

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4440 of 2018****Judgment reserved on 06.02.2020****Judgment delivered on 02.03.2020**

- Nemichand Kesharwani S/o Shri Puniram Kesharwani aged about 43 years, Ex-GDS Branch Post Master, Junwani Post Office, (SO-Bhatagaon) Tahsil-Bilaigarh Dist. Balodabazar C.G.

-----Petitioner**VERSUS**

1. Union of India, through the Secretary, Ministry of Communication, Department of Posts, Dak Bhavan, New Delhi, 110001
2. The Director Postal Service, Chhattisgarh Circle, CPMG Office, M.G. Road, Raipur 492001
3. The Sr. Superintendent of Post Offices, Raipur Division, First Floor of Gunj Post Office, Station Road, Raipur 495001 C.G.

-----Respondents

For Petitioner	:	Mr. B.P. Rao, Advocate
For Respondent-UOI	:	Mr. B.Gopa Kumar, Assistant Solicitor General

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J.**

1. The petitioner has challenged the order dated 19-02-2018 passed by Central Administrative Tribunal, Jabalpur Bench, Circuit Camp, Bilaspur (for short "C.A.T.) in Original Application (OA) No. 203/00092/2015, whereby learned C.A.T. dismissed the OA challenging the punishment order of dismissal from service.
2. The petitioner while working as GDS Branch Post Master at Junwani Post Office was placed under put-off on 20-09-2011. He was served with a charge-sheet alleging financial irregularities committed by him in depositing the amount of Rs. 3,31,200/- in the post office accounts which were deposited by

Gram Panchayat Secretary, Khaparidih on various dates. In the charge-sheet two charges of financial irregularities have been levelled against the petitioner, mentioning therein that the petitioner has not deposited the amount towards different pension schemes in the accounts of beneficiaries which was deposited by Secretary of Village Panchayat, Khaparidih time to time, but the same have been entered on the other subsequent dates amounting to Rs. 1,12,800/- and balance amount of Rs. 2,18,400/- which has not been accounted and similarly the amount of Rs. 2,71,800/- also has not been accounted in the post office accounts. The inquiry officer as well as the presenting officer were appointed to conduct the Departmental Enquiry proceedings against the petitioner. During the course of enquiry, witnesses of the prosecution were examined and cross examined. The petitioner-employee neither produced any defence witness nor he got himself examined in his defence. After conclusion of the departmental enquiry proceedings, the inquiry officer arrived at a finding that the charges levelled against the petitioner to be proved and forwarded the enquiry report to disciplinary authority. The disciplinary authority served the petitioner with enquiry report and called for his explanation. The petitioner submitted the representation to the enquiry report and the disciplinary authority after considering the enquiry report as well as the representation submitted by the petitioner, arrived at a conclusion that the charges levelled against the petitioner is proved and the misconduct committed by him to be very serious and he is not entitled to remain in service and passed the order of punishment of dismissal from engagement. Against the order of punishment, the petitioner preferred an appeal before the appellate authority which came to be dismissed and against which he filed OA before the C.A.T. which also came to be dismissed by the impugned order.

3. The learned counsel for the petitioner submits that the allegations levelled against the petitioner of not depositing an amount of Rs. 6,03,000/- in the

accounts of beneficiaries of different pension schemes, despite that, none of the account holders has made any complaint against him or against the postal authorities which shows that the allegations levelled against the petitioner are false and baseless which was overlooked by the inquiry officer as well as the disciplinary authority. He also contended that the petitioner has made statement that he has deposited all the amount received by him from the Village panchayat Secretary as well as the other account holders, but either he might not have accounted the amount correctly in the relevant register or entered the same in the other registers but he had not misappropriated any amount. He submits that only in fear and threat that criminal case would be registered against him, he has deposited the amount of Rs. 3,26,600/- and the same has been made base of acceptance of guilty of the charges levelled against him. It is also pointed out that the representative of the village panchayat has not been examined as witnesses by the inquiry officer, the enquiry has not been conducted in accordance with the procedure prescribed.

