

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application Nos.427 of 2014 & 428 of 2014

Date of Order : This the 25th Day of July 2016

HON'BLE MRS.MANJULA DAS, JUDICIAL MEMBER

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

Smti Lipi Patranabish
W/O Shri Sumit Patranabish
Postal Assistant, Guwahati GPO
R/o House No.9, Basanta Bahar, Alakananda Path
Near Lakhimi Bibah Bhawan, Beltola Tiniali, Guwahati
District Kamrup (Metropolitan), Assam-781028 Applicant

By Advocate Mr.G.Alam

-Versus-

1. The Union of India,
represented by the Secretary
(posts)& Chairman,
Postal Services Board & Director General
India Post, Department of Posts
Ministry of Communications &
Information Technology,
Government of India, Dak Bhavan,
Parliamentary Street
New Delhi-110001.
2. The Director, Postal Services (HQ)
Office of the Chief Postmaster General, Assam Circle
Department of Posts,
Ministry of Communications &
Information Technology, Government of India
Meghdoot Bhawan, Panbazar, Guwahati-781001
3. The Senior Superintendent of Post Offices,
Guwahati Division, Department of Posts.
Ministry of Communications &
Information Technology

Government of India,
3rd Floor, Meghdoot Bhawan,
Panbazar, Guwahati-781001.

Respondents.

By Advocate Mrs.M.Bhattacharjee, Addl.C.G.S.C.

O R D E R (ORAL)

Per Mohd Haleem Khan, Member (A):-

Smt. Lipi Patranabish , W/O Shri Sumit Patranabish, R/O House No.9, Basanta Bahar, Alakannanda Path, Near Lakhimi Bibah Bhawan, Beltola Tiniali, Guwahati has filed this application under Section 19 of the Administrative Tribunals Act 1985 aggrieved by the order dated 08/04/2014 issued under Memo No.F3-1/11-12/Discy/L.Patranabish by the disciplinary authority – the respondent No.3 Senior Superintendent of Post Offices, Guwahati Division imposing upon the applicant the penalty of reduction of pay to a lower stage in the time scale of pay for a period not exceeding 1(one) year with cumulative effect, i.e reducing the pay of the applicant by 1 (one) stage from Rs.12,980/- plus grade pay Rs.2,800/- to 12,520/- plus grade pay of Rs.2800/- in the pay band of Rs.5,200-20,200/- in the time scale for a period of 1(one) year w.e.f. 01.05.2014 with cumulative effect with the direction that she would not earn increments of pay during the

period of reduction, further ordering therein that an amount of Rs.85,900/- be recovered in 43 monthly instalments @ Rs.2,000/- per month in 42 instalments and @ Rs.1,900/- in 43rd instalment from the pay and allowances of the applicant w.e.f. May 2014 payable in June 2014. Further, it was ordered that the period of suspension of the applicant w.e.f 09.02. 2013 to 27.10.2013 be treated as "Non Duty" for all purposes. The applicant is also aggrieved by the appellate order dated 05.09.2014, issued under memo no.Staff/9-214/2014 by the appellate authority, the respondent No.2 Director Postal Service (HQ), Assam Circle refusing to modify the orders of the disciplinary authority and thereby disposing of the appeal preferred by the applicant.

2. The applicant has sought following reliefs:-

8. (i) To set aside and quash the impugned order dated 08.04.2014 by the Senior Superintendent of Post Offices, Guwahati Division (Annexure-A-17).
- (ii) to set aside and quash the appellate order dated 05.09.2014 passed by the Director of Postal Service (HQ) Guwahati (Annexure-A-19).
- (iii) to grant all consequential reliefs and benefits to the applicant.
- (iv) to allow the instant Original Application with cost.

v) to pass such further or other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. The applicant also sought following interim order:-

In the interim , it is most respectfully prayed that the no further effect be given to the impugned order dated 08.04.2014 by the Senior Superintendent of Post Offices, Guwahati Division (Annexure-A-17) and the appellate order dated 05.09.2014 passed by the Director of Postal Service (HQ) Guwahati (Annexure-A-19) and status quo ante as on the date prior to the issuance of the impugned order dated 08.04.2014 (Annexure-A-17) be directed to be maintained in respect of the salary of the petitioner and that no further recovery be made from her salaries.”

