



W.P. (MD) No. 6042 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.01.2024

PRONOUNCED ON : 01.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.6042 of 2009

R.Magaravel

...Petitioner

Vs

1.Union of India
Represented by the Director
Postal Services
Southern Region (TN)
Madurai 625 002

2.The Senior Superintendent of Post Offices
Tirunelveli Division
Tirunelveli 627 002

3.The Registrar
Central Administrative Tribunal
Chennai

...Respondents

Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent dated 02.11.2005 in O.A.No.50 of 2005 and quash the same and further direct the official respondents 1 and 2 to



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reinstate the petitioner into service with all back wages and other service and monetary benefits.

For Petitioner : Mr.T.Sakthikumaran
For Mr.A.Thirumurthy

For R1 & R2 : Mr.S.Jeyasingh
Senior Panel Counsel Government of India

ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed by a Gramin Daksevak Branch Post Master challenging the order passed by the Central Administrative Tribunal on 02.11.2005 in O.A.No.50 of 2005 wherein the Tribunal had confirmed the order of dismissal passed by the first respondent herein.

2.The facts leading to the filing of the present writ petition are as follows:

(i)The petitioner herein while he was working as a Gramin Daksevak Branch Post Master at Thiruvengatanathapuram Branch was placed under off duty on 16.10.1987 and a charge memo was issued to him on 27.01.1998 inflicting three charges relating to misappropriation. A criminal complaint was lodged as against the writ petitioner before Eruvadi Police Station and a



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criminal case came to be registered in C.C.No.54 of 1989 before the Judicial Magistrate Court, Nanguneri. The learned Judicial Magistrate, after trial, convicted the writ petitioner for rigorous imprisonment for two years with a fine of Rs.3,000/- on 04.05.1990. Appeal was filed by the writ petitioner before the First Additional Sessions and District Court, Tirunelveli in C.A.No.182 of 1990. Based upon the conviction, the petitioner was dismissed from service by the second respondent on 27.08.1990. The Appellate Court in C.A.No.182 of 1990 had confirmed the penalty of Rs.3,000/-, but modified the punishment of two year as one year by its order dated 06.02.1991.

(ii)The petitioner filed Crl.R.C.No.84 of 1991 before this Court. After hearing both the sides, the matter was remitted back to the Appellate Authority for rehearing C.A.No.182 of 1990 by its order dated 22.11.1993. The First Additional Sessions and District Judge, Tirunelveli after remand, had set aside the penalty and also sentence and acquitted the writ petitioner vide his judgment dated 11.11.1996.

(iii)Taking advantage of the order of acquittal from the criminal proceedings, the petitioner made a request for reinstatement on 17.04.1997. The order of dismissal based on conviction was set aside on 27.08.1990. The disciplinary proceedings that were closed due to the conviction in the criminal



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Court were revived by the second respondent.

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(iv) The petitioner had filed O.A.No.821 of 1998 challenging the appointment of Mr.A.Ramasamy as Enquiry Officer. This application was closed by the Tribunal on the ground that the enquiry has already been completed. Challenging the same, the petitioner had filed W.P.No.8245 of 1999 before this Court. This Court had directed the authorities to complete the enquiry within a period of four months from the date of receipt of copy of the order.

(v) The petitioner had participated in the enquiry proceedings and submitted his explanation on 04.09.2001. The Disciplinary Authority imposed the punishment of dismissal by its order dated 05.02.2002. The appeal filed by the writ petitioner before the first respondent was rejected on 18.05.2004. Challenging the said order, the petitioner had filed O.A.No.50 of 2005 before the Central Administrative Tribunal, Madras. The Administrative Tribunal under the impugned order dated 02.11.2005 had confirmed the order of dismissal on the ground that the charges levelled against the writ petitioner are grave in nature. Challenging the said order, the present writ petition has been filed.



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3. Contentions of the learned counsel appearing for the writ petitioner

are as follows:

(i) The Tribunal had not properly appreciated the fact that the witnesses were not examined in the presence of the writ petitioner and no opportunity was given to cross examine them.

(ii) A copy of the preliminary enquiry report was not furnished to the writ petitioner which is the sole basis for passing an order of dismissal.

(iii) No reasonable opportunity was given by the Enquiry Officer as well as by the Disciplinary Authorities. The Disciplinary Authority without independently assessing the merits of the case, had dismissed the petitioner.

(iv) On being acquitted by the Criminal Court, the Authorities ought to have reinstated the petitioner, instead they have chosen to revive the Departmental Enquiry which was closed already.

(v) The witnesses namely N. Ayyadurai Nadar and V. Chellammal were examined behind the back of the writ petitioner which is clearly in violation of the principles of natural justice and the judgment of the Hon'ble Supreme Court.

(vi) Even assuming that there are minor lapses on the part of the writ petitioner, punishment of dismissal is excessive and the third respondent ought



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to have set aside the order of dismissal. Hence, he prayed for allowing the writ petition.

4.Contentions of the learned counsel appearing for the respondents 1 and 2 are as follows:

(i)The petitioner has been charged with grave misconduct of misappropriation by failing to credit in the Government account of various amounts that were received by him.

(ii)The assisting Government servant for the petitioner had withdrawn his service in his letter dated 26.06.1990 as the petitioner being convicted by the Court. The enquiry had been abruptly terminated due to the fact that the petitioner was convicted by the Criminal Court.

(iii)After the petitioner was acquitted by the Criminal Court, the petitioner was not willing to participate in the enquiry and he had preferred an appeal against the revival of disciplinary proceedings. The petitioner had not attended the enquiry and he was filing various application in order to prolong the enquiry proceedings. The petitioner had even filed an appeal alleging bias as against the Enquiry Officer, but ultimately the said application was dismissed. The enquiry was held on 11.09.1998, 23.09.1998, 16.10.1998, 04.12.1998, 13.01.1999, 28.01.1999 and 25.06.1999.



