

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00552/2019

DATED THIS THE 25th DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

R.Prabhuswamy
S/o Shri Ramalinge Gowda
Aged about 36 years
Ex-Postman, Kuvempunagara Post Office
Mysuru-570023.
Resident of No.538
K.R.S.Road, Hootagalli
Belavadi, Mysuru-570 018.

....Applicant

(By Advocate Sri B.S.Venkatesh Kumar)

Vs.

1. The Sr.Superintendent of Post Offices
Mysuru Division
Mysuru-20.

2. The Director Postal Services
South Karnataka Region
O/o Postmaster General
South Karnataka Region
2nd Floor, GPO Building
Bangalore-560 001.

3. The Chief Postmaster General
Karnataka Circle
Palace Road
Bangalore-560 001.

4. The Union of India
Represented by its Secretary
Department of Posts
Ministry of Communications &
Information Technology
Dak Bhavan, Parliament Street
New Delhi-110 001.

....Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.PC for CG)

O R D E R
(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The brief facts of the case are that the applicant was initially appointed as GDS BPM, Kudluru BO a/w Ramasamudra SO w.e.f. 27.7.2002 under Nanjangudu Division and he was transferred to GDS MP Hanuru SO under redeployment w.e.f. 26.11.2002 and then he was transferred as GDS BPM, Lalithadripura BO a/w Halanahalli SO w.e.f. 4.7.2014 to 14.2.2016 under Mysuru division. After passing the LDCE for the post of Postman, he was selected as Postman w.e.f. 15.2.2016 and posted to Belavadi SO and was later transferred to Kuvempunagara SO w.e.f. 6.1.2018. While working as such, the applicant wrote a letter to the 1st respondent(Annexure-A5) regarding his misusing of department money to the tune of Rs.9635/- for treatment of his daughter who is suffering from brain damage and also suffering from strokes of Epilepsy/Fits. He requested for permission to credit the misused amount to the department account. The 1st respondent asked the applicant to credit the amount to UCR and after crediting the amount to the UCR, the 1st respondent issued a charge memo dtd.9.4.2018(Annexure-a6) alleging 4 articles of charge of misuse of money to the tune of Rs.9,635/-. The 1st respondent appointed Presenting Officer(PO) vide letter dtd.24.4.2018(Annexure-A7) and Inquiring Authority(IA) vide letter dtd.24.4.2018(Annexure-A8). Since the applicant admitted all the charges framed against him in the inquiry held on 17.5.2018, the IA submitted his report dt.26.5.2018 to the 1st respondent holding that the charges were proved against the applicant and the 1st respondent issued penalty order vide memo dtd.2.8.2018(Annexure-A9) by reducing the pay for one stage from 23,100/- to Rs.22,400 in pay matrix level 3 for a period of two years. Thereafter, the 2nd

respondent issued a memo dtd.7.11.2018(Annexure-A10) proposing to enhance the penalty to that of dismissal from service. In response to the same, the applicant submitted his appeal dtd.24.11.2018(Annexure-A11) to the 2nd respondent. But the 2nd respondent dismissed the applicant vide impugned order dtd.31.1.2019(Annexure-A12). The applicant was relieved on 6.2.2019(Annexure-A13). He had submitted mercy appeal dtd.13.2.2019(Annexure-A14) but instead of considering the same, he was directed to submit the appeal through proper channel(Annexure-A15).

2. The applicant submits that as per the charge sheet, the statement is required to be submitted within 15 days from the date of receipt of the charge memorandum. For having received the charge memo on 11.4.2018, the applicant is required to submit his explanation on or before 26.4.2018. But the disciplinary authority had appointed IA as well as PO on 24.4.2018 even before the expiry of the period prescribed for the explanation. This is against the decision of *VR Khanna vs. State of Delhi*. Having condoned the lapse on the part of the applicant and having received the payment, the respondents are stopped from initiating any disciplinary proceedings that too after undue delay. The action of the respondents is against the order passed by this Tribunal in the case of *K B Ramesh vs. the Supdt. Of Post Offices, Hassan Division*. The appellate authority has failed to take cognizance of this fact and also as to the unreasonable delay in issuing the charge sheet relating to the year 2013 to 2015 and the appellate authority is required to follow the provisions of Rule 27 and 29 of CCS(CCA) Rules. Further it has failed to take cognizance that the disciplinary proceedings should not be punitive but it should be reformative and hence, the order of the appellate authority in reviewing the case of disciplinary punishment is not only

