

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01196/2014

HYDERABAD, this the 15th day of October, 2020

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



I. Narayanaiah S/o Late Veerswamy,
Aged about 66 years, Retired BCR/Postal Assistant,
Guduru Head Post Office, R/o Puduru B.O.,
a/w Naidupeta S.O., Gudur (NL) Division,
Nellore Dt.Applicant

(By Advocate : Mrs.B.Geeta)

Vs.

1. Union of India, rep by
The Secretary, Ministry of Communications & IT,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi-110 001.
2. The Director General, Posts,
Department of Posts, Dak Sadan, Sansad Marg,
New Delhi-1.
3. The Chief Postmaster General,
A.P.Circle, Hyderabad-1.
4. The Postmaster General,
Vijayawada Region, Vijayawada.
5. The Superintendent of Post Offices,
Gudur Division, Gudur (NL)-524101.
District Nellore.
6. Sri I.R.K.Naidu,
(The then) Assistant Superintendent of Post Offices (R),
O/o Superintendent of Post Offices, Nellore Division,
Nellore-524001.Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC)

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

Through Video Conferencing:

2. The O.A. has been filed against the penalty of withholding of 20% pension for a period of five years in addition to withholding of an amount of Rs.87,525/- from the Gratuity of the applicant on his retirement by the respondents.

3. The brief facts of the case are that the applicant while working as BCR Postal Assistant in the respondent's organization was issued Rule 14 charge memo on 7.7.2008. He retired on 31.12.2008. The charge sheet was converted into Rule 9 case. The charge against the applicant was that he allowed SAS agents to attend to official work which they are not supposed to. An inquiry was conducted and based on the inquiry, the penalty of 20% pension cut for 5 years and also recovery of Rs.87,525/- from the Gratuity of the applicant was imposed by the respondents. The applicant claims that the punishment is too harsh and aggrieved over the same, the present O.A. has been filed.

4. The contentions of the applicant are that there have been number of corrections in the charge sheet. The charge sheet has been converted into Rule 9 without any Presidential Sanction. In fact, the Inquiry Officer himself has converted the Rule 14 into Rule 9 which he is not competent to do so. The practice of SAS agents attending to office work is very common in the office he was working and along with others, he has also allowed them to do official work. The prosecution witnesses were examined in the absence of the applicant during the inquiry. Bias petition

moved against the Inquiry Officer was rejected without proper application of mind. Besides, before regular inquiry could be conducted, preliminary inquiry was done and a copy of the same when sought by the applicant during the inquiry, the Inquiry Officer rejected the request. Applicant represented claiming that he was not actually involved in the fraud, which was not responded to. Applicant has also filed O.A. No.474/2011 wherein the Tribunal directed the respondents to decide the issue in 2 months time.



In regard to the inquiry sitting on 15.12.2008, no notice was sent to him.

5. In the reply statement respondents stated that a fraud of Rs.17,45,920/- occurred in Naidupeta Sub Post Office. The reason for the occurrence of the fraud is that the applicant did not properly maintain the stock of blank Pass Books. He allowed an outsider by name Sk. Rafi, who is the husband of the SAS agent Mrs. Shaheeda, to handle post office records, which is not permitted as per rules. Consequently, a Rule 14 charge sheet was issued and the applicant neither admitted nor denied the charges framed. Hence, inquiry was ordered and in the meanwhile, applicant retired from service and, therefore, inquiry was conducted under Sub Rule 2(a) of Rule 9. There is no requirement of the Presidential Sanction to issue rule 9, when the Rule 14 charge sheet is issued before the employee retires. Applicant was given an opportunity to examine prosecution witnesses but he did not avail of the same. In fact, he did not attend the inquiry on 19.1.2009 & 20.01.2009. A notice about the sitting of the inquiry on 15.12.2008 was sent by registered post bearing the No.2202 dated 1.12.2008 but it was returned stating that the applicant was absent in the address given by him. However, his Defence Assistant received the notice and attended the inquiry. Therefore, ample

opportunities have been given to the applicant during the inquiry. The preliminary inquiry report was not given in view of the instructions contained in Govt. of India decision regarding Inspection of Documents in (18) (6) of O.M No.F 30/5/61 ó AVD dated 25.8.1961 (Annex.R-3).



More so, when it is not used against the charged employee during the inquiry. Hence, the non-supply of the preliminary inquiry report would not in any way impact the inquiry. Action of the respondents is as per rules and for having been responsible for the occurrence of a major fraud, applicant was imposed with an appropriate penalty.

6. Heard Mrs. B. Geetha, learned counsel for the applicant and Mrs. K. Rajitha, learned Senior Standing Counsel appearing for the respondents, and perused the pleadings on record.

