

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 14th of Sept, 2011)

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Original Application No. 1106 of 2006.

(U/S 19, Administrative Tribunal Act, 1985)

Jwala Prasad Singh, Postal Assistant (H.O.) Head Post Office,
Allahabad.

..... Applicant

Versus

1. Union of India through its Secretary Ministry of Communication, Department of Post Dak Bhawan, Sansad Marg, New Delhi.
2. Director, Postal Services, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, Allahabad Division, Allahabad.

..... Respondents

Present for Applicant :

Shri H.N Sharma
Shri U.P. Singh

Present for Respondents :

Shri R.K. Srivastava

ORDER

Vide minor penalty chargesheet dated 20.12.1999, applicant was chargesheeted for being failed to exercise the check of manipulation in register, No. and date of issue in K.V.Ps issued by Kanpur Head Office under Registration No. 216145 dated 9.4.1999 in joint name of Shri Manoj Kumar and Smt Pooja Devi resident of 22/A Badshahi Mandi Chaowk Allahabad. Said K.V.Ps were transferred from Kanpur Head Office to Allahabad Head Office under NC; 32 column 4 dated 12.4.1999. Admittedly, the applicant submitted a representation dated 10.1.2000 asking the Disciplinary Authority to hold an enquiry into the charges in accordance with procedure prescribed under Rule 14 of CCS (CCA)

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Rules. Said fact is noted in the order dated 8.6

Disciplinary Authority imposing the penalty of recovery of Rs. 25000/- from pay of the applicant. The relevant para of said penalty order reads as under:-

"The official, in his defence representation dated 10.1.2000 demanded inquiries under Rule 14 of CCS (CCA) Rules, 1965. He was informed vide this office letter dated 17.1.2000 that there is no justification of Rule 14 enquiry and he was asked to submit his defence representation within 3 days. The official again submitted an application dated 29.1.2000 demanding Rules-14 enquiry and the official was again informed to see the documents and to submit his defence representation within 10 days. Again he was allowed 3 days more time vide letter dated 01.3.2000 and 27.3.2000. The official vide his application dated 3.4.2000 demanded examination of certain documents which were allowed and he examined the documents on 8.5.2000 and submitted his defence representation dated 5.6.2000. Thus, ample opportunity was given to the official".

2. However, declining the request of applicant for holding the regular enquiry into the charges levelled against him vide minor penalty order dated 20.12.1999, Disciplinary Authority imposed penalty upon the applicant as above.

3. Against said penalty order, the applicant preferred an appeal dated 24.7.2000. In said appeal, the applicant again raised a grievance that in not accepting his request for holding a detailed enquiry into the charges levelled against him, S.S.Ps had not acted fairly. Paras 2 to 13 of the application preferred by the applicant read as under:-

"2. That I vide my representation dated 10.1.2000 explained the things in detail, and narrated the circumstances under which the transaction had taken place. I further detailed the action taken at our end to save the

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department from loss and made it clear that the department has not suffered any loss. I pleaded not to be guilty and requested for exoneration of charges or to afford me reasonable opportunity of defence by initiating enquiry under rule 14 of the CCS (CCA) Rules 1965. A true copy of the representation dated 10.1.2000 is enclosed herewith and marked as Annexure II to this appeal.

3. That the SSPS's Allahabad vide his letter No. F-5/1/99-2000/Disc. Dated 17.1.2000 required another representation and informed that the chargesheet under rule 14 was not found justified. A true copy of the letter dated 17.1.2000 is enclosed herewith and marked as Annexure III to the Appeal.
4. That I vide my application dated 29.1.2000 requested that I have prayed for and demanded enquiry as prescribed under Rule 14 on the same chargesheet issued under rule 16 and it was permissible under rules. I did not demand for a charge sheet U/R 14. I reiterated my request. A true copy of the application dated 29.1.2000 is enclosed herewith and marked as Annexure IV to this Appeal.
5. That the SSPO's Allahabad rejected the request arbitrarily and a true copy of this letter No.F-5/1/99-2000/Disc. Dated 8.2.2000 is enclosed herewith and marked as Annexure V to this appeal.
6. That I vide my application dated 3.4.2000 while preserving any right to appeal against the above arbitrary rejection, requested for the opportunity of the inspection of the documents relied upon against me in support of the charge. A true copy of the application 3.4.2000 is enclosed and marked as Annexure VI to this appeal.
7. That out of 8 documents demanded as above specifically the SSPO's Allahabad allowed inspection of only seven amongst them at Serials 1 to 6 and 8. Though the other documents are fully relevant to the charge the SSPO's did not take pains even to assign reason as to why they were not being made available for inspection. He however made it clear that the memo was issued for compensation. He asserted categorically that the loss was self evident. Your precious self will kindly agree that the observation made by the SSPO's Allahabad is clear indicative of a predetermined notion without any base. In fact they had been no loss. A true copy of the letter dated 13.4.2000 enclosed herewith and marked as Annexure VII to this Appeal.

