IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.02.2019

Pronounced on : 01.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.282 of 2018

M.Paulpandi ... Petitioner

- Vs -

1. Union of India,
Represented by the Postmaster General,
Southern Region (TN),
Madurai-625 002.

2. The Director of Postal Services,
Southern Region (TN),
Madurai-625 002.

3. Senior Superintendent of Post Offices,
Tirunelveli Division,
Tirunelveli-627 002.

4. The Registrar,
Central Administrative Tribunal,
Chennai-600 104. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent Tribunal pertaining to its order which is made in O.A.No.1110 of 2013 dated 30.09.2016 and quash the same, consequent to direct the respondents 1 to 3 to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.K.Raju, [For R1 to R3]
Central Government Standing Counsel
Tribunal [For R4]

O R D E R

P.RAJAMANICKAM, J.,

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to quash the order passed by the Central Administrative Tribunal / 4th respondent in O.A.No.1110 of 2013 dated 13.09.2016 and consequently to direct the respondents 1 to 3 to reinstate the petitioner into service with all attendant benefits.

2. The petitioner who was working as Gramin Dak Sevak Branch Postmaster (GDS BPM), Parameshwarapuram BO, a/w Radhapuram SO, was issued with a charge memo dated 27.12.2007 under Rule 10 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 {GDS (C&E) Rules, 2001} by the 3rd respondent alleging that he has committed irregularities with regard to Savings Bank and R.D. accounts of the depositors. Three charges were framed against the petitioner.

3. Article-I of the charge is that the petitioner while working as Branch Postmaster (BPM), Parameshwarapuram BO, a/w Radhapuram S.O. during the period from December 2005 to June 2007 had accepted deposits of Rs.500/- on 02.04.2007 and Rs.2,000/- on 03.05.2007 from the depositor Shri.G.Murali of S.B.A/c.No.388976 and did not bring the deposit amount into Post Office accounts and had utilised them for his personal use and hence violated Rule 131 of Rules for Branch Offices (VIth EDU) as amended from time to time.

4. Article-II of the charge is that the petitioner, while working in the said Post Office, had accepted the deposit of Rs.3042/- during May, 2007 from the depositor Shri.S.Muthukrishnan of S.B.A/c.No.391078 and did not bring the deposit amount into the Post Office accounts but utilised the amount for his personal use. Further, the petitioner had also allowed withdrawal of Rs.1,500/- of the depositor during May 2007 and did not bring into Post Office accounts and hence violated Rules 131 and 133 of Rules for Branch Offices.

5. Article-III of the charge is that the petitioner while working as BPM in the aforesaid Post Office had accepted the deposits (with default) of Rs.1,000/- + Rs.10/- for March 2007 and April 2007 on 03.04.2007 and Rs.500/- for May 2007 tendered by Smt.R.Banumathy, the depositor of R.D. account No.754289 of denomination of Rs.500/- and did not bring the deposit amount into Post Office accounts but utilised the amount for his personal use and thus violated Rule 144 read with 131 of Rules for branch offices.

6. Based on the said charge memo, an inquiry was conducted and the Inquiry Officer filed a report on 01.04.2010 stating that the charges were proved. A copy of the said report was furnished to the petitioner herein and on receipt of his reply, the 3rd respondent herein, by his order dated 30.09.2010, accepted the findings of the Inquiry Officer and imposed a punishment of dismissal of the petitioner from service with immediate effect.

7. Aggrieved by the same, the petitioner had filed an appeal before the Director of Postal Services, Southern Region(TN), Madurai (2nd respondent). By an order dated 27.07.2012, the 2nd respondent had rejected the said appeal confirming the punishment imposed by the Disciplinary Authority. Feeling aggrieved, the petitioner had filed O.A.No.1110 of 2013 on the file of the Central Administrative Tribunal / 4th respondent.

8. The Central Administrative Tribunal / 4th respondent, by the order dated 30.09.2016, had dismissed the said O.A.No.1110 of 2013. Feeling aggrieved, the petitioner has filed the present writ petition.

