

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 040/00377 of 2014

Date of Order: This the Day of June 2016.

**HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER
HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER**

1. Sri Thagiram Nath
S/o Late Sona Ram Nath
Milanpur (Upahupara), P/O Mongaldoi
Dist-Darrang Assam.
P.O.Azara, Dist-Kamrup(M) Applicant

By Advocate Mr. A.K.Roy,
-AND-

1. The Union of India
Represented by the Secretary,
Department of Post, Govt of India
New Delhi

2. The Chief Postmaster General
Assam Circle, Meghdut Bhavan
Guwahati-781001

3. Director of Postal Services (HQ)
Assam Circle, Meghdut Bhavan
Guwahati-781001

4. Sr.Superintendent of Post offices
Guwahati Division, Guwahati-781001 Respondents

By Advocate Ms.M.Bhattacharjee Addl.C.G.S.C.

ORDER**Per Mohd Haleem Khan, Administrative Member:**

Sri Thagiram Nath Son of Late Sona Ram Nath Resident of Milanpur (Upahupara), P.O.Mongaldoi, has filed this application under Section 19 of the Administrative Tribunals Act 1985 seeking following reliefs:-

“8.1 To set aside and quash the Memorandum of charges dated 27.08.2009 (Annexure- A) ; order dated 29.11.2013(Annexure-D) Passed by the Sr. Superintendent of Post Offices and order dated 14.10.2014 (Annexure-F) passed by the Director of Postal Services.

(ii) To direct the respondent to return the deducted amount of Rs.60,000/- (Rupees sixty thousand) only which has been deducted from his pay.

(ii) To pass any other order or orders as Your Lordships may deem fit and proper.”

2. Briefly the applicant joined service on 05.07.1979 as Postal Assistant and thereafter has been promoted to the post of Postmaster. When the applicant was working as Assistant Postmaster (Accounts) at Guwahati GPO, he received memorandum of charges issued by the Senior Superintendent of Post Offices dated 27. 08. 2013 (Annexure-A), which according to him was in violation of the Central

Civil Services (Classification, Control and Appeal) Rules 1965 (CCS & CCA) Rules. He however, submitted an application to the Disciplinary Authority on 04.09.2013 requesting him to allow the inspection of certain documents so that he could file proper reply. But the said authority refused his prayer vide a letter dated 31.10.2013 (Annexure-B) stating that inspection of records/documents is not mandatory as per relevant rule and asked him to submit reply within ten days. The applicant accordingly submitted his defence reply dated 19.11.2013 giving reasons in details and denied the allegation against him as according to him charges levelled against the applicant are baseless. According to the applicant without holding any regular enquiry, the disciplinary authority passed order dated 29.11.2013(ANNEXURE-D) by imposing the penalty of recovery of Rs.60,000/- (Rupees sixty thousand) only in 30 monthly instalments @ Rs.2000/- p.m.from the pay and allowances of the official w.e.f. December, 2013 payable in Janauary, 2014. The applicant preferred an appeal dated 16.01.2014 (ANNEXURE-E) before the Director of Postal Services (HQ). However, the appellate authority passed order vide Memo No.Staff/9-196/2014 dated 14.10.2014 disposed of the appeal without any modification of the punishment orders issued by the disciplinary authority and ordered recovery of Rs.60,000/- from his salary. The applicant's

contention is that though the disciplinary authority issued the memorandum of charge under Rule 16 CCS (CCA) Rules 1965 the punishment order has been passed under Rule 11 of CCS (CCA) Rules. The applicant contended that the orders passed by the respondents are legally not sustainable and therefore, the O.A. be allowed with cost.

3. The respondents filed written statement and submitted that unless specifically admitted in the written statement or supported by documents all averments made by the applicant be considered as denied. According to the respondents the charges framed against the applicant are proper and in accordance with the provisions of Rule 16 of CCS(CCA) Rules 1965. The applicant was found guilty of not following the Departmental procedures, while working as Assistant Postmaster (Accounts) at Guwahati GPO. Because of not working as per guidelines and laid down procedure he has given scope to the Assistant Postmaster (Accounts) at Guwahati GPO to misappropriate of Govt. money to the tune of Rs.3,20,986/- from SB deposits given by the members of general public. The Respondents further submitted that the applicant was found a subsidiary offender and has been awarded minor punishment. Therefore, holding of the regular enquiry was not required. The respondents specifically submitted that the

petitioner has not demanded a regular enquiry either at the appropriate stage. The respondents further submitted that this is as per the DOPT's O.M. 11012/18/85-estt.dated 28.10.1985. The respondents also clarified that though the applicant was charged under Rule-16 of CCS (CCA) Rules, 1965 however, he was given minor penalty as per Rule-11 of CCS (CCA) Rules, 1965. The respondents also controverted the submissions of the applicant in para 5 (iv) of the original Application by submitting that Sub Rule 23 (B) of Rule 11 of CCS (CCA) Rules, 1965 provides that penalty of recovery can be awarded in cases where it has been established that the negligence or breach of orders on the part of the Govt. servant has led to the loss to the Department.

