

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**OA/020/01193/2014**

HYDERABAD, this the 14<sup>th</sup> day of October, 2020

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



K.Subhadramma W/o late K.Seshagiri Rao,  
Aged about 64 years, Retired Assistant Postmaster (SB),  
Visakhapatnam H.O. Now residing at D.No.57-27-3/3,  
Bhavani Gardens, ITI Junction, Visakhapatnam-530 007       ....Applicant

(By Advocate : Mr.A.Satya Prasad representing Mrs.Prayusha Appari)

1. The Union of India,  
Represented by the Additional Secretary (Pension),  
Ministry of Personnel, Public Grievances & Pensions,  
Department of Pension & Pensioners' Welfare,  
III Floor, Lok Nayak Bhavan, New Delhi-110 001.
2. The Union of India, Represented by the Secretary,  
Department of Personnel and Training,  
Ministry of Home Affairs, Government of India,  
New Delhi.
3. The Union of India, Represented by the  
Director General, Department of Posts,  
Dak Bhavan, New Delhi.
4. The Chief Postmaster General,  
A.P.Circle, Hyderabad-500 001.
5. The Postmaster General,  
Visakhapatnam Region, Visakhapatnam-530 017.
6. The Senior Superintendent of Post Offices,  
Visakhapatnam District, Visakhapatnam-530 001.
7. Union Public Service Commission, New Delhi,  
Represented by its Secretary.       ....Respondents

(By Advocate : Mr.Sanjay Reddy representing  
Mr.T.Hanumantha Reddy, Sr. PC for CG)

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

**Through Video Conferencing:**

2. OA has been filed aggrieved over the decision of the respondents in ordering de-nova inquiry in regard to the Rule 14 charge sheet issued to the applicant.



3. Brief facts of the case are that the applicant, while working for the respondents, was issued a Rule 14 charge memo on the last date of retirement on 30.6.2010 by identifying her as a subsidiary offender in M.V.Palem fraud case, resulting in denying the disbursement of the retiral benefits excepting provisional pension. Inquiry was conducted wherein it was held that the charges were not proved on grounds that the original documents were not furnished and Xerox copies of documents were not properly identified. Defence was submitted but there was no action for nearly 2½ years. OA No.1252/2010 filed by the applicant seeking intervention of this Tribunal was dismissed on grounds that the main prayer has become infrutuous. Disciplinary authority disagreed with the findings in the I.O. report and on the advice of UPSC further inquiry was ordered belatedly invoking rule 15 of CCS (CCA) Rules, 1965. New I.O was appointed. Bias petition moved against the I.O was rejected by the disciplinary authority and the appellate authority as well. Aggrieved, OA has been filed.

4. The contentions of the applicant are that the I.O. appointed initially has rightly held that the charges as not proved for not furnishing original documents. Advice of UPSC was not given. I.O has been changed on the

grounds that he had retired though rules provide for engaging a retired official as I.O. Respondents would like to produce the documents in the further inquiry ordered . As per DOPT memo dated 8.1.1971 orders have to be passed on the I.O report within a reasonable time limit. Judgments of the Hon'ble Apex Court in D.S Nakara and Ors v. Union of India & Ors.; in State of Jharkhand V Jitender Kumar Srivastava &ors in CA 6771/2013 were quoted in support of the contentions.

5. Respondents in the reply statement state that a fraud to the extent of Rs.66 lakhs and odd was committed by one Sri D.N. Prasad, SPM in M.V.Palem Sub Post office and the applicant who was working as Asst. Post Master (Savings Bank), Visakhapatnam Head Post Office failed to make proper supervisory checks resulting in the issue of Rule 14 charge sheet after identifying her as a subsidiary offender. Applicant failed to appear before the investigation officer when called on 25.5.2010 vide letters dated 19.5.2010/14.6.2010 and hence, on the day of her retirement ie 30.6.2010, when she joined duty, charge sheet was served. IO was appointed on 08.09.2010. I.O held the charges as not proved and the disciplinary authority disagreeing with I.O findings obtained UPSC advise and in accordance with advise rendered, further inquiry was ordered under Rule 15 of CCS (CCA) Rules, 1965. Earlier I.O retired and hence another I.O was appointed which is within competence of the disciplinary authority. Bias petition moved against the I.O. was dismissed and the appeal made did not yield any different result. Applicant is delaying the inquiry. Action has been initiated in harmony with Rule 69 of CCS (Pension) Rules 1972 and Rule 4 of CCS (Commutation) Rules, 1981.

