

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:: HYDERABAD**

OA/020/00130/2015

Date of CAV: 15.03.2021

Date of Pronouncement: 26.03.2021



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

C.Rangaiah, S/o. late Subbaiah,
Aged about 72 years,
Occ: Retired BCR Sub Postmaster,
Yousufguda SO, R/o. EWS 1031, Upstairs,
KPHB Colony I & II Phases,
Hyderabad – 500 085.

...Applicant

(By Advocate: Sri ABLN Pavan Kumar for Sri M. Venkanna)

Vs.

1. Union of India, Rep. by its Secretary to the
Ministry of Communications and IT,
Department of Posts – India,
Director General of Posts – India,
Dak Sadan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General,
AP Circle, Dak Sadan, Hyderabad – 500001.
3. The Director of Postal Services,
Hyderabad City Region,
O/o. The Chief Postmaster General,
AP Circle, Hyderabad – 500001.
4. The Senior Superintendent of Post Offices,
Hyderabad City Region, Hyderabad – 500001.

....Respondents

(By Advocate : Mr. Paravastu Krishna, Addl. CGSC)

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

2. The applicant filed the OA challenging the order dt. 01.02.2013 imposing the penalty of withholding of 25% of the monthly pension for a period of 5 years and forfeiture of entire gratuity admissible to him.

3. Brief facts which required to be adumbrated are that the applicant while working as Sub Post Master (SPM) Yousufguda Post office was suspended for supervisory lapses and Rule 14 charge sheet under CCS (CCA) Rules 1965 was issued which culminated in imposing the penalty of forfeiture of entire gratuity and reducing the monthly pension by 25% for a period of 5 years. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the penalty is disproportionate to the offence committed. The charges are not of grave misconduct. The amount of loss to the respondents due to the alleged supervisory failure is to the extent of Rs.44,921 and that the Principal offender has made good the loss sustained by the respondents organisation. The I.O report is based on assumptions and presumptions. The alleged fraud by the principal offender was committed in 2002 and the inquiry was completed in 2005, whereas the penalty was imposed in 2013. UPSC advising the disciplinary authority to impose a heavy penalty is beyond the scope of the allegations made against the applicant.

5. Respondents per contra state that the during the period July 2000 to March 2002, when applicant was working as SPM, Yousufguda Post office, the Treasurer of the said post office committed a fraud to the extent of Rs.54 lakhs. The fraud which came to light in March 2001 occurred due to



the supervisory failure of the applicant and hence the applicant was identified as subsidiary offender for causing loss to the extent of Rs.9.47 lakhs. Hence, disciplinary action was initiated and after due inquiry the penalty of forfeiture of Gratuity and 25% cut in monthly pension, after seeking advice of UPSC, was imposed on 1.2.2013. The principal offender has not credited a single paise to the Govt. account. Out of the total fraud of Rs.53.80 lakhs, a balance of Rs.38.88 lakhs is yet to be recovered.



6. Heard the counsel for the applicant and perused the pleadings on record. No representation for the respondents. Nevertheless, the respondents filed a detailed counter, we have gone through the same in detail. As the matter is of 2015 and the applicant is a senior citizen, aged about 78 years, we deemed it fit to adjudicate the matter, to avoid further procrastination.

7. I. The dispute is about imposing a penalty disproportionate to the offence committed by identifying the applicant as subsidiary offender, pursuant to the charge memo dt.21.09.2002 with three Articles of Charge, which are as under:

“ARTICLE – I

Sri C. Rangaiah, formerly SPM, Yousufguda SO, now under suspension while working as SPM, Yousufguda SO, Hyderabad 500045 during the period from 01-07-2000 to 20-03-2002 allowed a withdrawal of Rs. 15,000/- in SB A/c No. 703573 on 18-02-2002 standing in the name of Sri A. Mohan, in support of which no entry is found in the pass book and no attestation is found in the ledger of the account nor the BAT noted by him. The transaction of withdrawal has been denied by depositor Sri A. Mohan. The signature on the application for withdrawal appearing at the place meant for “Signature or thumb impression of the depositor” is also found to be not agreeing with the specimen signature of the depositor on record.

Further it is also found that the following transactions of deposit as noted in the pass book were found not accounted for in the accounts of the P.O.

1. Rs. 7,000/- on 05-02-2002.

2. *Rs. 10,000/- on 19-02-2002.*

It is therefore alleged that the said Sri C. Rangaiah, has failed to follow the provisions of Rule 33(5)(i) of PO SB Manual Vol. I and thereby failed to maintain absolute devotion to duty as required by Rule 3(1)(ii) of CCS Conduct Rules, 1964 on account of which the un-accounted deposit of Rs. 7,000/- on 05-02-2002 remained undetected and the withdrawal of Rs. 15000/- on 18-02-2002 which was denied by the depositor could take place and which contributed the deposit of Rs. 10,000/- on 19-02-2002 going un-accounted.