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8. *That under such compelling pressure and administrative excess besides authoritative wrongful, I had to submit another representation dated 5.6.2000 in continuation of the earlier representations. A true copy of the representation dated 5.6.2000 is enclosed herewith and marked as Annexure VIII to this Appeal for your kind perusal and ready reference.*
9. *That my above representation I again asserted emphatically that the discharge of the KVP was made in heavy rush of work and the forgery could not be noticed then and there as the NCC-32 was received through proper channel. The erasures were made very cleverly and the recipient holder was duly identified by Shri Gppal Sharma NS Agent No. 52. Besides this there was simultaneous issue of KVPs in lieu of the discharged value No. monetary transaction took place with the mischevious holder. Further the same have been treated stolen/lost and payment prohibited vide SSPO's Allahabad notification No. CR-9/SB-38/99 dated 14.6.99 and also vide CPMG Lucknow No. NV/M-13/2/99/5 dated 28.6.1999 and PMG Allahabad no. RPA/Inv/F-3/I/99/2 dated 30.6.99 in fact there is no loss.*
10. *That the SSPO's Allahabad acted as per his predetermination and hurried in deciding the case on 8.6.2000 i.e. as soon as the representation was received on 8.6.2000 itself, vide his memo no. F-5/1/99/2000 dated 8.6.2000. A true copy of which is enclosed herewith and marked as Annexure IX to this appeal for your kind perusal and ready reference.*
11. *That the a SPO's has ordered recovery of Rs. 25000/- from my pay in 25 instalments of Rs. 1000/- each and the reason of the same has been assigned by him in para 3 of the findings whatsoever recorded by him in the aforesaid punishment order. To him he has based on probability under wrong assumption and irrelevant consideration. The payment have been stopped and due notification issued and circulated. Clear remarks have been made in the records of Allahabad H.O. The payment can not be obtained without prior verification from Allahabad H.O. and if any one does otherwise in contravention of rules and instructions on the subject it is he who shall be liable to the loss. The learned SSPO's Allahabad has erroneously presumed that the payment shall be obtained easily. He is not confident of the official notification made by him himself and duly conveyed by the H.O. and CO. It reflects upon his own confusion and undue pessimism. The observations made by him are apparently irregular and illegal and the action stands vitiated on this score only.*

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12. *That there is no loss I am not the main offender. There is police case against the offenders. The recovery of a presumed loss that too from one other than the main offender is manifestly wrongful and illegal. The rules are very much clear in this regard. The punishment of recovery is nothing but administrative excess without any justification.*

13. *That the SSPO's Allahabad has not acted fairly. He has not considered the things as they are. The orders passed by him are unjust irregular and illegal besides being violative of the principle of natural justice in as much as the reasonable opportunity has been denied to me for my defence".*

4. Appellate Authority passed the order dated 21.3.2001 rejecting the aforementioned appeal preferred by the applicant. While passing the said order, the Appellate Authority evaded the finding on plea of the applicant that S.S.P.Os Allahabad has not acted fairly inasmuch as he did not held any regular enquiry into the matter. Paras 3 and 4 of the order passed by Appellate Authority read as under:-

"3. अपीलार्थी ने अपील में अपने बचाव के निम्नलिखित तर्क प्रस्तुत किए हैं।

(1) अपीलार्थी ने वर्तमान मामले में दण्डाधिकारी से नियम 14 की जाँच की माँग किया था जिसे अस्वीकार कर दिया गया।

(2) अपीलार्थी को माँगे गये सभी अभिलेख नहीं दिखाये गये। इस प्रकार उसे बचाव का समुचित अवसर प्रदान नहीं किया गया।

