

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 16TH DAY OF SEPTEMBER, 2016

PRESENT

THE HON'BLE MR. JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION NO. 86911 OF 2012 (S-KAT)

Between:

Rajendraprasad
S/o late Krishna Rao
Aged about 43 years
Occ: Ex.-Grameen Dak Seva
Branch Post Master
R/o H.NO.7-5-317
Jawaharnagar, Raichur

...Petitioner

(By Sri Ameet Kumar Deshpande, Advocate)

And:

1. Union of India
Though Secretary
Department of Posts
Dak Bhavan
New Delhi - 110001
2. The Postmaster General
North Karnataka Region
Dharwad - 580001

3. Superintendent of Post Offices
Raichur Division
Raichur – 585102
4. Director of Postal Services
N.K.Region, Dharwad-580001

...Respondents

(By Sri Jairaj K. Bukka, ASGI)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the final order dated 25.09.2012 passed in O.A.No.276/2010 by the Central Administrative Tribunal, Bangalore Bench, Bangalore, dismissing the application of the petitioner, the certified copy of which is at Annexure-H and consequently set aside the order dated 25.08.2009 passed by respondent No.3 herein in NO.F.BPM/GHANAMOR BO/2008, the copy of which is at Annexure-C and etc.

This petition having been heard and reserved on 07.09.2016 for pronouncement of Order, this day, **B.VEERAPPA J.** made the following:

ORDER

The petitioner has filed the present writ petition against the order dated 25.09.2012, made in O.A.No.276/2010, on the file of the Central Administrative Tribunal, Bangalore Bench, Bangalore, dismissing his original application,

confirming the removal order passed by the Disciplinary Authority, Appellate Authority as well as the Revisional Authority.

2. The facts in brief are:

According to the petitioner, he joined the services as Grameen Dak Sevak, Branch Post Master of Yermaras Grameen Post Office in the year 1992 and he had put in unblemished services in the department for almost 16 years. Acting under Rule 12 of Grameen Dak Seva (Conduct and Employment) Rules, 2001 (hereinafter called as 'Rules' in short), the petitioner was issued with charge memo dated 10.07.2008 under Rule 10 of the said Rules alleging that the petitioner did not return two money order bearing Nos.1692/44 and 1813/50 as "unclaimed" because the payee namely Narasamma W/o Govindappa had died on 02.06.2006, while in the records it was shown by the petitioner that the said amount was paid and also on the charge that the money order Nos.2937/45 and 2982/37 were

shown to be paid to deceased Savitramma W/o Govappa who had also already died on 15.06.2006 and also on the charge that money order No.1357/100 was shown to be paid to Rangamma W/o Hanmanthu, though the same was not actually claimed by the payee. Therefore, he has violated the provisions of Rules 115 and 76 (4) of the Book of Branch Office Rules.

3. In response to the said show-cause notice, the petitioner filed his written statement/reply on 15.07.2008 contending that he was compelled by coercion to give amount of money order to the daughter of payee in the presence of political leaders of the village. The petitioner also paid back the value of the money orders in the department. In reply of Charge No.2, it was also stated by the petitioner that amount of money order was paid to the mother-in-law of the payee, since they were suffering from poverty and to meet the funeral expenses of the payee. The petitioner has voluntarily paid back the value of the said money order from his own pocket.

He has pleaded that he has not misappropriated the amount of said money orders. He denied Charge No.3 and it was stated that the money order was correctly paid to the payee Smt.Rangamma in the presence of her son on 02.07.2007 and the death of Smt.Rangamma was wrongly shown as 25.03.2007 while she died on 28.07.2007.

4. Not being satisfied with the reply submitted by the petitioner, the respondents have appointed the Enquiry Officer to enquire into the article of charges and submit the report. The Enquiry Officer has concluded the enquiry on 09.03.2009 and submitted his report on 11.03.2009 holding that the charges made against the petitioner were proved. The petitioner filed his objection to the said Enquiry Report on 16.05.2009 contending that Charge No.3 is not proved. The report of Enquiry Officer was based on presumption alone and the death of Smt.Rangamma took place on 28.07.2007 as per the information of the village accountant. Therefore, he sought for exoneration of charges.

