

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**Original Application No.21/870/2015**



**Hyderabad, this the 5<sup>th</sup> day of February, 2020**

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

P. Reddy Sekhar @ P.R. Anjappa,  
 S/o. late Sri P. Durgaiah,  
 Aged about 60 years, Postal Assistant,  
 R/o. B-103 (H. No. 37-46),  
 J.J. Nagar Colony, Neredmet,  
 Sainikpuri, Secunderabad – 500 094.

... Applicant

(By Advocate: Mr. K. Siva Reddy)

Vs.

1. The Union of India,  
 Department of Posts,  
 Dak Bhavan, Sansad Marg,  
 New Delhi, rep. by Director General of Posts.
2. The Chief Postmaster General,  
 Andhra Pradesh Circle, Hyderabad – 500 001.
3. The Senior Postmaster,  
 Secunderabad Head Office,  
 Secunderabad.

... Respondents

(By Advocate: Mr. K. Venkateswarlu, Addl. CGSC)

***ORDER (ORAL)***  
***{As per B.V. Sudhakar, Member (Admn.)}***

2. The OA is filed for regularising the period of suspension from 24.06.1986 to 12.01.1987, which was rescinded to by the respondents.



3. Brief facts which require mention are that the applicant, while working as a Postman, was suspended for misconduct and misbehaviour. Later, the suspension was revoked on 13.01.1987. Disciplinary proceedings were initiated under Rule 16 (1) (b) of CCS (CCA) Rules and a minor penalty was imposed. As a minor penalty was imposed, applicant represented on several occasions without the desired result and hence the OA.

4. The contentions of the applicant are that the action of the respondents is violative of the Fundamental Rules 53 and 54-B as well as the DOPT Memos issued on 22.10.1964 and 03.12.1985. Besides, the decision not to treat the suspension period as duty is against law.

5. In contrast, respondents assert that the Fundamental Rules quoted by the applicant are not applicable to his case as well as the DOPT Memos referred to. Respondents assert that suspension need not essentially be followed by a major disciplinary proceedings and that the disciplinary authority has the discretion to initiate minor disciplinary proceedings under Rule 16 of the CCS (CCA) Rules, 1965. Action of the respondents in not treating the suspension period as not on duty is as per rules.

6. Heard learned both sides counsel and perused the pleadings on record.



7 (I) It is a matter of record that the applicant was suspended for misconduct and misbehaviour followed by issue of Rule 16 (1) (b) charge sheet, under CCS (CCA) Rules, leading to imposition of a minor penalty of withholding the next increment for a period of one year without cumulative effect. The issue under dispute is how to treat the period of suspension from 24.06.1986 to 12.01.1987, as duty or otherwise. In this regard, a reference to the Articles of Charge reproduced hereunder, would be beneficial to arrive at an equivocal appreciation of the case:

#### "ARTICLE – I

*That Sri P. R. Anjappa while working as Postman, Sec'bad failed to sign in the register of money orders received (MO-3) in acknowledgement of 32 money orders given to him on 13.6.86 for effecting payment to the respective payees, although he received them and entered their particulars in his postman book (ms-27) as required by Rule – 706(1) of the P & T Man. Vol. VI Part-III.*

*That he failed to return to the PA concerned the money orders he was unable to pay and obtain his initials in token of having done so as required by Rule 696(2) ibid.*

*And that he failed to record remarks stating why the money orders entrusted to him were not paid in the postman's book as required by Rule -711(1) ibid.*

#### ARTICLE – II

*That Sri P. R. Anjappa did not wilfully avail the services of Sri K. Kasinathrao, Sorting Postman arranged as escort by the APM (Delivery) although he was specifically informed of the same by Sri M. Premdas, P.A. (Delivery), that he (Sri P.R. Anjappa) asked him (Sri Kashinathrao) to go away even when the latter approached him for the purpose of escorting, that*

*he failed to take the required cash for effecting payment of money orders entrusted to him for payment on the plea that the ATR, Sri Sharfuddin Khan did not give him the required cash in the absence of escorting official and thus he failed to make any efforts to effect payment of the MOs received by him and thereby he failed to maintain devotion to duty as required of him by Rule – 3(1)(ii) of CCS (Conduct) Rules, 1964.*



