

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 040/00347 of 2014

Date of Order: This the 9th Day of June 2016

HON'BLE MRS.MANJULA DAS, JUDICIAL MEMBER

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

Sri Jatindra Nath Das,
Retired Sub-Postmaster
Son of late Jogeswar Das,
resident of Rajendra Bhawan,
Near Gopal Bazar Post Office,
P.O.Nalbari,Pin-781353

Applicant

By Advocate Mr.H.K.Das,

-Versus-

1. Union of India
Represented by the Secretary to the
Department of Posts, Government of India,
Ministry of Communication
Information and Technology
New Delhi-1
2. The Director (MM&VP)
Government of India,
Ministry of Communication
and Information Technology,
Department of Posts,
Dak Bhavan, Sansad Marg
New Delhi-1.
3. The Chief Postmaster General
Assam Circle,
Meghdoot Bhwan
Panbazar, Guwahati-1.

Respondents

By Advocate Mr.C.Choudhury, Sr.C.G.S.C.

ORDER (ORAL)

Per Mohd Haleem Khan, Member(A):-

Shri Jatindra Nath Das, retired Sub-Postmaster, Son of Late Jogeswar Das, resident of RAjendra Bhawan, Near Gopal Bazar Post Office, P.O.Nalbari has filed this application under Section 19 of the Administrative Tribunals Act 1985, against the order No. C-14016/07/2010-VP dated 25.05.2012 issued by the Director (MM & VP), Government of India, Ministry of Communication and Information Technology, Department of Posts, New Delhi, and prayed for following reliefs:-

“8.1 To quash and set aside the impugned order dated 25.05.2012 issued by the 2nd respondent and grant all the consequential service benefits.

8.2 To direct the respondents to release full pension alongwith arrears and entire gratuity money to the applicant along with interest.

8.3 Cost of the application.”

Accordingly notices were issued.

2. The respondents filed the written statement and submitted that the applicant while posted as Sub-Postmaster , Kaithalkuchi Sub

Post Office during the period from 16.04.2003 to 04.06.2004 accepted application and money from the purchaser of National Savings Certificate (VIIIth issue) on 09.03.2004, issued NSC against the amount to the purchaser duly signed and placing office date stamp on it, but the amount so collected was not credited to the Govt. account. Thus Sri Jitendra Nath Das violated the provision of Rule 103 of FHB Vol.I, Rule 20 (I) (i) and note 5 below Rule 20 of POSB Man Vol.II and Rule 84 of Postal Manual Vol.VI Part.III. Shri Das, consequently, was proceeded under Rule 3(I) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964. Respondents further submitted that Mr.Das, during the above period fraudulently withdrew Rs.20,000/- on 12.09.2003 from SB Account No.700538 and RS.30,000/- on 25.03.2004 from Savings Bank Account No.701945 by forging the signatures of the depositors in both the accounts. Thereby Shri Jitendra Nath Das violated the provision of Rule 103 of FHBVol.1 Rule 33(5) of POSB Man Vol.1 and Rule 84 of Postal Manual Vol.VI Part III. Sri Das by above acts displayed lack of integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant as enjoined in Rule 3(I) (i), (ii) & (iii) of CCS (Conduct) Rules 1964. According to the respondents since the applicant retired on 31st 08.2006, the proceedings were continued under Rule- 9 of CCS

(Pension) Rules, 1972 and Inquiry Officer and Presenting Officer were appointed to conduct the Departmental inquiry as the charged official denied the charges against him. The IO submitted his inquiry report on 14.8.2008. The Inquiry Officer held all the charges as proved. A copy of Inquiry report was supplied to the charged official on 21.08.2008 and the charged official was asked to submit his representation. The charged official submitted his representation on 03.09.2008. The Inquiry Officer held charges as proved against the appellant and the Disciplinary Authority being agreed with the findings of the Inquiry Officer forwarded the case to the Postal Directorate's New Delhi through Circle office, Guwahati. The case was placed before the President. The President after careful consideration of the fact and circumstances of the case came to the conclusion that the misconduct on the part of the appellant is grave enough to justify action under Rule-9 of CCS (Pension) Rules, 1972 for awarding penalty to forfeit pension/gratuity. Accordingly, the case was referred to the UPSC on 09.8.2011 for seeking advice. The UPSC took note of the documentary evidence, the submissions made by the applicant during the departmental proceedings and also took note of the fact that the

appellant voluntarily deposited the amount misappropriated along with the penal interest.

