

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/01078/2018

Date of CAV : 05.02.2020

Date of Order:- 01.06. 2020

C O R A M

Hon'ble Shri J. V. Bhairavia, Member [J]
Hon'ble Shri Dinesh Sharma, Member [A]



Raj Kumar Choudhary, aged about 33 years, S/o Late Srikant Choudhary, Resident of Village – Chandedih, PO – JatDumari, P.S. – Punpur, Distt – Patna – 804453.

....Applicant

By Advocate : Mr. N.N.Singh
 Vs.

1. Union of India, through the Secretary, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Postmaster General, Bihar Circle, Patna – 800001.
3. The Director Postal Services [HQ], Patna – 800001.
4. The Chief Postmaster General GPO, Patna - 800001.
5. The Deputy Dy. Chief Postmaster Patna GPO, 80001.
6. The Suptd. Post, Bhojpur Div. Ara.

..... Respondents.

By Advocate : Mr. H.P.Singh, Sr. SC

O R D E R

Per J.V. Bhairavia, M [J] :- In the instant OA, the applicant has prayed for the following reliefs : -

"8[a] Your Lordships may graciously be pleased to quash and set aside the order of Disciplinary Authority dated 20.06.2018 [Annexure-A/1] and order of Appellate Authority dated 05.12.2018 with all consequential benefits.

8[b] Any other order/orders as your lordship may deem fit and proper in the interest of justice.

8[c] Cost of the case may please be awarded for unnecessary expenditure incurred in litigation causing mental agony, sorrow, sufferings and pain."

2. The case of the applicant in short, runs as under :

[i] It is contended by the applicant that initially, he was served with minor charge memorandum bearing Memo No. L4-01/2017-18/Raj Kumar Choudhary/Ch-I, dated 18.04.2018 [Annexure-A/6] under the provision of Rule 16 of CCS [CCA] Rules, 1965. In the statement of imputation of misconduct dated 18.04.2018, the Disciplinary Authority mainly alleged against the applicant as under : -

*"That the said Shri Raj Kumar Choudhary, while working as P.A.S.B. Counter, Patna GPO during the period from **01.08.2014 to 01.06.2016** received an application on 25.03.2017 for issue of ATM card in Patna GPO Saving Bank Account No.1300466831 of Smt. Sumitra Devi addressed at Sipara, Dhelwan, Patna - 800001. Afterwards he submitted the application to the APM SBHO, Shri Dharmnath Singh for verification. Lastly he handed over the ATM card to a person other than the account holder [who is reported died on 17.02.2015]. By his this action 63 transactions were made through ATM facilitating withdrawal of Rs. 4,65,000/- [Four lakh sixty five thousand] from the saving account as the holder died two years ago on 17.02.2015.*

Said Shri Raj Kumar choudhary failed to exercise due caution while issuing ATM CAD which facilitated withdrawal of huge amount. Thus Shri Raj Kumar choudhary, is alleged to have failed to maintain devotion of duty. By his this act, he is prone to unbecoming of a Govt. Servant.



Thus, Sri Raj Kumar Choudhary, P.A. S.B. Counter, Patna GPO is charged on the following count –

[i] Failed to maintain devotion of duty as enshrined in Rule 3[I][ii] of the CCS [Conduct] Rules, 1964;

[ii] Failure to maintain Rule 3[I][iii] of the CCS [Conduct] Rules, 1964 unbecoming of a Government servant."

[ii] The Disciplinary Authority directed the applicant to submit his representation in response to charge memorandum dated 18.04.2018. In response to it, the applicant submitted his representation dated 21.04.2018 [Annexure-A/7] therein the applicant has contended that he did not accept the charges levelled against him mainly on the ground that he was not on duty during the period mentioned in the charge memo, i.e. 01.08.2014 to 01.06.2016 and therefore, he has requested the Disciplinary Authority to correct the said period. Further ground taken by the applicant was that he had verified the record cautiously presented before him by the applicant named as Sumitra Devi, wife of Sita Ram Prasad, resident of Sipara, PO – Dehlwarn, Patna in support of proof of her address. The applicant produced Adhar Card No. 697049934184 as well as PAN Card and after verification these documents, the applicant forwarded the said application to APM, SB HO as per departmental Rule for further action and after



the approval, the ATM Card was issued. Therefore, it is evident that he had followed the departmental procedure for issuance of ATM Card and not failed to maintain devotion to duty. Further, the withdrawal through ATM not from the SB Counter. Had the fraudulent holder of ATM card ever come to SB counter, she would have been caught red handed by us.