5. The Disciplinary Authority based on the Enquiry Report, by an order dated 25.08.2009 concurring with the report of the Enquiry Officer has proceeded to impose the penalty of removal of the petitioner from service with immediate effect. Aggrieved by the said order of the Disciplinary Authority/Superintendent of Post Officer, the petitioner has made representation to the Director of Postal Services, North Karnataka Region, Dharwad. The Director of Postal Services, N.K.Region, Dharwad by his order dated 11.01.2010 held that it is clearly evident that the articles of charges levelled against the petitioner are serious in nature and stand proved. Therefore, he upheld the orders passed by the Disciplinary Authority.

6. Being aggrieved by the orders passed by the Disciplinary Authority as well as Appellate Authority, the petitioner has filed the revision before the Postmaster General, North Karnataka Region, Dharwad, who by an order dated 19.04.2010 rejected the Revision Petition. Aggrieved by

the said orders of the authorities below, the petitioner has filed O.A.No.276/2010 before Central Administrative Tribunal, Bangalore Bench, Bangalore. The Central Administrative Tribunal after hearing both the parties, by the impugned order dated 25.09.2012 dismissed the original application of the petitioner. Hence, the present writ petition is filed.

7. We have heard the learned counsel for the parties to the lis.

8. Sri Ameet Kumar Deshpande, learned counsel for the petitioner contended that the impugned orders passed suffer from patent errors of jurisdiction and have caused substantial injustice to the petitioner and there is no deliberate violation of any Rule or deliberate misconduct on the part of the petitioner. The money order in one case was paid to the relative of the payee and the same was due to the coercion imposed upon the petitioner by the local political leaders. In another case, the money order was paid to the

relative of the payee due to the poverty of the relative of the payee, even in fact for meeting of funeral expenses of the payee. After making such payment under coercion and compulsion, the petitioner has immediately repaid the value of the money orders to the department after bringing it to the notice of the department the circumstances under which the money orders were paid to the relatives of the payees. The conduct of the petitioner reflects upon the innocence of the petitioner. Therefore, the impugned orders removing him from the service are liable to be quashed.

9. He further contended that the Central Administrative Tribunal had committed grave error in holding that the finding of the Enquiry Officer cannot be interfered, when they are not arbitrary and perverse. The finding of the Enquiry Officer and the Disciplinary Authority are not only arbitrary but also perverse since the authorities have ignored the relevant evidence and the circumstances. He further contended that he was not attributed with any malafides and

has not misappropriated the amount of money order by himself but was paid to the relatives of the payee admittedly. Subsequently, the petitioner himself has come forward and deposited the value of money orders with the department. The punishment imposed upon the petitioner of removal from services is stunningly disproportionate. Therefore, interference of this Court is just and necessary, etc. Therefore, he sought to set aside the impugned orders.

10. Per contra, Sri Jairaj K. Bukka, learned Additional Solicitor General of India has sought to justify the impugned orders passed by the authorities below and contended that the charges issued on the petitioner were with regard to the financial irregularities. After enquiry, the Enquiry Officer has recorded a finding that the articles of the charges have been proved against the petitioner and after considering the entire material on record, the Disciplinary Authority has passed an order of removal of service on 25.08.2009 and the same was confirmed by the Appellate Authority, Revisional Authority as

well as the Central Administrative Tribunal, Bangalore. Therefore, the petitioner has not made out any good ground to set aside the findings recorded by the authorities below. He further contended that mere depositing the amount of money orders back to the Department would not absolve the official from the charges of his financial irregularity, which shows his lack of integrity and devotion of duty. When the charges against the officials were proved, it is construed that the official cannot function in the Department with full integrity though he might have credited back the amount of financial irregularity. Therefore, he prayed for dismissal of the writ petition.