ARTICLE - II

Sri C. Rangaiah, formerly SPM, Yousufguda SO now under suspension while working as SPM, Yousufguda SO, Hyderabad – 500045 during the period from 01-07-2000 to 20-03-2002 allowed a withdrawal of Rs. 1,000/- on 26-02-2002 in SB A/c No. 704895 standing in the name of Sri Ch. Paramesh attesting the BAT of Rs. 52-80 Ps. in the ledger. The said BAT is found noted by the SB PA in the SO Ledger while it is required to be noted by the SPM himself. But the same as per the pass book of the account is found to be Rs. 11,052-00, because of the deposit of Rs. 11,000/- dated 22-02-2002 in the P.B. which is found to have not been credited and accounted for in the PO records. The SPM inter-alia failed to compare the balance available in the pass book with that in the SB ledger while allowing the transaction on account of which the non-credit of the deposit of Rs. 11000/- dated 22-02-2002 remained un-detected. It is therefore alleged that the said Sri C. Rangaiah failed to follow the provisions of Rule 33(5)(i) of POSB Manual Vol. I and thereby failed to maintain absolute devotion to duty as required by Rule 3(1)(ii) of CCS Conduct Rules, 1964 contributing to the continuation of the non-credit of the deposit of Rs. 11,000/- dated 22-02-2002, for which the depositor preferred the claim.

ARTICLE - III

Sri C. Ranghaiah, formerly SPM, Yousufguda SO now under suspension while working as SPM, Yousufguda SO, Hyd – 45 during the period from 01-07-2000 to 20-03-2002 allowed the acceptance of deposit of Rs. 2000-00 in SB Account No. 704670 on 18-02-2002, Standing in the name of Sri A. Yadagiri and noted the same in the SB Long Book. It is found that the BAT was not noted in the pay-in-slip as required by Rule 31(2)(i)(b) of PO SB Manual Vol. I. Further the attestation of SPM is not found in support of the transaction in the SB Ledger of the account nor the BAT noted by him. The following transactions as noted in the P.B. of the account are found wanting in the SB Ledger of the said account.

Sl. No.	Date	Deposit	Withdrawal
1	19-12-2001	4,200-00	
2	22-12-2001		1,000-00
3	05-01-2002	2,500-00	
4	12-01-2002		1,000-00
5	29-01-2002	1,820-00	
6	07-02-2002	3,400-00	
7	11-02-2002	3,000-00	
8	15-02-2002		999-00
	TOTAL	14,920-00	2,999-00

Net Short Credit: Rs. 11,921/-

It is therefore alleged that the said Sri C. Rangaiah, failed to follow the provisions of Rule 31(2)(ii)(b) of PO SB Manual Vol. I and also failed to ensure that the BAT is noted in the pay-in-slip as required by Rule 9 and 31 (2) (i) (b) ibid and thereby failed to maintain absolute devotion to duty as required by Rule

3(i)(ii) of CCS (Conduct) Rules, 1964 contributing to the continuation of the non credit of deposits and non accounting of the withdrawals as detailed above, resulting in a net short credit of Rs. 11,921/- for which the depositor has preferred a claim."

It is seen from the records that the treasurer of the Yousufguda Post Office committed a fraud of Rs.54.0 lakhs by manipulating the savings accounts and savings certificates being operated at the said post office. The applicant as Sub Post Master/ Head of the Office was identified as a subsidiary offender and imposed the penalty of forfeiture of gratuity coupled with 25% cut in monthly pension for a period of 5 years. The applicant claims that he was found responsible for the loss to the extent of Rs.44,921, whereas respondents affirm that subsequently Circle level investigation has been done wherein, it was found that the contributory negligence of the applicant was to the extent of Rs.9.47 lakhs.

II. After giving a careful reading of the contentions of either sides, it cannot be gainsaid that the applicant was not directly involved in the fraud. It was his supervisory failure in not overseeing the work of the Treasurer that has led to the occurrence of the fraud. Therefore, the applicant was penalised with the penalty in question. The argument of the respondents is that out of the fraud amount of around Rs.54 lakhs, they could recover Rs.14.92 lakhs and that the balance of Rs.38.88 lakhs is yet to be recovered and hence, the penalty imposed is justified. We do not concur with this notion of the respondents since the penalty imposed has to be proportionate to the offence committed. As there is a huge loss caused, the same has to be recovered from those identified as subsidiary offenders is a unfair preposition, transcending the basic tenets of law. In the instant case, respondents admit that they could not recover anything from the