7. Applicant, while working as BCR Postal Assistant in Naidupeta Post Office, had allowed an outsider, who is the husband of an SAS agent to handle Post Office records. Post Office is a public institution and its work has to be done by employees recruited by the respondents organization. It is illegal to allow any outsider to attend to official records of the Post Office. It is a well known fact that Post Office deals with Savings Bank work involving deposits running into hundreds of crores. Such being the importance of the work, it is not understood as to how the applicant, who is a senior official, would indulge in the luxury of permitting an outsider to work in the Post Office. The claim of the applicant that it is a normal practice in the Post Office and, therefore, he has allowed the same, is not a valid submission to be taken on record. If

others are committing mistakes, it does not mean that the applicant also has the license to do the same. As a Govt. servant it was his duty to bring it to the notice of the competent authority about the irregular and illegal practices in the Post Office. If he has permitted outsiders to deal with official work , then he has to own the responsibility. Having permitted outsiders to work in the Post Office, he was found to facilitate a fraud to take place and therefore disciplinary action was initiated for violating relevant rules. Respondents have issued charge sheet under Rule 14. However, while issuing the charge sheet, there were many typographical mistakes, which they have corrected by issuing a corrigendum. Correcting a charge sheet by issuing a corrigendum is permitted under the rules. Therefore the contention of the applicant that the charge sheet is invalid due to too many corrections is not sustainable.

Inquiry Officer was appointed and the applicant was given permission to engage a Defence Assistant. Applicant along with the Defence Assistant, has attended the inquiry and placed his defence. The applicant&os claim that on 15.12.2008, the inquiry was done without giving notice to him, is found to be incorrect since the respondents have taken care to see that notice is sent to the applicant by registered letter dated 1.12.2008, but it was returned with a remark that the addressee was not staying in the address given. It is the responsibility of the applicant to ensure that in case any letter is received at the address given by him, if he was not to be there, at least he should have left instructions with the concerned Post Office about his absence. Interestingly, Defence Assistant of the applicant got the notice and he attended the inquiry.

Therefore, it does not appear to be logical to claim that the respondents have not sent the notice to the applicant.



Usually, when a fraud is detected, initially a preliminary inquiry is done and accordingly the respondents have set up a team which did the preliminary inquiry. The respondents have taken care to ensure that the preliminary inquiry was not used as an evidence in the regular inquiry against the applicant. The law provides that in case if it is not used as an evidence, then the respondents are not duty bound to provide the preliminary inquiry report. Further, Govt. of India decision regarding Inspection of Documents in (18) (6) of O.M No.F 30/5/61 ó AVD dated 25.8.1961 (Annex.R-3) supports the view point of the respondents that the preliminary inquiry report need not be given to the applicant when it has not been cited as a document in the regular inquiry.

Rule 14 charge sheet was issued to the applicant before his retirement and after his retirement it is deemed to have been converted into Rule 9 as per Rule 2(a) of Rule 9 of CCS (Pension) Rules. Under this Rules, the President is competent to impose a penalty of pension cut, recovery in Gratuity, etc. The respondents have accordingly followed the rules and imposed the punishment.

At this juncture, we need to mention that the Tribunal in the garb of judicial review cannot set aside the decision of the Disciplinary Authority in imposing the penalty unless it is shocking and disproportionate or the punishment was imposed without following the prescribed procedure. In the instant case, respondents have followed the procedure prescribed. Only when there is a discrepancy in following the procedure, the Tribunal

has the competency to intervene and direct the respondents to adhere to the rules prescribed for disciplinary inquiry/ disciplinary action. In the case on hand, we find that the inquiry was conducted in a fair and transparent manner by allowing the applicant reasonable opportunity to defend himself. After taking his defence on record, respondents have imposed the penalty in question. The penalty is 20% cut in pension for a period of 5 years and recovery of Rs.87,525/- from Gratuity, which we feel is not shocking or disproportionate as claimed by the applicant. More so, in the context of the image of the Post Office is being compromised by allowing outsiders to handle financially related transactions. The damage to the image of the Post Office is incalculable.

Learned counsel for the applicant cited that the observation of the Hon'ble Supreme Court in J.K. Mishra Vs D.G. Police, CRPF (1981 (2) SLR 182 (Cal) 346) supports the cause of the applicant effectively. We have gone through the said judgment and find that it is not applicable to the present case as its facts and circumstances are different.

Keeping the above circumstances in view, we find no merit in the O.A. filed and hence has to be dismissed. Accordingly, it is dismissed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER **(ASHISH KALIA)**
JUDICIAL MEMBER

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