

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No.853/1999.
This the 18th day of March 2008.

HON'BLE MR. M. KANTHAIAH, MEMBER (J).
HON'BLE MR. P.K. CHATTERJI, MEMBER (A).

Harish Chandra Joshi, son of Late Keshav Dutt Joshi, aged about 48 years, Postal Assistant, resident of Nath Niketan, town and post office Bhowali, District Nainital.

...Applicants.

By Advocate: Shri Saurabh for Shri A. Saxena.

Versus.

1. Union of India, through Secretary, Post and Telegraphs, New Delhi.
2. Director, Postal Services, Bareilly Region, Bareilly.
3. Senior Superintendent of Post Office, Nainital Division, Nainital.

... Respondents.


By Advocate: Shri A. Tripathi for Shri S.C. Tripathi.

Shri R.C. Shukla for Shri S. Singh.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed this OA to quash the impugned removal order Dt. 31.10.1998 (Annexure-2) passed by Disciplinary Authority (Resp-3) and also dismissal of his Appeal covered under impugned order Dt. 31.03.1999 (Annexure-1) passed by Appellate Authority



(Resp-2), with consequential benefits for payment of full salary for the period of suspension etc.

2. The respondents have filed Counter Affidavit denying the claim of the applicant stating that the removal of the applicant was passed by Respondent No.3 under Annexure-2 and also confirmation of the same by Appellate authority Respondent No.2 under Annexure-1 are as per rules and there are no justified grounds for interference of this Tribunal.


3. The applicant has filed Rejoinder Affidavit, denied the stand taken by the respondents and reiterated the pleas taken in the OA.

4. Thereafter, the respondents have filed Supplementary Counter Affidavit to the Rejoinder Affidavit.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief as prayed for.

7. The admitted facts of the case are that the applicant worked as Sub Post Master Ramgarh, Nainital during the year 1992 to March 1994 and thereafter he was transferred to Bhowali. While he was working at Bhowali, he was placed under suspension under Sub Rule (1) of Rule 10 of CCS (CCA) Rules, 1965 on the ground of misappropriation of Govt. money, as well as permanent loss of Rs. 10,000/- on account of issue of 6 years NSC relating to the party, when he worked at Ramgarh. It is also not in dispute that a Criminal




case was also registered against the applicant in Crime No.6/1994 at Police Station, Ramgarh on 15.11.1994 in respect of alleged misappropriation of the Funds and after completion of investigation, Police also filed a charge sheet on the file of Additional Civil Judge, (Senior Division), Nainital under case No.207/1999 and which has been transferred to the Court of Civil Judge, Upper Khand, Nainital. Annexure-3 is the copy of suspension order dated 31.08.1994 issued by Respondent No.3. Thereafter the Respondent No.3 have initiated the disciplinary proceedings against the applicant under Rule 14 of CCS (CCA) Rules, 1965 after serving charge sheet with the following 3 charges, by appointing Sri J.C. Joshi, retired superintendent as enquiry officer.

" Article-I

While working and discharging the duties of S.P.M. Ramgarh INT) on 18.3.94, Sri H.C. Joshi kept Rs.10,000/- (Rs. Ten thousand) short in Govt. Cash balance in contravention of the provisions contained in Rule 84, 85 of Postal Mau. Vol. VI Part III and Rule 4 (1) 58, 103 of F.H.B. Vol. I. it is , therefore, alleged that the above said Sri H.C. Joshi by his acts and misdeeds failed to maintain absolute integrity , devotion to duty and acted in a manner unbecoming of a Govt. Servant, thereby violating the provisions of rule 3 (i) I), (ii)+(iii) of C.C.S. (Conduct) Rules 1964.

Article-II

While working and discharging the duties of Ramgarh (N.T.) w.e.f. 19.8.93 to 18.3.84 Sri H.C. Joshi managed a fraudulent withdrawal of Rs.6985.45 from Ramgarh S.B. A/C No.329064 standing in name of late Smt. Shaiti Devi wife of Sri Manfool on



19.10.93 and failed to make specific entries of the said withdrawal with malafide intention in S.O.S.B. ledger and did not score out the specimen signature with proper remarks on the specimen signature book in violation of the provisions contained in Rule 33, 36 (A) and 432 (6) (b) (ii) and 43 (6) (d) of P.Q. Man. Vol-I causing loss of Rs.6985.45 to the Govt. It is, therefore, alleged that the above said Sri HC. Joshi by his above acts and misdeeds failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of a Govt. Servant as required by Rule 3 (i) (i), (ii)+ (iii) of C.C.S. (Conduct) Rules, 1965.