principal offender, which gives an inkling about the efficacy with which the respondents have handled the fraud. Under law, there are various provisions to attach the assets of the prime offender by approaching the appropriate authority under Revenue Recovery Act and also seek the help of the central agencies in tracking down the assets of the prime offender. The respondents have not elaborated as to whether they made any such efforts. The effort should be to pin down the main culprit and make him pay for his sins and not hound the other employees to unexplainable limits, who are hapless victims for certain procedural failures, which occur due to pressure of work and also considering the multifarious functions, which a postal employee has to perform ranging from savings bank, life insurance, retailing, business development and what not. The postal employee is a jack of all arts but master in none. Hence, the predicament and the lapses too often observed in the respondents organisation in thousands of Post Offices operated by them. In addition, respondents are operating the Indian Post Office Act of the British era without amending it to meet the needs of the organisation and the public expectations. It is time that they need to pay serious attention to this. True to speak, all these factors have compounded to cause occurrence of incidents in question. Nevertheless, for supervisory failures, the applicant has to face the music, but it should not be disproportionate to the lapses committed. The respondents have to strike a fine balance between the offence and the penalty to be imposed. The equilibrium in the decision taken to impose the penalty is grossly missing.

III. Generally, the Tribunal would not interfere in disciplinary matters, unless the penalty imposed is disproportionate and shocking the

conscience of the court. The case on hand is one such case, where we found that the applicant, for have been identified as a subsidiary offender, was penalised by forfeiting entire hard earned Gratuity after rendered 38 years of service in the respondents organisation. Besides, a 25% monthly pension cut for 5 years is too draconian, shocking our conscience and undoubtedly, not proportionate to the supervisory lapses committed by the applicant. By any standards, the penalty imposed is too harsh to be upheld and no reasonable person would have concurred with the conclusion of the respondents. In this regard, we take support of the Hon'ble Supreme Court observation as under, wherein it was held that the Courts can set aside the penalties imposed, which are disproportionate and shocking the conscience of the court.

a) Supreme Court of India, ***B.C. Chaturvedi vs Union Of India And Ors*** on 1 November, 1995, reported in ***1996 AIR 484, 1995 SCC (6) 749:***

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the



Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

Xxxx

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.



IV. The contention of the applicant of not coming up for any adverse notice in his long service of 38 years, but for the present case, has not been refuted by the respondents. Hence, for a single supervisory lapse can the applicant be condemned to his fate by imposing a penalty of the intensity seen in the instant case. The alleged fraud took place in 2002 and the penalty was imposed in 2013 after the applicant has retired from service. UPSC was consulted in imposing the penalty and in doing so, the disciplinary authority has to apply his mind to the case independently and not just go by the UPSC advice. It appears that the respondents have simply toed the line of UPSC. The penalty ought to be imposed after proper application of mind, which we find is lacking in the instant case. Hence, in the said context imposing the disproportionate penalty in question is against the legal principle laid down by the Hon'ble Apex Court cited supra.

In a similar case involving identical circumstances, this Tribunal in OA No. 1091 of 2013, vide order dt.22.11.2017, set aside the recovery, but

did not interfere with the penalty of reduction of pay. The relevant paras is extracted hereunder:

“18. The issues that arise for consideration in this OA are-

- (i) Xxx
- (ii) *Whether such negligence which allegedly led to committal of fraud by the main offender can be a ground for imposition of the penalty of recovery of the loss from the applicant.*
- (iii) Xxx

Xxx xxxxx



25. In view of the settled position of law that a penalty of recovery of loss cannot be imposed on a Government servant for his failure or negligence in adhering to procedures/ instructions, which might have resulted in the committal of fraud by a third party, the respondents are not justified in imposing a penalty of recovery on the applicant. This issue is answered in favour of the applicant.”

The order of the Tribunal was upheld by the Hon’ble High Court of Judicature at Hyderabad in WP No. 21668 of 2018 vide order dt.27.06.2018, while making the following observations:

“In view of the settled position of law, the finding of the Tribunal that a penalty of recovery of loss cannot be imposed on a Government servant for his failure or negligence in adhering to procedures/ instructions, which might have resulted in the committal of fraud by a third party, is perfectly justified and the petitioners are not justified in imposing penalty of recovery on the respondent. We note, in so far as the other punishment is concerned, the Tribunal has no interfered with the same.

In the light of the settled legal position and the facts recorded above, we find no order to interfere with the impugned order passed by the Tribunal.”

The case on hand is thus covered by the judgment of the Hon’ble High Court and hence, requires similar consideration.

V. Therefore, in view of the aforesaid circumstances, we set aside the penalty imposed by the respondents vide memo dated 1.2.2013 and remit the matter to the respondents to impose a penalty, which is

proportionate to the proven misconduct, by proper and independent application of mind, by keeping in view the directions of this Tribunal in the OA No.1091 of 2013 and the order of the Hon'ble High Court cited supra. Justness in imposing a penalty for violations of rules and regulations is the cornerstone of service jurisprudence and we are sure, the respondents are on board with us, in this regard. The time period allowed to implement the judgment is 3 months from the date of receipt of this order. The OA is accordingly disposed of with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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