

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/1526/2014

HYDERABAD, this the 3rd day of February, 2021



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

N. Satyanarayana, S/o. N. Subbarao,
Aged about 57 years,
Occ: Sub Postmaster (under the orders of removal),
Kutukuluru SO, Rajahmundry Division,
East Godavari District, R/o. No.945,
Vasant Nagar, Kukatpally, Hyderabad -72.

...Applicant

(By Advocate : Sri B. Pavan Kumar for Dr. A. Raghu Kumar)

Vs.

1. The Union of India rep. by
Director General,
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 – 17.
4. The Superintendent of Post Offices,
Rajahmundry Division, Rajahmundry.

...Respondents

(By Advocate : Smt. L. Pranathi Reddy, Addl. CGSC)

ORAL ORDER**(Hon'ble Mr. B.V. Sudhakar, Admn. Member)****Through Video Conferencing:**

2. The Original Application is filed challenging the Notice vide Lr.No.F.4-1/2008-2009, dated 17.07.2014 in regard to adjustment of Rs.7,15,057/- from out of the dues of the applicant towards unpaid subsistence allowance from 01.10.2009 to 26.11.2013 along with the arrears arising out of 6th CPC between January, 2006 to August, 2008, Productivity Linked Bonus for 2008-2009 and pay and allowances from 01.01.2009 to 31.01.2009 and the consequential Orders dated 28.11.2014 recovering the said amount and to quash and set aside the same.

3. Brief facts of the case are that the applicant was appointed as Postal Assistant on 16.3.1981 in the Respondents Organisation. Applicant claims that a Criminal Case vide FIR No.80 was foisted against the applicant on 24.05.2009 for alleged misappropriation of cash of Rs.27.44 lakhs. A Memo was issued on 17.7.2009 placing the applicant under deemed suspension with effect from 27.06.2009. Applicant submitted a representation on 27.06.2009 to grant medical leave from 28.01.2009 to 26.06.2009. Respondents issued a letter dated 22.12.2009 granting subsistence allowance with effect from 27.06.2009. Charge sheet was filed in the Competent Court. Thereafter, the impugned notice dated 17.07.2014 was issued to the applicant wherein it is mentioned that a Rule-14 charge memo was issued for alleged defrauding of public money to the extent of Rs.35.48 lakhs and disciplinary inquiry was conducted

resulting in dismissal of the Applicant. It is further stated in the said Notice that, towards loss caused, a sum of Rs.39.41 lakhs has to be adjusted. Accordingly, a sum of Rs.7.15 lakhs unpaid subsistence allowances, 60% of 6th CPC arrears payable, productivity Linked Bonus for the year 2008-09 and pay and allowances of January, 2009 have been adjusted towards the loss. In response, the applicant represented that neither the proceedings regarding the disciplinary inquiry nor the charge sheet has been received by him. Besides, there is no provision to recover from subsistence allowance. Aggrieved by the recovery ordered vide memo dated 28.11.2014, the OA is filed.



4. The contentions of the applicant are that the charge sheet was not served, but the notice for recovery was served. Respondents knew the address of the Applicant. FIR was lodged when the applicant sought medical leave in November, 2009. FR 53 has been violated. Subsistence allowance is granted for minimum livelihood.

5. Respondents in the reply statement state that the applicant while working as Sub Postmaster, Kutukuluru Sub Post Office during the period 2006-2009 has committed a fraud to the extent of Rs.35.48 lakhs and absconded from duty since 27.1.2009. FIR was registered vide Crime No.80/2009 on 24.05.2009, which led to the arrest of the applicant on 27.6.2009 and released on bail on 10.7.2009. Police filed charge sheet and the criminal case bearing the number CC No.97/2010 is in progress. Applicant was placed under deemed suspension from 27.6.2009 vide memo dated 17.7.2009, stipulating the condition that his Headquarter would be Rajahmundry and should not leave Headquarters without

permission. Further, he has to report to ASP (HQ) when called for in respect of disciplinary case / Criminal Case. Applicant avoided receiving official communication sent to his Last Known Address and therefore, a police complaint was lodged on 26.10.2010, who in turn informed that the Applicant is not traceable. Disciplinary inquiry was conducted by issuing notices to his Last Known Address which were returned and the applicant did not attend the inquiry. Notices were published in "The Hindu" about the proceedings and finally, he was dismissed from service. Further, officers from Respondents Organisation went over to the last known address of the Applicant and contacted the family members of the Applicant who informed that applicant is not living in the Last Known Address. Hence, relevant papers were stuck on the door of the Last Known Address and important documents were even handed over to the sister of the applicant. Along with the applicant, eleven others were proceeded against under Rule 16 of CCS (CCA) Rules as subsidiary offenders. Action was, therefore, taken to issue notice for recovery of loss, which was delivered on 24.10.2014. As per FR 53, subsistence allowance will be paid only if non-employment certificate is submitted, which the applicant did not furnish.