3. In view of the fact that the charges proved against the applicant constituted grave misconduct on his part, the penalty of withholding of 50% of the monthly pension admissible to him was imposed permanently and further the entire gratuity admissible to him was also withheld vide Postal Directorate's letter No.14016/07/2010-VP dated 25.05.2012. According to the respondents the above order is under challenge in the instant O.A. No. 347 of 2014 before the Hon'ble Tribunal.

4. The respondents controverted the averments made by the applicant in various paras of the application as follows:-

"1. :- That with regard to the statement made in para 4.1 of the O.A, the respondent states that the appellant was retired from service as Postal Assistant, Nalbari Head Post Office instead of Sub-Postmaster, Kaithalkuchi Sub Post Office after attaining the age of superannuation on 31.08.2006 (A/N) as per record.

2. That with regard to the statement made in para 4.2 of the O.A the respondent states that the applicant while working as SPM, Kaithalkuchi SO defrauded a sum of Govt. money to the tune of Rs.55,000.00+

Rs.7,922.00 (including interest + Panel interest) during the period from 16.04.2003 to 04.06.2004. In this regard, a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was served to the appellant vide SPOs. Nalbari-Barpeta Division, Nalbari-781335 Memo No.FI-01/SB/A/04-05 dated 03.07.2006.

3. That with regard to the statement made in para 4.3 of the O.A, the respondent states that the Sri Jitendra Nath Das, while functioning as Sub-Postmaster, Kaithalkuchi Sub Post Office during the period from 16.04.2003 to 04.06.2004 has fraudulently withdrawn Rs.20,000.00 on 12.09.2003 from Saving Bank Account No.700538 in the name of Smt Pranita Devi and Rs.30,000.00 on 25.03.2004 from Saving Bank Account No.701945 in the name of Sri Jonali Haloi by forging the signatures of the depositors. Again Sri Jitendra Nath Das, while functioning as SPM, Kaithlkuchi SO during the aforesaid period accepted application for purchase of National Saving Certificate (VIII Issue) from Sri Dinesh Mishra, the purchaser, on the date 09.03.2004, collected the amount mentioned against the National Saving Certificate and issued prescribed National Saving Certificate of the said amount to the purchaser. The National Saving Certificate was impressed with Kaithalkuchi Sub Post Office date stamp, made the required entries in the National Saving Certificate application form and handed over the certificate to the purchaser after signing of the same. But the sale proceeds of the National Saving Certificate was not accounted for on that date or later. No National Saving Certificate issue journal was prepared against that sale and the amount was not credited to Sub office Daily Account. Thus, the applicant misappropriated

the Govt.money to the tune of Rs.55, 000.00 during the aforesaid period.

Copy of written statement dated 16.2.2006 of Sri Jonali Haloi & written statement dated 19.01.2005 of Sri Pranita Devi are annexed with written statement as Annexure-A2 & A3.

