

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/968/2014

**Reserved on : 22.07.2020
Pronounced on : 19.08.2020**

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



U. Ravi Babu, S/o. U. Mohan Rao,
Aged about 39 years, Occ: Sub Postmaster,
(Under the orders of suspension),
Bendamurlanka SO, Amalapuram Division,
East Godavari District.

... Applicant

(By Advocate: Mr. B. Pavan Kumar, Advocate
representing Dr. A. Raghu Kumar)

Vs.

1. The Union of India rep. by its Secretary,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi -1.
2. The Chief Postmaster General,
A.P. Circle, Dak Sadan, Hyderabad -1.
3. The Postmaster General,
Visakhapatnam Region, Visakhapatnam.
4. The Superintendent of Post Offices,
Amalapuram Division, Amalapuram – 533 201.
5. Sri K.V.S.L. Narasimha Rao,
Assistant Superintendent of Post Offices,
O/o. Superintendent of Post Offices,
Amalapuram Division, Amalapuram – 533 201.

... Respondents

(By Advocate: Mr. A. Radhakrishna, Sr. Panel Counsel for Central Govt.)

O R D E R**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

2. OA is filed challenging the suspension of the applicant without jurisdiction, competency and continuing the same without mandatory review before 90 days as well as the charge memo dated 14.2.2014.

3. Brief facts are that the applicant was appointed as Postal Assistant by the Director of Postal Services on 13.2.1995 (Annexure A-V) and thereafter, he was transferred to Amalapuram Postal division under Rule 38 of P & T Manual Volume IV. While working at Bendamurlanka Sub Post office under Amalapuram Division, applicant was suspended by the 4th respondent on 1.3.2013 and it was not reviewed before 90 days as is mandated under the rules. On representing, subsistence allowance was enhanced on 29.7.2013. Suspension was reviewed and extended only on 25.11.2013 contravening the statutory rule. Further, applicant deposited a sum of Rs.3,05,000/- to the Govt. account for alleged fraud purported to be committed by him in International Money Transfer Scheme (IMTS) and represented for revocation of suspension. Charge sheet was issued on 14.2.2014 and inquiry was conducted by appointing Asst. Supdt. of Post Offices (HQ) as the inquiry officer on 26.3.2014. Without revocation of suspension despite representations on 2.3.2014 & 19.3.2014, review and extension of suspension was continued against rules. Aggrieved over the continued suspension and issue of charge sheet by an incompetent authority, OA has been filed.

4. The contentions of the applicant are that the suspension order dated 1.3.2013 is without power, jurisdiction and contravenes Rule 10 of CCS (CCA) Rules 1965. Similarly, the review and extension of suspension on 26.11.2013 after 90 days of suspending the applicant is also violative of Rule 10 of CCS (CCA) Rules 1965. Even the charge memo issued on 14.2.2014 is by an incompetent authority contravening Rule 12 of CCS (CCA) Rules 1965. The ASP (HQ), the immediate subordinate to the 4th respondent was actively involved in the preliminary inquiry, suspension, issue of charge memo etc. and therefore, appointing him as inquiry officer vitiates the inquiry proceedings.

5. Respondents in their reply statement submit that the applicant has confessed in his statement dated 28.2.2013 about committing fraud in IMTS payments by manipulating relevant records and based on the same, he was suspended on 1.3.2013 by the 4th respondent. Suspension ordered is as per rules by the competent authority. The defrauded amount was to the tune of Rs.3,02,000/- and the entire amount was credited by the applicant into the Govt account along with interest. The suspension as well as enhancement of subsistence allowance of the applicant was reviewed and extended from time to time adhering to the relevant rules by keeping in view the progress of the past work verification. Charge sheet was issued on 14.2.2014. ASP (HQ) was appointed as I.O. on 26.3.2014 and after the sittings commenced, the inquiry was stayed by the Tribunal vide order dated 22.8.2014. The ASP (HQ) has assisted the 4th respondent in matters relating to the suspension of the applicant and preparation of charge memo etc. but he did not actively participate in the investigation of the fraud, which indeed was done by Inspector, Posts Amalapuram Division.

6. Heard both the counsel through Video conferencing and perused the pleadings on record. Ld. Counsel for the applicant during the final hearing sought permission to submit judgments of this Tribunal in OA Nos. 677/2014, 955/2015 and Hon'ble Apex Court judgment in Ajay Kumar Choudhary v U.O.I in CA No. 1912/2015, which was granted and on submission, they were taken on record and perused.

7(I) The applicant has contended that the 4th respondent viz., Supdt. of Post Offices, Amalapuram, has suspended the applicant though he is incompetent to do so as per Rule 10 of CCS (CCA) Rules, 1965, which is extracted below:

“10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension- (a) where a disciplinary proceeding against him is contemplated or is pending; or (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:”

The applicant is also liable to be suspended by the Supdt. of Post Offices, who is the disciplinary authority for the post of Postal Assistant as per schedule of powers conferred on officers of the Postal Department as per Postal Manual Volume III. Therefore, there is no infringement of the rules in regard to the suspension of the official.