6. Heard both the counsel and perused the pleadings.

7. I. The dispute is about recoveries ordered without intimating the applicant about the disciplinary inquiry proceedings and by not serving the charge sheet. In this regard, we observe the following:



(a) Applicant was involved in committing a fraud of Rs.35.48 lakhs in Savings Bank, Recovering deposit, Monthly Income Scheme and Time deposit accounts. After committing the fraud, applicant absconded from duty since 27.1.2009 and thereafter, on lodging a Police Complaint, he was arrested on 27.6.2009 and released on bail on 10.7.2009. Applicant was placed under deemed suspension with effect from 27.6.2009 with a rider that he shall not leave the headquarters i.e. Rajahmundry without permission and shall be available for disciplinary proceedings / criminal case. The Criminal Case is under adjudication vide CC No.97/2010 as stated by the respondents in the reply statement. Rule 14 charge sheet was issued on 2.9.2010 and based on the ex-parte Inquiry done, applicant was dismissed from service. Thereafter, the impugned notice dated 17.07.2014 was served and recovery to the following extent has been ordered :

- (i) Rs.6.45 lakhs from unpaid subsistence allowance for the period from 01.10.2009 to 26.11.2013;
- (ii) Rs.0.64 lakhs from 6th CPC arrears;
- (iii) Productivity linked Bonus for the year 2008-09;
- (iv) Pay and Allowances of January, 2009.

(b) The Last Known Address of the Applicant is H.No.945, Vasanthnagar Housing Board Colony, Kukatpally, Hyderabad-85;

(c) Applicant claimed that he was kept in the dark in regard to the disciplinary inquiry and imposition of penalty. This is not found to be true from the following facts which were not rebutted by the Applicant in the form of a rejoinder.



(i) When the applicant left Headquarters ie Rajahmundry without permission, he was directed to submit his explanation vide memo dated 22.12.2009, which was delivered to the applicant by Registered Post at the Last Known Address. Applicant thereafter sought T.A. advance on 21.08.2009 and the same was sanctioned on 14.10.2009, which the applicant did not avail, which goes to prove that the Applicant was in touch with the Respondents.

(ii) An officer was deputed on 22.3.2011 to deliver the charge sheet. Officer met the wife and son of the applicant who informed that the applicant is staying at the some other address, about which they do not know. This is rather surprising. When family members are missing, generally the immediate reaction is to approach the Police for assistance. Family members have not done so, as there is no record submitted, which demonstrate that they were not revealing the true facts. Nevertheless, Applicant was contacted on his mobile number 8106923404 and he promised to contact the officer in the evening, but he did not. Therefore, on the same day, Officer went to the Last Known Address once again and found that the wife and son of the Applicant were not available but his sister was available, to whom a copy of the charge sheet was delivered and another copy was pasted to the door as per relevant rules. However, applicant contacted the Assistant Superintendent of Post Offices, West Sub Division, Rajahmundry on 23.3.2011 at 12.03 hours informing that he will file the reply.



(iii) Charge Sheet was taken delivery by one Sri M. Choudary by Registered Post dated 28.03.2011 on behalf of the applicant on 31.03.2011 (Annexure R-25) at Last Known Address which is evidenced by delivery slip (Annexure R-26). Charge Sheet was also delivered to the son of the Applicant on 28.3.2011 by Registered Post.

(iv) A letter in regard to the Disciplinary Inquiry sitting dated 17.06.2011 was delivered at the Last Known Address by the Registered Post on 13.06.2011 as per web based complaint response dated 25.7.2011.

(v) Notice about dismissal was published in the Newspaper "The Hindu" on 15.12.2013 (Annexure R-63). Another notice sent to the applicant to file a reply to the Inquiry Officer report was also published in the cited Newspaper on 14.09.2013.

(vi) The Inquiry Officer's Report dated 25.03.2013 was pasted to the door of the Last Known Address by Asst. Supdt. Of Post Offices, Rajahmundry East Sub Division along with Public Relations Inspector on 18.9.2013. A photo of the same is enclosed as Annexure R-57.

(vii) Impugned Notice dated 17.7.2014 was delivered at the Last Known Address by Registered Post on 24.10.2014.

(viii) Applicant was directed to appear at General Hospital, Kakinada in regard to Medial Leave for 2nd opinion, which was

delivered at Last Known Address and acknowledged by the Applicant.



Therefore, from the above facts, it cannot be gainsaid that the applicant was not aware of the suspension or review memos, Charge sheet, Disciplinary Inquiry, Inquiry Officer's report and the final order of dismissal. Respondents made several attempts to deliver the relevant communications at every stage through Registered Post. Deputing Officers, using the services of the local Sr. Supdt. of Post Offices, Secunderabad in whose jurisdiction the Last Known Address falls were other means adopted to ensure delivery of the relevant communications to the applicant. Respondents even tried to deliver the relevant communications at the Criminal Court where the Applicant was facing Criminal Case and as the Applicant did not appear, they could not. There can be no better efforts which the respondents can make to ensure that the applicant receives the communication and is heard. Most of the Registered letters were returned undelivered and officers tried to contact him in person, but of no avail.