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(iv)The petitioner had challenged the revival of the disciplinary proceedings before the Central Administrative Tribunal. However, the said application was dismissed. The petitioner had filed W.P.No.8245 of 1999 before this Court challenging the said order. This Court had confirmed the revival of the enquiry, but directed the authorities to complete the enquiry within a period of four months. Only thereafter, the petitioner had attended the enquiry on 06.08.2001 and 14.08.2001. The enquiry report was submitted on 12.10.2001 and the petitioner had submitted his explanation on 13.11.2001. After considering his explanation, the petitioner was dismissed on 15.11.2001. The appeal filed by the petitioner before the Director of Postal Services, Madurai was rejected on 18.05.2004.

(v)Though ample opportunities were granted to the writ petitioner, the petitioner was habitually absenting himself from attending the enquiry in order to drag on the enquiry proceedings. The petitioner failed to utilise the opportunities granted to him at all stages. Merely because the petitioner was acquitted in the criminal proceedings, it will not be a legal impediment for proceeding with the Departmental proceedings, since it relates to misconduct or breach of duty of the delinquent.



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(vi)The petitioner had alleged that two of the witnesses have been examined behind his back. Though the petitioner was granted an opportunity to cross examine them, the petitioner had not utilized those opportunities. The petitioner had been dismissed from service for grave charges of misappropriation after giving due opportunities to the writ petitioner. Therefore, the order of the Central Administrative Tribunal may be sustained.

5.We have considered the submissions made on either side and perused the material records.

Discussion:

6.The petitioner while he was working as Gramin Daksevak Branch Post Master, was issued with a charge memo on 27.01.1998. The following are the summary of the charges:

(i)Charge No.1:

The petitioner had failed to credit a sum of Rs.500/- on 11.05.1987 and Rs.1000/- on 14.05.1987 in the Government account after collecting the same.

(ii)Charge No.2:

The petitioner had failed to credit into the Government account for a sum of Rs.600/- on 20.06.1987 and Rs.550/- on 26.06.1987 after collecting



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the same from the general public.

WEB COPY (iii) Charge No.3:

The petitioner had failed to credit into the Government account the deposit of Rs.1290/- on 09.04.1987 and Rs.505/- on 25.04.1987 after collecting the same from the general public.

7.The petitioner had challenged the order of dismissal primarily on the following grounds:

(i)The petitioner was not granted any opportunity to cross examine the witnesses.

(ii)He was not furnished with a copy of the preliminary enquiry report which is based to the dismissal order.

(iii)After being acquitted from the criminal case, the Disciplinary Authority ought to have revived the disciplinary proceedings which was closed earlier.

(iv)Two witnesses namely N.Ayyadurai Nadar and V.Chellammal were examined behind the back of the petitioner which is in violation of the principles of natural justice.

(v)Even assuming without conceding that there are some minor lapses, the punishment of dismissal is disproportionate to the alleged misconduct.



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8. The petitioner was suspended from service and disciplinary proceedings were initiated on the allegation of misappropriation of funds. In view of his conviction by the criminal Court, the disciplinary proceedings were abruptly stopped and an order of dismissal came to be passed. After the revision filed by the petitioner was remitted by the High Court, the Sessions Judge had acquitted the writ petitioner. Thereafter, the respondent authorities have revived the disciplinary proceedings.

9. In view of the conviction order, the authorities have no other option than to dismiss the writ petitioner. However, on being acquitted, the authorities have revived the disciplinary proceedings. Mere acquittal in the criminal proceedings, will not be an impediment for the respondent authorities to revive/initiate disciplinary proceedings, especially when the misconduct relates to discharge of official duties.

10. The petitioner in paragraph No.9 of his affidavit had categorically admitted that he could not attend the enquiry and he had issued a telegram to postpone the same. The respondent authorities in their counter have pointed out that at least on 8 occasions, the petitioner was granted opportunity to appear for the enquiry. The petitioner had voluntarily chosen not to appear before the



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enquiry citing one reason or the other. Therefore, the contention of the learned counsel appearing for the writ petitioner that the petitioner was not provided with ample opportunity to defend himself is not factually correct.

11. During the hearing dates on which the witnesses were examined by the Presenting Officer, the petitioner had chosen to remain absent and therefore, he had not availed the opportunity to cross examine the witnesses namely N.Ayyadurai Nadar and V.Chellammal. Therefore, the respondent authorities cannot be found fault with for not permitting the petitioner to cross examine those witnesses.

12. The petitioner has been charged with misconduct of misappropriation by not crediting the amounts collected from the general public into the Government account on 4 occasions. Therefore, the charges are serious in nature. The Enquiry Officer after giving ample opportunity to the petitioner had found that the charges are proved. In view of the serious charges, the punishment of dismissal inflicted upon the petitioner cannot be considered to be disproportionate to the proved charges.

13. The Appellate Authority has independently considered the grounds raised by the writ petitioner and has confirmed the order of dismissal. The Tribunal has also independently assessed each one of the charges and have



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arrived at a finding that the charges have been clearly proved by documentary evidence and pass books of the respective customers. It could be clearly seen that the petitioner had adopted dilatory tactics to protract the enquiry proceedings.

14. In view of the above said facts, we do not find any merit in the writ petition. The writ petition stands dismissed. No costs.

(D.K.K.J.,)

(R.V.J.,)

01.02.2024

Index :yes
Internet :yes
NCC : yes/no
msa



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To

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Order made in
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