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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12333 OF 2021

1. Union of India, Through
The Postmaster General,
Aurangabad Region,
Aurangabad 431002.
2. The Director of Postal Services
O/o. The Postmaster General,
Aurangabad Region,
Aurangabad 431002.
3. The Superintendent of
Post Offices, Nanded Division,
Nanded 431 602.

... Petitioners

Versus

Pashupati Digambar Swamy
Group "C" Ex. GDS Branch
Post Master Nandusa B.O.
(Malegaon .O.), Nanded Division,
Residing at House No.51,
Nandusa B.O. Tq. Nanded,
District – Nanded – 431 750.

... Respondent

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Mr. A. G. Talhar, A.S.G.I. for the Petitioners.

Mr. C. S. Tembhurnikar, Advocate for the Respondent-sole.

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**CORAM : DIPANKAR DATTA, CJ &
N. B. SURYAWANSHI, J.**

DATE : 15th February, 2022

ORAL JUDGMENT: [Per Dipankar Datta, CJ.]

1. Union of India through the Postmaster General, Aurangabad Region, Aurangabad; the Director of Postal Services, Aurangabad Region, Aurangabad; and the Superintendent of Post Offices, Nanded Division, Nanded, are the petitioners in this application under Article 226/227 of the Constitution. They take exception to the judgment and order dated 4th December, 2019 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) allowing Original Application No.10 of 2015 instituted by the respondent, Pashupati Digambar Swamy (hereafter "the employee", for short). By the said judgment and order, the Tribunal set aside the show-cause notice dated 25th September, 2012, the order removing the employee from service dated 2nd April, 2013 and the order dated 20th October, 2014 of dismissal of a revision petition of the employee and directed payment of consequential benefits to the employee who had reached the age of superannuation before institution of the original application.

2. Filtering out unnecessary facts, what we find is this. The employee was appointed as a Gramin Dak Sevak on 15th May, 1989. More than two decades after rendering service as such sevak, the employee had allegedly failed to maintain the expected degree of good conduct in the course of discharge of his official duty, resulting in issuance of a memorandum of charge dated 19th May, 2011 by the disciplinary authority, i.e., Superintendent of Post Offices, petitioner no.3, in terms of Rule 10 of the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 (hereafter "2001 Rules", for short). The employee was charged with omission to credit Rs.3,800/- to the Government account on 12th April, 2010, which viewed as failure to maintain absolute integrity and devotion to duty and thus contravened Rule 21 of the 2001 Rules. However, it is noted that by the time the memorandum of charge was issued, the 2001 Rules stood superseded by the Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 (hereafter "the 2011 Rules", for short) and further proceedings were carried forward in terms thereof. The employee did not reply to the charge-sheet leading to appointment of an Inquiry Officer. An inquiry followed, whereat the employee admitted

his guilt. The Inquiry Officer submitted a report on 9th February, 2012 holding that the charge stood proved by admission. Such report was forwarded to the employee seeking his comments. By a letter dated 17th February, 2012, the employee conveyed to his disciplinary authority that he was in service for 21 years and that there had been no previous occasion of any mistake having been committed by him. Failure to credit Rs.3,800/- was claimed to be an act of oversight and not intentional. It was also claimed that the sum of Rs.3,800/- was credited to the relevant account on 9th August, 2010 along with penal interest of Rs.250/-. Considering the employee's response, the disciplinary authority in his order dated 29th February, 2012 observed that it was a human error and that in view of the employee's long unblemished service of 22 years and that he was 58 years of age, a lenient view could be taken. Accordingly, the disciplinary authority imposed the punishment of 'censure' on the employee and ordered that the "put-off duty" period between 16th August, 2010 and 31st August, 2010 be treated as such; however, such period could be counted for calculation of ex-gratia gratuity and severance allowance amount.