4. Briefly, on being successful in the recruitment process the applicant, joined the Department of Posts as a Postal Assistant on 10th February, 1996. Since the date of her joining service, she has been discharging her duties as assigned to her by her superior authorities, sincerely and honestly. On 27.01.2010 a girl child Anoushkaa was born to the applicant. The applicant joined Assam Sachivalaya Post Office on 1st August 2010 after availing maternity leave. Within one and half month she was transferred as Sub Post Master (SPM) of Beltola Sub Post Office, Guwahati on 22.09.2010. According to the applicant the Beltola Sub Post Office was loaded with a huge volume of work and

there was acute shortage of staff therein. In addition to several verbal requests to her superior authorities she sent official letter on 06.01.2011 requesting the respondent No.3 to depute a Postal Assistant in the Beltola Sub-Post Office in view of the huge load of works , stating that Postal Assistant who was earlier posted there had been transferred out, however, there was no response to her requests.

On 18.10.2011 Shri K.Boro, the SPM of Tangla Sub Post Office, inquired about the genuineness of 12 e-MOs, purportedly issued from Beltola Sub-Post Office and on finding something fishy about it, the applicant asked the said SPM of Tangla Sub Post Office, to stop the payment and reported the matter to the higher authorities. The Department then got the matter enquired into by the Inspector of Posts, Guwahati East Sub-Division, Ulubari who submitted a Preliminary Enquiry Report dated 20.10.2011 to the Senior Superintendent of Post Offices, Guwahati Division. The Central Bureau of Investigation (CBI) then investigated into the matter on the basis of F.I.R No.RC-017 2011A 0016 dated 15.12.2011, registered as Special Case No.1/13 in the Court of the Special Judge, CBI, Assam at Guwahati and detected a fraud by siphoning of e-MOs money and calculated the loss to be Rs. 10,26,900/- from Beltola Sub-Post Office. After investigation , the CBI submitted a

Final Report dated 31.12.2012 against Shri Hari Kanta Kalita, former Sub Post Master of Basistha Sub-Post Office, Md.Nazrul Islam S/O Md.Jamshed Ali and Md.Iftikar Hussain S/O Md.Khurshid Ali as accused persons. According to the applicant the CBI did not find any evidence of the applicant deriving any pecuniary benefit from the fraudulent transactions and did not arraign her as an accused but merely suggested that appropriate departmental action may be taken against her.

The applicant on 08.5.2012, was transferred to Bamunimaidan Sub Post Office. The applicant received Memorandum No.F-31/11-1/Beltola dated 17.04.2012 issued by the Senior Superintendent of Post Offices, Guwahati Division. She was informed that an inquiry was initiated against her under Rule 14 of the CCS(CCA) Rules, 1965, alleging that during the period from 01.04.2011 to 17.10.2011 the applicant issued and authorised , on various dates, bogus e-MOs in violation of provisions and department incurred loss of Rs.10,26,900/- The applicant further alleged that vide letter No.F3-1/11-12/Beltola dated 05.02.2013, whereby she was placed under suspension, that is after one year four months of the initiation of the departmental proceedings. The applicant further submitted that vide letter No.F3-1/11-12/Discy/L Patrnabish dated 08.04.2013 she was

informed that the disciplinary authority has cancelled the charge memorandum issued under Memo No.F-3-1/11-12/Beltola dated 17.04.2012 as the same was not based on actual facts, without prejudice to issue a subsequent charge memorandum. Accordingly, on 03.05.2013 and 04.05.2013 , the applicant received 3 documents from the Senior Superintendent of Post Offices, Guwahati Division.

5. Vide Memorandum No.F3-1/11-12/Discy/L.Patranabish dated 01.05.2013 the departmental proceedings were initiated against the applicant under Rule 14 of the CCS(CCA) Rules, 1965, alleging that she had appointed one outsider named Md.Nazrul Islam to help her in the daily work at Beltola Sub Post Office without prior approval from the competent authorities and this has resulted in a loss of Rs.10,26,900/-. Further in the same memorandum it was also stated that from 22.9.2010 to 05.05.2012 she allowed one GDS packer named Sri Rabin Kalita, to close the office at the end of day in her absence with duplicate keys. It was also alleged that the applicant had given computer password to the said Md.Nazrul Islam which had resulted in a loss of Rs.10,26,900/-.