### ARTICLE - III

*That Sri P.R. Anjappa, Postman, Sec'bad HO did not write remarks for non-delivery briefly and legibly on the address side and did not note his dated initials and his beat No. on the following three regd. letters entrusted to him for delivery on 13.06.1986.*

- i) *RL 1549 dtd. 6-6-86 of Sri/ Ramnagar, Rajahmundry addressed to M/s. Data Processing Services, P.G. Road, Sec'bad -3.*
- ii) *RL 1191 of Sec'bad HO addressed to Amar Petrol Suppliers, Sec'bad -3.*
- iii) *RL 224 of Netajinagar, Calcutta addressed to Smt. B. Gupta, Taxila Apartments, Sec'bad -3.*

*Except on the first day of their issue and thus failed to comply with the provisions of Rule 711(1) of the P & T Man. Vol. VI Part-III and that he was negligent in effecting prompt delivery of the RLs entrusted to him by recording false remarks and thereby failed to maintain absolute devotion to duty as required of him by Rule 3(1) (ii) of the CCS (Conduct) Rules, 1964. ”*

II. A cursory glance of the charges does indicate that the charges are not grave as to warrant suspension. By suspending an official, the respondents would not be able to seek services from the official but would have to pay half the salary during the suspension period. Hence, DOPT has been, time and again, emphasising that necessary caution has to be exercised in suspending officials. However, respondents claim that the applicant has been suspended on the presumption that his continuance in the office would subvert discipline. The action of the respondents is in tune with clause (ii) of DOPT instructions dated 22.10.1964. The applicant stating that as per the cited OM, suspension should be resorted to in grave and serious cases and not for others, is not supported by the contents of the OM of 1964

under reference. The relevant OM is extracted hereunder to rebut the contention of the applicant.



***“Guiding principles for placing a Government servant under suspension –***

*It has been decided that public interest should be guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority, should have discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory:-*

- (i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);*
- (ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;*
- (iii) Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as there is public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;*
- (iv) Where allegations have been made against the Government servant and preliminary inquiry has revealed that a *prima facie* case is made out which would justify his prosecution or is being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.*

**NOTE:**

- (a) In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established.*
- (b) Certain types of misdemeanor where suspension may be desirable in the four circumstances mentioned are indicated below:-*
  - (i) any offence or conduct involving moral turpitude;*
  - (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;*
  - (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;*
  - (iv) desertion of duty;*
  - (v) refusal or deliberate failure to carry out written orders of superior officers.*

*In respect of the types of misdemeanor specified in sub clauses (iii) and (v) discretion has to be exercised with care.*

*[MHA OM No. 43/56/64-AVD dated the 22nd October, 1964]"*



III. The other contention of the respondents is that as per DoPT O.M. No. 11012/15/85-Estt (A) dated 03.12.1985, in cases where an employee is suspended, resulting in major disciplinary proceedings being initiated ending in imposing a minor penalty, the suspension period has to be treated as duty. As the applicant's suspension followed by a minor disciplinary proceedings (Rule 16(1)(b)) led to imposition of a minor penalty, he is ineligible to get the suspension period treated as duty. Therefore, the OM of 1985 under reference is not applicable. The said OM is extracted hereunder, as it is the fulcrum on which the entire case hinges upon.

*"(8) Period of suspension to be treated as duty if minor penalty only is imposed. The undersigned is directed to invite attention to this Department, OM No. 43/56/64-AVD, dated 22-10-1964, containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a *prima facie* case made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B."*

The OM without mincing words asserts that suspension should be resorted to only when the disciplinary proceedings would eventually lead to awarding penalties of compulsory retirement, removal or dismissal. The respondents are empowered to suspend the official as per memo dated 2.10.1964 but as per memo of 03.12.1985 such suspension should culminate in imposition of a major penalty. In contrast the penalty imposed on the applicant is a minor one. Therefore the very decision of suspending the applicant is violative of DOPT memo referred to, since it was not followed by a major penalty.