9. According to the petitioner, the enquiry was conducted in total violation of principles of natural justice. There is no complaint against him by the said depositors mentioned in the charge memo and the said witnesses during cross-examination have deposed that they did not know the person who had written the statement for them. As regards the Article - I of the charge, the alleged depositor namely Murali, in his deposition, has stated that he has not made any deposit in his Savings Bank account after March 2007. His further case is that with regard to Article-II, the charge is vague and not specific. The depositor Muthukrishnan has stated that he has made deposit only by cheque but in the charge, it has been stated that the petitioner has collected cash.

10. With regard to Article-III, the petitioner's case is that the depositor Tmt.R.Banumathy has categorically deposed during her cross-examination that she has not made any deposit after the initial deposit on 08.02.2007. His further case is that even though the aforesaid witnesses have not supported the case of the Department, the Enquiry Officer gave findings as the charges were proved and hence, the said findings are perverse.

11. The respondents 1 to 3 have opposed the said Original Application before the Central Administrative Tribunal / 4th respondent by filing reply statement. According to them, the petitioner while working as GDSBPM at Parameshwarapuram BO, defrauded public money in 26 savings accounts to the tune of Rs.49,542/- (Rupees Forty Nine Thousand Five Hundred and Forty

Two Only), but an inquiry was conducted only with regard to three charges. Their further case is that the Enquiry Officer has conducted the enquiry by following the principles of natural justice and sufficient opportunities have been given to the petitioner to cross examine the witnesses and the petitioner also availed the said opportunities and cross examined the witnesses. Their further case is that the Enquiry Officer, after considering the materials placed before him, found that the charges levelled against the petitioner were proved and accordingly, he submitted a report. Their further case is that a copy of the said report was served on the petitioner and the petitioner also submitted his reply and after considering the same, the disciplinary authority had accepted the inquiry report and imposed the punishment of dismissal from service. Their further case is that the appeal filed by the petitioner before the 2nd respondent came to be dismissed as it is devoid of merits.

12. As against the order passed by the 2nd respondent, the petitioner had filed O.A.No.1110 of 2013, on the file of the Central Administrative Tribunal / 4th respondent and the same also came to be dismissed. Challenging the said order, the petitioner has filed the present writ petition. In this writ petition also, the respondents 1 to 3 have filed counter affidavit reiterating their stand which was taken before the Central Administrative Tribunal/4th respondent in O.A.No.1110 of 2013 and hence, they prayed to dismiss the writ petition.

13. Heard Mr.R.Malaichamy, the learned counsel for the petitioner and Mr.K.Raju, the learned Central Government Standing Counsel appearing for the respondents 1 to 3.

14. The learned counsel for the petitioner has submitted that the Enquiry Officer had conducted the enquiry in total violation of principles of natural justice. He further submitted that the witnesses examined on the side of the Department did not support the case of the Department. He further submitted that SW-1 had deposed that she had not deposited any amount and her husband might have deposited the amount but the husband of SW-1 has not been examined as witness. He further submitted that SW-2 was declared as hostile witness and SW-3 had deposed that no deposit was made by him after March 2007. He further submitted that despite the fact that the alleged three depositors have not supported the case of the Department, the Enquiry Officer submitted his report stating that the charges were proved against the petitioner and hence, the findings of the Enquiry Officer are perverse and the said enquiry report ought not to have been accepted by the 3rd respondent. He further submitted that the 3rd respondent had mechanically accepted the enquiry report and awarded punishment of dismissal from service.

He further submitted that the Appellate Authority and also the Central Administrative Tribunal have mechanically rejected the petitioner's case and therefore, he prayed to allow the writ petition.