6. Vide another Memorandum No.F3-1/11-

12/Discy/L.Patranabish dated 01.05.2013 another enquiry was started under Rule 14 of the CCS (CCA) Rules, alleging gross negligence in discharging her duties which resulted in a loss of Rs.10,26,900/-and by the third letter No.F1/Review Committee/Suspension Cases/04-05/part-II dated 01.05.2013 her suspension was further extended by ninety days.

7. Applicant submitted her written statement of defence dated 16.08.2013 to the Memorandum No.F3-1/11-12/Discy/L.Patranabish dated 01.05.2013. According to the applicant she submitted an application on 19.8.2013 that the two proceedings initiated under Rule 14 and 16 of the CCS (CCA) Rules 1965 be merged. However, the respondents vide letter No.F3-1/11-12/LPatranabish dated 23.8.2013 and 28.8.2013 appointed a Presenting Officer and an Inquiry Officer for the departmental proceeding under Rule 14 of the CCS (CCA) Rules, 1965. The Inquiry Officer submitted his Inquiry Report dated 08.01.2014 to the disciplinary authority and the same was given to the applicant vide letter No.F3-1/11-12/Discy/L.Patrnabish dated 28.1.2014 and she was asked to submit her representation on the Inquiry Officer's report within 15 days. The applicant submitted a representation dated 10.02.2014 on the said Inquiry Report. Vide order No.F3-1/11-12/L.Patranabish dated 08.04.2014 issued by the Senior Superintendent

of Post Offices, Guwahati Division, the Disciplinary authority imposed penalty upon the applicant. The applicant filed an appeal dated 07.06.2014 before the Director of Postal Service (HQ) Assam and the Director of Postal Service passed an order under memo No.Staff/9-214/2014 dated 05.09.2014.

8. According to the applicant under Rule 16 of the CCS(CCA) Rules, 1965 the applicant was imposed with a penalty of recovery of Rs.4,00,000/- in 44 monthly instalments from the pay and allowances of the official w.e.f. September 2013. The applicant had preferred an appeal against the same which was disposed of vide order No.Staff/9-183/2014 dated 4.7.2014. According to the applicant the enquiry did not prove that she had given her computer password to Md.Nazrul Islam, the prime accused in fraud. According to the applicant the computer pass words can be hacked by others and such action is an offence under Section 66 of the Information Technology Act, 2000. According to the applicant the System Manager, Guwahati Division who was in charge of the safety and security of computer systems used to assign the passwords. According to the applicant he was aware of the engagement of outsider in the post office of the applicant. According to her if it was not acceptable practice, the said systems Manager ought

to have immediately stopped and reported the matter to the higher authorities. According to the applicant the Systems Manager is equally responsible and liable for the fraud and singling out the applicant for the same is highly discriminatory, biased, arbitrary and unfair. The applicant further submitted that the superior officer has subsequently realised the paucity of staff in Beltola Sub-Post Office and appointed 2 Postal Assistants in addition to the Sub-Post Master. According to the applicant had the superior authority in the postal department heeded to the requests of the applicant to appoint additional staff in the said sub-Post Office, the fraud would not have occurred. According to the applicant the fraud took place in 2 sub post offices in Basistha Sub-Post Office and Beltola Sub-Post Office clearly bringing out the fact that the fraud took place due to some anomaly in the system and not merely due to any omission on the part of the applicant. Applicant further emphasized that the MPCM reports and daily summary are sent to the GPO for verification, audit and supervision. According to the applicant had the GPO diligently carried out their part of duties, the fraud could have been detected at a very early stage. According to the applicant she has been singly held responsible for the fraud which is arbitrary, uncalled for and liable to be set aside and quashed.

9. The applicant filed another O.A. No.427 of 2014 seeking following reliefs:

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petitioner and that no further recovery be made from her salaries.”