It is further contended by the applicant in his reply that one Sita Ram Prasad, retired Gr. 'A' Officer of the Postal Department is sole nominee in SB Account No.1300466831 and late Sumitra Devi was his wife, if Smt. Sumitri's death occurred on 17.02.2015, i.e. two years back, then Sri Prasad should have intimated this fact to the department, i.e. Chief Postmaster, Patna GPO claiming himself legal holder of that amount "as Death Claim" but Shri Prasad being well versed of the departmental rules kept mum till Rs. 4,65,000/- was not withdrawn from that account through ATM instead of SB counter. This fact indicates connivance of Shri Prasad in fraudulent issue of ATM Card and withdrawal of cash through ATM.

Under the circumstances, the applicant had requested the Disciplinary Authority to issue order to conduct enquiry under Rule 16 [I-A] of CCS [CCA] Rules, 1965, so that a thorough

investigation may be done to reach to the real culprit behind this fraudulent act.

It is also stated in the representation that it is a question to be decided how a fake adhar card and pan card was prepared in the name of a deceased person. A Ground-A Officer [Retired] of the Postal Department handed over his Saving Bank Pass-Book to a fraudulent person to facilitate her to deceive the Postal Staff. These are some facts to be find out in the enquiry. And, therefore, the applicant had requested to be pleased to issue order for enquiry under Rule 16[I-A] of CCS [CCA] Rules, 1965 [Annexure-A/7].



[iii] On receipt of aforesaid representation filed by the applicant dated 21.04.2018, the Disciplinary Authority, vide order dated 23.04.2018 [Annexure-A/8] dropped the memorandum dated 18.04.2018 without prejudice.

[iv] It is contended that vide order dated 24.04.2018, the applicant was served with 2nd charge memorandum bearing Memo No. L4-01/2017-18/Raj Kumar Choudhary/Ch-I, dated 24.04.2018 [Annexure-A/8 series] under the provision of Rule 16 of CCS [CCA] Rules, 1965. In the statement of imputation of misconduct dated 24.04.2018, the

Disciplinary Authority mainly alleged against the applicant as under :-

*"That the said Shri Raj Kumar Choudhary, while working as P.A. S.B. Counter, Patna GPO during the period from **19.10.2016 to 30.09.2017** received an application on 25.03.2017 for issue of ATM card in Patna GPO Saving Bank Account No.1300466831 of Smt. Sumitra Devi addressed at Sipara, Dhelwan, Patna - 800001. Afterwards he submitted the application to the APM SBHO, ShriDharmnath Singh for verification. Lastly he handed over the ATM card to a person other than the account holder [who is reported died on 17.02.2015]. By his this action 63 transactions were made through ATM facilitating withdrawal of Rs. 4,65,000/- [Four lakh sixty five thousand] from the saving account as the holder died two years ago on 17.02.2015.*

Said Shri Raj Kumar Choudhary failed to exercise due caution while issuing ATM CAD which facilitated withdrawal of huge amount. Thus Shri Raj Kumar choudhary, is alleged to have failed to maintain devotion of duty. By his this act, he is prone to unbecoming of a Govt. Servant.

Thus, Sri Raj Kumar Choudhary, P.A. S.B. Counter, Patna GPO is charged on the following count –

[i] Failed to maintain devotion of duty as enshrined in Rule 3[I][ii] of the CCS [Conduct] Rules, 1964;

[ii] Failure to maintain Rule 3[I][iii] of the CCS [Conduct] Rules, 1964 unbecoming of a Government servant."

[v] The Disciplinary Authority directed the applicant to submit his representation in response to charge memorandum dated 24.04.2018. In





response to it, the applicant submitted his representation dated 02.05.2018 [Annexure-A/9] therein the applicant has specifically contended that the applicant had been served charge memo dated 24.04.2018, in which the allegation are the same which had been mentioned in the charge memo dated 18.04.2018, except correction of period of his working as P.A. S.B. Counter Patna GPO. Nothing new in this second charge memo except correction the period of his duty. The second charge sheet has been issued in haste violating D.G. P&T Letter No.114/324/78-Disc-II dated 5th of July, 1979 which debars the authority to issue 2nd charge-memo without reasoning if the first charge sheet has been dropped without prejudice. He has further contended that the applicant reiterating the representation dated 21.04.2018 with the request to issue order for holding enquiry under Rule 16[I-A] of CCS [CCA] Rules, 1965 [Annexure-A/9].