IV. Turning attention to the other contention of the respondents that suspension followed by major disciplinary proceeding ending in minor penalty, would only permit treating the suspension period as duty, it has to be said that such an argument forwarded is not in the realm of reason. The spirit of the OM dated 3.12.1985 is to evaluate the issue based on the final outcome of the disciplinary proceedings ie imposition of a minor penalty. It is not as to whether what type of disciplinary proceedings were issued. The common elements which are of utmost importance, as per the DOPT Memo of 1985, are the suspension and the final penalty. It is these parameters which decide the issue and are fully complied in respect of the case of the applicant. Even when in cases where major disciplinary proceedings were initiated after suspension resulting in imposition of minor penalty and the suspension period gets treated as duty, then it is all the more appropriate to treat suspension period for initiating minor disciplinary proceedings and ending up in awarding a minor penalty. Major disciplinary proceedings



refer to matters of grave concern and even in such matters, DOPT has felt it appropriate to consider the suspension period as duty and therefore in cases where minor disciplinary proceedings end in a minor penalty, it requires no further clarification that it has to be treated as duty. In case the respondents had a doubt they could have sought a clarification from DOPT. Without doing so they went ahead against the very spirit of the DOPT OM dated 3.12.1985 by treating the suspension period as not on duty. The respondents tried to be too technical rather than appreciating the import of the instructions of DOPT memo being discussed. It is not out place to state that substantive justice prevails over technical or procedural justice as observed by the Hon'ble Supreme Court in *State, Rep By Inspector of Police, Central Bureau of Investigation vs. M Subrahmanyam*, in Criminal Appeal NO(s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019), wherein it has been held as under:

*“9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.”*

Respondents trying to be hyper technical to decline the request of the applicant will not be of any assistance to them in view of the Hon'ble Apex



Court judgment cited supra. Thus, the action of the respondents is primarily suspending the applicant and secondarily, not treating the suspension period as duty apparently does not syncretise with the DOPT instructions cited supra.



V. Having evaluated the issue under dispute against rules, it is time to turn the spot light on to the aspect of as to whether respondents action was as per law or against. In this regard, Tribunal relies on the decision of the Hon'ble High Court of Delhi in Writ Petition (C) No. 1713 of 1993, dated 30.07.2007 between P.K. Chopra vs. Administrator NMDC, wherein in a similar issue it was held as under:

*"8. The petitioner was suspended from service on August 2, 1991. The order simply stated that he was being placed under suspension in contemplation of disciplinary proceedings against him. It did not indicate whether the proceedings proposed to be held were likely to be for a major or minor penalty. Therefore, when the order of suspension was passed, it was not in contemplation of the respondent that the disciplinary proceedings for imposition of a minor penalty were proposed to be held against him. This decision was taken subsequently on April 3, 1992 when he was issued a memorandum intimating him that inquiry under Section 16 of the CCS(CCA) Rules, 1965 for imposition of minor penalty was proposed to be instituted against him. In this view of the matter, the submission of the learned counsel for the respondent that when the petitioner was placed under suspension, the proceedings for minor penalty were in contemplation has no basis. The decision thereto was taken eight months after the order of suspension was passed."*

Respondents claim that they have suspended the applicant for the reason that his continuance would lead to subversion of discipline but nowhere it was spelt out that their intention is to levy a minor or a major penalty. Such a decision was taken only after Rule 16(1) (b) was issued

subsequent to the action of suspending the applicant. Therefore, the above judgment squarely covers the case on hand. Hence not treating the period of suspension as duty is incongruent to the legal principle laid down by the Hon'ble Delhi High Court.



VI. To sum up, the action of the respondents in not treating the suspension period as duty is neither supported by rules or law as expounded above. Resultantly, the respondents are directed to treat the suspended period from 24.06.1986 to 12.01.1987 as duty with all the consequential benefits.

VII. With the above direction the OA is disposed of, with no order as to costs.

**(B.V. SUDHAKAR )  
MEMBER (ADMN.)**

/evr/