4:- That with regard to the statement made in para 4(iv) of the O.A, the respondent states that as per departmental rule, the Inquiry Officer (IO) and Presenting Officer (PO) were appointed to inquire into the charges framed against the charged official, henceforth applicant as per sub-rule (2) read with sub-rule (22) of Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

5:- That with regard to the statement made in para 4.5 of the O.A, the respondent states that the inquiry against the applicant was conducted as per departmental rule and as per charges framed against the applicant in the memorandum of statement of misbehaviour or misconduct under Rule-14 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965. The applicant was also given ample scope to examine all the documents/records related to this case and the applicant inspected all the documents/records and put his signatures in the documents/records at the time of inquiry. The applicant was also given the scope of cross examination of the witnesses during the time of inquiry. After conclusion of the inquiry,

the presenting officer submitted his written brief to the Inquiry officer and the Inquiry officer submitted the inquiry report to the Disciplinary Authority i.e Superintendent of Post Offices, Nalbari-Barpeta Division on 14.08.2008 vide memo no.A-1/Inquiry-3/08 dated 14.08.2008. The findings of the Inquiry Officer are as follows:-

“In fine after careful examination of the evidences that have been produced before me as well as exhibited documents and on question to the charged official and review of the reasons derived from the summary outlines of the prosecution witnesses I find that all the charges framed against the said Sri Jitendra Nath Das in Article -1 and II of a I and II of the charge sheet dated 03.08.2006 proved beyond doubt and as such implication of the annexure I and II of the charge sheet dated 03.08.2006 proved beyond doubt and as such implication of the Violation of Rule-103 of Financial Hand Book Volume I, Rule -33(5) of Post office Saving Bank Manual Volume I and Rule-84 of Postal Manual Volume VI Part III found proved and Rule 20(I) (i) Note 5 below Rule 20 of Post office Saving Bank Manual Volume II also stands proved and thereby he also displayed lack of integrity, devotion to duty and acted in a manner which is unbecoming of Govt. Servant as enjoined in Rule 3(I) (i), (ii) (iii) of Central Civil Services (Conduct) Rules, 1964.”

Copy of Inquiry Officer's report dated 14.08.2008 is annexed with the written statement and marked as Annexure-A4.

6:- That with regard to the statement made in para 4.6 of the O.A, the respondents states that the additional documents i.e National Saving Certificate issue journal dated 09.03.2004 was not prepared by the applicant with intention of defrauding the National Saving Certificate sale amounts on the said date. Hence, the Presenting Officer clearly presented the fact on hearing dated 07.11.2007 and Inquiry Officer also accepted the fact and recorded in the order sheet no.5 dated 07.11.2007. Regarding additional witnesses requisition by the applicant, there was no mention in the order sheet no.4 dated 08.03.2007 recorded by the Inquiry Officer and signed by the applicant also. Hence, the plea of the applicant is not tenable.

Copy of Order Sheet No.4 dated 08.03.2007 & 5 dated 07.11.2007 are annexed with the written statement and marked as Annexure-A5 & Annexure A6

7:- That with regard to the statement made in para 4.7. of the O.A, the respondent states that the Presenting Officer submitted his brief on the basis of outcome of the inquiry as per procedure and direction of the Inquiry Officer in order sheet no.78 dated 08/06/2008. A copy of said brief was sent to the applicant giving opportunity to submitting his defense representation against the said brief to the Inquiry officer.

8:- The Inquiry Officer submitted the final report on the basis of evidence, listed documents & witnesses examined/cross

examined and with conclusion of charges proved beyond any doubt.

9.:- That with regard to the statement made in para 4.9 of the O.A, the respondent states that as per Rule-14 of CCS(CCA) Rules, 1965, Government of India's Instructions (31), the Inquiry officer had the authority to decline to examine any witness on the ground that his evidence is not relevant or material for the inquiry. Under this circumstance, the Inquiry officer of the case did not find relevancy for calling of two witnesses, as both the witnesses were found not material evidence for the inquiry. The Inquiry officer, examine the witnesses of Sri Jonal Haloi, Account holder of Saving Bank Account number 701945 and Sri Ranjit Saikia, Sub Divisional Inspector of Posts, Nalbari West Sub Division and their witnesses was consider as material evidence into the case. The applicant was given ample scope to defend himself and thus question of deprivation of the applicant from his right of defense during course of inquiry does not arise. Again, Presenting Officer vide letter no.AI/PO-NLB/J.N Das/06-07 dated 08.03.2007 requested to the Supdt. Of Post Offices, Nalbari to supply the NSC issue Journal dated 09.03.2004 as desired by the applicant during the time of inquiry for examination of the same as additional documents. The Supdt.of Post Offices,