11. In view of the rival contentions urged by the learned counsel for the parties to the lis, the only point that arises for our consideration in the present writ petition is;

“Whether the petitioner has made out a case for interference with regard to punishment imposed on him by the respondents/authorities, which shocks the judicial conscience of the Court?

12. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record including the original records carefully.

13. It is an undisputed fact that the petitioner had joined the services as Grameen Dak Sevak, Branch Post Master of Yermaras, Grameen Post Office in the year 1992 and had put in unblemished services in the department for almost 16 years and there were no complaints throughout his career except the present article of charges issued, which resulted in passing the impugned orders. The article of charges issued by the Authority reads as under:

“ARTICLE-I

That the said Shri Rajendraprasad (Under POD) while functioning as Gramin Dak Sevak Branch Postmaster Ghanmur Branch post Office A/W Yermarus Camp Sub Post Office during the period from 29.02.1992 to 01.02.2008 did not return Money Order Nos. 1692/44 and 1813/50 as unclaimed received in the name of deceased payee

Smt. Narsamma W/o Govindappa Ghanmur who died on 02.06.2006 Shri. Rajendraprasad instead of returning these Money orders as unclaimed shown in the post office records as paid and charged the payment in the accounts Shri. Rajendraprasad thus failing to return these money orders as unclaimed did not follow the provisions of Rule-115 book of rules for branch post offices read with Rule 76(4) of ibid, thereby exhibiting lack of integrity and devotion to duty contravened the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules-200.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office the said Shri. Rajendraprasad also did not return Money Order Nos. 2937/45 and 2982/37 as unclaimed received in the name of deceased payee Smt. Savitramma W/o Govappa Ghanmur who died on 15.06.2006 Shri Rajendraprasad instead of returning these Money Orders as unclaimed shown in the post office records as paid and charged the payment in the accounts Shri Rajendraprasad thus failing to

return these money orders as unclaimed did not follow the provisions of Rule-115 of book of rules for branch post offices read with Rule 76(4) of ibid, thereby exhibiting lack of integrity and devotion to duty contravened the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules-2001.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office the said Shri. Rajendraprasad further did not return Money Order No.1357-100 as unclaimed received in the name of deceased payee Smt. Rangamma W/O-Hanmanthu, Madamandodd,i Ghanmur who died on 25.03.2007. Shri. Rajendraprasad instead of returning the Money Order as unclaimed shown in the post office records as paid and charged the payment in the accounts Shri. Rajendraprasad thus failing to return the said money order as unclaimed did not follow the provisions of Rule-115 of book of rules of rules for branch post offices read with Rule 76(4) of ibid, thereby exhibiting lack of integrity and devotion to duty contravened the provisions of Rule

*21 of the Department of Posts, Gramin Dak Sevaks
(Conduct and Employment) Rules-2001.*

Sd/-

*Superintendent of Post Offices,
Raichur Division, Raichur – 584 102.”*

14. The petitioner has filed his written statement against the article of the charges on 15.07.2008 and offered explanation to each of the charges as under:

“ARTICLE – I

M.O No:1692/44 and 1813/50 pertains to Smt. Narasamma W/o Govindappa who died on 02.06.2006 and same M.O's were paid to her daughter Smt. Neelamma in the presence of witness on the day of death of the payee, and subsequent date on the pressure of the political leaders of the village and relative of death payee respectively. The receiver of said M.O's had been voluntarily credited the money into U.C.R. I may kindly be excused by treating said M.O's paid by me to wrong person as I had not misused said amount.

ARTICLE-II

M.O. No: 2937/45 and 2982/37 received in the name of Smt. Savitramma W/o Govappa R/o Ganamur, were paid to her mother-in-law Smr. Govindamma W/o Govindu R/o Ganamur, in the presence of Sri. Mareppa R/o Ganamur after the death of the payee on the pressure of local political leaders and relative of the death payee. Due to poorness and met the funeral expenses etc., Wrong receiver had also credited the said amount voluntarily to the Govt. on accounts i.e. U.C.R. kindly excused me by treating as wrong payment of M.O's to other than payee further I will not commit mistakes in future please.