3. After the employee was censured by his disciplinary authority, he received a show-cause notice dated 10th August, 2012 / 25th September, 2012 issued by the Director of Postal Services, petitioner no.2, who happened to be the employee's appellate authority. Incidentally, the date 10th August, 2012 was printed whereas the date 25th September, 2012 was hand-written. As the case related to integrity of a Gramin Dak Sevak, the appellate authority by such notice proposed, in exercise of *suo motu* power of revision conferred by Rule 19(1)(ii) of the 2011 Rules, to enhance the punishment of censure to that of "removal from service with immediate effect". After receiving the show-cause notice, the employee submitted a representation dated 9th October, 2012. For the purpose of deciding this writ petition, it would suffice to note that the employee while owning up his mistake sought for being excused by contending that it was his first mistake at the age of 59 years and there was no ill intention behind the act of omission for which he had been proceeded against. By an order dated 2nd April, 2013, the appellate authority of the employee declined to take a sympathetic view and, on the finding, that the charge was grave and maintaining the

punishment of censure would send a wrong message, ordered his removal from service with immediate effect.

4. The order dated 2nd April, 2013 was challenged by the employee before the Postmaster General, being the revisional authority, by filing a revision petition dated 25th April, 2013. Therein, the employee *inter alia* contended that the show-cause notice proposing enhancement of punishment was issued after six months of the order of censure passed by the disciplinary authority and, therefore, the proceeding initiated by such notice was without jurisdiction. Reference made by the employee to any particular statutory provision in this behalf is, however, not found.

5. The revisional authority looked into the relevant file/records and recorded in his order dated 20th October, 2014 that the Director of Postal Services had "*reviewed the punishment order on 08.08.2012 in the file i.e. within the time prescribed*" and, therefore, the contention of the employee that the punishment "*was reviewed after six months was not found to be correct*". Considering that due procedure had been followed and the charge leveled against the employee had

been proved beyond doubt, the revisional authority proceeded to confirm the order of removal from service. Consequently, the revision petition stood dismissed.

6. Challenging the order of the revisional authority as well as the order of the appellate authority and the show-cause notice issued by it, the employee had the occasion to approach the Tribunal with an original application which, as noticed above, has succeeded giving rise to the challenge that we are tasked to decide.

7. We have heard Mr. Talhar, learned Assistant Solicitor General representing the petitioners and Mr. Tembhurnikar, learned advocate representing the employee and perused the impugned judgment and order.

8. The Tribunal is found to have considered the grievance of the employee in the light of the Central Civil Services (Classification Control and Appeal) Rules, 1965 (hereafter "the 1965" Rules, for short), although the 1965 Rules was not the relevant rule in terms whereof the employee had been proceeded against; instead, it was the 2011 Rules referred to above that ought to have exercised the consideration of the

Tribunal. Be that as it may, nothing much turns on it since there is not much material difference in the provisions of the 1965 Rules and the 2011 Rules with regard *suo motu* exercise of power to revise an order and we are of the considered opinion, for the reasons that follow, that the ultimate conclusion reached by the Tribunal can be justified even by reference to the 2011 Rules.

9. The appellate authority proceeded to invoke Rule 19 of the 2011 Rules. For facility of clarity and understanding, we quote Rule 19 of the 2011 Rules hereunder:

"19. Revision

(1) Notwithstanding anything contained in these rules:

(i) Regional PMG, for those Gramin Dak Sevaks who work in region headed by PMG; and in the erst of the cases by the Head of the Circle (Chief Postmaster General).

(ii) Any other authority immediately superior to the authority passing the orders; or

(iii) Any other authority specified in this behalf by the Government by general or special order, and within such time as may be specified in that general or special order;

may, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise an order under these

rules, reopen the case and after making such enquiry as it considers necessary, may

*(a) confirm, modify or set aside the order,
or
(b) pass such orders as it deems fit."*

Provided that no such case shall be reopened under this rule after the expiry of six months from the date of the order to be revised except by the Government or by the Head of Circle or by the Postmaster-General (Region) and also before the expiry of the time limit of three months specified for preferring an appeal under Rule 14:

Provided further that no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the Sevak concerned has been given a reasonably opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) and (vi) of Rule 9 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed except after the enquiry in the manner laid down in Rule 10, in case no such enquiry has already been held.

(2) No application to revise an order on an application for a revision or order passed or made on a revision shall be entertained."