15. Per contra, the learned standing counsel appearing for the respondents 1 to 3 has submitted that the petitioner while he was working as Branch Post Master (BPM), Parameshwarapuram BO, in account with Radhapuram S.O. during the period from December 2005 to June 2007 had indulged in malpractice. He further submitted that the petitioner had received the amounts from 26 persons to the tune of Rs.49,542/- (Rupees Forty Nine Thousand Five Hundred and Forty Two Only), but, he did not bring the said amount into Post Office accounts and had utilised for his personal use. He further submitted that the said malpractice was noticed during audit and even though the petitioner had defrauded public money in 26 savings accounts, the Department had chosen to frame charges only with regard to the three accounts. He further submitted that the charge memo was issued on 27.12.2007 and after receipt of the said charge memo, the petitioner did not submit any explanation for the said charges, however an enquiry was ordered and an Enquiry Officer was appointed. He further submitted that the Enquiry Officer had conducted the enquiry by following the principles of natural justice and during enquiry, opportunities were given to the petitioner to cross examine the SWs and the petitioner also availed the said opportunities and cross examined the witnesses. He further submitted that the Enquiry Officer gave opportunities to the petitioner to adduce evidence on his side and accordingly, he examined one Shri.G.Murugadoss as DW-1 and also examined himself as DW-2 and he also marked one exhibit as D.E.1 on his side and therefore, it cannot be said that the Enquiry Officer has not followed the principles of natural justice. He further submitted that since the petitioner has not disputed the entries made by him in the pass book of the depositors namely SWs 1 to 3, it has to be presumed that the entrustment of the amount is proved. He further submitted that once entrustment is proved, then it is for the petitioner to establish that he has appropriated the amount in accordance with law. He further submitted that in this case, the petitioner has not discharged his burden. He further submitted that the petitioner himself examined as DW-2, and has admitted that there are some discrepancies in savings bank account and taking into account of the same, the Enquiry Officer has rightly held that the charges were proved. He further submitted that a copy of the enquiry report was served to the petitioner and the petitioner also submitted his reply and after considering the same, the Disciplinary Authority has passed an order for dismissal of the petitioner from service. He further submitted that the appeal filed by the petitioner before the Appellate Authority and the

O.A.No.1110 of 2013 filed by the petitioner before the Central Administrative Tribunal / 4th respondent also came to be dismissed and therefore, he prayed to dismiss the writ petition.

16. Even though the chargememo was served on the petitioner on 27.12.2007 with a direction to submit a written statement of his defence within ten days of the receipt of the said charge memo, the petitioner has not submitted any written statement of his defence. However, an enquiry was ordered and an enquiry officer was appointed. The Enquiry Officer had conducted enquiry and submitted a report on 01.04.2010 stating that the charges were proved by documentary and oral evidence beyond doubt.

17. A perusal of the enquiry report would show that the Enquiry Officer had conducted the enquiry strictly in accordance with law by following the principles of natural justice, in which, the petitioner duly participated. The witnesses, on the side of the Department, were examined in the presence of the petitioner and he also cross examined them extensively. After closing evidence on the side of the Department, an opportunity was given to the petitioner to adduce evidence on his side. Availing the said opportunity, the petitioner examined one Sr.G.Murugadoss as DW1. Further, the petitioner examined himself as DW2. He also marked one exhibit as D.E.1. After closing the evidence on the side of the defence, the petitioner had submitted his written submissions and also oral submissions. After considering the entire materials placed before him, the Enquiry Officer came to the conclusion that the charges were proved against the petitioner. Therefore the contention of the learned counsel for the petitioner that the enquriy has been conducted without following the principles of natural justice cannot be accepted.