[vi] It is contended that without proper consideration of his representation, the Disciplinary Authority had issued the impugned order dated 20.06.2018 [Annexure-A/1] thereby the Disciplinary Authority held the charged levelled against the applicant is proved, which resulted in award of punishment and accordingly the

Disciplinary Authority awarded punishment of **"withholding increment of pay" of the applicant for a period of six months and further ordered to recover Rs. 2.40 Lakh @ Rs. 20,000/- [Twenty thousand only] per month from the pay of the office with effect from July, 2018 in a period of 12 months.**



[vii] Aggrieved by the aforesaid punishment order, the applicant preferred statutory appeal before the Appellate Authority on 13.07.2018 [Annexure-A/11] taking all the grounds as aforesaid as also ground of non-assigning any reason by the Disciplinary Authority for not accepting the request of the applicant to initiate detail enquiry under Rule 16[I-A] of CCS [CCA] Rules. However, the Appellate authority had also not considered the grounds raised by the applicant in its true spirit and reject the appeal by the impugned order dated 05.12.2018 [Annexure-A/2] and uphold the punishment awarded by the Disciplinary Authority.

3. Aggrieved by the order passed by the Disciplinary Authority dated 20.06.2018 [Annexure-A/1] and the order passed by the Appellate Authority dated 05.12.2018 [Annexure-A/2] has filed the present OA.

4. The Id. Counsel for the applicant mainly submitted that –

[i] The impugned orders are bad in law since it has been passed contrary to provision of Rule 16 of CCS [CCA] Rules, 1965 and the D.G., P&T letter dated 5th July, 1979 [below Rule 15 of CCS [CCA] Rules].

[ii] It is submitted that the Disciplinary Authority has not assigned any reasons for cancellation/dropping of the original charge-sheet. There is no iota of word stated in the second charge-sheet in this regard. The instructions/directions contained in the D.G. P&T letter dated 5th July, 1979 in this regard has been totally violated, which debars the authority to issue 2nd charge-memo without reasoning if the first charge sheet has been dropped without prejudice.

[iii] The learned counsel further contended that as per the instructions/directions contained in OM dated 28th October, 1985, in a case delinquent government servant demands or request for an enquiry, the Disciplinary Authority could after due consideration, come to the conclusion that an enquiry is not necessary, it should say so in writing indicating its reason, instead of rejecting the request for holding the enquiry summarily





without any indication that he has applied its mind to the request. As such an action could be construed as denial of natural justice. In the case of the applicant though the applicant repeated requested the Disciplinary Authority to hold the enquiry under the provision of Rule-16[I-A][b], however, the said request has not been considered by the Disciplinary Authority and arbitrarily proceeded against the applicant and held the applicant guilty of misconduct and awarded the punishment. The said conduct on the part of the Disciplinary Authority is in violation of principle of natural justice as also contrary to the aforesaid OM.

[iv] The learned counsel placed reliance on the judgment passed by the Hon'ble Apex Court in the case of O.K. Bhardwaj vs. Union of India & Ors., report in [2001 9 SCC 180] therein it is held that even in the case of minor penalty, opportunity of being heard required to be granted. The Id. Counsel for the applicant further relied upon the order passed by this Tribunal in OA No. 170 of 2008 dated 29.05.2009, order passed in OA 420 of 2010 dated 9th July, 2013 and order passed in OA No.756 of 2018 dated 07.08.2019 and submitted that failure on the part of Disciplinary Authority for not assigning any reason with respect to request

made on behalf of the applicant/delinquent for conducting enquiry under Rule 16[I-A] as also request for full fledged enquiry under Rule 16[I-B], the said action of Disciplinary Authority vitiates the disciplinary proceeding.

5. On the other hand, respondents have filed written statement and denied the contention of the applicant. On the basis of written statement, the learned Standing Counsel for the respondents mainly submitted as under:-

5.1 It is submitted that respondents have received one complaint dated 29.06.2017 from one Shri Sitaram Prasad, resident of Indrapuri (Sipara), Post-Dhelwan, Patna-800020 (being husband of the deceased holder of the SB a/c No.1300466831 GPO, Patna. In the said complaint, it was requested to sanction the amount available in Patna GPO SB Account of Late Smt. Sumitra Devi since the complainant's nomination registered in his favour in the account. It is further alleged that the said complainant came to know from the reliable sources that more than 3.5 lakhs has been fraudulently withdrawn from ATM during the period of last three preceding months through ATM issued from Patna GPO on



28.03.2017 based on fake documents like bogus Aadhar Card, PAN Card etc. after death of the depositor, who died on 17.02.2015. He alleged that his wife Smt. Sumitra Devi died on 17.02.2015 and she has not got any Aadhar card, PAN Card and ATM issued during her life time.