10. Bare perusal of Rule 19 would reveal that in terms of clause (ii) of sub-rule (1), the appellate authority, being the authority immediately superior to the disciplinary authority, has been conferred the power to revise an order made under

the 2011 Rules. This exercise would require reopening of the case and making such inquiry as the said superior authority considers necessary, whereupon the order under revision could either be confirmed or modified or set aside. However, such power of revision is not an unrestricted or unbridled power; it is hedged with a rider contained in the first proviso to sub-rule (1) of Rule 19. It ordains that if the power of revision is being exercised by any authority other than the Government or the Head of Circle or by the Postmaster General (Region), such power cannot be exercised by the said authority and no disciplinary case which has been closed may be reopened after expiry of six months from the date of the order sought to be revised. This particular point was raised by the employee before the revisional authority while challenging the order of the appellate authority to revise the order of the disciplinary authority in exercise of power conferred by Rule 19, albeit without reference to the relevant proviso. According to the employee, the disciplinary authority having ordered that the employee should be imposed the punishment of censure on 29th February, 2012, the time limit to revise the order at the instance of the appellate authority expired at the end of

six months on 28th August, 2012, and the show-cause notice proposing enhancement of punishment having been signed and put into transmission as late as on 25th September, 2012, which he received on 27th September, 2012, the limitation provided in the first proviso to sub-rule (1) of rule 19 had set in, thereby divesting the appellate authority of the competence and/or jurisdiction to reopen the disciplinary case. Such contention was negated by the revisional authority on the ground that the appellate authority had initiated the exercise of revising the order of the disciplinary authority by making a note in the file on 8th August, 2012.

11. In the circumstances as above, we have been called upon to decide whether the note made in the file on 8th August, 2012 should be considered as the date on which the appellate authority reopened the case or whether reopening of the case has to be reckoned from the date the show-cause notice proposing enhancement of punishment was signed and put into transmission for reaching the employee. We are inclined to hold, on a thorough reading of Rule 19 inclusive of the first proviso to sub-rule (1), that a mere endorsement in the file intending to reopen a disciplinary case which has been

closed by an order of the competent authority would not suffice but that such intention has necessarily to be translated into action by issuing a show-cause notice to the sevak (indicating that the revisional authority, intending to reopen the disciplinary case, proposes to enhance punishment) and by putting the same in transmission; or, at the least, by communicating to the sevak the intention of reopening the case though the proposal to enhance punishment could be notified subsequently. It is either when the show-cause notice issued by the authority or a communication seeking to convey his intention to reopen the disciplinary case is put into transmission that such case can be held to have been lawfully and validly reopened in accordance with the first proviso to Rule 19 (1) of the 2011 Rules. Such a constricted construction has to be placed on the first proviso in preference to a wide construction thereof to avoid any possibility of misuse of power by ante-dating endorsements thereby leading to undesirable results.

12. In **State of Punjab vs. Amar Singh Harika**, reported in AIR 1966 SC 1313, the Supreme Court held that an order of dismissal kept in the file without communication to the officer

can take effect only upon its communication to such officer or if it is otherwise published. Although it is not an order of dismissal that we are concerned with, the rationale on the basis whereof the Court decided that case applies here with equal force.

13. That apart, quite significantly, the alleged file noting made on 8th August, 2012 by the employee's appellate authority, to which reference was made in the revisional authority's order, was neither placed on the record of the Tribunal nor has it been placed before this Court by the petitioners. Without such endorsement being placed on record for our consideration, there is no warrant to accept what the revisional authority has recorded in his order dated 20th October, 2014. The fact that the show-cause notice proposing to enhance the punishment also bears the hand-written date 25th September, 2012 has not been disputed by the petitioners. It is a clear indicator that the show-cause notice was signed on that date and not before. This being the undisputed position, we are at loss to comprehend as to how Mr. Talhar could be justified in his contention that 8th August, 2012 ought to be reckoned as the date when the disciplinary

case against the employee was reopened.