II. The respondents did their best to ensure that the Applicant be given reasonable opportunity even by pasting important communications to the door of the last known address and publishing them in the newspaper "The Hindu". Surprisingly, certain other communications were delivered at the very same address. These facts thus establish that the Applicant was aware of the Disciplinary Proceedings, but for reasons best known to him, he has avoided taking delivery of the same. In the said

circumstances, Respondents conducted ex-parte enquiry and based on the Inquiry Officer's report, applicant was dismissed on 26.11.2003.

III. The Vigilance guideline contained in para 20.2 of Chapter X of the Vigilance Manual Volume I (1991 Edition), reproduced hereunder, makes it clear that in case an employee avoids taking delivery of communication pertaining to disciplinary proceedings, the charges are deemed to have been delivered.



“20.2 If the Government servant evades acceptance of the articles of charge and/or refuses to accept the registered cover containing the articles of charge, the articles of charge will be deemed to have been duly delivered to him as refusal or a registered letter is normally tantamount to proper service of its contents.”

IV. Coming to recovery of amount vide notice dated 17.7.2014, applicant claims that FR 53 is violated. FR 53(2) is extracted herein below:

“F.R. 53.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.”

Further, relevant portion of Govt. of India's Orders No.3 under FR 53, is extracted as under:

(3) Subsistence allowance.-

(a) Initial grant :- Xxxx

The subsistence allowance shall not be denied on any ground unless a Government servant is unable to/does not furnish a certificate that he is not engaged in any other employment, business, profession or vocation, during the period of suspension.

(G.I., M.F., OM No. F.1(2)-E.IV(A)/63-III, dated the 29th August, 1963 and G.I., M.F., File No. 19(4)-E.IV/55)

(b)Payment of:- Each claim for subsistence and compensatory allowance should be supported by a certificate by the Government servant concerned to the effect that he was not engaged in any employment, business, profession or vocation, during the period to which the claim relates.



(G.I., M.F., OM No. F.19(4)-Ests.IV(A)/55, dated the 17th June, 1958)”

Thus, it is amply clear that as per FR 53, applicant has to submit a non-employment certificate to avail the subsistence allowance. Applicant did not submit this certificate. Further, applicant did not claim the subsistence from 1.10.2009 to 26.11.2013 (i.e. for four years) which goes to show that applicant is not dependent on subsistence allowance. Hence, the plea that subsistence allowance is paid to survive does not hold good in respect of Applicant, since he did not bother to claim the same for four years. Further, when he has not claimed subsistence allowance and was not granted to him, because of non-filing of non-employment certificate, it is not understood as to how applicant would have a claim over the unpaid subsistence allowance. Respondents followed the provisions contained in P & T Manual Vol.III in issuing notice to the Applicant. After considering the reply dated 31.10.2014, the recovery was ordered on 28.11.2014 and we find no error in doing so. Principles of natural justice have thus been followed.

V. Besides, the conduct and track record of the applicant indicate quite a few penalties imposed in the past, like penalty of Censure on 26.3.1983, suspension on 29.5.1983, withholding of increment on

6.9.1983, next increment withheld on 24.11.1988, Censure on 25.11.1997 and indulging in misconduct, absconding from duty from 27.1.2009 after committing the alleged fraud, leaving Headquarters without permission leading to lodging of a Police Complaint on 26.10.2010 to trace Applicant's whereabouts etc., are not very encouraging tendencies dotting the career of the Applicant. It is also observed that in the process of recovering the loss caused to the Respondents Organisation to the tune of Rs.49.80 lakhs (Rs.35.48 lakhs + 14.31 lakh) including interest, 11 other officials were proceeded under Rule 16 of CCS (CCA) Rules and recovery of Rs.11 lakhs was ordered. In regard to the balance amount of Rs.24.48 lakhs the show cause notice was issued.



VI. Defrauding Public Money is a case of serious misconduct. Applicant was given many opportunities to defend himself. It is the fault of the Applicant for not having availed the opportunities given. Respondents have a right to make good the loss caused to the Public Exchequer. They have acted as per Rules contained in P&T Manual, Vigilance instructions DoP & T Memos and as per law. Fraud vitiates every action in any matter be it related to money, selection etc and cannot be swept under the carpet. Applicant cannot avoid the consequences of a fraud by taking cover on grounds cited which are not maintainable. Applicant was dismissed from service for the fraud committed. We take support of the Hon'ble Supreme Court verdict in **Ajit Kr. Bhuyan. vs Debajit Das on 23 October, 2018**, in Civil Appeal Nos.10662 of 2018, (Arising out of SLP (C) No.25770 of 2015)

Fraud vitiates every action and cannot be kept under the carpet on the ground that the action challenged was belated, more so when there is a reasonable explanation for such delay.

VII. Hence in view of the aforesaid, we find no merit in the OA.

Therefore, it is dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/