4. Per contra learned counsel for the respondents-Department submits that the allegations/ charges levelled against the petitioner were of very serious in nature and he has not accounted the amount which was deposited by the Secretary of Village Panchayat, Khaparidih in the post office accounts of beneficiaries under different pension schemes, the total of which is Rs. 6,03,000/-. The petitioner himself deposited part of the amount of Rs. 3,26,600/- which itself shows that the petitioner has committed misconduct of misappropriation of amount. It is also contended that the petitioner cannot question the procedure adopted by the inquiry officer because in the enquiry proceedings, the inquiry officer has recorded the details of the proceedings of each day fixed for enquiry and more so when the petitioner neither produced any defence witness nor got himself examined in his defence. He submits that looking to the seriousness of the misconduct and the charges levelled against the petitioner, the C.A.T. has rightly dismissed the OA after analysis of

all the facts and circumstances of the case.

5. We have heard learned counsel for the petitioner as well as the respondent-Department and perused the material available on record with utmost circumspection.
6. The charges levelled against the petitioner for not accounting of Rs. 6,03,000/- in total in the accounts of account holders of post office during the period from 24-03-1998 to 20-09-2011 is a very serious misconduct committed by him. The petitioner being posted at Gramin Dak Sevak (GDS), Branch Post Master, Post Office Junwani, where the amount is also deposited in the accounts of account holders under several schemes and thereby the role of the petitioner was one of the guardians of the amount so deposited in the accounts maintained in the Post Office. Though the question has been raised by the learned counsel for the petitioner on the proceedings initiated by the inquiry officer but on going through the records, we do not find any irregularities committed by the inquiry officer, in fact, he has recorded date wise proceedings which is mentioned in the enquiry report also. Witness on behalf of the prosecution/ department was examined and also cross examined, but when the turn of production of defence witness came, the petitioner did not produce any witness in his support nor got himself examined as witness in his defence. The petitioner, though, argued that the documents etc. have not been supplied to him which were relevant for the enquiry proceedings, despite, he has not raised any objection nor filed appropriate case before the appropriate forum during the proceedings of enquiry, therefore, the petitioner cannot be permitted to raise such a plea even if available to him at all.
7. Perusal of the enquiry report placed on record would show that the inquiry officer has conducted the enquiry in accordance with the procedure adopted, the petitioner-employee was granted full opportunity, there was no violation of principle of natural justice. Challenge of punishment before the Tribunal or

Court is not an appeal but the powers which were to be exercised by the Tribunal or the Court is of the judicial review and under that jurisdiction, it is only to be seen whether the inquiry officer has followed the procedure prescribed for conducting the Departmental Enquiry, proper opportunity was afforded to the petitioner/ delinquent employee or not and whether there was violation of principle of natural justice or not. The C.A.T. after taking note of the decisions rendered by the Supreme Court in the matter of **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya** reported in (2011) 4 SCC 584 and **Prem Nath Bali v. Registrar High Court of Delhi and anr** reported in (2015) 16 SCC 415 and observed as under for dismissal of the OA:

“9. In the matters of ***Prem Nath Bali vs. Registrar High Court of Delhi and anr.*** (2017) 1 SCC (L&S)263 : (2015) 16 SCC 415 the Hon'ble Supreme Court held that where the appellant is served with detailed charge sheet along with documents referred to therein; he filing reply to charge sheet; parties given full opportunity to adduce evidence; which they availed of by examining witnesses in their support and by cross-examining each of them, there was due compliance with principles of natural justice by enquiry officer, warranting no interference in exercise of writ jurisdiction.

10. Going through the arguments of the learned counsel of both sides and material available on record, it is seen that the respondents have carried out the whole departmental proceedings as per rules prescribed. The enquiry report has clearly recorded that the amount collected, and some amount not accounted for at all. The disciplinary authority and appellate authority have passed detailed speaking orders while imposing/confirming the punishment.

11. The reliance placed by the learned counsel for the applicant on the decision in the matters of **A.Haroon** (supra) can not support his case, as he has failed to point out any violation of principles of natural justice in the instant case.”

8. On perusal of the documents placed on record by the petitioner which are the report of inquiry officer i.e. order of disciplinary authority as well as order passed by the appellate authority, there is no violation of principle of natural

justice, punishment awarded cannot be said to be shockingly disproportionate to the misconduct. We do not find any good ground to take a different view than taken, in view of the seriousness and gravity of the charges proved against the petitioner.

9. In the result, the petition being devoid of any substance which is liable to be and is hereby dismissed. No order as to cost.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge