IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.32786 of 2022
and WMP. No.32190 of 2022

1.M/s.Union of India,
Rep. by the Superintendent of Post Offices,
Kanyakumari Division, Nagarcoil 629 001.

2.The Assistant Superintendent of Post Offices,
O/o. The Senior Superintendent of Post Offices,
Kanyakumari Division, Nagarcoil 629 001.

... Petitioners

Vs.

1.Central Administrative Tribunal,
Rep. by its Registrar,
High Court Building, Chennai 600 104.

2.P.Johnson ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records pertaining to the Order made by the 1st respondent in O.A. No.1463 of 2015 on the file of the Central Administrative Tribunal, Chennai Bench dated 19.08.2022 and quash the same.

For Petitioners : Mr.S.Janarthanam,
Senior Panel Counsel

For Respondents : Tribunal -R1
No Appearance for R2

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Writ on hand has been instituted by Union of India, represented by the Superintendent of Post Offices, Kanyakumari Division, Nagarcoil questioning the correctness of the order dated 19.08.2022 passed in O.A. No.1463 of 2015.

2. Mr.S.Janarthanam, learned Senior Panel Counsel appearing on behalf of the petitioners would mainly contend that the second respondent viz., P.Johonson (herein after referred to as 'respondent') was holding the post of Multi Tasking Staff (incharge) and misappropriated the funds of the Postal Department. He admitted the charges during the course of enquiry. Based on the admission of charges by the delinquent official, the Enquiry Officer held that the charge relating to misappropriation is proved. Based

on the findings of the Enquiry Officer, the respondent was removed from service. The respondent challenged the said removal order before the appellate authority, which was rejected. Thereafter, Original Application was filed before the Central Administrative Tribunal. The Tribunal quashed the removal order passed by the original authority and the appellate authority and directed the appellants to conduct the enquiry proceedings afresh as per the Rules and to pass a speaking order. Aggrieved by the said order, the present Writ Petition came to be instituted.

3. Notice was served upon the respondent, however none appeared for the respondent. The name of the respondent is also printed in the High Court daily cause list. Since the respondent has not chosen to defend his case before this Court, the final hearing of the case is heard.

4. We have perused the documents filed by the respondents. Article -I, charges framed against the respondent reads as under:

> *" Annexure-I*
>
> *Statement of articles of Charge framed against Sri.P.Johnson, GDS Packer-II, Marthandam SO*
>
> *ARTICLE -1*
>
> *Sri.P.Johnson, GDS Packer -II, Marthandam SO while officiating as MTS Marthandam SO, has misappropriated an amount of Rs.57211/- by the way of purchasing lower quantity of diesel for 10 KVA generator of Marthandam SO than the quantity for which the*

amount was charged during the period from June-2012 to November -2013. Thus it is charged that the said Sri.P.Johnson, GDS Packer-II, Marthandam SO failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, GDS (Conduct and Engagement) Rules, 2011.

Annexure-II

Statement of articles of imputations of misconduct in respect of the charges framed against Sri.P.Johnson, GDS Packer-II, Marthandam SO

ARTICLE-1

That the said Sri.P.Johnson, GDS Packer-II, Marthandam, SO while officiating as MTS, Marthandam SO was ordered by the Postmaster Grade II, Marthandam SO to purchase 20 litres of diesel for the generator available at Marthandam SO on 09.12.2013. He purchased 10 litres of diesal and produced a receipt bearing No.11966 dated 09.12.2013 for Rs.1162/- being the cost of 20 litres of diesel given by the dealer, M/s.Devadas & Co, Indian Oil Dealers, Main Road, Marthandam 629 165 and the Postmaster, Grade II, Marthandam SO passed the bill for payment. The said, Sri.P.Johnson received Rs.1162/- from the treasurer towards the cost of 20 litres of diesel. The amount of Rs.1162/- was charged under the head 'Bills Paid' by the Treasurer at Marthandam SO. On that instance itself, Sri.G.Aji Kumar, Postmaster Grade II, Marthandam SO checked the quantity of diesel purchased by the said Sri.P.Johnson. It was observed that he had purchased lower quantity. Sri.G.Aji Kumar, Postmaster Grade II, Marthandam went to the Petrol Bunk alongwith Sri.P.Johnson and Sri.C.Shaji, Acting Mail Packer to confirm the quantity of diesel purchased by him. It was confirmed by the Postmaster, Grade II, Marthandam SO with the dealer that he had purchased 10 litres of diesel only. Also, Sri P.Johnson, GDS packer accepted the mistake committed by him in his statement dated 09.12.2014 given before the Postmaster Grade II, Marthandam SO. As a consequence of this, the Postmaster Grade II, Marthandam SO checked the quantity register maintained for purchase of diesel for generator and fuel consumption. It is found that the said Sri.P.Johnson has embezzled the Government money during the period from June 2012 to November 2013 by purchasing lower quantity of diesel and obtaining bill for higher quantity. The Postmaster Grade II, Marthandam SO has arrived a sum of