Since the issues underlying the two O.As are similar, therefore, both O.As are being disposed of by a common order.

10. The respondents filed the written statement and denied the averment made in the O.A. unless admitted or supported by documents.

11. Respondents submitted that while the applicant working as the SPM (Sub Postmaster of the Beltola S.O. w.e.f. 22.9.2010 to 05.05.2012, 202 (two hundred two) Nos. of bogus e-MOs with total value of Rs. 10,26,900(Rupees ten lakhs twenty six thousand and nine hundred) were issued on various dates. Out of the total amount of Rs.10,26,900.00, an amount of Rs.4,48,000.00 only has been recovered from the payees. Respondents further submitted that payment of 19 e-MOs amounting to Rs.93,000/- could be stopped from being paid. Therefore, Rs. 4,85,900.00/- were net loss to the department. According to the respondents the applicant has committed irregularity by engaging one outsider named Md.Nazrul Islam without prior approval from the competent authority which ultimately resulted in a total loss of Rs.10,26,900/- to the department. Accordingly, the

Disciplinary proceedings were initiated against the applicant and she was also proceeded against for recovery of Rs. 10,26,900/-. According to the respondents, the applicant used to pay Nazrul Islam from her own pocket and gave him computer password to do all the computer works of Beltola Post Office. According to the applicant another disciplinary proceeding under Rule 14 has been initiated against the applicant for engaging an outsider to hep her without approval from the competent authority and handing over duplicate key to the GDS Packer vide office Memo No.F3-1/11-12/Discy/L. Patranabish dated 01.05.2013. On conclusion of the above proceedings she was awarded penalty of reduction of pay to a lower stage in the time scale of pay for a period not exceeding 1 year with cumulative effect, she was penalised recovery of Rs.85,900/- to be recovered in 43 instalments. Respondents further submitted that the department has handed over the case to CBI for proper investigation and according to investigation made by the CBI authority, a huge fraud occurred due to negligence on the part of the applicant and recommended RDA Major penalty against the applicant vide CBI(ACB), Guwahati Memo No., RC 017 2011 Aoo16 RC.16(A)/2011-GWH/6998 dated 31.12.2012. According to the

respondents the applicant preferred two appeals before the appellate authority for the punishments imposed upon her under both Rule-16 and Rule -14. The appellate authority decided these appeals of the applicant on 04.7.2014 and 05.9. 2014 respectively, without modifying the punishment imposed upon her by the disciplinary authority.

12. The respondents also controverted the contention of the applicant in para 4.3 of the O.A. by submitting that the applicant herself had requested the administration to post her in the vicinity of her house as it will be convenient for her to look after her child. The Department considered her request sympathetically and posted her at Beltola.

Respondents further submitted in reply to para 4.7. of the O.A., that as per instruction of C.O., Guwahati vide letter NO.VIG/SPE-22/2012 dated 25.03.2013 , the aforesaid memo was dropped vide this office letter No.F3-1/11-12/Discy/L.Patranabish dated 08.04.2013. Respondent further clarified that the applicant was proceeded under 2 memo of charges separately, one for engaging outsider to help her in daily work at Beltola SO without prior approval of the competent authority and another charge was for handing over the duplicate key of

the office to the DGS Packer unauthorisedly.

13. Respondents further controverted the applicant's plea of lack of experience as the applicant has worked in Guwahati GPO and Assam Sachivalaya MDG and both these offices are fully computerized. So, lack of experience in computer cannot be acceptable. Respondents further clarified that under Rule 16 she was charged for not following the departmental rules while rule 14 she has been charged for engaging an outsider to help her without approval of the competent authority and for handing over the duplicate key to the GDS packer. The respondents further emphasised that in para 16 & 17 of her representation dated 10.2.2014, the applicant herself has submitted that she engaged one outsider named Md.Nazrul Islam. The respondents further clarified that when the applicant was working as SPM, Beltola SO, one Postal Assistant was kept attached at Beltola, due to work load of the office. So her allegation that request for staff was not considered by the superior authority is not correct. Respondent further emphasised that the fraud was committed because of negligence of duty on the part of the applicant has already been proved in Departmental and CBI investigation. Therefore, she cannot be exonerated. Respondents further emphasised that incidence of fraud

occurred not for the lack of training of the applicant but due to her casual approach and lack of seriousness in the work.