4. The respondents also emphasised that the department has suffered a loss Rs. 3,20,986/- lakh. The respondents also denied the submission made in para 5 (vi) of the original application in regard to violation of Article 14, 16 and 21 of constitution of India and emphasised that the disciplinary authority i.e. the Sr.Superintendent of Post offices, Guwahati Division is empowered to issue punishment order as per Rule-11 of CCS (CCA) Rules, 1965. Both the disciplinary authority and appellate authority have acted as per Rules, therefore, the O.A. deserve to be dismissed.

5. The applicant have not filed any rejoinder. Accordingly, the case was heard on 04.05.2016.

Mr.A.K.Roy, learned counsel for the applicant made submissions variously on the lines of the averments made in the application. Ms. M.Bhattacharjee, learned Addl.C.G.S.C. for the respondents however, emphasised that the applicant has been given lesser penalty as he has not specifically been charged for fraud but dereliction of duties. Had the applicant brought the matter to the notice of the superiors, in time, fraud would have been avoided.

6. The learned counsel for the Respondents also emphasised that the respondents have followed the procedure for imposing minor penalty as provided in Rule 11 of CCS (CCA) Rules 1965. The applicant has not been able to point out any flaw either with regard to procedure or relating to facts.

7. Keeping in view the submissions of the rival parties , the pleadings and material on record , it has been noted that the main plea taken by the applicant against the memo of charges is that the same is not specific. The same is extracted below:-

“Statement of imputation of misconduct or misbehaviour on which action is proposed to be taken under Rule-16 of CCS(CCA) Rules,

**1965 against against Sri Thagiram Nath,
APM(Accounts) ,Guwahat GPO.**

That Sri Thagiram Nath, APM(Accounts) Guwahati GPO while working as Postmaster, Guwahati University Head Office w.e.f. 01.06.2006 to 02.11.2007 was required to verify the reasons for retention of excess cash by the SOs personally and was also required to report the matter to Divisional Superintendent immediately, furnishing full facts as per Rule 59 of Postal Manual Volume VI Part-III. During the period from 16.01.2006 to 06.08.2009, Sri Paresh Chandra Deka, Ex SPM, Bezera SO was retaining excess cash regularly against the maximum authorized limit of Rs.6000/- But, Sri Thagiram Nath did not take any action to remove excess cash from Bezera SO and also failed to exercise the provisions of aforesaid Rule in true spirit resulting which Sri Paresh Chandra Deka was emboldened to misappropriate Government money to the tune of Rs.3,20,986/- and the Department has to sustain such huge loss.

That Sri Thagiram Nath during the above mentioned period, was also required to see that the SPM's monthly report are received punctually i.e on the 1st of the month and was required to forward the same duly signed and stamped without delay to the Superintendent as Per Rule 60 (3) of Postal Manual Volume-VI Part III. During the period from 16.01.2006 to 06.08.2009, Sri Paresh Chandra Deka, Ex SPM, Bezera SO did not submit SPMs monthly report since December 2006. But Sri Rhagiram Nath did not supervise the matter and failed to exercise the provisions of aforesaid Rule in true spirit, resulting which the retention of excess cash by the EX-SPM could not be monitored at Divisional level and Sri Paresh Chandra Deka, Ex-SPM was emboldened to misappropriate Government money to the tune of Rs.

3,20,986/-and the Department has to sustain such huge loss.

By the above acts, Sri Thagiram Nath, APM (Accounts), Guwahati GPO displayed serious laxity as well as contributory negligence in discharging his prescribed duties and thus violated the provisions Rule-59, Rule-60(3) of Postal Manual Volume-VI (III) and Rule -58 of FHB Volume-1 (Swamy's Compilation) and therefore, failed to maintain devotion to duty as required under Rule 3(1) (ii) of CCS (Conduct) Rules, 1964"

This Court is not able to find anything vague in the charge as served as the applicant and reproduced above. The order of the disciplinary authority dated 29.11.2013 have dealt in detail the issues raised by the applicant in a very objective manner. The relevant portion of the order dated 29.11.2013 reads as under:-

"OBSERVATIONS AND FINDINGS

I have gone through the representation dtd.19.11.2013 submitted by Sri Thagi Ram Nath with reference to the charges brought against him with the application of mind together considering all aspects cited in the representation of the official and observed the following-

The representation submitted by the official is not satisfactory and also not acceptable at all.