Article-III

While working and discharging the duties of S.P.M. Ramgarh (NT) above in Sri H.C. Joshi during the period from 19.6.93 to 19.3.94 had retained excess cash beyond the sanctioned authorized balance of Min. Rs.2000/- and Max. Rs.3000/- as fixed by the S.S.P.S. Nainital in the consolidated memo of authorised balance issued vide No.G-4/50 W.1.28.4.93 on 8.2.94, 10.2.94, 11.2.94, 12.4.94, 15.2.94, 16.2.94, 17.2.94, 18.2.94 and 21.2.94 showing the fake liabilities vide 31 of Postal man. Vol. VI Part III. It is, therefore, alleged that the said Sri H.C. Joshi failed to maintain absolute integrity devotion to duty and acted in a manner becoming of a Govt. Servant required by rule 3 (1) (i), (ii)+ (iii) of C.C.S. (Conduct) rules 1964.

3. The staff of imputations of misbehavior or misconduct in respect of each articles of charge framed against Sri H.C. Joshi were as under."

8. After completion of enquiry the Enquiry Officer submitted his report in which he found Charge No.1 and 3 are proved whereas, charge No.2 not proved against the applicant . Annexure-5 is the copy of said enquiry report. When the applicant received the copy of said

enquiry report, he submitted his reply dated 17.8.1995. Annexure-A-6 is the copy of the said reply. But the Disciplinary authority (Resp-3) passed final order of punishment removing the applicant from service Annexure-7 Dt. 21.11.1995 is the copy of said removal order. Against which when the applicant filed an appeal the same was allowed, remanding the matter for denovo proceedings from the stage of sending copy of enquiry report to the applicant. Annexure-8 is the copy of appeal dated 21.11.1995 whereas Annexure-9 Dt. 19/25.6.1998 is the copy of Appellate order. In pursuance of such remand, Disciplinary authority (Resp-No.3) communicated the points of disagreement with the finding of enquiry officer for which the applicant also submitted his reply. Annexure-10 dated 19.8.1998 is the letter of the disciplinary authority (Resp-3) and Annexure-11 dated 01.09.1998 is the reply submitted by the applicant for the points of disagreement of the disciplinary authority (resp-3). Thereafter, the disciplinary authority (Resp-3) passed final order Dt. 30.10.1998 imposing the penalty of removal from service with immediate effect. Annexure-2 is the copy of said order issued by the Disciplinary Authority (Resp-3). Aggrieved by the said removal order, the applicant preferred an appeal but the same was dismissed, Annexure-12 Dt. 07.12.1998 is the copy of appeal. Whereas Annexure-1 Dt. 31.02.1999 is the copy of the order of dismissal of Appeal. Thereafter, the applicant has filed this OA, challenging the order of disciplinary authority (Res-3) covered under Annexure-2 dated 30.10.1998, imposing the penalty of removal from service and



also dismissal of appeal by the appellate authority (Res-2) covered under Annexure -1 Dt. 31.3.1999.

9. The applicant has challenged the impugned dismissal order passed by the Disciplinary Authority (Res-3) covered under Annexure-A-2 Dt. 30.10.1998 and also dismissal of his appeal by the Appellate Authority (Res-2) covered under Annexure-A-1 Dt. 31.03.1999 on the following grounds:-


(i). No fresh opportunity was given to the applicant to submit any reply after the matter was remanded for denovo proceedings by the Appellate Authority .

(ii). The Disciplinary Authority has not considered the enquiry report insofar charge No.1 and 3 are concerned.

(iii). The Disciplinary Authority did not consider his representation covered under Annexure-11 in respect of his objections for disagreement points raised covered under Annexure-10 and no opportunity was given to him for making representation before passing order covered under Annexure-A-2.

(iv). The applicant challenged the order of the Appellate Authority (Res-2) dismissing his appeal on the ground that Respondent No.2 failed to consider the points raised by him in appeal and it is not a reasoned order.

(v). The punishment awarded by the Disciplinary Authority for removal of the applicant from service and also confirmation of such



punishment by the Appellate Authority is too harsh and shocking and disproportionate to the charges.

(vi). He also raised objection that the enquiry was conducted by retired officer, who is not within the meaning of public servant and as such entire enquiry is liable to be quashed.


(vii). To what relief.

10. Point No.VI:

In respect of these arguments, the applicant did not take any objections in OA for appointment of a retired Superintendent of Post Office as enquiry officer but while advancing arguments, he raised such objections and relied on the following decisions stating that the same is sufficient to quash the enquiry report itself.

