

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 12 DAY OF 8 2009)

*Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)*

Original Application No.864 of 2007

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

Chandrama, aged about 52 years son of Late Ramdhari, Ex. Branch PostMaster, R/o Village & Post Office Saidupur, Tehsil-Chakiya, District Chandauli-232103.

..... *Applicant*

Versus

1. Union of India through Ministry of Communication Chief Post Master General, U.P. Circle Lucknow-226001.
2. Post Master General, Allahabad Circle, Allahabad.
3. Director Postal Services, Allahabad Region, Allahabad 211001.
4. Sr. Superintendent, Post Office, Eastern Division Varanasi.

..... *Respondents*

Present for Applicant : *Shri A.K. Sinha*

Present for Respondents : *Shri S.C. Mishra*

O R D E R

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

The applicant has filed aforesaid Original Application for the following relief:-

- (i) *Pass an order or direction quashing the impugned orders dated 26.07.2005 (Annexure A-1); dated 31.10.2005 and dated 22.03.2007 (Annexures A-2 & A-3) respectively; and order dated 14.06.2007 (Annexure A-4) passed by respondent nos. 4,3 and 2 respectively with all consequential benefits to the applicant.*
- (ii) *Pass an order or direction to the respondents to restore back the applicant in service and pay him entire back salary and allowances with penal interest from the date of his removal from service i.e. 22.03.2007 till the date of his restoration back into service with all consequential benefits.*

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2. The applicant is aggrieved by the order dated 26.07.2005 passed by respondent no.4 i.e. Disciplinary Authority whereby he has awarded the punishment of debarring the applicant from appointment in Group 'D' service for a period of three years (Annexure A-1) and also challenged the order dated 31.10.2005 passed by respondent no.3 (Appellate Authority) showing his intention to revise the order dated 26.07.2005 suo-moto as well as order dated 22.03.2007 removing the applicant from service (Annexure A-2 and A-3). Applicant has also challenged the memo dated 14.06.2007 passed by the respondent no.2 upholding the order dated 22.03.2007 and rejecting the appeal of the applicant dated 24.04.2007 (Annexure A-4) while working as GDS Branch Post Master, Saidupur. The applicant was proceeded with an action under rule 10 of GDS (Conduct & Employment) Rules, 2001 and on receipt of enquiry report the respondent no.4 punished the applicant debarring him from appointment in Group 'D' service for the period of three years (Annexure A-5). The said order was served upon the applicant on 16.08.2005. The grievance of the applicant is that before the expiry of period of three months for submission of appeal under the Provision of Rule 19 of the GDS (Conduct and Employment) Rule 2001 the respondent no.3 issued his memo of intention for revising the punishment order passed by the Disciplinary Authority on 31.10.2005 itself i.e. two weeks prior to the expiry of 19 days. According to the applicant, respondent no.3 was the Appellate Authority and the respondent no.2 was the Revising Authority. The Appellate Authority did not have any jurisdiction to revise the order of punishment passed by the Disciplinary Authority. It is also alleged by the applicant that the action of respondent no.4 in issuing the memo of intention to revise the disciplinary order, is wholly without jurisdiction. Aggrieved by the order passed by the respondent no.3, the applicant

preferred an appeal dated 24.03.2004 to the respondent no.2 (Annexure A-8). The respondent no.2 vide its order dated 14.06.2007 (Annexure A-4) rejected the appeal of the applicant. It has also been contended by the applicant that there were near about 250 Saving Bank/Recurring Deposit/TD accounts in operation at Saidupur Branch Office, during the period of working of the applicant, no irregularity was found by the verifying authority in any of the accounts except Account No.424973 pertaining to Shri Shambhu Nath Pandey. The integrity of the applicant was above board and omission in SB A/c No. 424973 occurred due to high handedness and criminal background of the account holder. Out of sheer terror of the said account holder the applicant could not dare to intimate this fact to any of the higher authorities. The 28 years' unblemished service of the applicant was hood winked by the respondents. The main ground of attack in this case is that the Appellate Authority's intention to revise the order dated 26.07.2005 passed by the Disciplinary Authority vide its memo of intention dated 31.10.2005 is not according to law. The Appellate Authority in its order has clearly admitted that the applicant has taken a specific ground that time limit for submission of appeal expires on 15.11.2005 and the Disciplinary Authority's order dated 26.07.2005 was admittedly received by the applicant on 16.08.2005 but the respondent no.3 has exercised his power of revision within a period of 75 days only and the action of respondent no.3 is clearly in teeth of the provisions of Rule 19(A) of GDS (Conduct and Employment) Rules, 2001.