Nalbari vide letter No.FI-01/SB/A/04-05 dated 21.03.2007 intimated to Sri R.K.Farid, Presenting Officer of the case that no NSC issue journal was prepared by the Sub-Postmaster, Kaithalkuchi i.e the applicant

on 09.03.2004. Thus the allegation made by the applicant "the Inquiry officer did not produce the documents asked by the applicant in his defense is totally unjustified.

10:- That with regard to the statement made in para 4.10 of the O.A, the respondent states that the applicant was retired on 31.08.2006 after attaining the age of superannuation. Accordingly, the departmental proceeding was converted to a proceeding under Rule-9 of Central Civil Services (Pension) Rules, 1972. As per Rule 136 of the Postal Manual Volume-III, the disciplinary proceeding initiated against an officer while in service, should be deemed to be proceeding under Rule-9 of Central Civil Services (Pension) Rules, 1972 after retirement and should be continued and concluded under the provision of that rule. In such case, the function of the disciplinary authority is only to reach a finding on the charges and to submit a report recording its findings to the Govt. In this case, the case was forwarded to Ministry for consideration of the president of India as the applicant has already retired from service on 31.08.2006. The Ministry with the approval of the President of India has decided to impose the penalty of suitable cut in the pension and gratuity of the applicant and the case was forwarded by the Ministry to the UPSC for seeking their advice. The UPSC after taking into the all other aspects relevant to the case note that the charges established against the applicant constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the penalty of withholding of 50% (fifty

percent)of the monthly pension otherwise admissible to him is imposed permanently on the applicant, Sri Jitendra Nath Das and further the entire gratuity admissible to him may also be withheld. The President of India after careful consideration of the advice of the UPSC, all facts, circumstances and relevant records of the case ordered accordingly. The Director (MM & VP), Government of India, Ministry of Communications and IT, Department of Posts, issued order vide letter No.14016/07//07/2010-VP dated 25.05.12.

Copy of Director (MM & VP), Government of India, Ministry of Communications and IT, Department of Posts, issued order vide letter No.14016/07/2010-VP dated 25.05.2012 was annexed with the written statement and marked as Annexure-A8.

15:- That with regard to the statement made in para 4.15 of the O.A, the respondent states that the presenting officer vide letter no.AI/PO-V/NLB/J.N.Das/06-07 dated 08.03.2007 requested to the Supdt. Of Post offices, Nalbari to supply the NSC issue journal dated 09.03.2004 as desired by the applicant during the time of inquiry for examination of the same as additional documents. The Supdt.of Post Offices, Nalbari Vide letter No.FI-01/SB/A/04-05 dated 21.03.2007 intimated to Sri R.K.Farid, Presenting officer of the case that no NSC issue journal was prepared by the Sub-Postmaster, kaithalkuchi i.e. the applicant on 09.03.2004. Thus the

allegation made by the applicant “the Inquiry Officer did not produce the documents asked by the applicant in his defense” is totally unjustified. The Applicant knows the fact and misguides the Inquiry Officer to produce the same as he knows the fact. Thus the applicant saying this type of argument wastes the valuable time of the Hon’ble CAT.

16. That with regard to the statement made in para 4.16 of the O.A, the respondent states that the Inquiry officer appointed by the Disciplinary Authority i.e Supdt. Of Post offices, Nalbari-Barpeta Division, Nalbari is completed the inquiry as per departmental rule prescribed in the Central Civil Services(Classification, Control and Appeal)

Rules, 1965 and as per charges framed against the applicant in the memorandum of statement of misbehaviour or misconduct under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The applicant was also given ample scope to examine all the documents/records related to this case and the applicant inspected all the documents/records and put his signature in the documents/records at the time of inquiry. The applicant also examines the witnesses during the time of inquiry. The inquiry Officer conducted the inquiry as per departmental rule. Thus the applicant allegation is totally on the basis of presumption and no any actual fact of evidences behind the allegations.