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

7. I. Applicant was identified as a subsidiary offender in M.V.Palem fraud case for supervisory failures and in particular for not acting as per rules 2(4) & 48 (ii) of Post Officer Savings Bank Manual Volume-I. Charge sheet was issued under Rule 14 of CCS (CCA) Rules and served on the date of her retirement for reasons well explained in the reply statement. Inquiry officer has held the charges as not proved for non furnishing of original documents and without properly identifying the Xerox documents. Disciplinary authority disagreed with the I.O report and an elaborate disagreement note was recorded which was furnished to the applicant vide letter dated 14.3.2012. On the advise of UPSC, further inquiry was ordered under rule 15 of the CCS (CCA) Rules, which is extracted hereunder:

**“15. ACTION ON INQUIRY REPORT:**

*(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.*

*(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.*

*\*[(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:*

*(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and*

*(ii) comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.*

*(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission."*



From the above, it is evident that the competent authority has the right to order further inquiry. Respondents have thus acted as per rule and the case is still at the stage of inquiry with no definite conclusion arrived at in the matter. Respondents have exercised the legal provisions available under rules to disagree with the findings of the then I.O and the disagreement note was made over to the applicant. Thereupon, on the advise of UPSC further inquiry has been taken up. Thus the inquiry is yet to be completed.

II. Options are still open to the applicant to ably defend her case. Doors are not shut to fight out her case. However, we have observed that UPSC advise has not been served on the applicant as provided for under rule 15 cited supra which is a technical flaw. For non supply of UPSC advise, Tribunal can direct the respondents to set right the anomaly and proceed with the inquiry but cannot prevent the respondents from taking disciplinary action against the applicant for supervisory lapses. Decision to take disciplinary action cannot be questioned but if there are any infirmities in the decision making process, then, they can be directed to be rectified, as for instance non supply of UPSC advise, noticed in the instant case. It is well settled that Judicial review can be confined to the inadequacies in the decision making process and not beyond. A mere issue of a charge sheet

and conduct of inquiry would not amount to an adverse order affecting the rights of the applicant. It is possible that depending on the outcome of the inquiry, respondents may take a view which may be favourable to the applicant. Apprehending that the result would be adverse and therefore, attempting to short-circuit the inquiry process by pleading for a judicial review may not be a workable proposition for the applicant, both in the context of rules and law. Only when a final order is passed by the respondents, which would adversely affect the interests of the applicant, then the applicant is said to have a grievance to agitate before the Tribunal.

While stating the above, we have relied upon the observation of the Hon'ble Supreme Court in the case of Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, as under:-

*"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh[(1996) 1 SCC 327 : JT (1995) 8 SC 331] ,Special Director v. Mohd. Ghulam Ghouse[(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] ,Ulagappa v. Divisional Commr., Mysore[(2001) 10 SCC 639] ,State of U.P. v. Brahm Datt Sharma[(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.*

*14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. "*

III. Moreover, it is substantive justice that would prevail and not technical justice as opined by the Hon'ble Supreme Court in State Rep By Inspector of Police, CBI vs M Subrahmanyam on 7 May, 2019 in Criminal Appeal no(s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019)

by citing its own judgment in Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597, as under.



*The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.*

Some technical flaws here and there committed by the respondents in proceeding against the applicant would not be vital but what would be substantive is as to the role of the applicant in the occurrence of the fraud as a subsidiary offender. It is this aspect which the respondents are looking into and it is for the applicant to use the process of inquiry to prove her innocence. Further, there are remedies of appeal, petition, mercy petition etc which are available to be invoked, if the need so arises. To be candid, in the dispensation of justice a balance has to be struck, so that ultimately Justice prevails. To forestall the inquiry process would create inequilibrium in the deliverance of justice.