Rs.57211/- as misappropriated amount with reference to the register maintained. Also, the said Sri.P.Johnson, GDS Mail Packer admitted the mistake committed by him and credited voluntarily an amount of Rs.30500.00 under UCR at Marthandam SO as detailed below.

Sl.No.	***Date of Credit***	***Amount of Credit***	***Receipt No.***
1	*11.12.2013*	*10000.00*	*A3545*
2	*21.12.2013*	*20000.00*	*A3561*
3	*23.04.2014*	*500.00*	*A3608*
Total	*Rs.*	*30500.00*	

Thus, Sri.P.Johnson, GDS Packer-II, Marthandam SO has misappropriated the government money by purchasing lower quantity of diesel than the quantity for which amount was charged and paid the amount from the quantity actually purchased to the dealer and took the remaining amount for his own expenses.

Thus, it is imputed that the said Sri.P.Johnson, GDS Packer-II, Marthandam SO has failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, GDS (Conduct and Engagement) Rules, 2011."

5. Annexure III to the charge memo provides list of documents relied on by the Disciplinary Authority, list of witnesses are denoted in Annexure IV to the charge memo. Thus, we do not find any infirmity in respect of the charge memorandum issued against the respondent under the Discipline and Appeal Rules.

6. In response to the charge memo served on the delinquent staff/ respondent, the respondent had not submitted any explanation. Thus, the

Disciplinary Authority appointed an Enquiry Officer and before the Enquiry Officer, the respondent had submitted a defence statement on 14.07.2014. In the said defence statement, the delinquent staff has admitted the charges without any hesitation or ambiguity. The learned counsel for the petitioners would submit that in pursuance to the admission made by the delinquent staff, he had repaid part of the misappropriated amount of Rs.31,500/-.

7. Pertinently, before the Enquiry Officer, the respondent/delinquent staff admitted the charges. The findings of the Enquiry Officer reads as under:

> *"<u>IO ANALYSIS ON ARTICLE I</u>*
>
> *The preliminary hearing of the inquiry was held at the premises of Marthandam SO on 14.07.2014 at 11.00 hrs, Sri.P.Johnson, GDS Packer-II, Marthandam SO the charged CGDS participated in the inquiry from the beginning to end. The said CGDS was asked whether he had received memo No ASP (HQ)/ADA/PL/14-15 dated 16.05.2014 of ASP HQ, Kanniyakumari Division, Nagercoil. The said CGDS admitted having recieved the said memo No.22.05.2014. He also confirmed the signature found in the Marthandam SO delivery slip in respect of RL (RT 712954785IN) containing the memo of charges framed against him. The content of the said memo was read over and explained to Shri.P.Johnson in Tamil. The CGDS was asked whether he admits or denies the charges framed against him in the said memo. He was given ample time to think over. He took sufficient time to think over and pleaded guilty and admitted the article of charges and imputation of misconduct and misbehaviour conveyed in the said memo unconditionally without any reservation. He further told no more inquiry was needed. In this connection his deposition was recorded and inquiry was concluded.*

> *In view of his own admission, I hold the charge framed against Shri P.Johnson GDS Pkr-II Marthandam SO vide ASP HQ Kanniyakumari Nagercoil Memo No.ASP (HQ)/ADA/PL/14-15 dated 16.05.2014 stands – 'PROVED BEYOND DOUBT'."*

8. Since the delinquent staff admitted the charges in his statement before the Enquiry Officer, the Disciplinary Authority passed final orders imposing the punishment of removal from service in proceedings dated 27.08.2014. The respondent preferred an Appeal before the Appellate Authority, who in turn rejected the same in proceedings dated 29.04.2015.