- i. (2004) 13 S.C.C. 427
Ravi Malik Vs. National Fertiliser Development Corporation Ltd. and Others.
- (ii). O.A.No.766/2006 Dt. 19.04.2006
Sangeetha Ashok Vs. Kendriya Vidyalaya Sangathan on the file of Central Administrative Tribunal Principal Bench, New Delhi.
- (iii). O.A.No.41/2007 Dt. 22.01.2007 Balbir Bahadur Vs. U.O.I. & Others on the file of Central Administrative Tribunal, Allahabad Bench, Allahabad.
- (iv). O.A.No.479/2007 Dt. Oct, 2007
Ram Bahadur Yadav Vs. U.O.I. & Others on the file of CAT, Allahabad Bench, Allahabad.

11. Admittedly, Sri J.C. Joshi retired SPO was appointed as enquiry officer in the month of September, 1994 but the delinquent officer did not take any objection and also not raised any protest during the enquiry proceedings, which took place till the date of submission of his report Dt. 2.08.1995. similarly, he did not raise any objection in his




earlier departmental appeal in the year 1995 or in the subsequent appeal before departmental authorities and also not taken such objections in his reply submitted to the Disciplinary authority covered under Annexure-A-11. Even in this O.A. also he did not raise any such ground and it is not his case to quash the enquiry report on such ground of enquiry conducted by the retired officer.

12. But this is the legal plea touching the enquiry conducted by the retired officer on the ground that the same is against Rule 14 (2) of CCS (CCA) Rules 1965. when the question is on legal aspect, the parties are at liberty to take such legal pleas even at the stage of arguments without any pleadings and as such the applicant is justified in raising the said objection at this stage.

13. The learned counsel for the applicant relied on the decision of coordinate bench of Central Administrative Tribunal, Principal Bench in O.A.No.766/2006 Dt. 19.04.2006 Sangeetha Ashok Vs. Kendriya Vidyalaya Sanghathan and on the file of Central Administrative Tribunal, Allahabad Bench , Allahabad in O.A.No.41/2007 and O.A.No.479/2007, which are referred above and also judgment in CMWP No.44002/2007 Dt. 13.09.2007 on the file of Hon'ble High Court of Allahabad and all these decision clearly stated that the retired officer is not competent to conduct an enquiry covered under Rule-14 (2) of CCS (CCA) Rules 1965.

14. In view of such findings of the coordinate bench and also Hon'ble High Court, it is clear that the retired officer will not come within the definition of public servant or authority as stated in Rule 14 (2) of



CCS (CCA) Rules, 1965. As such even in the instant ^{case,} the enquiry was conducted by the retired SPO, who is not the competent authority and on such ground the entire enquiry conducted by such office is liable to be quashed. Thus the arguments advanced by the learned counsel for the applicant on the ground of the enquiry conducted by a retired SPO is justified hence, the enquiry conducted by a retired officer and his report is to be quashed. Hence, this point is decided in favour of the applicant.

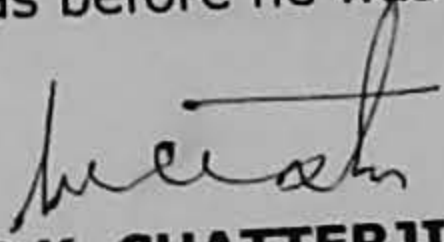
15. Points No. I to V:

In view of the finding of Point No. V, when the report of the enquiry officer has been quashed on the ground that the same has been conducted by the retired officer, who is not competent, going into other points raised by the applicant on the finding of disciplinary authority with disagreement Memo and also his conclusion and imposing penalty of removal of the applicant covered under Annexure-A-2 Dt. 31.10.1998 and also departmental appeal by the Respondent No.2 covered under Annexure-A-1 Dt. 31.03.1999 has no value. Hence, no further discussion is required on these points in view of the decision on Point No.VI in favour of the applicant.

16. In the result, O.A. is allowed quashing the order of dismissal of the applicant covered under Annexure-A-2 Dt. 31.10.1998 passed by Respondent No.3 and orders ^h covered under Annexure-A-1 Dt. 31.03.1999 passed by Respondent No.2 and also the enquiry report covered under Annexure-A-5 Dt. 02.08.2005 filed by Sri H.C. Joshi, retired SPO are hereby quashed with a liberty to the respondents to

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get the enquiry held afresh in accordance with rules by appointing eligible person as an enquiry officer under Rule 14 (2) of CCS (CCA) Rules, 1965. The position of the applicant will remain the same as it was before he was removed from service. No costs.


(P.K. CHATTERJI)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)

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