mallika, the illiterate depositor of SB account No.614543 into PO accounts and thus misappropriated Rs.4500/- in the said account. The said Shri O.Kumaresan has admitted the above irregularity in his statement dated 14.11.2008 given before the Asst Supdt of Pos. Melur Sub Division. Thus it is imputed that the said Shri O.Kumaresan by his



act of misappropriation of Rs.4500/- from the above said account has contravened Rule 131 of Book of BO Rules (sixth Edition) and thus failed to maintain absolute integrity and devotion to duty as required of him in Rule 21 of GDS (Conduct and Employment) Rules, 2001."

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4. On receipt of the charge memo, the petitioner submitted a detailed explanation on 30.10.2010, thereby admitting both the charges. However, the disciplinary authority, finding that the petitioner has admitted both the charges in his explanation dated 30.10.2010, again, appointed an Enquiry Officer, who also conducted the enquiry and submitted an enquiry report dated 28.03.2011. After a copy of the enquiry report has also been submitted to the petitioner to submit further explanation, the petitioner, on receipt of the copy of the report finding him guilty of charges, submitted a further representation dated 15.04.2011, wherein also, the petitioner admitting the guilt requested the disciplinary authority to pardon him. Overlooking the admission of both the charges, without examining the complainant, the learned counsel for the petitioner submitted that no further enquiry was held and no one was examined. Therefore, the impugned order of punishment dated 15.12.2011 imposing the punishment of removal from service is wholly disproportionate to the proven charges, he contended.

5. Adding further, the learned counsel submitted that though the petitioner repeatedly pleaded that he has learnt huge lesson from the period of six months of put off duty, the disciplinary authority, overlooking the fact that the petitioner has admitted his guilt, ought not to have imposed the grave punishment of removal from service.

6. He would further submit that when the said order was also questioned before the learned Tribunal, the first respondent herein, the learned Tribunal has miserably failed to note that the enquiry held against the petitioner was vitiated on the sole ground that the enquiry officer ought to have conducted full-fledged enquiry so as to prove the alleged misconduct against the petitioner. Moreover, the learned Tribunal has not even considered the charge No.1, where, it was properly explained by the petitioner in his representation to the report of the enquiry officer that he has not misappropriated Rs.4,500/- from the account of Smt.D.Malliga. That apart, so far as the admission made by the petitioner in respect of the second charge is concerned, the fourth respondent has given assurance that punitive action would not be taken in the disciplinary proceedings, if the petitioner would accept his charge. Believing that the fourth respondent has not taken any stringent action against the petitioner, he has admitted it. Therefore, some leniency may be shown to the petitioner, as he has not committed any misconduct.



7. A detail counter affidavit has been filed by the respondents 2 to 4.

8. The learned counsel for the respondent would submit that while the petitioner was serving as Gramin Dak Sevak Branch Postmaster Chockalingapuram branch office, on 14.11.2008, kept Rs.47/- short in the Branch Office during the inspection made by the Assistant Superintendent of Post office, Melur Sub Division, fourth respondent herein. Moreover, the petitioner, while working as GDS BPM, during the period from 23.08.2004 to 14.11.2008, failed to bring the deposits and withdrawal made by Smt. D.Mallika, who is an illiterate depositor of Savings Bank account No.614543 into post office account and thus, he has misappropriated a sum of Rs.4500/-. Since he has defrauded the said amount of Rs.4,500/-, he was placed under off duty with effect from 14.11.2008 vide Memo NO.F/BPM/CKM/ASP/MLR dated 14.11.2008 issued by the ASP, Melur Sub Division. However, after some time, he was reinstated in service by order dated 08.05.2009 issued by the Senior Superintendent of Post Offices, Madurai Division. However, finding that the aforementioned two lapses caused grave disbelief on the conduct of the petitioner, he was proceeded under Rule 10 of GDS (Conduct and Engagement) Rules 2011 by issuing a charge memo containing two charges. The petitioner also, on receipt of the charge memo, submitted his explanation on 30.10.2010.

9. Peculiarly, the petitioner, admitting both the charges unconditionally, requested the disciplinary authority not to proceed with the enquiry and he was also pleading for some leniency to be shown taking a ground that when he was placed under off duty with effect from 14.11.2008 by the ASP, he has realised his mistake that he should not commit any mistake in future. Though the admission given by the petitioner is unconditional in the explanation dated 30.10.2010, the disciplinary authority, once again, appointed an enquiry officer to enquire into the matter. Again, during the enquiry, the learned counsel submitted that he has admitted the charges, which shows that there was no one to force him to admit the charges in full assurance. It is further submitted that as the fourth respondent has given an assurance that in the event of petitioner's admission, he would be let off and no punishment would be passed against him and when the petitioner has repeatedly admitted his guilt both in his explanation and after during the enquiry also, he has submitted that he has admitted his guilt unconditionally, the enquiry officer also, after completing the enquiry, taking note of his admission submitted a detailed report on 28.03.2011 holding that the charges 1 and 2 were proved beyond doubt. Even after the receipt of the report, a copy was also furnished to the petitioner for his further representation. Accordingly, further representation was also submitted on 15.04.2011. The disciplinary



authority, taking note of the fact that the petitioner has repeatedly admitted his guilt, had never come forward to disagree with the charge memo and confirmed the order of removal from service.

10. In view of the fact that aggrieved by the order of punishment, the petitioner approached the Central Administrative Tribunal and the Tribunal also, taking note of the fact that the petitioner has fairly admitted his guilt, confirmed the order of removal from service, making observations that the petitioner also while filing an appeal on 26.01.2012 has sought for only modification of the order of the disciplinary authority that shows that the petitioner has admitted the guilt. Finding that there was no procedural irregularity, as the petitioner has admitted his guilt, the Tribunal also refused to interfere with the punishment imposed against the petitioner, as it was not disproportionate to the proven charges levelled against him.

11. Therefore, the present impugned order, passed by the learned Tribunal, in confirming the order of punishment imposed against the petitioner on 15.12.2011, does not call for any interference.

12. We are also in full agreement with the reasons given by the respondent in the final order imposing the punishment of removal from service. A perusal of the reasons given by the learned Tribunal also shows that the petitioner not only once, but twice admitted his guilt, in his explanation 30.10.2010 submitted to the charge memo dated 21.10.2010 and again he has repeated the same admission before the enquiry officer and the same was also taken note of by the Enquiry Officer in his report dated 28.03.2011. Moreover, when the petitioner challenged the correctness of the final order dated 15.11.2011 before the appellate authority in his statutory appeal, dated 26.01.2012, the petitioner has again requested for modification of the order of the disciplinary authority, which shows that the petitioner has clearly admitted his guilt. Therefore, the law is well settled that once the delinquent officer has admitted his guilt, the question of examining the further evidence is far from acceptance. Therefore, we are not able to find any merit in the writ petition. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS-III)



To

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104

2. The Director of Postal Services
Union of India,
Office of the Post Master General
Southern Region, Madurai - 625 020

3. The Senior Superintendent of Post Offices
Madurai Division, Madurai - 625002

4. The Assistant Superintendent of Post Offices,
Melur Sub Division, Melur, Madurai District.

+ 1 CC TO MR.S.JEYASINGH, ADVOCATE IN SR NO.80846

RR

BU/PM/SAR-III:31.10.2018 : 6P/6C

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and
M.P. (MD) No.1 of 2013
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