IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.735 of 2021 and

WMP No.791 of 2021

P.Mani ... Petitioner

Vs.

1. Union of India,
rep. by the Director General,
Department of Post, Dak Bhavan,
New Delhi 110 001.

2. The Member (Personal),
Postal Services Board, Dak Bhavan,
New Delhi 110 001.

3. The Chief Post Master General,
Tamilnadu Circle, Chennai 600 002.

4. Director of Postal Services,
O/o Postmaster General, Western Region,
Coimbatore 641 002.

5. Senior Superintendent of Post Offices,
Coimbatore Division, Coimbator 641 002.

6. The Registrar,

Central Administrative Tribunal,
Madras Bench, Madras High Court Compound,
Chennai 600 104. ... Respondents

PRAYER: Writ petition is filed under Article 226 of Constitution of India, for issuance of a writ of certiorari, calling for the records relating to the impugned order dated 27.08.2015 in M.A.No.109/2012 in O.A.No.197/2012 and O.A.No.197/2012 passed by the Central Administrative Tribunal, Madras Bench and quash the same and consequently allow the O.A.No.197/2012.

For Petitioner : Mr. R.Subburaj

For Respondents : Mr. R.Rajesh Vivekananthan, Deputy Solicitor General

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed as against the order passed by the Tribunal, in and by which, his claim for reinstatement of service with all consequential benefits was dismissed.

2. The brief facts leading to the filing of the writ petition is as follows. The petitioner had joined the postal department as E.D.Agent (now known as Gramin Dak Sevaks) in the year 1972 and subsequently, he was promoted as Postman in the year 1979, and again promoted as Postal Assistant in the year 1990 and further, he assumed charge as Treasurer of R.S.Puram P.O. on 30.10.1994 and continued till 21.11.1996. Subsequently, he was relieved of the Treasurer on 22.11.1996 F.N. by one G.P.Rajendran.

2.1. On 28.11.1996, shortage of cash of Rs.1,10,000/- was reported in the Treasury and the same was attributed to the petitioner and even though the petitioner is not responsible for the above shortage, he had paid the shortage amount of Rs.1,10,000/- with penal interest of Rs.1,000/-, since he was placed under suspension from 02.12.1996 and he was issued charge memo No.F1/8/96-97 dated 29.05.1997 under Rule 14 of CCS(CCA) Rules, 1965, vide order dated 29.05.1997.

2.2. Thereafter, Inquiry Officer was appointed, and the petitioner had admitted all the charges leveled against him before the Inquiry Officer, because, the disciplinary authority has given an assurance that they would take a lenient view against the petitioner, if he admitted the charges. But, the inquiry officer, based on the admission made by the petitioner, had given a report finding that the charges framed against the petitioner proved beyond any doubt. Consequent to the above report, the Disciplinary authority, contrary to their assurance, has passed the final order, dismissing the petitioner from service, vide memo dated 27.11.1997. Against which, the petitioner has filed an appeal before the appellate authority and it was rejected on 08.07.1998. The revision petition and the mercy petition filed by the petitioner also ended against him.

2.3. In the mean time, a criminal case was also filed against the petitioner in C.C.No.226/1996 on the file of the Judicial Magistrate No.1, Coimbatore and vide judgment dated 09.12.2005, the petitioner was convicted under Section 409 IPC and sentenced to undergo RI for one year and to pay a fine of Rs.1,000/-, i/d to undergo RI for one month; and also convicted under Section 477(A) IPC and sentenced to undergo RI for one year and to pay a fine of Rs.1,000/- i/d to undergo RI for one month. As against the above judgment, the petitioner had preferred an appeal in Crl.A.No.5/2006 before the District and Sessions Judge, Coimbatore and the same was allowed, by setting aside the above conviction and sentence imposed on the petitioner by the Judicial Magistrate No.1, Coimbatore.

2.4. According to the petitioner, the charges framed against the petitioner was disproved before the Criminal Court. Further, the admission of misappropriation of funds by the petitioner was made only inview of the assurance made by the Department that, if he admitted the charges, they will take lenient view on him. But the Department has not considered the above fact and imposed the major punishment of dismissal from service. The Tribunal has also not appreciated the above fact and rejected the claim of the petitioner. Hence this writ petition has been filed.

3. The learned counsel for the petitioner submitted that, as per Rule 15(4) of the CCS (CCA) Rules, 1965, the disciplinary authority ought to have impose the major punishment only on the basis of documentary evidence and they ought not to have imposed the major punishment, based

on the petitioner's admission of charges, on the promise of taking lenient view by the disciplinary authority. To support his contentions, the learned counsel for the petitioner has also relied upon the following decisions, viz.,

> **i) Ministry of Finance & Anr. Vs. S.B.Ramesh reported in 1998 3 SCC 227**
> **ii) B.C.Chaturvedi Vs. Union of India and others reported in 1996 AIR 484 and**
> **iii) P.Balakrishnan Vs. The Accountant General (A & E), Thirvananthapuram and three others decision of the Tribunal, Ernakulam Bench in O.A.No.113/2008 dated 06.03.2009.**

He further submitted that, as per the ration laid down by the Hon'ble Supreme Court in the above second cited case, "*if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, if may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof* ". Therefore, he seeks to set aside the order passed by the Tribunal.