IV. We also observe that the applicant has retired a decade back and is not in receipt of retiral benefits all along. Applicant is aggrieved that the disciplinary authority has not gone with the findings of the previous I.O. who held the charges as not proved. At this juncture we must point out that the respondents' organisation is a public institution accountable to uphold public interest. Hence, respondents are duty bound to ensure that public interest is upheld and therefore, the disagreement note is followed by the required steps to be taken. Expecting that an I.O who held the charges as not proved, has to be continued, even after retirement is not a fair

expectation on part of the applicant. It is for the disciplinary authority to decide as to who shall be the I.O. Once the I.O. is appointed his role is that of an independent adjudicator, whoever it may be. Respondents have appointed a different I.O when the earlier one retired. Rules do provide for engaging retired employees as I.O as claimed by the applicant, but in the same vein, rules do grant the discretion to the respondents to appoint an I.O. Therefore the contention of the applicant that the earlier I.O should have been continued even after his retirement is not impressive to carry us over. A change of I.O does not change the character of the case, since the inquiry process is bound by rules and law. This is substantiated by the fact that the applicant did exercise the right to move a bias petition against the I.O which was rejected and the result remained same when appeal was made. Thus it is seen, respondents have been providing reasonable opportunity to the applicant to defend herself. Having been unsuccessful in her efforts with the respondents, Tribunal was moved in the instant OA seeking interim relief to stay the inquiry proceedings, which was granted on 15.10.2014.

V. The prayer of the applicant is to set aside the inquiry and order payment of retiral benefits. Judicial review by the Tribunal is limited to the extent of examining as to whether there were any procedural lapses in the disciplinary process with reference to rules and law. The lapse of not supplying the UPSC document and other related documents to be handed over to the applicant, is being strictly directed to be complied with by the respondents in accordance with rules and law. Nevertheless, an alternative available to the Tribunal is to set aside the charge sheet and grant liberty to

the respondents to issue a fresh charge sheet, on the basis of the technical flaws noticed. At this distant date, such a direction would result in further procrastination of the issue for some more years to come. We are of the view that such a measure would neither be beneficial to the applicant nor in the best interests of the respondents organization. We did peruse the UPSC advise tendered on 16.1.2014, appended to the reply statement which ought to have given to the applicant rather than allowing it to gather dust. The concern of the Tribunal is that the issue has to come to a logic end in accordance with norms. Applicant retired on 30.6.2010 and 10 years have lapsed without receiving any retiral benefits, leaving her astray in the woods. We understand the difficulty being faced by the applicant though she was only a subsidiary offender and not committed the fraud perse. Having occupied a supervisory role, care and caution should have been responsibly exercised by the applicant in discharging the assigned duties, so that she was not susceptible to the allegations in question. Any fraud committed because of lack of proper checks to be done at levels identified would besmear the fair name of the Post Office. The fault of the applicant is that she is alleged to have failed to make the supervisory checks and hence identified as a subsidiary offender. Therefore applicant has to go through the disciplinary process to prove her innocence. Be it as it may, the role is main or subsidiary. There can be no short cut whatsoever under law. Judgments cited by the applicant are not of assistance to the applicant, in the context of the Hon'ble Apex Court directions referred to supra and considering the facts as well as circumstances of the case.

VI. Therefore, keeping the above circumstances in view, we direct the respondents to immediately supply the UPSC advise to the applicant as a part of the disciplinary process so that her response to the same is duly evaluated in taking a view on the matter. Other relevant documents as are required to be made over to the applicant, be fulfilled, as ordained under rules and law. Applicant shall cooperate with the respondents for early completion of the disciplinary inquiry. Respondents are granted a time period of 5 months to complete the disciplinary case in all respects as deemed fit in a manner compatible with rules and law.

VII. With the above direction the OA is disposed of. Interim order passed by the Tribunal on 15.10.2014 stands vacated. No costs.



**(B.V.SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

*evr*