ARTICLE-III

M.O. No: 1357/100 for Rs.200/- received in the name of Smt. Rangamma W/o Hanumanthu R/o Madamandoddi, on 01.07.2007 and paid her on 02.07.2007 in the presence of witness Sri. Bajarappa while she alive that day but in the charges it has shown that she died on 25.3.2007 which is not correct. Some persons misleading to the department by furnishing the wrong

information about the date of death of the payee. The correct of the death of payee is 28.07.2007 the copy of the death certificate issued by the village accounts Sagamakunta is enclosed for your kind perusal.

Sir, I have discharged my duties with sincerely without lacking of integrity during the period the period 9.2.1992 to till my duty. I had paid said M.O's wrongly to the relatives of death payee's on the pressure of local political leaders they were threatened to me for make a payment. They claimed M.O's payment as the pension pertains to the death payee arrears before the death of the pensioners. Further they were voluntarily credited to Govt. accounts. Who were received the amount. I will assured that the said mistakes never been repeated. I have admitted the charges of article-I & 2 categorically. Therefore I may kindly be excused this time. And allow me to continue as B.P.M Ganamur as my children's education and my family welfare is depends on my salary.

Your kind sympathetic action in the matter is highly solicited. And I am not fraudulent man.

Thanking you sir,

End: Copy of the death certificate

Yours faithfully,

Sd/-

(SRI. RAJENDRA PRASAD)

Placee: Ganamur

B.P.M. Ganamur (P.O.D)

Date: 15.7.08

A/w, Yeramarus, Camp.”

15. Before the Enquiry Officer, three witnesses were examined. PW.1 – Sri Bajjarappa S/o late Rangamma, payee of money order No.1357/100 dated 23-6-2007 for Rs.200/- on 11-2-2009, in his cross-examination by the Disciplinary Authority stated as under:

Examination-in-chief by PO

“Q-1: Do you identify the EXP-12 and LTI impressed on it ?

Ans: I am not able to identify the EXP-12 and its contents and also I have not impressed LTI on it.

Cross Examination by DA:

Q-1: Whether are you lodged complaint against Shri Rajendraprasad, GDS BPM Ghanmur BO about non payment of MO to your mother ?

Ans: I have not made any complaint.

Q-2: While on living, your mother was received any MO Payment from Sri Rajendraprasad ?

Ans: Yes.

Q-3: Do you know the exact date of death of your mother ?

Ans: No. I do not know and we recall the years only on the basis important Festival.

Question by I.O.

Q-7. I state that you have lodged the complaint against Sri Rajendraprasad by enclosing death certificate of your mother during November – 2007 Now you stated that you have

not lodged any complaint. It is false. What is your say?

Ans: No. I have not lodged any complaint.”

16. PW.2 – Sri Akthar Hussain, SPM, Yermarus Camp PO, on 11.02.2009 in his examination-in-chief has stated as under:

“Examination in chief by PO:

Q-2: Please identify EXP-29 and EXP-28[c] and confirm about issue and payment of MO in R/o MO No.1357/100, of Kallur SO for Rs.200/- P/t Rangamma. Whether entries noted by you or not and accounted by you are not?

Ans: Yes, I have identified both the documents i.e. EXP-29 & EXP-28[c] were written by me an the said MO No.1357/100 of Kallur SO for Rs.200/- pl, to Rangamma, were received my office & the same was Entered into BO MO-3 in r/o Ghanmur BO and sent to BO alongwith cash to effect the payment on 2.7.2007. The said MO was paid at BO on 2.7.2007 and incorporated in SO a/c. on 3.7.2007. Further the after verification of paid vouchers, prepared the MO paid Journal & sent to Head Office.

Q-3: How is your official relationship with sri Rajendraprasad, GDS BPM[POD] Ghanmur BO and any suspicious matters noticed?

Ans: Cordial relationship and there is no suspicious matter noticed about said GDS BPM [POD].