4. The learned Deputy Solicitor General appearing for the respondents strongly objected the contention of the petitioner and submitted that, no such oral assurance was given by the respondent for taking lenient view, as stated

by the petitioner. He further contended that, the criminal case filed against the petitioner was ended in acquittal, however, the above judgment was not passed on merits and only by giving benefit of doubt, the petitioner was acquitted from the charges. Therefore, based on the evidence and the materials available on records, disciplinary proceedings was conducted and punishment was imposed on the petitioner. The above said punishment was also confirmed by the appellate authority as well as the Tribunal. He further submitted that, the criminal proceedings and the disciplinary proceedings are entirely different from each other and the acquittal from the charges in the criminal proceedings cannot be relied upon to excuse the delinquent and to free from the disciplinary proceedings. Hence, he seeks for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned Deputy Solicitor General appearing for the respondent and we have perused the materials on record.

6. It is an admitted fact that while the petitioner was working as Treasurer I, R.s.Puram Head Post Office, three charges were framed against him, viz.,

i) shortage of cash of Rs.1,10,000/- while closing Treasurer;s Cash book on 21.11.1996.

ii) improper accounting and misappropriation of item 'C' cash which was recovered from the pay of the officials, to be remitted to the Tamilnadu Circle Post Cooperative Bank Limited, Chennai.

iii) deducting Rs.50,100/- from the out of account (item c) cash balance by making an entry in the register on 08.11.1996 without the knowledge of the Postmaster, RS Puram Head Post of Office for remitting to the TNPC Bank Ltd., Chennai through a D.D, but actually the amount was remitted only on 14.11.1996. The petitioner temporarily utilized the amount of Rs.50,100/- for his personal use.

A perusal of the records shows that, for the above said charge memo served on the petitioner on 03.06.1997, he submitted a statement on 23.06.1997, admitting all the charges without any reservation. Subsequently, inquiry officer was appointed and before the inquiry officer also, the petitioner made a statement on 22.10.1997, confirming his defence statement dated 23.06.1997. The inquiry officer submitted his report stating that all the three charges proved beyond doubt. Thereafter, the report of the inquiry officer was served to the petitioner, for which, the petitioner had given his representation on 21.11.1997, admitting the charges, but, requested the department to excuse his offense and to give a life to him. Subsequently, the petitioner was imposed punishment of dismissal from service.

7. The only ground raised by the petitioner is that, he admitted all the charges levelled against him, based on the assurance given by the Department that they will take lenient view upon the petitioner, if he admitted the charges. But, the above contention of the petitioner cannot be accepted, because, the petitioner himself admitted the charges in all the stages viz., i) while issuing charge memo, ii) during enquiry before the inquiry officer and also iii) after receipt of the notice from the department along with the report of the inquiry officer, by giving defence statement before the authorities concerned and at any point of time, during the disciplinary proceedings, the petitioner had not withdrawn his admission of the charges. After examining all the evidences and materials, the disciplinary authority has imposed the punishment of dismissal from service, which was also confirmed by the appellate authority. ***As per the decision of the Hon'ble Supreme Court cited supra***, unless the punishment imposed by the Department shocks the conscience of the court; or if there is any procedural lapses in conducting the disciplinary proceedings; or if there is any violation of the provisions of the Rules, the court cannot interfere with

the punishment imposed upon the delinquent employee.

8. In so far as the criminal proceedings are concerned, the same was conducted for the offences punishable under sections 409 and 477(A) IPC. But the disciplinary proceedings was conducted as per the provisions contained in the CCS (CCA) Rules. Therefore, both the proceedings are individual proceedings and hence, no reliance can be made seeking to set aside the punishment imposed on the petitioner in the departmental proceedings, based on the judgment passed by the criminal court, acquitting him from the charges under IPC. Further, on perusal of the records reveals that additional charge has been framed for non accounting money. Therefore, the judgment in Criminal case in C.A.No.5/2006, dated 24.04.2006 would not give any assistance to the petitioner to interfere with the punishment imposed by the Department.

At this juncture, the learned counsel for the petitioner seeks liberty to make an application before the authority concerned under Rule 41 of Central Civil Services Pension Rules, seeking payment of pension. For which, we are not inclined to express any positive direction, however, liberty is granted to the petitioner, and it is for the Department to consider the same.

With the above liberty, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (K.B.J.)

03.04.2024

Internet: Yes/No
Index : Yes/No
mst

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