14. The applicant filed rejoinder and reiterated the submission of double jeopardy for the same misconduct the averments made in the O.A.

15. Pleadings being complete. The case was heard on 25.7.2016. Both the lawyers argued variously on the lines of submissions made in the pleadings.

16. On the basis of material available on record the pleadings and arguments of the rival parties, the following observations can be made:-

1) The following paragraph of the CBI Report in Case No.1/13 is extracted below:-

“During investigation no evidence either in the form of oral or documentary could be found to establish that Smt. Lipi Patranabish, Sub-Post Master, Beltola Sub-Post Office, Beltola, Guwahati, had taken any pecuniary benefit from the defrauded e-MO transaction. Hence, no action is recommended against her, but for lapses on her part for engaging Md. Nazrul Islam in the Post Office without taking any approval from the Head Post Office and giving her User ID and Password to work in the computer for booking of Speed Post, Parcel, E-MO to an outsider Md. Nazrul Islam, a recommendation is being sent to her department to her department

to initiate RDA Major Penalty against her for the commission and omission committed by her."

2.) The following portion from the written

statement of defence of the applicant as

supplied with the O.A as Annexure A-11 Page

No.2 last but one para is being extracted below:-

"That Madam, with regard to the allegations levelled against me under Article 1, that I engaged one outsider named Md.Nazrul Islam to help me in daily work at Beltola Sub Post Office without prior approval from the competent authority. In this regard, the undersigned states that while coming across the transfer and posting order, as it was known in the department that the Beltola Sub Office was a busy office with loads of works accentuated with shortage of staffs in the said office, I requested the authorities not to post me at the said office at that stage of motherhood, but there was no heed to my request/grievance and was unnecessarily subjected by the authorities to take charge under compelling situation. Under such circumstances I took over charge as SPM, Beltola Sub-Post Office. At the time of taking over charge, my predecessor Smt. Kankana Das introduced me to one Nazrul Islam whom she told me she had engaged in her personal capacity to help her run the office. She also told me that she paid him Rs.6000/- per month from her own pocket. She advised me to continue the engagement of Md Nazrul Islam."

3. The paragraph 6 of the written statement

which controverted that the applicant was

transferred on her own request for her

convenient to look after her child is extracted below:-

“That with regard to the statements made in paragraph 4.3 of the O.A., the deponent begs to state that the petitioner while stating the facts has tried to suppress the truth. She herself had requested the administration to post her in the vicinity of her house as it will be convenient for her to look after her child. The Department considered her request sympathetically and posted her at beltola.(Her request letter is enclosed as Annexure-A). The case was inquired at the Department level and it is found that e-MOs were issued electronically from Beltola SO to the tune of Rs. 10,26,900/- by using Departmental Infrastructure by Md.Nazrul Islam and Md.Iftika hussain who are not the employees of the department. On enquiry it was found that those 2 outsiders used the Departmental password and booked and transmitted the e-MOs . The applicant shared the Secret password with these 2 outsiders who are offenders in the case and in the course of CBI investigation also she was identified as subsidiary offender. Though the petitioner is not the beneficiary but it was due to her negligence, the Department has been put under embarrassment and incurred huge loss by the department.”

4) The applicant has not been able to point out any flaw in conduct of departmental proceedings whereby the Court could conclude that she has not been given enough opportunity to defend herself. Therefore, the submission of the respondents that they have

proceeded against the applicant as per law acquires weight.

17. In view of the above, observations, there is no merit in the application and the Court does not find any reason to intervene against the penalty imposed upon the applicant.

However, keeping in view that the above, incidence happened just after the applicant returned from maternity leave, it will suffice to observe that in case the applicant finds that the instalments of recovery are too burdening she may make an application before the competent authority to enhance the number of instalment thus decreasing the monthly deduction to a more acceptable level.

18. The application is accordingly, disposed of. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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