5.2 It is further submitted that the Chief Postmaster, Patna, GPO directed his office IP (PG) to enquire into the allegation and after enquiry (preliminary), *prima facie*, it was established that the ATM card was issued on the basis of fake documents and there were fraudulent withdrawal of huge amount from the said Bank Account by some unknown person. It was further reveal during the preliminary enquiry that one Shri Dharamnath Singh, APM, SBHO and the applicant herein, namely Shri Raj Kumar Choudhary, SB Counter, PA, Patna were held responsible for issue of ATM Card during the period 25.03.2017 to 28.03.2017 to a lady fraudulently impersonating herself as the depositor of the a/c No. SB 1300466831.

5.3 It is contended that it was bounded duty and responsibility of the applicant to ensure that all the official acts are done exactly in

accordance with the procedure prescribed for the same and in no circumstances, the prescribed procedure is violated. Since it was found that the applicant did not follow the prescribed procedure with respect to issue of ATM Card. The respondents have relied upon Annexure – R/1, R/2 and R/3.



5.4 It is submitted that the applicant failed to exercise due caution while issuing ATM Card which facilitated withdrawal to huge amount of Rs.4,65,000/- in the Saving Bank Account No.1300466831.

5.5 It is submitted that had the applicant verified the Account and genuineness of the person properly on the basis of the details of the account holder available in the post office in accordance with the extant guidelines then this could not have happened. Since the applicant failed to exercise due caution while discharging his official duty, the Disciplinary Authority had issued charge memorandum dated 18.04.2018 under provision of Rule 16 of CCS (CCA) Rules, 1965 for the purpose of imposing minor punishment against the applicant. However, after receipt of representation from the applicant, the said

memorandum was dropped without prejudice vide order dated 23.04.2018. Subsequently, the Disciplinary Authority i.e. Dy. Chief Postmaster (Admin.) Patna GPO, respondent No. 5 herein issued fresh charge memorandum dated 24.04.2018 under the provision of Rule 16 of CCS (CCA) Rules, 1965.

5.6 After granting due opportunity to the applicant for filing his representation which the applicant had availed, he submitted his representation and on consideration on it, the Disciplinary Authority came to the conclusion that the charged levelled against the applicant stands proved and therefore imposed the punishment as per the order dated 20.06.2018 (Annexure – A/1).

5.7 The applicant had also availed the remedy of filing statutory appeal under the provision of Rule 22/23 and the said appeal was duly considered by the Appellate Authority and the same has been rejected vide order dated 05.12.2018 (Annexure- A/2). Therefore, it is not correct on the part of the applicant that he was not granted due opportunity to defend his case. In fact, the applicant had availed the opportunity, he submitted his



representation against the charge memorandum and on consideration of it, as also material on record, the disciplinary authority had passed the impugned order dated 20.06.2018. Both the authorities followed the due procedure and penalty has been imposed.



- 5.8 It is further submitted that in the first charge sheet period of duty of the applicant/delinquent was wrongly mentioned which was rectified and accordingly fresh charge sheet was issued.
- 5.9 It is further submitted that it is not correct on the part of the applicant to state in para 4.14 of O.A that disciplinary authority neither made any enquiry himself nor assigned duty to any official to enquire the case. The said statement of the applicant is wrong, hence same has been denied. In fact, the respondents had carried out fact finding enquiry through the IP (PG), Patna GPO and Vigilance Branch of the Chief Postmaster General (Annexure- R/2 and R/3 refer).
- 5.10 The learned Standing Counsel on behalf of the respondents by relying upon the averment made in para 13 of written statement submitted that there was no need

of holding regular enquiry because in the considered opinion of the Disciplinary Authority, Minor penalty proceeding was only required to be initiated. Accordingly it was done after following due procedure, the penalty has been imposed.