erroneous but also untenable in law. The decision of the appellate authority(2nd respondent) to enhance the punishment of reduction of the pay of the applicant by invoking the provisions contained in Rule 29 of the CCS(CCA) Rules, 1965 is illegal and arbitrary and is liable to be set aside in terms of the Rule 29(1) (v) of the CCS(CCA) Rules, 1965. Though the proposal for enhancement of penalty was issued before completion of 6 months, in fact the impugned order was issued only on 6.2.2019 i.e. after completion of 6 months, hence, it is totally against the Rule 29(1)(v) of the CCS(CCA) Rules 1965 & G.I.Dept. of Per & Trg. Notification dtd.30.3.1990. The applicant relies on the judgments of this Tribunal in *Muthuswami vs. Postmaster General, Bangalore 1989 (10 ATC 555)*, The Hon'ble High Court of Kerala in *Joney vs. Director of Telegraphs Kerala 1976 (KLT) 172 (Kerala)* in support of his claim.

3. The applicant further submits that fact that he misused the amount came to light only after his prompt admission and the respondents never traced the same. There is no intention of misuse or misappropriation of departmental money but only to survive his daughter whose condition is so worse that doctors also expressed their helplessness and advised to provide medicines without fail(Annexure-A2-A4). The quantum of punishment awarded to the applicant is highly disproportionate to the gravity of the charges levelled against the applicant. The applicant relied on several Supreme Court judgments viz., *UOI vs. P.C.Chaturvedi (1995) 6 SCC 750, Kailash Nath Gupta Vs. Enquiry Officer, 2003 AIR SCW 1813* etc., in support of his contention and submits that the law laid down by the Hon'ble Supreme Court in the said decisions is squarely applicable to his case. The applicant submitted a petition to the 3rd respondent vide letter

dtd.13.2.2019(Annexure-A13) but till date no action has been taken on the same.

Being aggrieved, he filed the present OA seeking the following relief:

- i. *Call for the relevant records leading to the issuance of impugned proceedings in Memo No.SK/VIG/4-8/PR/MYS/2017 dt.31.01.2019(Annexure-A12) issued by the 2nd respondent dismissing the applicant from the service and on perusal;*
- ii. *Quash and set aside the impugned proceedings Memo NO.SK/VIG/4-8/PR/MYS/2017 dated 31.01.2019(Annexure-A12) as arbitrary, discriminatory and void for the reasons stated in the application and*
- iii. *Direct the respondents to reinstate the applicant with all consequential benefits, and*
- iv. *Pass any other appropriate order or direction as deemed fit by this Hon'ble Tribunal including an order as to costs of this application in the facts and circumstances of the case and in the interest of justice, equity and fair play in the administration.*

4. Per contra, the respondents have submitted in their reply statement that during verification of past work of the applicant who worked as GDS BPM, Lalithadripura BPO under Mysore Postal division and as Postman, Belavadi SO, financial misappropriation in 1 SB, 3 SSA, 22 RD and 1 TD accounts by the applicant to the tune of Rs.47435/- came to light by the Asst.Suptd. Posts, Mysuru East Sub-Division, Mysuru on 4.6.2016. The applicant in his written statement dtd.19.5.2017(Annexure-R1) stated that he has accepted the deposits made entries in the pass book duly impressing the date stamp and that he has not entered the said deposits in BO RD journal, BO daily account and BO account book and has not accounted the same. In his written statement dtd.5.9.2017(Annexure-R2), the applicant stated that the COD article was issued to him on 10.10.2016 and he had shown it as 'intimation delivered' on 10.10.2016 ad kept the article in the post office. Further, on 13.10.2016, he took the article for delivery without the knowledge of SPM and PA, delivered it and utilized the amount of Rs.1185/- received from the addressee for his personal expenses. The