(3) किसान विकास पत्रों का भुगतान करते समय काउण्टर पर बहुत अधिक कार्य था और भीड़ थी। एन सी 32 उचित माध्यम से प्राप्त हुआ था। अतः किसी गड़बड़ी की आशंका नहीं थी। अतः उसमें जो गड़बड़ी थी चेक नहीं की जा सकी।

(4) सभी किसान विकास पत्र कानपुर प्रधान डाकघर से वास्तव में जारी किए गये थे। रजि सं एवं जारी तारीख इतनी बारीकी से बदले गये थे कि जल्दबाजी में यह गड़बड़ी पकड़ने योग्य नहीं

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थी। धारक के साथ कोई आर्थिक लेन देन नहीं हुआ। नये के वी पी भुगतान किए गये के वी पी के बदले में जारी किये गये थे। भुगतान राष्ट्रीय बचत अभिकर्ता श्री गोपल जी शर्मा की गवाही पर किया गया था। धारक को नकद भुगतान नहीं किया गया था। इस प्रकार इस मामले में विभाग को कोई आर्थिक क्षति नहीं है। नये जारी किये गये किसान विकास पत्रों के भुगतान पर रोक लगा दी गयी है और चीफ पी एम जी, पी एम जी एवं प्रवर अधीक्षक डाकघर इलाहाबाद द्वारा इन्हे चोरी गये। गुमशुदा मानकर व्यापक प्रचार/प्रसार भी कर दिया गया है। अतः अन्यत्र किसी डाकघर से इनके भुगतान लेने की संभावना भी नहीं है। अतः अपीलार्थी के वेतन से वसूली अनियमित है।

- (5) अपीलार्थी ने अपना प्रतिवेदन दि० 5.6.2000 को प्रेषित किया जो दण्डाधिकारी को दि 8.6.2000 को प्राप्त हुआ है उसी दिन उन्होंने दण्डादेश पारित कर दिया जिससे यह स्पष्ट होता है कि दण्डादेश जल्दबाजी में पारित किया गया है और प्रतिवेदन पर सम्यक विचार नहीं किया गया है।
- (6) नये जारी किए गये किसान विकास पत्रों के भुगतान को रोकने के लिए सभी संभव कार्रवाई की गयी है। अतः इसका भुगतान लेना असंभव है। यदि कोई किसी प्रकार भुगतान ले भी लेता है तो क्षति के लिए वह कर्मचारी जिम्मेदार होगा जो भुगतान करेगा।
- (7) इस मामले में अपीलार्थी मुख्य अपराधी नहीं है। मुख्य अपराधी के विरुद्ध पुलिस में मामला दर्ज है और वसूली उससे संभव है।
- (8) दण्डाधिकारी ने उचित ढंग से निर्णय नहीं किया और प्राकृतिक न्याय के नियमों को उल्लंघन किया है। अपीलार्थी को बचाव का समुचित अवसर नहीं दिया गया है।
- (9) दण्ड कठोर है।
4. मैंने अपीलार्थी की अपील, आरोप पत्र, बचाव प्रतिवेदन, अनुशासनिक पत्रावली एवं अन्य सभी संबंधित अभिलेखों का सम्यक अध्ययन किया। उसके बचाव के तर्कों पर बिन्दुवार विश्लेषण निम्नवत है।

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- (1) दण्डाधिकारी इसके लिए सक्षम है।
- (2) अपीलार्थी को उपलब्ध एवं संगत सभी अभिलेख दिखाये गये हैं।
- (3) इसे अपीलार्थी के पक्ष पर शिथिलता ही कहा जायेगा।
- (4) यह सब ठीक है लेकिन माह अप्रैल 99 में जारी किसान विकास पत्रों का भुगतान मई 99 में नहीं हो सकता, जो अपीलार्थी ने किया है। इस प्रकार (रु 50,000 / कय मू + 50,000 ब्याज 1,00,000) की तत्कालिक क्षति है। कोई बाद में इसका भुगतान ले अथवा न ले सके यह और बात है। अतः अपीलार्थी के वेतन से रु 25,000 / की वसूली नियमित है।
- (5) दण्डादेश जल्दबाजी में नहीं जारी किया गया है। अपीलार्थी ने दि 5.6.2000 के पहले भी दि 10.1.2000 को अपना बचाव प्रतिवेदन प्रेषित किया है।
- (6) यह उसी प्रकार संभव हो सकता है जैसे उपयुक्त पैरा 4 (4) में भुगतान संभव हुआ।
- (7) यह बाद की बात है। सम्पूर्ण रकम की वसूली हो जाने के बाद अपीलार्थी अपनी वसूली समाप्त करने के लिए लिख सकता है।
- (8) दण्डाधिकारी ने दण्ड प्रक्रिया सही अपनायी है। अपीलार्थी को बचाव का समुचित अवसर दिया गया है।
- (9) दण्ड नियमानुकूल दिया गया है और गलतियां के समानुपातिक हैं।”