6. The applicant has filed rejoinder to the written statement and reiterate his contention. Additionally, it is submitted by the applicant as under:-



6.1 The respondents in their reply had produced the copy of operational Handbook for ATM (Version – 2, January, 2018) as also preliminary enquiry report/fact finding report (Annexure - R/1, R/2 and R/3). In this regard, it is submitted that in the preliminary enquiry report in para –ii(a) of R/2 at page 27 of written statement, the enquiry officer has confirmed that the ATM Card was issued after verifying the record such as Aadhar Card, PAN card. It is further reveal in the report (Annexure – R/3) i.e. Circle Level Enquiry report, the respondents have admitted about defects in rules – which says, Non verification of PAN/ Aadhar through biometric process in Finacle. Therefore it is not correct on the part of respondents to state and allege that applicant had not followed the procedure prescribed by the respondents authority while issuance of ATM Card. The respondents have admitted the fact that the second charge sheet dated 24.04.2018 has been issued by the same

authority and without assigning any reason, therefore, the said action of respondents is now established done in violation of DGP&T Letter No.114/324/78-Disc II dated 05.07.1979 (contained in D.G.P. &T orders under Rule 15 of CCS (CCA) Rule 1965). In the case of applicant, in terms of instructions/directions of the aforesaid letter, the disciplinary authority is de-barred from issuing fresh charge sheet without assigning any reason for doing so.



6.2 It is submitted that the respondents have failed to establish provision of Rule 16 and 16(1-A) of the rules. The applicant had already requested vide his representation dated 21.04.2018 (Annexure – A/7 of the O.A. to hold enquiry under Rule 16(1-A) in pursuance of G.I. Deptt. Of Personnel and Training OM No.11012/18/85-Estt(A) dated 28.10.1985. It is submitted that the finding of guilt of the applicant has been arrived by the disciplinary authority on the basis of relevant connected files and documents, application/complaint of the nominee Sri Sitaram Prasad. These documents had never been supplied to the applicant, nor was it indicated in the memo of charges that such statements are being made use for establishing the charge against the applicant. That even there is no case of respondents that the statement recorded in the presence of applicant and he had been

offered opportunity to cross examine the person who gave statement in regard to issuance of ATM card.

6.3 It is further submitted that sub Rule 1-A of Rule 16 makes provision of holding such an enquiry where it is necessary where the findings is to be arrived based on the previously recorded statement in the witnesses and such statement have necessarily to be made available to the delinquent Govt. Servant and further he must be afforded opportunity to cross-examine the persons who gave the statements.

6.4 Therefore, the learned counsel submitted that the provision of Rule 1-A of Rule 16 to be read with directions/instructions contained in OM dated 28.10.1985 ought to have been followed by the disciplinary authority before imposing the punishment which is likely to affect adversely the amount of pension payable to the applicant.

In this regard, the learned counsel for the applicant additionally submitted that the appellate authority also failed to consider the said ground raised by the applicant in his appeal memo and erroneously rejected the appeal of the applicant. In the order passed by the appellate authority (Annexure - A/2) has observed that "the disciplinary authority felt no need of conducting hearing under Rule 16(1-A) and in the very next line it is observed that the allegation was got enquired into through his enquiry authority and the



enquiring authority reported the allegation proved." The said conclusion of the appellate authority is self contradictory and also in violation of mandate of provision of rule 16 (1-A). Therefore, the impugned order has been passed in contravention of statutory provision as also against the principle of natural justice.



7. The respondents have filed reply to rejoinder and reiterate their submission for denying the prayer of applicant. Additionally, it is submitted that the present applicant delinquent was charge sheeted on the basis of fact finding enquiry conducted by the department. The second charge sheet was issued after dropping the first charge sheet as first charge sheet contains some clerical error.
8. Heard the learned counsel for the parties and perused the materials on record.
9. The Hon'ble Apex Court in the case of B.C. Chaturvedi v. Union of India & Ors. [(1995) 6 SCC 749] held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessary correct in the eyes of the Court. In para-12, "**it is held that the Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry...."**

10. In the present case, it is noticed that initially the applicant was served with minor penalty charge memorandum under Rule 16 of

CCS [CCA] Rules, 1965, vide order dated 18.04.2018. After the applicant delinquent submitted representation to it, the Disciplinary Authority dropped the said charge memorandum without assigning any reason, vide order dated 23.04.2018 [Annexure-A/8]. The said order reads as under -

"No.L4-01/2017-18/Raj Kumar Choudhary/CH-I"

dated at Patna GPO, the 23.04.2018.