5. The applicant filed rejoinder and submitted that all the averments made in the written statement be treated as denied unless specifically admitted or based on documents.

6. In the rejoinder the applicant reiterated that the necessary documents sought by the applicant in his defense were never produced by the enquiry officer which has caused prejudice to the defense of the applicant. The learned counsel for the applicant further emphasised that during the proceedings a new Inquiry officer was appointed who had some vested interest in the matter. The applicant also emphasised that the UPSC advice was not supplied to him before the punishment was awarded. According to the applicant the whole proceedings being vitiated, he is entitled for grant of the relief as prayed for in the application.

7. Pleadings being complete. The case was heard on 09.06.2016. The learned counsel for the applicant emphasised on various averments made by the applicant in his pleadings, specifically with regard to supply of UPSC advice to the applicant.

8. The learned Addl.C.G.S.C, submitted that the applicant has tried to misappropriate and defraud the govt.money and accordingly, as per rule a memorandum of charge was issued on 03.07.2006. The learned Addl. C.G.S.C submitted that the Memorandum of charge was

issued on the basis of the records. The charged Officer was provided the enquiry report has not been denied by the applicant. Since, before the conclusion of Departmental proceedings the Charged officer retired, the proceedings were converted under Rule-9 of CCS (Pension) Rules, 1972. The learned Addl. C.G.S.C emphasised that the applicant has failed to bring forth that he was not provided the opportunity to defend himself. The respondents have come to the conclusion on the basis of the following documents:-

1. Memo No.FI- 01/SB/A/04-05/ dated 03.07.2006.
Statement of Articles of charge framed against Sri Jitendra Nath Das, then SPM, Kaithalkuchi SO and now PA Nalbari HO.
2. English version of written statement dated 16.2.2006 of Sri Jonali Haloi depositor of SB Account No.701945.
3. English version of written statement dated 19.1.2005 of Smt.Pranita Devi depositor of SB Account No.700538.
4. Report of inquiry under Rule 14 of the CCS/CCA Rules 1965 against Sri Jitendra Nath Das P/A.
5. Order sheet No.4 dated 8.3.2007.
6. Order sheet No.5 dated 07.11.2007.
7. Procedure for imposing major Penalties
8. OrderNo.14016/07/2010-VP,dated 25.05.2012.

Government of India,
Ministry of Communications & IT
Department of Posts.

9. This Court has gone in to contents of the impugned order dated 25.05.2012 as well as UPSC's advice dated 14.12.2011 and noted that during the conduct of proceedings, when the charged officer, was examined the charged officer has admitted the misappropriation and also the failure to follow the procedure and irregular conduct on his part.

10. In view of the above, it is clear that the competent authority's decision is not based on any extrapolated interpretation /re-appreciation of the documentary evidence submitted at the time of enquiry of Departmental proceedings against the charged Officer, the report of the Inquiry Officer and submissions of the Presenting Officer. The UPSC's advice in this case at best is merely fulfilment of a procedural requirement. The applicant has not been able to bring out any ameliorating circumstances, facts or reasoning in his pleadings though he was by then in possession of UPSC's report. Since the applicant could not bring out in this O.A. that the order was not speaking and he has something to say against UPSC advice. Reliance on 2011 4 SCC 591 S.N.Narula vs. Union of India and others is at best of technical nature. Relevant portion extracted below:-

“We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order

and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject.”

This case is therefore not covered by the Apex Courts observation as evident from above quota.

11. This Court does not find any merit in the case and accordingly, the O.A.is dismissed as wanting in merits both on the grounds of law as well as facts. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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