

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.39832 of 2015

K.Pooranachandran

..Petitioner

vs

1.Union of India, Rep.by the
Director of Postal Services,
Southern Region(TN)
Madurai - 625 002.

2.The Superintendent of Post Offices,
Ramanathapuram Division,
Ramanathapuram - 623 501

3.The Presiding Officer,
Central Government Industrial Tribunal
-Cum-Labour Court,
Chennai - 600 006.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling the records of the 3rd respondent Tribunal cum Labour Court which is made in I.D.No.27 of 2011 dated 30.12.2014 and quash the same, consequent to direct the Respondents 1 & 2 to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.K.Srinivasamurthy
Central Government counsel

O R D E R

The Award dated 30.12.2014 passed in I.D.No.27 of 2011 is under challenge in the present writ petition.

2. The writ petitioner states that he was working as Gramin Dak Sevak Branch Postmaster(GDS BPM), Nagaram Branch Post Office. On account of an allegation of misappropriation, a charge sheet dated 06.07.1998 under Rule 8 of ED Agent (Conduct and Service) Rules, 1964 was issued to the writ petitioner by the 2nd respondent. The charge sheet contains two articles of charge. The 1st article of charge is that the petitioner has treated as paid the M.O.No.2632 dated 27.10.1997 of Aberdeen Bazaar for Rs.1,000/- payable to Sri.M.Irulaiya, Sethukkal, Nagaram without obtaining the signature of the said payee in the M.O. Paid voucher and without actually paying the value of M.O. to the payee. The 2nd article of charge, it has been alleged that the petitioner treated as paid M.O.No.1934 dated 24.10.1997 of Port Blair for Rs.2,000/- payable to Smt.Irulayee Kartheesan, Sethukkal Nagaram, without actually obtaining the left thumb impression / signature of the payee in the M.O. paid voucher and also without actually paying the value of the M.O to the payee.

3. The enquiry was conducted and the writ petitioner also participated in the enquiry proceedings. The only contention of the writ petitioner is that the customer / pensioner of the money order was not examined by the enquiry officer. A criminal case was registered against the writ petitioner and the said criminal case was ended with an order of acquittal. The contention of the writ petitioner is that the enquiry officer has decided to dispense with the witnesses from the enquiry and therefore, entire process of enquiry was improper. Relying on these grounds, the writ petitioner states that the Award of Labour Court is perverse and erroneous. The non-examination of the complainant by the enquiry officer amounts to denial of cross examination and therefore, the writ petitioner lost his opportunity to defend his case and consequently, the entire enquiry proceedings became illegal.

4. The learned counsel appearing on behalf of the respondents 1 and 2 disputed the contentions by stating that the petitioner was placed under off duty with effect from 15.11.1997 a.n. The petitioner was charge sheeted under Rule 8 of ED Agents (Conduct and Service) Rules, 1964 by the 2nd respondent in memo dated 06.07.1998 and the gist of the charges against the writ petitioner are as follows:

ARTICLE-I:

MO No.2632 dated 27.10.1997 of Aberdeen bazaar for Rs.1,000/- (Rupees One thousand only) payable to Shri.M.Irulaiya, Sethukal Nagaram B.O was received at Nagaram B.O on 05.11.1997 duly invoiced in the BO slip dated 05.11.1997 from Nainarkoil S.O. The MO has not been entered in the BO journal of Nagaram BO but has been shown as in deposit from 04.11.1997 to 08.11.1997 and it has been treated as paid on 10.11.1997 and the amount has been charged to MO paid in the BO account

and the BO daily amount on 10.11.1997. In the paid voucher of the said MO there is signature signed in Tamil as Irulaiya in the space for signature of payee found in the space for signature of paying official. There is also a signature found in the space for signature of witness/identifier. The witness could not be located. While verifying the work of the said ED Agent, the ASP Paramakudi Sub Division contacted the payee of the said M.O. Shri M.Irulaiya and enquired about the payment of the MO. Shri.M.Irulaiya in his statement dated 19.11.1997 given before the ASP Paramakudi Sub Division denied to have received payment of the said MO and disowned the signature found in the MO paid voucher. The petitioner was not prepared to give any statement in this case. The claim of the payee was settled vide Postmaster General, Madurai Memo No.INV/150-19/Misc/96 dated 17.12.1997. The petitioner had treated the said MO as paid on 10.11.1997 without actually obtaining the signature of the payee in the MO paid voucher and without actually paying the value of the MO to the payee. The petitioner had failed to follow the procedure laid down in rule No.109 and 112 of book of BO Rules(VI Edition) and thereby had failed to maintain absolute integrity and devotion to duty as required in Rule No.17 of P&T ED Agents(Conduct & Service) Rules, 1964.

ARTICLE-II:-

M.O.No.1934 dated 24.10.1997 of Port Blair for Rs.2000/- payable to Smt.IrulayeeKartheesan, Sethukal, Nagaram was received at Nagaram B.O on 07.11.1997 duly invoiced in Nainarkoil BO slip dated 07.11.1997. The MO has been entered in the BO journal on 07.11.1997. The MO was shown in deposit from 07.11.1997 to 10.11.1997. On 11.11.1997 the MO was treated as paid and the amount was charged to MO paid in the BO daily account and in the BO account. While verifying the past work of the said ED Agent, The ASP Paramakudi Sub Division contacted Smt.IrulayeeKartheesan and enquired about the payment of the MO.Smt.Irulayee W/o.Kartheesan in her statement dated 19.11.1997 given before the ASP, Paramakudi sub division denied to have received payment of the MO and disowned the LTI found in the MO paid voucher. Shri.Arumugam, father of the payee stated in his statement dated 19.11.1997 that he had not witnessed the payment of the MO and had not impressed his thumb in the MO paid voucher. The person who witnessed the payment of the MO could not be identified. Though there is entry in the postman book of the EDDA as intimation was served on 07.11.1997 Shri.M.Muniyandi, EDDA, in his statement dated

