

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01517/2014

HYDERABAD, this the 1st day of February, 2021

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



B.H.Sitarama Raju S/o Ramaraju,
Aged about 55 years, Occ : GDSMC/MD,
Vetakuru Branch PO, A/w Maredumilli SO,
Rajahmundry Division, East Godavari District.Applicant

(By Advocate : Dr.A.Raghu Kumar)

Vs.

1. The Union of India rep by Director General,
Departmet 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-17.
4. The Superintendent of Post Offices,
Rajahmundry Division, Rajahmundry.
5. The Assistant Superintendent of Post Offices (HQ),
Rajahmundry Division, Rajahmundry-1.
6. The Inspector (Posts),
Korukonda Sub Division, Korukonda,
East Godavari District.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 OA is filed in regard to removal of the applicant from service on 9.6.2014.
3. Brief facts of the case are that the applicant while working as Grameen Dak Sewak (GDS) in the respondents organisation was issued a charge memo on 23.3.2013 under rule 10 of the GDS (Conduct & Engagement) Rules 2011 for alleged fraud in Savings Bank (SB), Recurring Deposit (RD) and RPLI (Rural Postal Life Insurance) accounts. Inquiry was conducted and the charges were held as proved and based on the inquiry report, applicant was removed from service on 9.6.2014 by the Competent authority. Appeal preferred was rejected on 31.10.2014 and hence the OA.
4. The contentions of the applicant are that the disciplinary authority, Inspector Posts, Korukonda Sub division, has investigated the alleged fraud and hence cannot issue the charge sheet. Disciplinary authority has to initiate and finalise the disciplinary action. Further, disciplinary authority has appointed officers as IO/PO who were superior to him. Applicant admitted the charges under duress during the inquiry. ASP (H.Q) who was appointed as adhoc disciplinary authority was associated with the case. The charges were not explained to the applicant while conducting the inquiry and was not informed that he can avail the services of a defence assistant.

5. Respondents per contra state that the applicant committed a fraud in SB, RD & RPLI accounts to the extent of around Rs.52,234 and in the statements made before the Inspector Posts, Korukonda Sub division on 24.4.2012 and 9.6.2012, applicant has admitted to have committed the fraud. He has also credited a sum of Rs.49,500 in the Govt. Account towards the loss caused. Disciplinary authority is competent to appoint I.O/P.O as per Rule 10 of GDS (C&E) Rules 2011. Penalty of removal was imposed on 9.6.2014 and upheld by the Appellate Authority on 31.10.2014. Applicant was never put under duress to admit the fraud. Rules have been followed in imposing the penalty.

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

7. I. Applicant is aggrieved that the penalty of removal was imposed by not following the relevant rules. The main contention is that the Inspector Posts, Korukonda sub division, who is the disciplinary authority conducted the preliminary inquiry and hence cannot issue the charge sheet. In this regard it would be beneficial to refer to Rule 50 of Posts and Telegraph Manual, extracted hereunder:

50. The authority who conducts the preliminary enquiry into a case of misconduct etc. of a Government servant will not be debarred from functioning as a disciplinary authority in the same case provided it has not openly given out its findings about the guilt of the accused official.

It is true that the Inspector Posts, Korukonda Sub division who is the disciplinary did conduct the preliminary inquiry and as per Rule 50 of P & T Manual cited above, which is statutory in nature, he can act as the disciplinary authority. Applicant has not contended that the Inspector Posts, Korukonda has openly given his findings about the guilt of the accused official in the preliminary report and therefore any submission at this stage

would not carry much conviction. Even during the inquiry applicant has admitted the charges and had not raised the issue in question. Further, Inspector, Korukonda division, as appointing authority has only issued the charge sheet and it was the adhoc disciplinary authority appointed for the purpose of imposing the penalty, who imposed the penalty of removal. The action of the Inspector Posts in issuing the charge sheet is in consonance with the instructions issued under GDS (C&E) Rules namely instructions 6 & 7 vide DG letters dated 16.12.1981 and 23.11.1978, enclosed with the reply statement.

