

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/445/2014

Hyderabad, this the 2nd day of December, 2019



***Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

P. Sudhakar, S/o. P. Eswaraiah,
P.A., Mahabubnagar HO,
R/o. H. No. 9-6-51, Raghavendra Colony,
Gadwal, Mahbubnagar.

... Applicant

(By Advocate Mr. M. Venkanna)

Vs.

1. The Union of India, Represented by its Secretary,
Ministry of Communications & IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg,
New Delhi.
2. The Chief Postmaster General,
A.P. Circle, Dak Sadan, Abids,
Hyderabad – 500 001.
3. The Director of Postal Services,
Hyderabad Region,
Hyderabad – 500 001.
4. Superintendent of Post Offices,
Mahabubnagar Division,
Mahabubnagar – 509 001.

... Respondents

(By Advocate Ms.Megha Rani Agarwal, Addl. CGSC)

ORDER (ORAL)
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the notice issued by the respondents on 4.4.2014 proposing to enhance the penalty imposed on the applicant from reduction of pay to that of removal from service.



3. Brief facts, which are to be adumbrated, are that the applicant, while working as Sub Post Master, Uppal Camp Sub post office, was issued a charge sheet on 17.10.2011 under Rule 14 of CCS (CCA) Rules, 1965 with two Articles of charge, for irregularly opening Savings bank accounts without following the KYC (Know Your Customer) norms. Inquiry was conducted and the Inquiry Officer (for short “IO”) has held the charges as proved vide Inquiry report dated 22.07.2013. Based on the inquiry report and the representation of the applicant dt.02.09.2013, Disciplinary Authority vide order dt. 30.09.2013, imposed the penalty of reduction of pay from Rs.10,960/- + GP Rs.2800/- to Rs.8,750/- + GP Rs.2400/- for a period of five years. It was further ordered that the official will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay. Applicant chose not to challenge the penalty order. However, appellate authority issued a memo on 5.2.2014 to call for relevant records and a notice was issued on 4.4.2014 to the applicant for revising the punishment from reduction of pay to ‘removal of service’. Applicant requested to drop the proposal for revising the penalty on 16.4.2014, but being apprehensive of the fact that the appellate authority has made up his mind to revise the penalty, the present OA has been filed.



4. The contentions of the applicant are that the main culprits namely Sri Hanumantha Reddy, Group D, Sri Veeranna Goud, Sri Srinivas Reddy, who were instrumental in committing the fraud were not cited as prosecution witnesses. The SB accounts were opened on 25.8.2010, whereas the KYC norms were circulated on 7.9.2010. There was no malafide intention on the part of the applicant in opening the accounts. The amount of Rs.3,59,500/-, which was defrauded by Sri Hanumantha Reddy and his cohort was recovered and that there is no loss to the department. The applicant did assist the depositors, who were from the rural area, to open the accounts. This can, at best, be termed as irregular but not illegal. Appellate authority has violated Rule 29(1)(v) of CCS (CCA) Rules in issuing the notice to revise the penalty. Applicant has cited the judgment of this Tribunal in OA 549/2009 in support of his contentions.

5. Respondents in the reply statement oppose the contentions of the applicant by claiming that the applicant while working as SPM of Uppal Sub Post Office has committed fraud in encashment of structure compensation cheques from 25.8.2010 to 28.8.2010. On detecting the same, disciplinary proceedings were initiated as per Rules and after the Inquiry Officer held the charges as proved, penalty of reduction of pay with allied clauses in regard to increments was imposed. Appellate Authority invoking Rule 29(1) (v) of CCS (CCA) Rules issued first notice on 5.2.2014, within 6 months of imposition of penalty on 30.9.2013, proposing to enhance the punishment from reduction of pay to removal from service. Further, Sri Hanumantha Reddy and his accomplices were not examined by the Inquiry Officer as they were not cited as prosecution witnesses. The applicant could

have chosen them as defence witness, if he so desired. The I.O. has held that the KYC norms were circulated much earlier and that the applicant was aware of the same. Moreover, as per Rule 23 of Post Office Savings Bank Manual Volume -I postal officials should not fill up application forms etc.