Cross Examination by DA:Nil.....

Question by I.O.

Q-2: Are you received any public complaints received against sri Rajendraprasad [POD] Ghanmur BO during his working as GDS BPM, Ghanmur ?

Ans: No, not received any complaints."

17. PW.3 – Sri S.R.Talakeri, ASPOS, Raichur Sub DN.,
on 12.02.2009 in his examination-in-chief has held as under:

Examination-in-chief by P.O

Q-3 Why Village Accountant issued two death certificates of Smt. Rangamma, W/o Hanumanthu stating the date of death as 25.3.2007 which was issued on 8.10.2007 and another date of death as

28.7.2007 which was issued on 2.4.2008 after long period?

Ans: The Village Accountant was questioned has to why different dates of Death were shown in r/o Smt. Rangamma W/o Hanumanthu, he stated the maintaining records of birth and death was entrusted to Anganwadi Teachers. He also stated Anganwadi Teachers post were kept vacant. As such no reports were being received informing actual happenings and there were complaints from villagers regarding this. Therefore, he stated that he himself visited the Madammandoddi village, conducted inquiries & Panchanama about Smt. Rangamma's actual death and he ascertained the actual date of death was 28.7.2007 and therefore he issued a revised date of death certificate on 2.4.2008 which was sent to Divisional office, Raichur along with his letters for having done so.

Q-4: Please identify and confirm the contents and Exhibits Exp-12 to EXP-29.

Ans: I have today seen the following exhibits and identify then as handled By me during the course

of Inquiry. [The witness admitted all the Documents Except EXP-12, the complaint of Sri Bajjarappa S/o Hanumanthu, received by the DO on 16.11.2007 was lodged in his Name is affixed with Thumb impression. The genuiness of which Was doubted].

Question by I.O.

Q.1. You have state that in examination-in-chief by PO that Sri Rajendraprasad, BPM, Ghanmure No has paid the Kallur SO MO No. 1357/100 Dated 23.6.2007 for Rs. 200/- was wrongly paid to Smt. Rangamma W/o Hanumayya and further state that the above said MO was paid to Smt. Rangamma W/o Hanumanthu, which is correct?

Ans: From the enquiries under taken with the BPM, villagers and the Village Accountant, Sagamkunta, and in the presence of MO, it was confirmed That Smt. Rangamma W/o Hanumanthu R/o Madammandoddi was living on 2.7.2007 and she expired actually on 28.7.2007. The MO was paid to her only as she was present. The BPM remembering stated that the Confused as there being two to three payees by the same

name and the Date of death produced was 25.3.2007.

Q-5: Whether any complaints received against Sri Rajendraprasad, BPM, Ghanmur, BO, before noticing the said complaint?

Ans: Ghanmur Villages almost illiterates. They complained orally about Rajendraprasad's not residing in the BO Village 24 hours. There was Political motivation without any supports. Major residents of Ghanmur, Madammandoddi and Naganadoddi mostly liked his services. No body Prepared to give in writing as they are illiterates.

18. The Enquiry Officer has proceeded to hold that the death of mother of PW.1 was on 25.03.2007 itself seems to be correct and PW.1 has orally stated during the enquiry that his mother was dead three years back during the Ugadi festival and also recorded a finding that PW.3 has stated while he inquiring the payment of money orders in the death case, he confirmed by the village accountant as the date of death of Smt.Rangamma was on 25.03.2007 instead of 28.07.2007

issued by the same village accountant earlier for which PW.2 has stated that based on this, the village accountant has issued the death certificate. The village accountant has conducted Panchanama and ascertained the correct date of death of Smt.Rangamma and issued the revised death certificate on 28.07.2007. The petitioner (C.O.) has admitted Articles 1 and 2 unconditionally and voluntarily therefore, having proved beyond any doubt. Further, recorded a finding that PW.1 has stated that his mother Smt.Rangamma died during Ugadi festival. Therefore, it is clear that Smt.Rangamma died on 25.03.2007 itself. Further, held that PW.3 has tried to safeguard the petitioner by reporting dual and controversial reports.