9. The Central Administrative Tribunal found that the procedures followed for conducting the enquiry is not in consonance with the Rules and therefore, the removal order and the appellate authority's order confirming the original order have no legs to stand.

10. The Tribunal mainly found that further opportunity on the report of the Enquiry Officer was not afforded to the delinquent staff and therefore, the order of removal was set aside.

11. We are of the considered opinion that in a Disciplinary Proceedings, rules of natural justice have to be followed scrupulously by the Disciplinary Authority. Opportunities as contemplated under the Rules are to be provided and violation of procedures would vitiate the entire

Disciplinary Proceedings and in such circumstances, Courts normally direct the Authorities to conduct denovo enquiry from the place wherefrom the error crept in.

12. In the present case, the Central Adminstrative Tribunal made a finding that the Writ Petitioner/Department had not examined any witnesses nor any material evidence had been placed before the Enquiry Officer. The punishment of removal from service has been imposed only based on the admission of guilt by the delinquent staff before the Enquiry Officer.

13. In the context of the admission of charges, the Appellate Authority considered the issues and made a finding as under:

> *"All reasonable opportunities have been afforded to him by the way of ordering a fair inquiry by appointing IO & PO. But the appellant had admitted the charges framed against him in his reply to the charge sheet dated 16.05.2014 and during preliminary sitting conducted on 14.07.2014 by IO and in his defence statemet dated 07.08.2104 to IO report. In all these representations, the GDS Packer had regretted for the mistake committed by him and requested to forgive him. Also, he agreed to make good the loss sustained to the Department even in easy monthly instalments. He never spoke about the amount of fraud or period of fraud anywhere during inquiry. The appellant admitted the mistake committed by him and credited voluntarily an amount of Rs.31500.00 under UCR at Marthandam SO in easy instalments on various dates. He also expressed his willingness to repay the remaining amount in installments due to his poor family situation. The appellant had given reasonable opporuntiy to defend his side. But he did not do so. Therefore, the version of the appellant is clearly in afterthought."*

14. The delinquent staff himself admitted the guilt and given a statement in his own handwriting, that he will repay the misappropriated amount in monthly instalments during the course of enquiry before the Enquiry Officer. Thus, there is no reason to follow further procedures as contemplated under the Discipline and Appeal Rules. The delinquent staff requested the officials to permit him to repay the misappropriated amount in instalments and accordingly, a sum of Rs.31,500/- was repaid. That being the factum the findings of the Tribunal that further documents were not examined appears to be an incorrect proposition. Once the delinquent staff admitted the charges in writing before the Enquiry Officer and the said finding was considered by the Appellate Authority in the appeal, question of examining further witnesses or documents would not arise at all. That apart, the documents relied upon by the Department had been stated in the charge memo itself. List of witnesses are also furnished, if at all the delinquent staff disputes the charges, then alone question of examining the witnesses would arise but not otherwise.

15. In the present case, examination of witnesses became an empty formality and non compliance would not be fatal to the Departmental Disciplinary Proceedings. Thus, the findings arrived by the Central Administrative Tribunal on this ground is not based on the legal proposition settled.

16. In view of the facts and circumstances, we find that the ground on which the Original Application was allowed is not in consonance with the legal postition and thus we are inclined to interfere.

17. Accordingly, the impugned order passed by the Central Administrative Tribunal is set aside and the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

[S.M.S., J.] **[M.J.R., J.]**
07.11.2024

Index: Yes/No
Speaking/Non-speaking order
rkp
To
The Registrar, Central Administrative Tribunal,
High Court Building, Chennai 600 104.

<u>S.M.SUBRAMANIAM, J.</u>
<u>AND</u>
<u>M.JOTHIRAMAN, J.</u>

rkp

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