The applicant did not challenge the penalty imposed by the disciplinary authority, which implies that he has agreed with the findings of the I.O. At the stage of review of penalty, questioning the findings of the I.O is incorrect. Thus, based on the above, respondents claim that there is no merit in the OA and hence, it requires to be dismissed.

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

7(I) The applicant was proceeded against on disciplinary grounds for opening savings bank accounts without following KYC norms. Respondents claim that the failure of the applicant in not following the KYC has facilitated the fraudulent encashment of cheques. The Articles of Charge framed against the applicant are as under:

“ARTICLE – I

Sri P. Sudhakar, SPM (U/s), Uppal Camp SO, while working as SPM, Uppal Camp SO from 2-3-2009 to 25-01-2011, irregularly opened SB Joint Account No. 67711, with a balance of Rs. 50/- on 25-08-2010 without observing KYC norms. Further, the said Shri P. Sudhakar, himself filled in SB-3 card in his own hand writing and allowed withdrawal for an amount of Rs.1,20,000/- on 28/08/2010 in violation of Note-I below of Rule 23 of PO SB Manual Volume I and the instructions contained in SB Order No.08/2010 & violated the provision of Rule 33(1)(2) and 33 (3) (c) of PO SB Manual Volume I.

It is therefore alleged that Shri P. Sudhakar, SPM (U/s.), Uppal Camp SO while working as SPM, Uppal Camp SO during the above said period has failed to maintain absolute integrity and devotion to duty and also acted in a manner which is unbecoming of government servant

contravening the provision of Rule 3(1) (i) (ii) (iii) of Conduct Rules, 1964.

ARTICLE – II

Sri P. Sudhakar, SPM (U/s), Uppal Camp SO, while working as SPM, Uppal Camp SO from 2-3-2009 to 25-01-2011, irregularly opened SB Joint Account No. 67712, with a balance of Rs. 50/- on 25-08-2010 without observing KYC norms. Further, the said Shri P. Sudhakar, himself filled in SB-3 card in his own hand writing and allowed withdrawal for an amount of Rs.1,79,882/- and Rs.76,589/- on 28/08/2010 in violation of Note-I below of Rule 23 of PO SB Manual Volume I and the instructions contained in SB Order No.08/2010 & violated the provision of Rule 33(1)(2) and 33 (3) (c) of PO SB Manual Volume I.



It is therefore alleged that Shri P. Sudhakar, SPM (U/s.), Uppal Camp SO while working as SPM, Uppal Camp SO during the above said period has failed to maintain absolute integrity and devotion to duty and also acted in a manner which is unbecoming of government servant contravening the provision of Rule 3(1) (i) (ii) (iii) of Conduct Rules, 1964.”

II. Regular inquiry was conducted and both the charges were held to be proved by the Inquiry Officer. Disciplinary authority, taking into cognizance the Inquiry report and the reply thereof from the applicant, has imposed the following penalty:

“The Pay of the Government servant be reduced from the existing Rs.10,960/- + GP Rs.2800/- in the pay band i.e. Rs.5,200/- - Rs.20,200/- to Rs.8,750/- + GP Rs.2400/- for a period of five years with immediate effect in the pay band i.e. Rs.5,200/- - Rs.20,200/- permanently. It is further ordered that the official will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay.”

III. Appellate Authority invoking Rule 29 (1)(v) of CCS (CCA) Rules, proposed to revise the penalty, by issuing notices on 5.2.2014 and 4.4.2014, on the grounds that the penalty imposed by the Disciplinary Authority was not commensurate to the offences committed by the applicant. Rule 29 of CCS (CCA) Rules reads as under:

“29. Revision

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the Appellate Authority, within six months of the date of the order proposed to be revised; or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary and the Government servant has been given an opportunity of representing against the advice of the Commission:



Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

- (i) the authority which made the order in appeal, or*
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.*



(2) No proceeding for revision shall be commenced until after-

- (i) the expiry of the period of limitation for an appeal, or*
- (ii) the disposal of the appeal, where any such appeal has been preferred.*

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."

As can be seen from the above, Rule 29 of CCS (CCA) Rules states that notice for modifying the punishment has to necessarily indicate the proposed penalty to be imposed so that the Government Servant will get reasonable opportunity to defend himself. Further, the time period permitted to revise the penalty is 6 months from the date of the order of the penalty order. It is to be examined as to whether the Appellate Authority has followed these guidelines. To do so the relevant portion of the notice given to the applicant on 5.2.2014 is extracted here under:

"3. Now, the undersigned proposes to revise the order of punishment under the provisions of Rule 29(1)(v) of CCS (CCA) Rules, 1965 as the punishment inflicted on the said official is found to be not commensurate with the gravity of the misconduct committed by the official. Hence this notice."

It is thus evident from the notice issued to the applicant, that there is no mention of the penalty proposed to be imposed. Besides, no reasons have been given as to why the penalty imposed by the disciplinary authority was inadequate. Unless the penalty proposed to be imposed is indicated, the

applicant will not be able to defend himself effectively. Therefore, the notice issued on 5.2.2014 is invalid since it violates Rule 29(1)(v) of CCS (CCA) Rules.

IV. Coming to the second notice issued on 4.4.2014, the relevant para is hereunder extracted:



“4. Now, the undersigned after having gone through the records of the case, proposes to revise the punishment from “the pay of the government servant be reduced from Rs.10,960/- + GP Rs.2800/- in the pay band i.e. Rs.5,200/- - Rs.20,200/- to Rs.8,750/- + GP Rs.2400/- for a period of five years with immediate effect in the pay band i.e. Rs.5,200/- - Rs.20,200/- permanently. It is further ordered that the official will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay” to that of “Removal from Service”;

The penalty of reduction of pay was imposed by the disciplinary authority on 30.9.2013. Six months time, as prescribed under Rule 29 (1) (v) of CCS (CCA) Rules would be over by 30.3.2014. However, the notice for revision of penalty was issued on 4.4.2014, after the lapse of 6 months period. Hence the second notice issued is time barred. Besides, here too, the Appellate Authority, who proposed to revise the penalty, has not given reasons as to why the penalty imposed by the disciplinary authority was not commensurate with the misconduct committed. Thereby, even this notice is invalid. This Tribunal in OA No. 549/2009 has set aside a similar notice issued to review the penalty for being time barred. In sum and substance, both the notices issued by the appellate authority contravene Rule 29 of CCS (CCA) Rules and thereby, lack validity.

V. Further, it is also seen that there is no loss to the Government. The entire amount was recovered from Mr. Hanumanath Reddy, retired Group



D and his other accomplices. It was a procedural error on the part of the applicant, which led to the fraudulent encashment of cheques. Yet, a major penalty was imposed. *Defacto*, as can be seen from the facts, it is not the applicant who benefited from the fraudulent transactions in question but some others. There is no malafide intention established on the part of the applicant. Besides, in rural post offices, it is a common sight even to this day that Postmasters help the customers in filling up the forms. It is a requirement to be fulfilled because of illiteracy and the circumstances prevailing in rural areas. The applicant due to lack of proper awareness of the rules has made the mistake of not following the KYC norms. For the said mistake, applicant has been penalised with a major penalty of reduction of pay with loss of increments on cumulative basis. Realising the procedural mistake committed, applicant did not even appeal against the order of penalty imposed by the disciplinary authority. Considering the stated facts, we are of the view that the Appellate Authority proposing to enhance the penalty to that of removal by issuing notices referred to, is undoubtedly harsh and disproportionate to the lapse committed. More so, in stark violation of the procedure prescribed under Rule 29 of CCS (CCA) Rules. Beside, the respondents cited orders of this Tribunal in OA Nos. 63 of 2011 and 41 of 2011 contending that there is no time limit for review. A perusal of the Orders in the said OAs indicates that the applicants therein are Grameen Dak Sevaks (GDS) who are governed by a different set of disciplinary rules and therefore, the findings in the said OAs are not relevant to the present case, since the applicant in the instant OA is a departmental employee.

VI. Therefore, in view of the aforesaid, the impugned notices dated 5.2.2014 and 4.4.2014 are quashed. The penalty imposed by the disciplinary authority on 30.9.2013 holds good. The OA is accordingly allowed.



VII. There shall be no order as to costs.

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

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

/evr/