3. Denying the pleas taken in the Original Application, the respondents submitted that the applicant made temporary misappropriation of Government money by way of false deposit in SB

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Account No.424973 in the name of Shri Shambhoo Nath Pandey, on following dates:-

14.10.2003	Rs.6,000/-
13.01.2004	Rs.4,000/-
03.02.2004	Rs.4500/-

Total=Rs. 14,500/-

During investigation the applicant credited the amount of Rs.14,500/- under UCR on 14.02.2004 at Chakia Post Office. The applicant was placed under put off duty vide order dated 06.02.2004 and was proceeded against Rule 10 of GDS (Conduct & Employment) Rules 2001 vide order dated 13.04.2004. After receipt of Enquiry Report the applicant submitted his representation on 18.07.2004 and after considering the representation of the applicant he was awarded punishment to stoppage of appointment in the cadre of Group 'D' for three years. The said order was reviewed by the respondent No.3 and notice dated 31.10.2005 was issued with intention to enhance the penalty already awarded to the applicant to "removal from service" Accordingly, the respondent no.3 enhanced the penalty of "Debarring" to "removal from service" vide order dated 22.03.2007. According to the respondents as per rule the next higher authority i.e. Director Postal Services, Allahabad is the Competent Authority to decide the appeal and the Appellate Authority is competent to review the punishment order of Disciplinary Authority, if consider necessary to do so within six months and revise the punishment awarded by Disciplinary Authority. In the last line of Para-20 of the Counter Affidavit, respondents have admitted that ***it is true that no appeal was preferred by the applicant upto 22.03.2007.***

4. Applicant has filed rejoinder reply and submitted that as per Rule 19(1)(iii)(b) of the GDS Rules, 2001 a revising authority cannot revise the order of punishment *suo-mota* before the expiry of the period of submission of appeal against the punishment order. The period of appeal from the date of receipt of the punishment order is three months.

5. We have heard Shri A.K. Sinha, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for the respondents and perused the written arguments filed by the parties counsel.

6. Learned counsel for the applicant has vehemently argued that as per Rule 14 of the GDS (Conduct and Employment) Rules, 2001, ***time limit prescribed for preferring an appeal to the next higher authority i.e. Appellate Authority, is three months from the date of receipt of copy of punishment order. The Director Postal Services, Allahabad Region Allahabad, who was the Appellate Authority, without waiting for expiry of three months i.e. period of filing appeal and issued memorandum of intention dated 31.10.2005 for revising the punishment order in exercise the power conferred under Clause (iii) (1) of 19 of Rules.*** Learned counsel for the applicant would contend that the respondent no.3 issued a memo of intent before 17 days earlier than expiry of period for filing appeal. It has also been argued by the learned counsel for the applicant that the respondent no.3 has exercise the power of revision under Clause (iii) of Sub Rule (1) of Rule 19, but at the same time he has not annexed any such authority/general or special order specified in this behalf by the Government to the Counter Reply or Supplementary Counter Reply. According to the applicant, respondent no.3 is only the Appellate

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Authority and Revising Authority is Post Master General, in sum and substance the respondent no.3 has illegally and arbitrarily exercised the jurisdiction and revised the order passed by the Disciplinary Authority.

7. We have carefully considered the rival contention of the parties and have carefully looked into the pleadings of the parties. The specific plea taken by the applicant in Para 14 and 15 of the O.A. is that, the respondent no.3 without waiting of expiry of three months (i.e. period of filing of appeal) issued memo of intent on 31.10.2005 for revising the punishment order in exercise of power conferred under (iii) of Sub Rule (1) of Rule 19. A perusal of the order dated 31.10.2005 clearly indicates that respondent no.3 without waiting for expiry of three months issued memo of intent dated 31.10.2005 for revising the punishment order and has clearly violated the Provisions of Rule 19 of GDS (Conduct & Employment) Rules, 2001. There is clear stipulation under Rule 14 that ***"no appeal shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against" and under Rule 19 first proviso is clearly mentioned that "provided that no such case shall be reopened and also before the expiry of the time limit of three months specified for preferring an appeal under Rule 14."***