18. In so far as the Article-I of the charge is concerned, on the side of the Department, the depositor Sri.G.Murali was examined as SW3. He has stated that he is having Savings Bank A/c.No.388776 in Parameswarapuram Post Office. He has produced his passbook and marked as SE5. Further, he has stated that he was examined by the Officer of the Postal Department on 21.06.2007 and gave a statement before him and the said statement has been marked as SE6. During cross-examination, he has stated that after March 2007, he has not made any deposit and hence he was declared as hostile witness and cross examined by the presenting officer. During the said cross-examination, he has stated that he has not verified the balance and deposits made on 04.04.2007 and 03.05.2007 at the time of issuing new passbook. The charge against the petitioner is that though the petitioner had accepted the deposits from the said Mr.Murali on 02.04.2007 Rs.500/- and on 03.05.2007 Rs.2000/- and made entries of deposits in the pass book on the above dates with his

initials and authenticated it with impression of date stamp of the post office, he had not entered the deposits in the Post Office Account. The petitioner has not specifically denied the receipt of the deposits of Rs.500/- on 02.04.2007 and Rs.2000/- on 03.05.2007 and made entries of deposits in the passbook. So, even if the witness Sri G.Murali (SW3) turned hostile, when there is no proper explanation from the petitioner with regard to the entries made in the pass book, it has to be presumed that he had received the deposits but did not bring into Post Office account.

19. With regard to the Article-II of the charge, the depositor Sri S.Muthukrishnan was examined as SW2. He also stated in his evidence that he is maintaining the savings bank account No.391078 in the Parameswarapuram Post Office. He has produced his pass book and marked as S.E.3. Further, he has admitted that he gave statement before the Officer of the Department of Post and the said statement has been marked as S.E.4. However, he has stated that the said statement was not written as what he dictated and hence he was declared as hostile and he was cross-examined by the Presenting Officer. In the said passbook also, an entry has been made in the month of May, 2007 as Rs.3042/- was deposited and the petitioner had put his initial and date stamp impression, but the said deposit was not brought to the account of the Post Office. SW2 has stated that he has not paid any amount by cash but he deposited a cheque for Rs.3042/-. It is seen from the enquiry report that DW1 has deposed that he accompanied the SW2 to Parameswarapuram Post office for depositing a cheque in SW2s Savings Bank account and at that time, the petitioner has informed SW2 that it will take fifteen days time for the clearance of the cheque and hence SW2 received back the said cheque from the petitioner. But the passbook of SW2 (SE3) shows that only cash of Rs.3042/- was deposited in the month of May, 2007. Further, SW2 has not deposed that he was accompanied by DW1. Further, he has not stated that the petitioner informed him that it will take fifteen days for clearance of the cheque and hence he received back the cheque. Even if the SW2 had received back the said cheque, that should have been mentioned in the passbook, but no such entry has been made in the pass book.

20. As regards the Article-III of the charge, the depositor Smt.R.Banumathy was examined as SW1. She has deposed that she is maintaining RD Account No.754289 in the Parameswarapuram Branch Post Office. Further, she has stated that on 10.05.2017, final balance amount in her passbook was Rs.2000/-. She has produced her passbook and marked as SE1. Further, she has deposed that she gave a statement before the Inspector of Post Office on 11.07.2007 and the said statement has been marked as SE2. One Sri.K.Selvaraj ASP (Retd), Palanankottai was examined

as SW4. He has stated that he enquired SW1 and she gave a statement stating that she deposited a sum of Rs.1000+ 10 on 03.04.2007 and Rs.500/- on 10.05.2007 and to that effect, entries have been made in her passbook. He further stated that he also enquired with the petitioner herein and he gave a statement admitting the fact that he received the amount from Sri.R. Banumathy (SW1) on 03.04.2007 Rs.1000/-; on 10.05.2007 Rs.500/- and to that effect, he has made entires in the pass book, but he did not bring into the account of the Post Office. The said statement has been marked as SE7. Further, the petitioner gave a statement on 05.07.2007 admitting the fact that he accepted the deposit of Rs.3042/- from the witness Muthukrishnan and made entries in the pass book. Though the petitioner while examining himself as DW2 has stated that since the statements were recorded by threatening, he has not put any such suggestion to SW4. Therefore, the contention of the petitioner that the said statement was obtained by threatening cannot be accepted. Further, subsequently the said Muthukirshnan had withdrawn a sum of Rs.1500/- and for that also, he made entry in the pass book. Further, he has stated that the said amount of Rs.1500/- was given from and out of his pocket and hence no corresponding entry has been made in the Post Office ledger and the said statement has been marked as SE12. He gave another statement on 05.07.2007 itself admitting the fact that he accepted the deposit of SW1 viz., Murali and made necessary entries in the passbook, but he did not bring into the account of the Post Office and the said statement has been marked as SE13. The said statements were marked through SW5. During the cross-examination of the said witness, it was not suggested by the petitioner that the said statements were obtained by threatening.