In course of CLI, Sri Thagi Ram Nath has been identified as subsidiary offender into the fraud case of Bezera SO committed by Sri Paresh Ch. Deka, Ex-SPM, Bezera SO to the

tune of Rs.3,20,986.00 (Rupees Three Lakh Twenty thousand nine hundred eighty six only) and he was charge sheeted due to non performing his prescribed duties as per Rule 59 and Rule 60(3) of Postal Manual Volume-VI Part .III.

The argument made by the charged official is not based on records. For instance, I have examined few of SO daily accounts of Bezera SO for the dates mentioned below and observed the following remarks noted against each date.

Sl. No.	Name of documents with date	Cash in hand (in Rs)	Remarks
1.	Bezera SO daily account dtd.02.07.07	98750.20	1)Retained excess cash without liabilities. 2)ECB memo not submitted 3)No instruction found given by the PM, G.U.HO.
2.	Bezera SO daily account dtd. 03.07.07	64094.20	-do-
3.	Bezera SO daily account dtd.04-07-07	46462.20	-do-
4.	Bezera SO daily Account dtd 05.07.07	42033.45	-do-
5.	Bezera SO daily account dtd.06-07-07	117515.20	-do-
6.	Bezera SO daily account dtd.07-07-07	106278.20	1)Retained excess cash with liabilities 2) ECB memo not

			submitted 3)No instruction found given by the PM,G.U.H.O
7.	Bezera SO daily account dtd 09-07-07	127904.20	-do-

Thus, it is clear that Sri Thagi Ram Nath did not give instruction to remove excess cash from Bezera SO on the aforesaid SO daily account and thereby failed to exercise the provisions of Rule 59 of Postal Manual Vol.VI, Part-III in true spirit resulting which Sri Paresh Chandra Deka was emboldened to misappropriate Government money to the tune of Rs.3,20,986/- and the Department has to sustain such huge loss. Further, Thagi Ram Nath in his representation dtd.19.11.2013 enclosed a copy of diary of O/S(Cash) dtd.02.07.07 wherein it is mentioned that O/S(cash) has visited the Bezera SO on 02.07.07 but he did not remove the excess cash retained at Bezera SO on the date and Sri Thagi Ram Nath also measurably failed to notice the same and he did not take action to remove the excess cash on the corresponding dates also as discussed above.

In view of the above, it is considered that Sri Thagi Ram Nath while working in the aforesaid office during the aforesaid period, exhibited gross contributory negligence towards performing her prescribed duties as Postmaster, Guwahati University HO and thus violated the provisions of Rule 59 and Rule 60(3) of Postal Manual Volume-VI Part III and Rule-58 of FHB Volume-1 (Swamy's Compilation) and thereby failed to maintain devotion to duty in contravention to Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964 and therefore, he deserves severe punishment. But, considering his length of service rendered to this Department, I pass the following order to meet the end of justice.

: Order :

I, Dr. Alice K.Vizo, Sr.Superintendent of Post Offices, Guwahati Division, Guwahati in exercise of powers conferred under Rule-12 of CCS (CCA) Rules, 1965 do hereby award Sri Thagi Ram Nath, Postmaster, Guwahati University HO the penalty of recovery of Rs.60,000/- (Rupees Sixty thousand) only in 30 (Thirty) monthly instalments @ Rs.2000/- (Rupees Two thousand) only per month from the pay and allowances of the official w.e.f. December, 2013 payable in January, 2014.

Sd/-

(Dr.Alic K.Vozo)

Senior Superintendent of Post Offices, Guwahati Division, Guwahati, 781001.”

8. It was also noted by the Court that against the order dated 29.11.2013 the applicant filed appeal on 16.11.2014 before the appellate authority. On 14.10.2014 the appellate authority has passed detailed order and deliberated the issues raised by the applicant in his appeal while upholding the punishment, the Appellate Authority has held as under:-

“After careful consideration of all the facts pertinent to the case, I have come to the conclusion that:-

(a) It has been proved beyond any reasonable doubt that the lapses on part of the official had facilitated the principal

offender to defraud the people , and the Department of Posts.

(b) As a public servant, the official cannot evade the responsibility of his lapses, and has to compensate the Government to the extent of his contributory lapses.

(c) Under the circumstances, the Disciplinary Authority has acted without any prejudice or bias, and has merely acted in a manner befitting the case.

Therefore, I RIJU GANGULY, Director Postal Services (HQ), Assam Circle, Guwahati find no reason to interfere with the decision of the Disciplinary Authority, and dispose off the appeal without any modification of the punishment orders issued by the Disciplinary Authority.

(Riju Ganguly)

Director Postal Services (HQ)
O/O the Chief Postmaster General
Assam Circle: Guwahati-781001”

9. In view of the above detailed orders, this Court does not find any merit the application. Accordingly, application is dismissed. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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