5. Assailing the order passed by Appellate Authority, applicant preferred revision petition dated 29.9.2001. In said revision petition, the applicant again pleaded that by not holding enquiry as per procedure laid down in terms of Rule 14 of CCS (CCA) Rules 1965, the Disciplinary Authority had denied him reasonable opportunity of defence. Paras 15 to 19 of revision petition dated 29.9.2001 preferred by applicant read as under:-

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- “15. That the petitioners vide his application dated 10.1.2000 explained the truth and made his position clear and requested for his exoneration of the charges or to be afforded reasonable opportunity of defence by instituting enquiry as prescribed under Rule 14 of CCS (CCA) Rules 1965. A true copy of the application dated 10.1.2000 is enclosed herewith and marked as Annexure XXI to this petition for your kind perusal and ready reference.
16. That the SSPO's Allahabad took the application of the petitioner otherwise and thought that the petitioner was demanding chargesheet under rule 14 ibid. He vide his letter dated 17.1.2000 rejected the issuance of chargesheet under rule 14. A true copy of his letter dated 10.1.2000 is enclosed and marked as Annexure XXII to this petition.
17. That the petitioner in his application dated 29.1.2000 clarified the things and reiterated his demand for enquiry. A true copy of his application dated 1.1.2000 is Annexure XXIII to this petition.
18. That the SSPO's Allahabad rejected his request for enquiry and forced for inspection of documents. A true copy of the SSPO's letter dated 8.2.2000 is enclosed and marked as Annexure XXIV to this petition.
19. That while keeping his right reserved to go in appeal against the above arbitrary rejection the petitioner vide his application dated 3.4.2000 specified the document which he desired to inspect. A true copy of the application dated 3.4.2000 is enclosed and marked as Annexure XXV to this petition”.

6. The Chief Post Master General, U.P. Circle, Lucknow rejected the aforementioned revision petition again without recorded any finding on the contention raised by the applicant that in not holding the regular enquiry as prescribed under Rule 14 of CCS (CCA) Rules 1965, Disciplinary Authority denied him opportunity of defence and violated principle of natural justice. Paras 3 and 4 of the order dated 10.5.2005 passed by Revisionary Authority read as under:-

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"3. The petitioner raised the following main points in the petition for consideration;-

- (i) That the petitioner had requested inquiry as prescribed under Rule 14 of CCS (CCA) Rules 1965 but the disciplinary/appellate authority did not consider the request of the petitioner.
- (ii) That the document assessing loss of Rs. 1,00,000/- and sanction of compensation were not shown.
- (iii) That the N.S Agent, who identified the person taking payment, is owning his responsibility, this commission bills to the tune of Rs. 50,000/- have been held up.
- (iv) That there is no loss to the department. The probable loss is not directly attributed to the petitioner.

4. Facts of the case are as under:

- (i) That the petitioner was informed that there was no justification for enquiry on the pattern of Rule 14 in this case.
- (ii) The KVPs of Rs. 1,00,000/- were issued on 5.5.99 without any credit of money in the Government accounts. Sanction for payment would be required to issue at the time of payment of these KVPs.
- (iii) That the formal checking as required under rules was not carried out by the petitioner. Further it is not conclusive that KVPs have been issued to lieu of discharged KVPs.
- (iv) That there is no justification that these KVPs have been purchased in lieu of discharged KVPs issued from Kanpur HO. There is every possibility that investor can take payment from any other PO like wise or legally".

7. In terms of General Instruction issued by D.O.P & T vide O.M No. 11012/18/85-Estt. (A) dated 28th October 1985, on receipt of representation of Govt. Servant concerned on the implications of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In the said O.M, it is further provided that in a case where a delinquent Government servant has asked for

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inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should apply its mind more closely to the request and should not reject the request solely on the ground that an enquiry is not mandatory. Said OM reads as under:-

"(1) Holding of an inquiry when requested by the delinquent instructions:- The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 had suggested that Rule 16 (1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) ibid leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the implications of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should apply its mind more closely to the request and should not reject the request solely on the ground that an enquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the Disciplinary Authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice".