21. With regard to the deposits accepted by the petitioner, entries have been made in the pass books and the said pass books were marked through the concerned depositors. The petitioner has not asked any question to them denying the said entries made in the pass books. It is not the case of the petitioner that the said entries were made either by the depositors themselves or by the Department. Therefore, it has to be presumed that the petitioner had accepted the deposits and made necessary entries in the pass books, but he did not bring into the account of the Post Office and utilised for his own purpose. Though the depositors, during departmental enquiry, have not fully supported the case of the Department, the documentary evidence would clearly show that the petitioner had accepted the deposits from the Sws.1 to 3 and made necessary entries in the pass books, but the said deposits were not brought to the post office account.

22. It is also to be pointed out that there is no explanation from the petitioner with regard to the entries made in the pass books. In such circumstances, it has to be presumed that the petitioner had accepted the deposits. Once entrustment is proved, the burden is upon the petitioner to show that he has appropriated the said amount in accordance with law. In this case, the petitioner miserably failed to discharge the said burden.

23. The Enquiry Officer, Disciplinary Authority and the first appellate authority have considered the materials placed by both sides and they concurrently came to the conclusion that the charges levelled against the petitioner are proved. The Tribunal also considered the submissions of both sides and rejected the petitioner's application. This is not a case of no evidence. This is a case of some evidence and therefore, this court does not find any infirmity in the findings of the aforesaid authorities and Tribunal.

24. The next question that arises for consideration is whether the punishment imposed by the respondents 1 to 3 on the petitioner dismissing him from the service is just and proper.

25. At this juncture, it would be relevant to refer to the decision in Mihir Kumar Hazara Choudhury Vs. LIC (2017) 9 SCC 404 wherein the Hon'ble Supreme Court in paragraph Nos.26 and 27 has observed as follows:

> "26. An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any institution and more when the institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. (See some observations in Damoh Panna Sagar Rural Regional Bank V. Munna Lal Jain).

27. There is no defence available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organizations and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse orders (See some observations in Disciplinary Authority-cum-Regional Manager V. Nikunja Bihari Patnaik)."

26. From the aforesaid decision, it is clear that an employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him to be very cautious in his duties because he deals with the money transactions for and on behalf of the employer. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention constitutes misconduct on the part of such employee.

27. In Municipal Committee, Bahadurgarh Vs. Krishnan Behari (1996) 2 SCC 714 = AIR 1996 SC 1249, the Honble Supreme Court has held as under:(SCC p. 715, para 4)

"4. .... In a case of such nature-indeed, in cases involving corruption- there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

28. In NEKRTC Vs. H. Amaresh and U.P. SRTC vs. Vinod Kumar (2006) 6 SCC 187 and U.P.SRTC Vs. Suresh Chand Sharma (2008) SCC 115, the Hon'ble Supreme Court held that the punishment should always be proper to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal. Hence, this court is of the view that the punishment of dismissal imposed on the petitioner does not call for any leniency. Therefore, the writ petition lacks merits and the same is liable to be dismissed.

29. In the result, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gv

To

1. Union of India,
   Represented by the Postmaster General,
   Southern Region (TN),
   Madurai-625 002.

2. The Director of Postal Services,
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3. Senior Superintendent of Post Offices,
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4. The Registrar,
   Central Administrative Tribunal,
   Chennai-600 104.

+1 cc to Mr.K.Raju, Advocate Sr.No.19151
+1 cc to Mr.R.Malaichamy, Advocate Sr.No.19292

W.P.No.282 of 2018

SR(CO)
CSL/26.03.2019