03.06.1998 denied to have served any notice in respect of the MO. The payee Smt.Irulayee also in her statement dated 03.06.1998 deposed that she had not received intimation of receipt of the MO. The ED Agent was not prepared to give statement in this case. The claim of the payee was settled vide PMG, Madurai memo NO.INV/150-19/Misc/96 dated 17.12.1997. The petitioner had failed to follow the procedure laid down in rule No.109 and 112 of book of BO Rules(VI Edition) and thereby had failed to maintain absolute integrity and devotion to duty as required in Rule No.17 of P&T ED Agents(Conduct & Service) Rules, 1964.

5. The petitioner submitted his reply statement on 03.08.1998 and an enquiry was ordered. The enquiry officer conducted the enquiry by providing opportunity to the writ petitioner.

6. The learned counsel for the respondents states that the 1st and 2nd sittings were held on 06.11.1998 and 24.11.1998. The third sitting was held on 15.06.1999 for examination of state witnesses Shri.Irulaiya and Smt.Irulayee. The said witnesses had not attended the sittings held on 15.06.1999, 02.09.1999, 19.04.2000, 28.06.2000. On 28.06.2000, the presenting officer Sri.P.Velu, Sub Divisional Inspector(Posts), Tiruvadanai Sub Division gave a representation dated 28.06.2000 to the Inquiry officer stating that the petitioner threatened the above witnesses and prevented them from appearing in the inquiry. Therefore, the said witnesses could not be examined and therefore, they were dropped due to their non-appearance on the above dates. The state witnesses Shri.C.Meenakshi Sundaram, Mail Overseer, Paramakudi Sub Division(SW-1), Shri.M.Muniyandi, EDDA, Nagaram BO (SW-2) were examined and the state exhibits 1, 2 & were filed during the inquiry held on 20.04.2000 and Shri.P.Kulandaivel, ASP was examined as SW-3 and the state exhibits 4,5 & 6 to 15 were filed through him during the inquiry held on 29.06.2000. The Defence Witnesses Shri.M.Dharmalingam, Mail Overseer-I, Paramakudi Sub Division and Smt.Thirumathi, W/o.Pooranachandran were examined as DW-1 and DW-2 respectively. Sitting for self examination of the petitioner was conducted and the inquiry was closed on 26.05.2006. The enquiry officer submitted his report, stating that the charges against the writ petitioner were not proved and based on the proved charges, the petitioner was terminated from service.

7. The petitioner raised the Industrial Dispute in I.D.No.27 of 2011 and the said dispute was dismissed by the Central Government Industrial Tribunal cum Labour Court.

8. The learned counsel for the petitioner states that the writ petitioner was acquitted in the criminal case and further,

the witnesses were examined in the enquiry proceedings. In respect of the acquittal in criminal case, this Court is of an opinion that mere acquittal in a criminal case would not exonerate the Delinquent employee from the disciplinary proceedings. To convict a person under the criminal law, a high standard of proof is required and the benefit of doubt goes in favour of the accused in a criminal case. Thus, an order of acquittal in a criminal case would not be a ground to seek exoneration from the departmental disciplinary proceedings. Contrarily, the departmental disciplinary proceedings are to be conducted independently and even moral turpitude and preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. Thus, the nature of proceedings regarding criminal case and the departmental proceedings cannot be equated to are different and distinct and therefore, the acquittal would not be a bar to continue the departmental disciplinary proceedings by the employer concerned. This being the principles to be followed, the order of acquittal will not be of any avail to the writ petitioner as the respondents had conducted an independent enquiry through an enquiry officer by examining the witnesses and by scrutinising the documents filed before the enquiry proceedings.

9. The Labour Court also categorically found that the writ petitioner is guilty of the charges. The Labour Court found that on going through the enquiry report, it can be seen that there was sufficient justification of the enquiry officer to enter a finding against the writ petitioner. The petitioner is first charge against the writ petitioner is regarding non-payment of Money Order of Rs.1,000/- payable to one Irulaiah himself is not seen examined. The petitioner has alleged that the witness was not examined deliberately. According to the Respondent, the witness was threatened by the petitioner against giving evidence.

10. It is also found that the signature Left Thumb Impression of the person concerned varies and under these circumstances, the enquiry officer arrived a conclusion that the charges against the writ petitioner were proved beyond any doubt. Under these circumstances, this Court is of an opinion that the case of misappropriation, more specifically, in such cases can never be viewed leniently. There cannot be any misplaced sympathy in respect of cases, where the public money is misappropriated, more specifically, by a Post Master, who is a trustee of such money orders. The punishment of dismissal cannot be said to be disproportionate with the gravity of the charges proved against the writ petitioner.

11. Thus, there is no perversity or infirmity in respect of the findings of the Labour Court, infirming the order of dismissal imposed on the petitioner. In this view of the matter, the Award passed by the Central Government cum Labour

Court dated 30.12.2014 in I.D.No.27 of 2011 is confirmed and consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Director of Postal Services,
Southern Region (TN)
Madurai.

2.The Superintendent of Post Offices,
Ramanathapuram Division,
Ramanathapuram.

3.The Presiding Officer,
Central Govt. Industrial Tribunal-cum-Labour Court,
Chennai.

+1cc to Mr.R.Malaichamy, Advocate SR.80858

+1cc to Mr.K.Srinivasamurthy, Advocate SR.80867

W.P.No.39832 of 2015

RV(CO)
CB(11/11/2019)



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