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8. In the present case, I find that in his representation dated 10.1.2000, the applicant had requested Disciplinary Authority to afford him reasonable opportunity of defence by instituting the enquiry under Rule 14 of CCS (CCA) Rules 1965 wherein he should have been given opportunity of examination and cross examination of evidence. The relevant excerpt of said representation reads as under:-

"Therefore I request your honour kindly to exonerate me of the charges, or be kind to afford me the reasonable opportunity of defence by instituting enquiry under Rule 14 of the CCS (CCA) Rules wherein I shall have an opportunity of examination and cross examination of the evidence whatsoever relied upon against me before I submit my defence representation"

9. A perusal of order passed by Disciplinary Authority revealed that applicant vide his application dated 10.1.2000 had also demanded examination of certain documents. Thus when the applicant had made a representation requesting for detailed enquiry and had also asked for examination of documents, Disciplinary Authority was expected to apply its mind to such request of the applicant closely and should have indicated the reasons for not holding enquiry in writing.

10. In the present case, I do not find any close application of mind by Disciplinary Authority, Appellate Authority and Revisionary Authority to the plea of the applicant for holding regular enquiry before imposition of penalty on him. None of the charges indicated/recorded any reason for not accepting the reasons of the applicant for holding enquiry before imposing penalty on him. On 11.8.2011 having heard argument finally, I had directed Shri R.K. Srivastava, Advocate to produce the enquiry

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file particularly letter dated 17.1.2000, order dated 8.6.2010 and letter dated 8.2.2000 mentioned in para 4 of the counter reply within one week. Said order reads as under:-

"11.8.2011

Hon'ble Mr. A.K. Bhardwaj, J.M

Order reserved.

Mr. Dharmendra Tiwari holding brief of Mr. R.K. Srivastava states that he will produce enquiry file particularly letter dated 17th January, 2000, impugned order dated 08.06.2010 and also letter dated 8th February 2000, which is mentioned in para 4 of counter reply within one week. He will also make the set of Rules from which Rule 3 and 37 are referred to i.e POSB Manual Volume II available.

Sd

JM"

11. However, respondents have not shown any care to produce the aforementioned documents till date. Thus, I have no option but to draw the adverse inference against the respondents on the issue of no close application of mind by respondents on the request of applicant for holding detailed enquiry into the charges leveled against him vide chargesheet dated 20.12.1999. In the case of **Kunhikannan Nambiar Vs. Govt. of Kerala : 2002 (3) ATJ HC (Ker.) 354**. Hon'ble High Court of Kerala ruled that *a formal enquiry must be held and principles of natural justice must be followed even at the time of imposition of minor penalty even if Rule does not provide such an enquiry*. Similarly in the case of **Shrishall Bhajantri Vs. The Principal Kendriya Vidyalaya No.2 Hubli and Ors; 2003 (2) A.T.J CAT (Bangalore) 388**, Bangalore Bench of the Tribunal ruled that *where the nature of charge or charges levelled against the delinquent are such that a finding of guilt could be recorded only after holding of inquiry in which the oral and*

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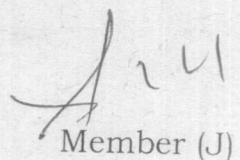
documentary evidence in support of the charges should be recorded and the delinquent should be given an opportunity of cross examination of the witnesses or explaining the documents, holding of inquiry in terms of Rule 16 is mandatory.

12. In the present case when the allegation against the applicant are of not checking the manipulation of NSCs/KVPs and he had demanded inspection of documents as well as right to cross examine the witnesses, Disciplinary Authority was expected to apply close mind to such request and indicate the reason for not accepting the same.

13. In view of the aforementioned, I quash the impugned orders dated 10.5.2005, 23.3.2001 and 8.6.2000 passed by the respondents and direct the Disciplinary Authority to apply its close mind to the representation dated 10.1.2000 made by the applicant for holding enquiry keeping in view the aforementioned instructions and decision of Hon'ble Kerala High Court and Bangalore Bench of this Tribunal. Refund of amount of Rs.25000/- recovered from pay of the applicant would abide by the decision of Disciplinary Authority on representation dated 10.1.2000 made by applicant or regular enquiry, if any, held by Disciplinary Authority into the charges.

14. O.A is disposed of. No costs.

Manish/-


Member (J)