II. In regard to the charge sheet, it has been issued under Rule 14 of CCS (CCA) Rules 1965 which has provisions for levying major penalties. In respect of the applicant, he has been appointed by the Director of Postal Services who is in the Junior Administrative Grade. As per Article 311 clause (1) no one can be dismissed or removed from service by an authority subordinate to the Authority which appointed him. For Postal Assistants, the Supdt. of Post Offices, as per

Postal Manual Vol.-III is the appointing and the disciplinary authority but in the instant case applicant has been appointed by a JAG officer and therefore, the Supdt. of Post Offices cannot impose any major penalties as per Rule 12 of CCS (CCA) Rules read with clause (1) of Article 311 of the Constitution, which are reproduced hereunder:



“a. Rule 12 (2) DISCIPLINARY AUTHORITIES:

“(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on -

- (a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;*
- (b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.”*

b. Article 311 of the Constitution of India:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.”

Therefore, in the context of Rule 12 (2) of CCS (CCA) Rules read with Article 311 (1) of the Constitution, the appointing authority being a JAG officer for the applicant, charge sheet issued by the Supdt. of Post Offices is invalid. We also take support of the decision of the Hon'ble Supreme Court in ***Union of India & Ors vs B.V.Gopinath*** dt. 5 September, 2013, in C.A No.7761 of 2013 to assert that it is only the appointing authority, who is competent to approve the charge sheet as under.



“40. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under [Article 311\(1\)](#) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under [Article 311\(2\)](#) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.”

The respondents have erred both in respect of rules and law. Hence, it would be incumbent on part of the respondents to appoint an adhoc disciplinary authority in JAG grade for issue of a fresh charge sheet to take the disciplinary action against the applicant to its logical end.

III. Coming to the aspect of appointing of ASP (HQ) as the inquiry officer, it cannot be said that he is associated with the investigation. As Asst. of Supdt. of Post Offices, his job has been so designed to assist the Supdt. of Post Offices and supervise various branches working under respondent No.4 including the one involved in drafting and issue of suspension orders, Charge Memos, etc. In fact, it was the Inspector of Post Offices, Amalapuram Sub Division, who did the preliminary inquiry since the Bendamurlanka Sub Post Office comes under his jurisdiction. Therefore the contention of the applicant in this regard is rejected.

IV. Regarding the review and extension of suspension period, the facts as per Annexure R-IX are that the applicant was suspended on 1.3.2013. Review

committee constituted for the purpose met within 90 days of the suspension of the applicant on 20.5.2013 and extended the suspension upto 31.5.2013. So far so good. However, the 2nd and the 3rd review done by the respondents on 25.11.2013 & 21.2.2014 were not within the scheduled dates and that too, without issue of charge sheet as per details given by the respondents in the table at page 9 of the reply statement, thereby contravening the legal principle laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India Through Its Secretary & Anr on 16 February, 2015, C.A No.1912 of 2015. Further, prolonged suspension is neither in the interest of the employee nor the organisation. In the case on hand, the past work verification has been completed and charge sheet issued albeit a defective one. Hon'ble Supreme Court in regard to prolonged suspensions for long periods has observed, as under, in the judgments cited below.

a) Supreme Court of India in Ajay Kumar Choudhary vs. Union of India Through its Secretary & Anr on 16 February, 2015, C.A No. 1912 of 2015 (Arising out of SLP No. 31761 of 2013)

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges /Charge sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

b) Supreme Court of India in State of Tamil Nadu Rep By Secretary to Govt (Home) vs Promod Kumar, IPS & Anr. on 21 August, 2018, Civil Appeal No.8427-8428 of 2018, (Arising out of S.L.P. (Civil) No.12112-12113 of 2017)



“23. This Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.”

The fraud committed by the applicant is around Rs.3.0 lakhs and the total amount with interest has been recovered from him and after past work verification charge sheet was issued, but by an incompetent authority. Considering the above circumstances, the appropriate decision would have been to revoke the suspension and post the applicant in a non-sensitive post in any office from where the applicant had little scope to meddle with records or influence witnesses and even prohibit him from contacting any person or handle records till his defense is submitted. It would in effect curtail unnecessary expenditure on subsistence allowance paid without any contribution to the organisation on the work front. Particularly, when the suspension is continuing since the last 6 years it would not serve any useful purpose by continuing it further. It would have been appropriate to invoke the suspension and complete the disciplinary action at the earliest. The applicant credited the amount defrauded by admitting to the commission of fraud as per records on file and therefore, the Tribunal would desist from interfering in the decision of the respondents to pay subsistence allowance as ordained in the rules.

V. Therefore, after taking into consideration the rules and law discussed in the aforesaid paras, the charge sheet dated 14.2.2014 issued by an incompetent authority is set aside. Consequently, the respondents are directed to consider as under:



Appoint an adhoc disciplinary authority in Junior Administrative Grade, who will issue a fresh charge sheet within 4 weeks of receipt of this order and finalise the disciplinary action in all respects within 6 months from thereon.

ii. Suspension be revoked and applicant posted to a non sensitive post as is found appropriate administratively with appropriate directions to the concerned for keeping a watch on the work and conduct of the applicant till the finalisation of the disciplinary case as directed at clause (i) above.

iii. With the above directions the OA is allowed to the extent indicated. No order as to costs.

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

(ASHISH KALIA)
MEMBER(JUDL.)

pv/evr