19. From the evidence of PWs.1 to 3, it is clear that the son of late Smt.Rangamma payee of money order No.1357/100 dated 23.06.2007 for Rs.200/- has never lodged a complaint against the petitioner and his mother died during the month of November, 2007. He was not aware of exact

date of death of his mother but he recall the years only on the basis of important festival. But, the Enquiry Officer has added as Ugadi festival on the basis of presumption and assumption without any basis. PW.2 has specifically stated in his cross-examination that the village accountant was questioned by him and the records of birth and death were entrusted to the Anganawadi teachers and Anganawadi teachers posts were vacant. Therefore, he himself visited the Madamanadoddi village and conducted enquires, drawn Panchanama and ascertained the actual date of death of Smt.Rangamma as 28.07.2007. Therefore, he has issued revised death certificate dated 02.04.2008 and the observation made by the Enquiry Officer that the mother of PW.1 died on 25.03.2007 is again without any basis and contrary to the material on record. PW.2 further stated that there were no complaints received against the petitioner and the Disciplinary Authority had not cross-examined PW.2 and PW.3 has confirmed the correct date of death of Smt.Rangamma as 28.07.2007 and money order was paid by

the petitioner and almost all the villagers of Madamanadoddi and Ghanmur have liked the services of the petitioner and no complaints were received and nobody have prepared to give complaints in writing as they are illiterates. The Enquiry Report submitted by the Enquiry Officer is contrary to the evidence of PWs.1 to 3 and unfortunately the said report was accepted by the Disciplinary Authority which is confirmed by the Appellate Authority as well as the Revisional Authority without verifying the reply filed by the petitioner as well as the oral evidence of PWs.1 to 3 and documentary evidence produced on behalf of the petitioner, which resulted great injustice to the petitioner from removal of his service.

20. It is an undisputed fact that the petitioner has worked more than 16 years without any blemish and he has specifically stated in the reply with regard to charge Nos. 1 and 2 that at the pressure of villagers and political leaders, he has paid Rs.200/- to her relatives namely Narasamma and Savitramma respectively. After coming to know about wrong

payment made by the petitioner, has remitted the said amount of Rs.200/- to the Department immediately and he has not misused the said amount. He further stated that he will not commit such mistakes in future. Therefore, he requested excuse him and allow him to continue as BPM, Grameen Post Officer as his children education and his family welfare is depends upon his salary and also requested the Disciplinary Authority for sympathetic action in the matter.

21. With regard to Charge No.3, the oral and documentary evidence clearly depicts that the petitioner has paid Rs.200/- in M.O.No.1357/100 on 02.07.2007 to Smt.Rangamma W/o Hanumanthu of Madamadoddi village in the presence of her son Sri Bajjarappa while she alive but the charge which has shows that she has died on 25.03.2007 which is not correct. The said Bajjarappa was examined as PW.1 who was none other than the son of late Smt.Rangamma has specifically stated on oath that he has not lodged any complaint against the petitioner and his

mother has died in the month of November, 2007 and PW.3 has specifically stated on oath that the petitioner has paid money order to the said Smt.Rangamma while she was alive on 02.07.2007 and she expired only on 28.07.2007. Therefore, the charge No.3 cannot held to be proved when the oral and documentary evidence clearly indicate that charge No.3 has not been proved. PW.3 further states that the village accountant has inspected the village and made Panchanama about Smt.Rangamma actual death on 28.07.2007. Therefore, the punishment imposed on the basis of the said charge No.3 is contrary to the oral and documentary evidence on record cannot be sustained.

22. The petitioner has stated in his reply that he has been discharged his duties sincerely without lacking integrity from 1992 till 2008 and he had paid money orders wrongly to the relatives of death payees in the presence of local political leaders. Further they were voluntarily credited to the department account who received the amount. Therefore, the

mere act of wrong payment to the relatives of the payees may not itself lead to the punishment of removal from service. The petitioner had stated that he has paid money orders of Rs.200/- wrongly by mistaken and he will never repeat and requested the authorities to excuse him for the mistake. The Disciplinary Authority, Appellate Authority as well as the Revisional Authority have proceeded to impose extreme punishment of removal only on the basis of the Enquiry Report, ignoring both oral and documentary evidence on record, which shocks our judicial conscience and the same is disproportionate to the gravity of charges. The Disciplinary Authority and respondents ought to have imposed a minimal punishment when the petitioner has fairly admitted that he has made wrong payment or rather irregular payment, confusing himself of three persons of the same name and the said mistake has been rectified by him later.

23. The Hon'ble Supreme Court while considering the punishment/penalty imposed by disciplinary/appellate

authority in departmental enquiry against a public servant is disproportionately excessive so as to shock the judicial conscience in the case of **B.C. CHATURVEDI vs. UNION OF INDIA AND OTHERS** reported in **(1995) Supreme Court Cases 749** at para No.18 held as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial of review, cannot normally substitute its own conclusion on penalty and impose some other penalty. 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, it may itself, in exceptional and rare

cases, impose appropriate punishment with cogent reasons in support thereof.”

24. The Hon’ble Supreme Court while considering the provisions of Articles 226 and 311 of Constitution of India, in the case of **Deputy Commissioner, KVS & Ors. vs. J.Hussain** reported in **AIR 2014 Supreme Court 766** has held that it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed on delinquent. This discretion has to be exercised objectively keeping in mind the nature and gravity of charge. Punishment imposed on delinquent – found to be disproportionate – Court cannot itself impose particular punishment – Court has to refer matter to disciplinary authority to impose proper punishment and held as under:

“6. When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be impose. Of course, this discretion has to be examined objectively keeping in

mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the –delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to

substitute its own opinion on reappraisal of facts. (See: Union Territory of Dadra & Nagar Haveli V. Gulabhia M. Lad (2010) 5 SCC 775: (2010 AIR SCW 3785). In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited Scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

7. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with doctrine of Wednesbury Rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of

the Court and the Court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in Council of Civil Service Unions V. Minster for Civil Service in the following words”

“ Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds on which administrative action is subject to control by judicial review. The first ground I would call “illegality”, the second “irrationality” and the third “procedural impropriety”. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality”.

9. To be fair to the High Court, we may mention that it was conscious of the narrowed scope of the doctrine of proportionality as a tool of judicial review and has stated so while giving lucid description of this principal in the impugned judgment. However, we are of the view that its is

the application of the principle on the facts of this case where the High Court has committed an error while holding that the punishment was shocking and arbitrary. Moreover, while interfering therewith, the High Court has itself prescribed the punishment which according to it, "would meet the ends of justice", little realizing that the Court cannot act a disciplinary authority and impose a particular penalty. Even in those cases where it is found that the punishment is disproportionate to the nature of charge, the Court can only refer the matter back to the Disciplinary Authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty in a given case."

25. In the present case, admittedly Charge No.3 said to have been proved by the Enquiry Officer and accepted by the Disciplinary Authority, Appellate Authority as well as the Revisional Authority is contrary to the oral and documentary evidence on record, which clearly indicates that the petitioner has paid money orders of Rs.200/- to Smt.Rangamma on 02.07.2007, when she was alive and admittedly she died on

28.07.2007 and therefore, charge No.3 was not proved. With regard to Charge Nos.1 and 2, the petitioner has fairly submitted that he has wrongly paid in the presence of local political leaders and subsequently the said amount of Rs.200/- has been voluntarily credited to the Government Account and he would never repeat such mistakes, the said payment was made confusing himself in the names of three different persons of the same name in the village. The Disciplinary Authority did not properly appreciate the tenor of the petitioner's reply and proceeded on the presumption that he has admitted Charge Nos.1 and 2 and imposed punishment of removal. A perusal of oral evidence, documentary evidence and the reply clearly stated that it was by mistake that wrong payment was made and subsequently said amount has been credited to the Government Account and further shows that such mistake would not be repeated in future and that he may be pardoned for the same. The mere act of wrong or irregular payment and subsequently has

paid the amount to the department itself cannot lead to the punishment of dismissal from service.