14. If indeed the disciplinary case was reopened on 8th August, 2012, the best evidence that could have been placed before the Court is withheld by the petitioners and an adverse inference has to be drawn that there is no such noting dated 8th August, 2012 by which the appellate authority could be said to have reopened the disciplinary case in exercise of its power to revise the order of censure. Assuming that any such endorsement was recorded in the file (that the appellate authority had sought to reopen the disciplinary case on 8th August, 2012), no plausible reason is also forthcoming from the side of the petitioners as to why it took more than 45 days thereafter to issue the show-cause notice proposing enhancement of punishment on 25th September, 2012. For the purposes of the present case, it is 25th September, 2012, and that date alone, which has to be reckoned for the purpose of a determination as to whether the appellate authority had exercised the power of revision within the time period of six months from the date of the order which was sought to be revised. We hold that reopening of the disciplinary case to revise the order of censure having commenced at the instance

of the appellate authority beyond six months, it was an act without the authority of law.

15. Mr. Talhar vehemently contends that the employee did not suffer any prejudice by reason of a few days' delay in communicating the show-cause notice proposing enhancement of punishment and, therefore, the Court ought not to take exception to the action taken by the petitioners to remove the employee from service, particularly when the employee in course of the inquiry had admitted his guilt and the charge was related to financial irregularity in the course of discharge of official duty.

16. The contention appears to be completely misconceived. No doubt the employee admitted the charge. It is also not in doubt that he was guilty of temporary misappropriation of public money. However, howsoever grave a misconduct is, a delinquent can be punished only in accordance with the extant rules governing the disciplinary case. We may not be misunderstood of approving the conduct of the employee, who surely ought to have been more careful because he was dealing with public money. There cannot be any margin for

error in such cases. A temporary misappropriation is also misappropriation. Nonetheless, the 2011 Rules have been framed for regulating the conduct of the sevaks as well as the authorities referred to therein. There can be no two opinions that while the said rules are binding on the sevaks, the same are equally binding on the superior authorities. The superior authorities cannot be heard to say that despite they being bound by the 2011 Rules and even though certain actions taken by them not authorized by the said rules, they would enjoy immunity because a sevak, at the receiving end of such action, may not have suffered any prejudice. We are not, at the least, persuaded to hold that the employee has suffered no prejudice. Prejudice suffered by the employee here is that he has been punished by his appellate authority who did not have the jurisdiction to reopen the disciplinary case after expiry of six months of the order of censure, which was sought to be revised. We wonder what more prejudice was required to be demonstrated by the employee. Article 14 of the Constitution of India is an admonition to the State against arbitrary action. If arbitrariness is writ large, the State action would incur the wrath of such article. Law is well-settled that

when there is a violation of a Fundamental Right, the sufferer of the right is not be required to demonstrate prejudice even. We cannot allow the petitioners to contend that although they might have breached the provisions of the 2011 Rules, that too quite arbitrarily, yet, they ought not to be pulled up for such breach because the employee did not suffer any prejudice. Prior to the Court being called upon to embark upon an inquiry as to whether the employee has suffered prejudice, it is obligatory for the petitioners to justify their action on the touchstone of Article 14 of the Constitution of India and demonstrate that such action does not suffer from the vice of arbitrariness. We, thus, have no hesitation to reject this contention.

17. Mr. Talhar has rightly not contended that the time limit in the first proviso to Rule 19(1) is directory. Power to revise an order *suo motu* is indeed a very wide power. Such power has to be exercised within the confines of the provision, which is its source, and not otherwise. We hold that the time limit is peremptory and other than those who are referred to in the first proviso, all other authorities must be scrupulously.

18. For the reasons aforesaid, we are of the view that at least the appellate authority did not have the jurisdiction to reopen the disciplinary case and propose enhanced punishment beyond 28th August, 2012.

19. All the contentions urged on behalf of the petitioners have failed to satisfy us for interfering with the ultimate conclusion recorded by the Tribunal that the order imposing the penalty of removal from service on the employee is not a legal and valid order. We, thus, uphold the impugned judgment and order of the Tribunal albeit for reasons which are altogether different from those assigned by it.

20. The writ petition stands dismissed. No costs.

21. Financial benefits to which the employee is entitled, had he not been fastened with the order of removal, shall be quantified and released in his favour by the petitioners, as early as possible but not later than four months from the date of receipt of a copy of this judgment and order.

(N. B. SURYAWANSHI, J.)

(CHIEF JUSTICE)