applicant was proceeded against under Rule 14 of CCS(CCA) Rules 1965 with four articles of charge vide memo dtd.9.4.2018. The applicant was given an opportunity to make a representation with reference to the articles of charge within 15 days of receipt of the memo. In his written statement of defence dtd.18.4.2018(Annexure-R6), the applicant admitted all the charges levelled against him. However, in order to give an opportunity, inquiry was ordered on 24.4.2018 by appointing Inquiring Authority(IA) and Presenting Officer(PO). During the preliminary inquiry held on 17.5.2018, the applicant admitted all the articles of charge unconditionally and requested that the inquiry be concluded and no further sittings be held and submitted a letter dtd.17.5.2018(Annexure-R7). The IA submitted inquiry report dtd.26.5.2018(Annexure-R8) holding all the four articles of charge as proved beyond doubt. The applicant submitted representation dtd.5.6.2018(Annexure-R9) on the IA's report admitting all the charges. The Disciplinary Authority(DA) imposed the penalty of pay reduction by one stage from Rs.23100/- to 22400/- in pay matrix level 3 to take immediate effect for a period of two years with further direction that he will not earn increments of pay during the period of such reduction and on expiry of this period, the reduction will have the effect of postponing future increments of his pay. The applicant did not file appeal against the orders of penalty imposed by DA. The Reviewing Authority has reviewed the extract of punishment register of Mysuru Division for the month of August 2018 in exercise of powers conferred under Rule 29 of CCS(CCA) Rules 1965 and the disciplinary case file was called for review. On review, it was found that the penalty imposed on the applicant was not commensurate with the gravity of the misconduct committed by him and it was proposed to revise the penalty to that of dismissal from service and a show

cause notice was issued to the applicant vide memo dtd.7.11.2018 stating as to why penalty should not be revised to that of dismissal from service. The applicant submitted representation on 24.11.2018 against the proposal and he was given personal hearing on 24.12.2018 as per his request. After having gone through the applicant's representation dtd.24.11.2018, his submissions/arguments during personal hearing on 24.12.2018, along with connected records carefully, the penalty imposed on the applicant by the DA was set aside and ordered that the applicant be dismissed from service by following the rules on the subject.

5. The respondents submit that the averment of the applicant that he submitted Annexure-A5 to the respondent is not correct. During the visit of the Asst.Suptd. Posts, Mysuru East Sub-Division, Mysuru on 4.6.2016, financial misappropriation of the applicant came to light. The applicant credited the amount of financial misappropriation to departmental accounts voluntarily as per the letters at Annexure-R10 to R17. Thereafter, he was proceeded against under Rule 14 of CCS(CCA) Rules 1965 with four articles of charge. The charges levelled against the applicant are grave in nature involving integrity, moral turpitude and breach of trust. The financial irregularity/misdemeanour of the applicant is not just one stray incident but a series of events. For such a serious and grave conduct, the penalty imposed by the DA is found to be very lenient. In his representation, the applicant mainly attributed the lapses to the ill health of his daughter and her treatment. Having committed acts involving questionable integrity, the reasons cited are not acceptable. He continued misconduct even after his promotion and drawing higher salary which was a serious issue. The applicant failed to bring out any convincing grounds to revise the proposed penalty. Therefore, the penalty imposed by the DA was set aside and ordered that the applicant be dismissed

from service with immediate effect. Mercy petition produced by the applicant is not addressed to the appropriate authority. Hence, he was directed to prefer the petition through proper channel.

6. The respondents further submit that the averment of the applicant that the DA appointed IO and PO before expiry of the period prescribed for the explanation is not correct. In response to the memorandum of articles of charges, the applicant submitted written statement of defence dtd.18.4.2018 admitting all the charges levelled against him. In order to give the applicant an opportunity, inquiry was ordered by appointing IO and PO. The averment that there is unreasonable delay in issuing charge sheet relating to the year 2013 to 2015 is also not correct. The averment that the orders of the Reviewing Authority is against Rule 29(1)(v) of CCS(CCA) Rules 1965 is not correct. Vide DG P&T orders No.4 dtd.27.7.1972(Annexure-R18), in view of the recent judgment of a High Court, it was clarified that it will be incumbent upon the Appellate Authority to make a specific mention of the fact that it proposes to revise the order already passed, when calling for the papers. In other words, the appellate authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order and it is in this connection the papers are being called for. At the same time, the Govt. servant should also be informed that the appellate authority proposes to revise the order. The respondents relied on the orders of this Tribunal in OA.No.880/2013, OA.907/2013 on the question of review of quantum of penalty by judiciary. The DA & RA have acted as per the provisions of CCS(CCA) Rules 1965. Therefore, the contention of the applicant is not correct and the OA is liable to be dismissed.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In this case, as stated by the respondents, the misappropriation done by the applicant came to light during the visit of the Asst.Supdt.of Posts, Mysore East Sub Division on 4.6.2016. During the verification, it was found that there were several cases of non-accounting of deposits and misappropriation thereon amounting to the tune of Rs.47435/- The respondents have also stated that over a period of one to two years, the applicant had also credited various amounts totalling to Rs.53716/- as having been misappropriated by him. He had also admitted the charges and given in writing to expedite the enquiry vide Annexure-R7. He takes the contention that even before the period of expiry of 15 days from the date of issue of charge memo within which he has to submit his explanation, the respondents had gone ahead and appointed Inquiry Officer etc. Apart from this, there is no other ground which he is making except to state that it is because of the illness of his daughter that he was forced to misappropriate the sums of money and that a proper punishment was given in the first instance by the Disciplinary Authority which was reviewed by the 2nd respondent resulting in his dismissal from service. The processes and procedures relating to the disciplinary proceedings have been followed without any deviation by the respondents and we cannot find any fault in any lack of opportunity being given to the applicant. In fact, he had admitted all the charges and the respondents have also pointed out that the alleged letter of Annexure-A5 was never given by him and the fact of misappropriation was found out by the Asst.Supdt. of Post Offices on 4.6.2016. The charges were given in 2018 and the applicant would claim that there was a considerable delay in the initiation of the disciplinary proceedings since the misappropriation had