The memorandum issued by this Office Letter of even no. Dated 18.4.2018 is hereby dropped without prejudice."

11. It is further noticed that vide order dated 24.04.2018 [Annexure-A/8 series] the same Disciplinary Authority again issued charge memorandum along with statement of imputation against the applicant bearing the same memo number of earlier dropped charge memorandum. The charge memo dated 24.04.2018 has been served upon the applicant herein by the Disciplinary Authority under Rule 16 of CCS [CCA] Rules, 1965. It is also seen that The statement of imputation dated 18.04.2018 and the subsequent charge memorandum dated 24.04.2018 are almost same except change of period of service of the applicant/delinquent, i.e. 19.10.2016 to 30th Sept., 2017 instead of 01.08.2014 to 01.06.2016. All other allegations are same as contained in first charge memorandum dated 18.04.2018.

12. It has been strongly contended on behalf of the applicant that respondents would be debarred from initiating fresh proceedings on the same set of allegation by issuing a fresh charge sheet that too without assigning any reason in terms of DG, P&T letter dated 5th



July, 1979 under Rule 15 of CCS [CCA] Rules, 1965. Therefore, it is appropriate to refer the said letter which mainly gives the instructions/directions under which manner the fresh charge sheet can be issued. It clarified that "Once the proceedings initiated under Rule 14 or Rule 16 of CCS [CCA] Rules, 1965, are dropped, the Disciplinary Authority would be debarred from initiating fresh proceeding against the delinquent officer unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that proceedings were being dropped without prejudice to further action, which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceeding should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges, the same was based on."

13. A plain reading of Annexure-A/8 order dated 23.04.2018 passed by the disciplinary authority whereby the disciplinary proceeding initiated against the applicant pursuant to the memo dated 18.04.2018 have been dropped, reveals that no reasons are mentioned for dropping the said proceeding and issuing a fresh charge sheet and intention to do so has been indicated. The issue of second charge sheet on the same set of allegation, as such, open to objection for being not conformity with the instructions on the subject which warrant that when the intention is to issue a fresh charge sheet, the order cancelling the original one or dropping the proceeding should be carefully worded so as to mention the reasons

for such an action an indicating the intention of issuing a subsequent charge sheet appropriate to the nature of charges on which the same is based on. In the present case, as noticed herein above, the original proceeding was dropped by stating only "without prejudice, but no reason whatsoever has been indicated to do so nor there is iota of any indication for the intention of disciplinary authority to issue a subsequent fresh charge sheet. In view of this factual matrix, to that extent, the order dated 18.04.2018 and subsequent order of issuance of fresh charge sheet (Annexurer – A/8 series) is clear infraction of the aforesaid administrative mandate. Therefore, it cannot be said that the respondents have followed the due procedure in imposing the penalty under the provision of Rule 16 of CCS (CCA) Rules 1965.

14. It is further noticed that the disciplinary proceeding was initiated against the applicant/delinquent under Rule 16 of CCS [CCA] Rules, 1965 and charge memorandum dated 24.04.2018 for imposing minor penalty has been served upon the applicant. The procedure prescribed under Rule 16 of CCS [CCA] Rules., 1965 reads as under :-

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be



forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and

(e) recording a finding on each imputation or misconduct or misbehavior.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (24) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include- Central Civil Services (Classification, Control and Appeal) Rules, 1965 22

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him; (

iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) representation, if any, of the Government servant on the advice of the Commission;

(vii) the findings on each imputation of misconduct or misbehavior; and

(viii) the orders on the case together with the reasons therefor."

15. It is noticed that the statement of imputation served upon the applicant which reads as under : -

"That the said Shri Raj Kumar Choudhary, while working as P.A. S.B. Counter, Patna GPO during the period from **19.10.2016 to 30.09.2017** received an application on 25.03.2017 for issue of ATM card in Patna GPO Saving Bank Account No.1300466831 of Smt. Sumitra Devi addressed at Sipara, Dhelwan, Patna - 800001. Afterwards he submitted the application to the APM SBHO, ShriDharmnath Singh for verification. Lastly he handed over the ATM card to a person other than the account holder [who is reported died on 17.02.2015]. By his this action 63 transactions were made through ATM facilitating withdrawal of Rs. 4,65,000/- [Four lakh sixty five thousand] from the saving account as the holder died two years ago on 17.02.2015.