26. We find it difficult to fathom a reason for placing such excessive reliance on the reply and evidence adduced by the petitioner, which clearly indicates that the appreciation of evidence by the authorities below is found to be wholly unsatisfactory and the conclusions drawn are perverse and contrary to the material on record.

27. The Hon'ble Supreme Court while considering the punishment of dismissal from service in identical circumstances in the case of **Collector Singh vs. L.M.L. Limited, Kanpur** reported in **(2015) 2 Supreme Court Cases 410** held at para Nos.9, 14 and 15 as under:

“9. Jurisdiction under Article 136 of the Constitution is extraordinary and interference with the concurrent findings of fact recorded by the Courts below is permissible only in exceptional cases and not as a matter of course. Where the appreciation of evidence is found to be wholly

unsatisfactory or the conclusion drawn from the same is perverse in nature, in exercise of the jurisdiction under Article 136 of the Constitution, this Court may interfere with the concurrent findings for doing complete justice in the case. In the facts and circumstances of the case, in our view, it is a fit case to exercise the jurisdiction under Article 136 of the Constitution to interfere with the conclusion of the Labour Court upholding the punishment of dismissal as affirmed by the High Court.

14. Having said that the punishment of dismissal from service is harsh and disproportionate, this Court in ordinary course would either order reinstatement modifying the punishment or remit the matter back to the disciplinary authority for passing fresh order of punishment. But we are deliberately avoiding the ordinary course. We are doing so because nearly two decades have passed since his termination and over these years the appellant must have been gainfully employed elsewhere. Further, the appellant was born in the year 1955 and has almost reached the age of superannuation. In such

circumstances, there cannot be any order of reinstatement and award of lump sum compensation would meet the ends of justice. Considering the length of service of the appellant in the establishment and his deprivation of the job over the years and his gainful employment over the years elsewhere, in our view, lump sum amount of compensation of Rs. 5,00,000 would meet the ends of justice in lieu of reinstatement, back wages, gratuity and in full quit of any other amount payable to the appellant.

15. In the result, the impugned order of the High Court dated 24.9.2012 passed in Collector Singh v. L.M.L. Ltd. confirming the award of the Labour Court is set aside and the appeal is allowed. The respondent management is directed to pay the amount of compensation of Rs 5,00,000 to the appellant within a period of six weeks from the date of receipt of copy of this order failing which, the said amount is payable with interest @ 9% p.a. thereon.

28. For the reasons stated above, the material documents clearly indicates that Charge No.3 made against

the petitioner was not proved and in respect of Charge Nos.1 and 2, he fairly stated that by mistake he has made wrong payment of Rs.200/- to the relatives of the deceased and subsequently, the said amount has been credited to the department. Therefore, the punishment imposed by Disciplinary Authority confirmed by the Appellate Authority, Revisional Authority as well as the Central Administrative Tribunal is found to be disproportionate to the gravity of the charge memo issued, shocks our judicial conscience, which requires modification by the Disciplinary Authority. Therefore, the point raised in the present writ petition has to be answered in the affirmative holding that the petitioner has made out a case for interference.

29. In view of the aforesaid reasons, the writ petition is allowed. The impugned order dated 25.09.2012 made in O.A.No.276/2010 by the Administrative Tribunal, Bangalore and also the order passed by the Disciplinary Authority dated 25.08.2009, the order passed by the Appellate Authority

dated 11.01.2010 and the order passed by the Revisional Authority dated 19.04.2010 are set aside. The matter is remanded to the Disciplinary Authority for passing fresh orders in the light of the observations made by us and in the light of the dictums of the Hon'ble Supreme Court stated supra in accordance with law, within a period of three months from the date of receipt of certified copy of this order. No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Srt