

(2022) 01 GAU CK 0023

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5190 Of 2021

Bhaben Ch Sarma

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 11-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Gramin Dak Sevak (Conduct & Employment) Rules, 2001 — Rule 21

Gramin Dak Sevak (Conduct & Employment) Rules, 2011 — Rule 12(1)

Citation : (2022) 01 GAU CK 0023

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : P J Saikia

Final Decision : Dismissed

Judgement

Sl. No.,"Hahara B.O. SB

a/c nos","Holdersâ??

name &

address","Date of non

credit","Amount of non

credit","Balance as per

Pass Book","Balance as per

HO L/Card","Total amount

defrauded (in

Rs.)

01,1240440,"Sri Marami

Gayari,
Holokhal,
Hahara","15.6.2006
08.7.2006","3000
500",4000,500,3500
02,1240523,"Sri Ranjita Das
Kamarkuchi,
Hahara","10.11.2006
15.12.2006
20.1.2007
26.2.2007
26.3.2007","200
200
200
Â 200",1500,500,1000
03,"242859 dt.
25.02.04","Smt. Jew(cid:61)
Rava, Hahara","25.10.04
28.03.05
26.12.05
26.09.06
22.12.06x3
23.03.07x3",50/-,1900.00,1400.00,500.00
04,"243238 dt.
31.12.04","Drona Ram
Deka, Hahara","26.05.05
28.11.05
23.12.05
22.03.06

29.08.06

27.10.06

24.02.07",200/-,5400.00,4000.00,1400.00

12(1) of GDS (Conduct and Engagement) Rules, 2011 hereby put Sri Bhaben Ch. Sarma, off duty with effect from 23.05.2007.â??",,,,,,

The learned counsel for the petitioner would hence submit that whereas the petitioner was dismissed from service on 04.10.2013, the department has",,,,,,

placed him under suspension during this period. This argument is, however, totally misplaced. All that the order dated 07.01.2014 does is to treat the",,,,,,

petitionerâ??s service between 2007 to 2013 as a put-off duty period, which we have been informed by the learned counsel for the respondents",,,,,,

means that during this period the petitioner was getting â??off dutyâ?? allowance. As far as the disciplinary proceedings are concerned, we find",,,,,,

absolutely no anomaly in the same. The petitioner was served with the charge-sheet and he had participated in the entire disciplinary proceedings. The,,,,,,

report of the Enquiry Officer as well as the subsequent proceedings do not point out any anomaly committed by the department at any point of time.,,,,,,

There is a categorical finding that an amount of Rs.917625.60 or close to this amount was misappropriated by the petitioner. This is an extremely,,,,,,

serious charge for a person who is working in a Post Office in a rural area and where he deals with small savings of depositors. Here the entire,,,,,,

relationship is one of trust. The Post Office department has lost trust on the petitioner and under these circumstances, dismissal was the only",,,,,,

punishment once the charges were proved against the petitioner.,,,,,,

At this stage, we would like to refer to the various decisions which have been relied upon by the Administrative Member of the Tribunal." ,,,,,,

In Om Kumar & Ors. -Vs- Union of India & Ors., reported in (2001) 2 SCC 386, the Honâ??ble Apex Court had held as under:" ,,,,,,

â??26. We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the,,,,,,

jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the,,,,,,

applicability of one or other of the well known principles known as Wednesbury principles. (See Associated Provincial Picture Houses v.,,,,,,

Wednesbury Corporation (1948) 1 KB 223. This Court had occasion to lay down

the narrow scope of the jurisdiction in several cases. The applicability of the principle of 'proportionality' in Administrative law was considered exhaustively in Union of India v. Ganayutham, [1997] 7 SCC 463 where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

In U.P. State Road Transport Corporation -Vs- Suresh Chand Sarma, reported in (2010) 6 SCC 555, it was held by the Hon'ble Apex Court as under:

22. In Municipal Committee, Bahadurgarh Vs. Krishnan Bihari & Ors., AIR 1996 SC 1249, this Court held as under:-

"In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. Vs. T.B. Kadam, AIR 1975 SC 2025; U.P. State Road Transport Corporation Vs. Basudeo Chaudhary & Anr., (1997) 11 SCC 370; Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) & Ors. Vs. Secretary, Sahakari Noykarara Sangha & Ors., (2000) 7 SCC 517; Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, AIR 2001 SC 930; and Regional Manager, R.S.R.T.C. Vs. Ghanshyam Sharma, (2002) 10 SCC 330.

23. In Divisional Controller N.E.K.R.T.C. Vs. H. Amaresh, AIR 2006 SC 2730; and U.P.S.R.T.C. Vs. Vinod Kumar, (2008) 1 SCC 115, this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

24. Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.

Further, in U.P. State Road Transport Corporation -Vs- Basudeo Chaudhary & Anr., reported in (1997) 11 SCC 370, the Hon'ble Apex Court in

Paragraph 4 had held as under:-,,,,,,,,

4. Having regard to the findings that have been recorded by the Labour Court, it is evident that this is a case where the petitioner had",,,,,,,,,

tried to fabricate the record regarding recovery of fare to show that the passengers had travelled for a lesser distance from Khalilabad to,,,,,,,,

Gorakhpur although they had actually travelled from Basti to Gorakhpur. The misconduct that was found established was thus serious in,,,,,,,,

nature and the Labour Court has rightly upheld the punishment of removal from service that was imposed on the petitioner. The High Court,,,,,,,,

was in error in interfering with the award of the Labour Court and in substituting the penalty of censure for removal from service on the,,,,,,,,

view that there was only an attempt to cause loss of Rs 65 to the Corporation and the action of the Corporation terminating the services of,,,,,,,,

the petitioner was not justified.â??,,,,,,,,

We must place on record here that all the judgments referred above were relied upon by the dissenting Member of the Tribunal,,,,,,,,

Therefore, we totally disagree with the finding of the majority of the Members of the Tribunal, as to the quantum of punishment. Under these",,,,,,,,,

circumstances, dismissal from service is the only punishment.",,,,,,,,

We find no merit in the writ petition. The writ petition is dismissed.,,,,,,,,,