Said Shri Raj Kumar Choudhary failed to exercise due caution while issuing ATM CAD which facilitated withdrawal of huge amount. Thus Shri Raj Kumar choudhary, is alleged to have failed to maintain devotion of duty. By his this act, he is prone to unbecoming of a Govt. Servant.

Thus, Sri Raj Kumar Choudhary, P.A. S.B. Counter, Patna GPO is charged on the following count –

[i] Failed to maintain devotion of duty as enshrined in Rule 3[I][ii] of the CCS [Conduct] Rules, 1964;

[ii] Failure to maintain Rule 3[I][iii] of the CCS [Conduct] Rules, 1964 unbecoming of a Government servant."



16. In response to the aforesaid charge-memorandum dated 24.04.2018, the applicant/delinquent submitted his representation dated 02.05.2018 thereby he has denied the charges and categorically requested the Disciplinary Authority to initiate enquiry as per the provision of Rule 16 [I-A] of CCS [CCA] Rules. In this regard it is appropriate at this juncture to refer OM No.11012/18/85-Estt.[A] dated 28th October, 1985 issued by GI, Deptt of Personnel & Training. Para 2 of the aforesaid OM explains the scope of Rule 16 [I] and 16[I-A]. It provides that the Disciplinary Authority shall apply its mind to all facts and circumstances and reasons urged in the representation for holding a detailed enquiry and form an opinion whether an enquiry is necessary or not. In a case, were a delinquent government servant has asked for inspection of certain documents and cross examination of prosecution witness, as also asked for detail enquiry in the manner laid down in sub rule [3] to [24] of Rule 14 enable him to get opportunity to inspect the relevant documents and cross examination of person involved or the Disciplinary Authority rely upon the complain of any witnesses, the Disciplinary Authority

should naturally apply its mind more closely to the request and should not reject the application solely on the ground that an enquiry is not mandatory. If the record indicates that, notwithstanding the points urged by the Govt. Servant, the Disciplinary Authority could after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing, indicating its reasons, instead of rejecting the request for holding enquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.



17. In the present case, a perusal of the order dated 20.06.2018 and 05.12.2018 impugned herein makes it quite clear that both the authorities, i.e. DA & AA have not properly applied their mind to the applicant's request for conducting a full fledged enquiry under Rule 16 [I-A] of CCS [CCA] Rules, 1965 since no reason whatsoever has been assigned to the request of applicant/delinquent to hold the enquiry under Rule 16(1-A), in our considered view, the decision making process, in the present case, cannot be said to be consistent with the statutory rules and the impugned decision, in our considered view, is in violation of statutory rules prescribing the mode of enquiry.

The judgment/order relied upon by the applicant passed by this Tribunal OA No. 420/2010, OA 756/2018 and OA No.170/2018 on the identical issue is squarely applicable in the present case. The impugned orders are also contrary to the law laid down by the Hon'ble Apex Court in the case of O.K.Bhardwaj [supra].

18. It is also noticed that respondents have admittedly in their written statement, that disciplinary proceeding was initiated against the applicant based on report of preliminary enquiry. It is also admitted that the reasons for issuance of fresh charge sheet has not been stated by the disciplinary authority. Not only that, it is also admitted by the respondents that the disciplinary authority did not find it appropriate to record any reason not to accept the request of applicant to hold the enquiry under provision of Rule 16(1-A).



19. The aforesaid conduct and decision of the disciplinary authority cannot be allowed to maintain under the mandate of statutory rule 16(1-A) as also administrative mandate referred in OM dated 28.10.1985 (Supra).

20. The submissions of the respondents that the Disciplinary Authority has followed the provisions stated in Rule 16 of CCS [CCA] Rules while proceeding against the applicant and there is no lapses in decision making process is not acceptable in view of the aforesaid discussions.

21. In the result, in view of aforesaid factual matrix of the case and the decisions referred to hereinabove and the discussion made hererinabove, the decision making process of the disciplinary authority as also appellate authority is suffered from infirmities. Hence, the impugned orders dated 20.06.2018 [Annexure-A/1] and order dated 05.12.2018 [Annexure-A/2] are quashed and set aside. Recovery made in pursuance of impugned orders, if any, may be refunded to the applicant forthwith. However, it is opened for the respondents to initiate fresh enquiry under Rule 16 of CCS [CCA]

Rules, 1965, if they so desire. by giving following the mandate of Rule 16[I-A]

22. The OA is allowed. No costs.

Sd/-

Sd/-

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps

