

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No.200/00090/2018

Jabalpur, this Tuesday, the 03rd day of March, 2020



HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

V.K. Agrawal, S/o Late Shri K.P. Agrawal, aged about 56 years,
 Sub Postmaster BMY Charoda, Bhilai R/o 27/16362 Gaya Nagar,
 Durg 491001
-Applicant

(By Advocate –**Shri J.B. Singh**)

V e r s u s

1. Union of India, Through Secretary, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi 110 001

2. Member (P) Department of Posts, Dak Bhavan, Sansad Marg, New Delhi 110001

3. The Chief Postmaster General, Chhattisgarh Circle Raipur 492001

4. Director Postal Services, O/o Chief Postmaster General, Chhattisgarh Circle Raipur 492001

5. Senior Superintendent of Post Offices, Durg Division, Civic Centre, Bhilai 490006
- Respondents

(By Advocate –**Shri Vivek Verma**)

(Date of reserving the order:-26.03.2019)

ORDER

By Ramesh Singh Thakur, JM:-

By way of this Original Application the applicant is challenging the order dated 26.08.2013 (Annexure A-6) issued by respondent No.5 whereby penalty of withholding of next increment for two years without cumulative effect has been awarded. The applicant is also challenging the orders dated 18.09.2014 and 30.08.2017(Annexure A/8) whereby appeal/revision petition of the applicant has been rejected.



2. The applicant has prayed for the following reliefs:-

“8(i) Quash the order dated 26.08.2013 (Annexure A-6) issued by the Respondent No.5 being illegal, unjustified and arbitrary;

8(ii) Quash the order dated 18.09.2014 (Annexure A-8) issued by the Respondent No.4 and order dated 30.08.2017 (Annexure A-13) issued by the Respondent No.2 being illegal, unjustified and arbitrary;

8(iii) Any other order/orders which this Hon'ble Court deems fit and proper;

8(iv) Cost of the petition may also kindly be awarded.”



3. The facts of the case are that the applicant was initially appointed as Postal Assistant on 14.12.1981 under Durg Postal Division in the Department of Posts. Subsequently applicant was posted to the post of Sub Postmaster, BMY Charoda Post Office on 02.06.2017 and is working continuously. On 02.05.2013 (Annexure A/1) applicant wrote a letter to respondent No.4 regarding some irregularities in transfer and postings vide order dated 26.04.2013 by respondent No.5. The respondent No.5 vide letter dated 20.05.2013 sought explanation from the applicant for directly making communication with respondent No.4 alleging the violation of rules without assigning the rule which had been violated.

4. The applicant has submitted his explanation on 23.05.2013 stating that he has written the said letter in the general interest of his members as an office-bearer of the Union through his Circle Secretary with advance copy to respondent No.4 and he has not violated any rules. The respondent No.5 issued a charge sheet under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as per memo dated 07.06.2013 (Annexure

A/4). The applicant submitted his representation on 18.06.2013 (Annexure A/5) wherein it is stated that the said letter had been written as office bearer of the Union for which channel of the respondent No.5 was not prescribed and he was not written the said letter in his official capacity therefore no rules were violated.



Without considering the said representation of the applicant, the respondent No.5 imposed the penalty for withholding the next increment of the applicant for two years without cumulative effect as per order dated 26.08.2013 (Annexure A/6). Against the said order, the applicant preferred an appeal to respondent No.4 on 18.11.2013 (Annexure A/7) which was rejected by the appellate authority vide order dated 18.09.2014 (Annexure A-8). Thereafter applicant preferred an appeal dated 24.02.2015 (Annexure A/9) to Hon'ble President of India in terms of Rule 24 (3) of the CCS(CCA) Rules, 1965 but to no avail. The applicant preferred revision petition dated 09.01.2017 (Annexure A-12) to the Member (P)-Respondent No.2. The same was rejected vide order dated 30.08.2017 (Annexure A/13). Hence this Original Application.



5. Respondents in their reply have submitted that the applicant was proceeded against Rule 16 of CCS (CCA) Rules, 1965 vide memo dated 07.06.2013 by SSPOs, Durg Division. The disciplinary proceedings were finalized by the disciplinary authority i.e. Senior Superintendent of Post Offices, Durg Division, Civic Centre Bhilai vide order dated 26.08.2013 passed punishment order under Rule 12 (2) of CCS (CCA) Rules, 1965 by withholding of next increment of the applicant for a period of two years without cumulative effect. Aggrieved by the said order the applicant preferred an appeal dated 18.11.2013 and the same was rejected by DPS, C.G. Circle Raipur vide memo dated 18.09.2014. The applicant preferred a revision petition not before the revisionary authority, addressed to the Hon'ble President of India yet still pending subsequently the applicant again submitted the same on 10.8.2016. Subsequently the revisionary authority has rejected the same. The respondents submitted that as per the channel of communication-Reiteration of instructions regarding:

“The instructions on “Channel of Communication” as contained in the said compilation inter alia provides that “the branches of service associations at Circle /Divisional



and local levels should correspond directly only with the authorities in charge of the unit they represent i.e. a local level service association should correspond only with local authority, a divisional association with divisional authority and circle-level association with the head of circle". Only, the central unit of the service association should correspond with the Secretary (Posts) or the Government through the Secretary Posts." (No.STB/100-19/52-STA dated 29.10.52). Further, as clarified vide the department's letter dated 03.08.66, no action is to be taken on direct references from local service associations except when specifically ordered by Minister/Minister of State/ Secretary (P) / Members of the Postal Service Board.

6. It has been submitted by the respondents that the Transfer order had been issued as per the administrative exigency and in interest of service the transfer case is belong to individual official, does not come under the purview of service union as per the Rule 16 of CCS (RS) Rules 1993 dated 05.11.1993. Divisional Authority and the applicant have not followed the instruction issued by the Department and directly corresponded to the higher authority. It has been further submitted that the applicant failed to fulfill the procedure prescribed by the department regarding the correspondence and directly crossing the channel with the higher authority.

7. The applicant has filed the rejoinder to the reply filed by the respondents wherein it has reiterated its earlier stand taken in the Original Application. It has been submitted by the applicant that order of penalty has not been given by the disciplinary authority i.e. Respondent No.5 but ordered by the subordinate staff and the disciplinary authority has just signed it in token of having seen the same.



8. Heard the learned counsel for both the parties and have perused the documents and pleadings attached with the O.A.

9. It is clear from the pleadings that the applicant was initially appointed as the applicant was initially appointed as Postal Assistant on 14.12.1981 under Durg Postal Division in the Department of Posts. Subsequently applicant was posted to the post of Sub Postmaster, BMY Charoda Post Office on 02.06.2017. It is also admitted fact that on 02.05.2013 (Annexure A/1), the applicant wrote a letter to respondent No.4 regarding some irregularities in transfer and postings vide order dated 26.04.2013 by respondent No.5. The respondent No.5 vide letter dated 20.05.2013 sought explanation from the applicant for directly



making communication with respondent No.4 alleging the violation of rules. The applicant has submitted his explanation on 23.05.2013 stating that he has written the said letter in the general interest of his members as an office-bearer of the Union through his Circle Secretary with advance copy to respondent No.4 and he has not violated any rules. The charge sheet was issued by respondent No.5 under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as per memo dated 07.06.2013 (Annexure A/4) the applicant submitted representation on 18.06.2013 (Annexure A/5). The respondent No.5 imposed the penalty of withholding the next increment of the applicant for two years without cumulative effect as per order dated 26.08.2013 (Annexure A/6). The applicant preferred an appeal to respondent No.4 on 18.11.2013 (Annexure A/7) which was rejected by the appellate authority vide order dated 18.09.2014 (Annexure A-8). Though the applicant preferred an appeal dated 24.02.2015 (Annexure A/9) to Hon'ble President of India in terms of Rule 24 (3) of the CCS(CCA) Rules, 1965. The applicant preferred revision petition dated 09.01.2017 (Annexure A-12) to

the Member (P)-Respondent No.2. The same was rejected vide order dated 30.08.2017 (Annexure A/13).



10. The main contention of the counsel for the applicant is that the applicant as Chief Executive of the Divisional Union finding serious irregularities, violation of rules and partiality in transfer/posting order dated 26.04.2013 issued by the respondent No.5, written a letter to respondent No.4 on 02.05.2013 (Annexure A-1) in the capacity of Divisional Secretary through Union's Circle Secretary with advance copy to respondent No.4, requesting him to intervene into the matter in the interest of general employees and the department. It was under a bonafied activity of the Union in as much as gross violation of departmental instructions had been made in the department. The charge sheet issued by respondent No.5 on 07.06.2013 (Annexure A-4) is vitiated on the ground that though the respondent No.5 alleged for violation of rules yet he could not specify the rules which has been violated. Respondent No.5 has simply alleged the violation of Rule 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964 which reads as under:-

“3(1)-Every Government Servant at all times:-

(i)

(ii) maintain devotion to duty,

(iii) do nothing which is unbecoming of a Government servant.”



11. Further contention of the applicant is that as per Rule 6.k of CCS (Recognition of Service Associations) Rules 1993 circulated vide No.2/10/80/JCA dated 05.11.1993 (Annexure A-14) service association shall not do any act or assist in the doing of any act which, if done by a Government servant, would contravene any of the provisions of the CCS (Conduct) Rules, 1964. The Conduct rules do not contain anywhere that bringing irregularities to the notice of the next higher authority is prohibited. Further the contention of the applicant is that as per clarification of department vide letter No.SR 39-52/92-SR dated 06.10.1995 (Annexure A-15), that legitimate union activity does not violate CCS (Conduct) Rules, 1964 and further as per letter No.16-2/65-SR dated 03.08.1966 (Annexure A-16) issued by the Department prescribe that no action is to be taken on direct references from local service associations except when specifically ordered by Minister/Minister of State/Secretary (P)/Member of the Postal Services Board.

Further as per letter No.13-3/2002-SR dated 05.07.2002 (Annexure A-17) no action is to be taken on direct references from local service associations.



12. On the other side the contention of the respondents is that as per the channel of communication-Reiteration of instructions regarding provides that “the branches of service associations at Circle /Divisional and local levels should correspond directly only with the authorities in charge of the unit they represent i.e. a local level service association should correspond only with local authority, a divisional association with divisional authority and circle-level association with the head of circle”. So, the transfer order had been issued as per the administrative exigency and in interest of service the transfer case is belong to individual official, does not come under the purview of service union as per the Rule 16 of CCS (RS) Rules 1993 dated 05.11.1993. The order passed by the disciplinary authority has been upheld by the appellate authority and revisional authority.

13. In the rejoinder the applicant has reiterated its earlier stand. It has been submitted on behalf of the applicant that transfer list

dated 26.04.2013 as many as 34 transfers have been done, which is concerned of the Union and so it was felt it necessary in the interest of its Members of Board to bring it to the notice of the next higher authority for intervention.



14. The point for determination in this Original Application is that whether the transfer orders passed by respondent No.5 is of the concern of the Union.

15. As per contention of the applicant it has come in the rejoinder that there is a transfer order of 34 persons, whereby the competent authority has violated the same provisions. From the pleadings itself it is clear that the applicant was an office bearer of the Union and has written to respondent No.4 i.e. the next higher officer regarding some irregularities in doing the transfer which is done by respondent No.5. As per charge sheet the applicant has been charge sheeted under CCS (Conduct) Rules, 1964 under Rules 3(1)(ii) and 3(1)(iii). The relevant portion of said rules is as under:-

“3(1)-Every Government Servant at all times:-

(i).....

(ii) maintain devotion to duty,

(iii) do nothing which is unbecoming of a Government servant.”

But in the charge sheet we do not find such allegation against the applicant as per Annexure A/14 notification dated 05.11.1993, the rules have been framed called as CCS (Recognition of Service Associations) Rules, 1993, and the service association has been expected not to continue the provision of CCS(Conduct) Rules, 1964 which reads as under:-



“6k. the Service Association shall not do any act or assist in the doing of any act which, if done by a Government servant, would contravene any or the provisions of the Central Civil Services (Conduct) Rules, 1964; and”

So, it is clear that the service association shall not do any act or assist in the doing of any act which would contravene any or the provisions of the Central Civil Services (Conduct) Rules, 1964.

16. As per Annexure A-15 in Para 13 action against the postal employees for union activities, it has been prescribed that legitimate union activity that does not violate CCS(Conduct) Rules, 1964, and P&T ED Agents (Conduct & Services) Rules 1964 or other rules or instructions governing the concerned employee should not lead to disciplinary action against the

employee. All disciplinary authorities in your jurisdiction should be instructed to ensure this. The relevant para is as under:-

“13.2. It is pointed out that legitimate union activity that does not violate CCS(Conduct) Rules, 1964, and P&T ED Agents (Conduct & Services) Rules 1964 or other rules or instructions governing the concerned employee should not lead to disciplinary action against the employee. All disciplinary authorities in your jurisdiction should be instructed to ensure this.”



17. Further as per Annexure A/16, the clarification has been given whereby it has been prescribed as under:-

<p><i>No.16-2/65-SR dated 3-8-66</i></p>	<p><i>4. No action is to be taken on direct references from local Service Associations except when specifically ordered by Minister/Minister of State Secretary (P)/Members of the Postal Services Board. On behalf of Service Associations their General Secretaries or Presidents should address the Administration. The Assistant General Secretaries or the Deputy General Secretaries wherever specifically authorized by their General Secretaries may also address communication to the Administration but the reference made by them should contain a clear communication that the same are being made under the authority of General Secretary concerned.</i></p>
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18. It has been requested by the authority that the instructions on Channel of communication are to be strictly adhered vide SR dated 05.07.2002. The relevant portion is as under:-

“16. Channel of Communication-Reiteration of Instructions Regarding-

2. The instructions on “Channel of Communication” as contained in the said compilation inter alia provides that “the branches of service associations at Circle /Divisional and local levels should correspond directly only with the authorities in charge of the unit they represent i.e. a local level service association should correspond only with local authority, a divisional association with divisional authority and circle-level association with the head of circle”. Only, the central unit of the service association should correspond with the Secretary (Posts) or the Government through the Secretary Posts.” (No.STB/100-19/52-STA dated 29.10.52). Further, as clarified vide the Department’s letter No.16-2/65-SR dated 03.08.66, no action is to be taken on direct references from local service associations except when specifically ordered by Minister/Minister of State/ Secretary (P) / Members of the Postal Service Board.”



So, from the above it is clear that if the persons who are a office bearer of the Union can approach higher authority directly regarding highlighting of irregularities done by the competent authority.



19. In the instant case, the applicant is being a office bearer had approached respondent No.4 regarding some irregularities on transfers of 34 persons which is definitely a concerned of the union. In such circumstances we are of the view that the action taken by respondent No.5 is unlawful and illegal, particularly in view of Annexures A/14 to A/17, the act of the applicant does not come within the ambit of CCS (Conduct) Rules, 1964.

20. In view of the above, this Original Application is allowed. Impugned orders dated 26.08.2013 (Annexure A/6), 18.09.2014 (Annexure A-8), and 30.08.2017 (Annexure A-13) passed by the respondents are quashed and set aside with all consequential benefits. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member