8. A careful analysis of the aforesaid provisions clearly indicates that the action of the revising authority in exercising the power of revision under Rule 19 (iii)11(b) of GDS (Conduct and Employment) Rules, 2001 is clearly in teeth of provisions contained in Rule 14 and 19 of GDS (Conduct and Employment) Rules, 2001. It is also settled principle of law that under the provisions of statute or rule it is mandatorily to do

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something in a specified manner and it must be done in that manner only, it is quite apparent that the respondent no.3 has given complete go bye to the provisions of Rule 14 and 19 (iii)(I) of the GDS (Conduct and Employment) Rule and has not followed the provisions of Rule. We may also observe that the respondents have utterly failed to deny the averments contained in Para 4.14 and 4.15 of the Original Application. We have also carefully perused the appellate order dated 31.10.2005 and we are satisfied that the main ground of attack taken by the applicant is that, the order passed by the respondent no.3 is wholly without jurisdiction, inasmuch as, he has passed the order of removal against the applicant without waiting for expiry of period of appeal.

9. Learned counsel for the respondents has strenuously opposed the contentions raised on behalf of the applicant and has submitted that the Revising Authority has in its wisdom exercised his power and has issued the impugned orders. He has submitted that there is no rule which prevents the Revising Authority to exercise the power of revision before the period of 90 days. The Revising authority has passed the order keeping in view the gravity of the charges. Learned counsel for the respondents would submit that no time limit has been prescribed for the revising authority to revise any of the order passed in a disciplinary case. Thus no violation can be fastened with the action of the respondents. We have considered the rival submissions put forward on behalf of both parties. As far as the factual aspect of the matter is concerned there is hardly any dispute and if at all any dispute remains that is regarding the fact whether the revising Authority has acted under the Provisions of Rule 14 and 19 (iii) (i) (b) of the GDS (Conduct and Employment) Rules, 2001. To appreciate the basic legal issue, as to whether the Revising

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Authority acted within his jurisdiction or not in issuing the impugned orders. For convenience the Rule 14 and 19 (iii) (i) (b) of the GDS (Conduct and Employment) Rules, 2001 are being reproduced hereunder:-

“14. Period of limitation for appeal

No appeal shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against :

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

19. Revision

(1) *Notwithstanding anything contained in these rules-*

(i) *the Head of the Circle, or Region*

(ii) *any other authority immediately superior to the authority passing the orders; or*

(iii) *any other authority specified in this behalf by the Government by general or special order, and within such time as may be specified in that general or special order;*

May, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise an order made under these rules, reopen the case and after making such enquiry as it considers necessary, may

(a) *confirm, modify or set aside the order*

(b) *pass such order as it deems fit :*

Provided that no such case shall be reopened under this rule after the expiry of six months from the date of the order to revised except by the Government or by the Head of Circle or by the Postmaster-General (Region) and also before the expiry of the time limit of three months specified for preferring an appeal under Rule 14 :

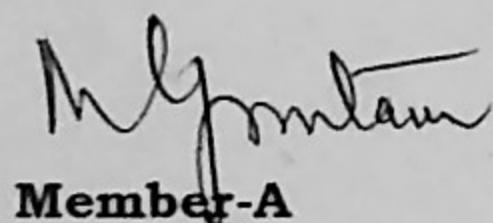
Provided further that no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the Sevak concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) and (vi) of Rule 9 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed except after the enquiry in the manner laid down in Rule 10, in case no such enquiry has already been held.

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(2) *No application to revise an order made on an application for a revision or order passed or made on a revision shall be entertained."*

After a careful analysis of the provisions of GDS (Conduct and Employment) Rules, we have absolutely no hesitation that the impugned orders dated 26.07.2005 (Annexure A-1); dated 31.10.2005 and dated 22.03.2007 (Annexures A-2 & A-3) respectively; and order dated 14.06.2007 (Annexure A-4) are without jurisdiction and the same cannot be upheld.

10. In view of the aforesaid observations, the Original Application is allowed, order dated 26.07.2005 (Annexure A-1); dated 31.10.2005 and dated 22.03.2007 (Annexures A-2 & A-3) respectively; and order dated 14.06.2007 (Annexure A-4) are quashed and set aside. Respondents are directed to reinstate the applicant within a period of three months from the date of receipt of copy of this order without any back wages. Respondents are also given liberty to proceed further in the matter in accordance with the law, if so advised.


Member-A


Member-J

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