II. More than the above, applicant has admitted in his statements dated 24.4.2012 and 9.6.2012 that he committed the fraud and he was truthfully abiding by the said confession vide his deposition before the Inquiry officer on 11.11.2013 and again by his reply dated 28.12.2013 to the Presenting Officer brief sent to him. The inquiry officer report was sent to him and he chose not to reply though served on him on 26.4.2014. Therefore, based on the repeated admissions of the applicant that he has committed the fraud at different stages of the disciplinary proceedings and after giving the applicant reasonable opportunity to defend himself, the penalty of removal was imposed on 9.6.2014 by the adhoc disciplinary but not by the regular disciplinary authority who did the preliminary inquiry.

III. Other contentions made by the applicant, is that the disciplinary authority has appointed officers who were superior to him. The rules on the subject provide for appointing a person as I.O who is not below the rank of the charged employee or junior to the charged employee. In the instant case, the I.O/P.O are Asst. Supdts of Post Offices, who are superior

to the charged employee and in fact are the appointing authorities for the cadre of the charged employee. Their appointment has not caused any prejudice to the cause of the applicant. Appointing Authority viz. Inspector Posts, Korukunda Sub Division, has appointed the I.O/P.O by complying with the above proviso. Besides, ASP (HQ) assists the Divisional Supdt. in administering the division and he supervises different branches in the divisional office. One of the branches is the fraud and investigating branch as part of his regular duties. Therefore, it cannot be said that he has exclusively dealt with the case and therefore has to be debarred from being appointed as adhoc disciplinary authority as claimed by the applicant. There is an immeasurable difference between the role of an adhoc disciplinary authority and that of an ASP (HQ) whose main role is to assist the Divisional Supdt. Hence we find no error in appointing the ASP (HQ) as the Adhoc disciplinary authority by the respondents. In regard to the applicant being subjected to duress to admit the charges, we are of the view that it is an afterthought since applicant has admitted the charges not on one occasion but on multiple occasions. The applicant has been harping on technical aspects to pursue his case but it is substantive justice which will prevail and not technical justice as observed 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) as under:

8. *In Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597, the Court opined:*

“6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural



direction..... The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"



9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. 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.

Hence, the repeated submissions of the Ld. Counsel for the applicant, that the Inspector Posts, Korukonda Sub division, being the disciplinary authority and having conducted the preliminary inquiry, should not have issued the charge sheet, would not hold ground in view of the observation of the Hon'ble Apex Court, as at above. Further, it is important to reiterate, though at the cost of repetition, that it is the adhoc disciplinary authority, ASP (HQ), who has imposed the penalty and not Inspector Posts, Korukonda. Sub division, who was the regular disciplinary authority at the relevant point of time. Ultimately, it was the Adhoc disciplinary authority, who has judged the case and not the regular disciplinary authority.

IV. Lastly, in the instant case, as facts are admitted, the case has revealed itself and is apparent on the face of record, and in spite of opportunity, no worthwhile explanation is forthcoming as is seen from the case details, it would therefore not be worthwhile to interfere with removal order imposed. In fact, no inquiry need to be conducted if the charged employee admits the guilt. However, respondents have taken required steps

to ensure that the applicant is given reasonable opportunities to fight out his case. We rely on the observations of the Hon'ble Supreme Court of India in **Dharmarathmakara R.A. Ramaswamy Mudaliar Ed. Institution vs The Educational Appellate Tribunal & Anr.** on 20th August, 1999, as under, in stating what we did, as at above.



*The contention of learned counsel for the respondent is confined that there was no enquiry in terms of Section 6 of the said Act. There is no submission of any defence on merit. Even before us when we granted learned counsel an opportunity to give any *prima facie* or plausible explanations on record to defend her actions, nothing could be placed before us. Giving of opportunity or an enquiry of course is a check and balance concept that no ones right be taken away without giving him/her opportunity or without enquiry in a given case or where statute require. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations? When she admitted she did not join M.Phil course, she did not report back to her duty which is against her condition of leave and contrary to her affidavit which is the charge, what enquiry was to be made? In a case where facts are almost admitted, the case reveals itself and is apparent on the face of record, and in spite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with termination order.*

V. Therefore, in view of the above circumstances, we do not find any merit in the case and hence, the OA is dismissed, with not order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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