happened during the year 2013-2015. The respondents counter this by saying that the irregularities committed by the applicant were over several years till 2016 and it is apparent that the proceedings concluded within a short period of time. While we can sympathise with the applicant on the condition of his daughter and possible mental agony the family must have been put through due to the disability of the child, as rightly contended by the respondents, this cannot be an excuse for misappropriation and breach of trust which the department has reposed in persons like the applicant. The reputation and image of the department would suffer irretrievably if, due to personal circumstances, the officials are allowed to misappropriate the money entrusted to them by the public. In any number of cases relating to the respondent organisation, we have taken the same position and as rightly contended by the respondents, the Hon'ble Apex Court has time and again held that even if the lack of integrity is for a small sum of money, it will still be diminishing the integrity and when a charged employee holds a position where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently.

8. We, therefore, do not want to interfere in the decision of the respondents and the OA is therefore, dismissed. If the applicant has any further scope for appeal or revision against the order at Annexure-A12, he can do so irrespective of the lapse of time and the respondents shall consider the same and pass appropriate orders as they deem fit. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred by the applicant in OA.No.170/00552/2019

Annexure-A1: Applicant's PH medical certificate
Annexure-A2: Photo of the ailing daughter of applicant
Annexure-A3: Photo of the ailing daughter of applicant
Annexure-A4: Medical certificate of the applicant's daughter
Annexure-A5: Applicant's letter confessing his mistake
Annexure-A6: Charge memo dtd.9.4.2018
Annexure-A7: Appointment of PO dtd.24.4.2018
Annexure-A8: Appointment of IO dtd.24.4.2018
Annexure-A9: Penalty order dtd.2.8.2018
Annexure-A10: 2nd respondent's proposal to enhance the penalty dt.7.11.2018
Annexure-A11: Applicant's appeal dtd.24.11.2018
Annexure-A12: 2nd respondent's order of dismissal from service dt.31.3.2019
Annexure-A13: Order of dismissal from service on 6.2.2019
Annexure-A14: Mercy appeal dtd.13.2.2019
Annexure-A15: Disposal of mercy appeal

Annexures with reply statement:

Annexure-R1: Written statement dtd.19.5.2017
Annexure-R2: Written statement dtd.5.9.2017
Annexure-R3: RD pass book
Annexure-R4: SSA pass book
Annexure-R5: SSA pass book
Annexure-R6: Written statement of defence dtd.18.4.2018
Annexure-R7: Letter dtd.17.5.2018
Annexure-R8: Inquiry report dtd.26.5.2018
Annexure-R9: Representation dtd.5.6.2018
Annexure-R10: Letter dtd.15.4.2017
Annexure-R11: Letter dtd.29.4.17
Annexure-R12: Letter dtd.31.5.17
Annexure-R13: Letter dtd.13.6.17
Annexure-R14: Letter dtd.1.7.17
Annexure-R15: Letter dtd.31.8.17
Annexure-R16: Letter dtd.5.9.17
Annexure-R17: Letter dtd.7.8.18
Annexure-R18: DG P&T Order dtd.27.7.1972
