

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No.535 of 2009

Madhukar Tajan Applicant
Vs
Union of India & Others Respondents

1. Order dated :03-11-2011.

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL)

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The Applicant while working as SDI(P), K-1st Sub Division, Jharsuguda was alleged to have committed certain acts of omission and commission. Memorandum under Annexure-A/1 dated 14th June, 2005 was issued to him under Rule 14 of the Central Civil Services (Classification Control & Appeal) Rules, 1965 giving him opportunity to show cause. Inquiry proceedings under Rule 14 of the Rules ibid were concluded. On consideration of the report of the IO, reply of the Applicant and the connected documents, vide order under Annexure-A/5 dated 31st August, 2007, the Disciplinary Authority/Respondent No.4 [Director Postal Services, Sambalpur Region, Sambalpur] imposed on the applicant punishment of **reduction of pay by two stages from Rs.8,500/- to Rs.8,100/- in the time scale of pay of Rs.6500-200-10500/- for a period of two years with effect from September, 2007 with further order that the applicant will not earn increments of pay during the period**



of reduction and that on expiry of this period the reduction will not have the effect of postponing his future increments of pay. Applicant preferred appeal dated 29.2.2008 in Annexure-A/6, against the said order of punishment under Annexure-A/5 dated 31-08-2007. After lapse of near about 20 months of preferring the appeal by the Applicant, the Appellate Authority/Respondent No.2 (Chief Postmaster General, Orissa Circle, Bhubaneswar) issued notice under Annexure-A/7 dated 14.10.2009 to the Applicant to show cause as to why the punishment imposed by the Applicant under Annexure-A/5 dated 31-08-2005 shall not be enhanced to that of 'removal from service'.

2. The said notice under Annexure-A/7 dated 14.10.2009 has been challenged by the Applicant in this OA on the grounds that the DA abruptly held the applicant guilty of the charge under Article II and imposed the punishment; notice of enhancement of the punishment was issued by the AA long after the applicant underwent the punishment imposed by the DA; the notice of enhancement beyond the period prescribed in Rule 29(1(v) of the CCS (CCA) Rules, 1965 and therefore, the notice under Annexure-A/7 being illegal, arbitrary and contrary to the sound principle of law is not sustainable in eyes of law and is liable to be set aside. Respondents filed their counter objecting

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to the stand taken by the Applicant in his Original Application.

The Applicant has also filed rejoinder controverting some of the points stated by the Respondents in their counter.

3. We have heard the rival submissions of the parties and perused the materials placed on record. While issuing notice to the Respondents to file their reply this Tribunal in order dated 16.11.2009 directed not to take any action pursuant to the show cause under Annexure-A/7 which order has been continuing till date.

4. There were two charges framed against the Applicant under Annexure-A/1 dated 14th June, 2005 which are stated herein below:

Article-I

Shri Madhukar Tajan, while working as Inspector of Posts, Sundargarh North Sub Division during the period from 02.6.98 to 24.5.02 demanded and accepted illegal gratification of Rs.13000/- from Smt. Magrita Tete on the promise of providing compassionate appointment to Sri Raj Kumar Tete S/o.Late Marcus Tete, Ex GDSMC, Balisankara SO and appointed Shri Raj Kumar Tete as GDSMC Balisankara on provisional basis from 18.6.2001 and he offered to refund the amount to Sri Raj Kumar Tete and her mother Smt. Magrita Tete before Jullus Tireky, BPM Saunamura when complaint was made and inquiry was conducted against him for accepting illegal gratification.

Shri Madhukar Tajan by his aforesaid action failed to maintain absolute integrity and acted in a manner which is unbecoming a Govt. servant thereby violating the provision of Rule 3(1) (i) and Rule (1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

Shri Madhukar, Tajan while working in the aforesaid capacity during the aforesaid period provisionally appointed Shri Raj Kumar Tete, S/o.Late Marcus Tete of Village Tangarbahal, PO-Saunamura, Dist. Sundargarh as GDSMC Balisankara with effect from 18.6.2001 to 14.12.2001 without going through the prescribed selection process and even though Sri Raj Kumar Tete was ineligible for appointment as

GDS as per DGP&T New Delhi letter No.43-84/90-PEN dated 30.1.81 since he had not attained the minimum age of 18 years then and allowed him to continue as such beyond 14.12.2001 without issuing provisional appointment memo for such continuance and violated the provision of DGP Letter No. 43-4/77-PEN dated 18.5.79.

Shri Madhukar Tajan by his aforesaid action exhibited lack of devotion to duty and acted in a manner which is unbecoming of a Govt. Servant thereby violating the provision of Rules 3(1)(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

5. The report of the IO is at Annexure-A/3 wherein the IO while holding the Article I as not proved held the allegation levelled against the applicant under Article II as proved. Based on the finding of the IO the DA imposed the aforesaid punishment on the Applicant. The Respondent No.2 issued show cause for the proposed enhancement of the punishment under Annexure-A/7 dated 14.10.2009 although, by that time, the applicant had undergone the punishment imposed by the DA. The reason assigned in the show cause notice under Annexure-A/7 dated 14.10.2009 reads as under:

"WHEREAS, Sri Madhukar, Sorting Inspector, office of the Postmaster General, Sambalpur Region, Sambalpur was proceeded against under Rule -14 of CCS (CCA) Rules, 1965 vide SRM 'K' Division, Jharsuguda Memo No. B-21/8/2004 dated 14.6.2005 for alleged demand and acceptance of ilegal gratification of Rs.13,000/- from Smt. Margarita Tete with the promise to provide compassionate appointment to her son Sri Raj Kumar Tete as GDSMC, Balisankara SO after the death of her husband, irregular provisional appointment of the said Sri Raj Kumar Tete to the post from 18.06.2001 to 14.12.2001 despite the fact that the candidate had not attained the prescribed minimum age required for appointment to such a post and allowing him to continue in the post beyond 14.12.2001 without issuing any provisional appointment order for such continuance;

AND WHEREAS the SRM 'K' Division forwarded the case records together with the Inquiry Report to the Post

Master General, Sambalpur Region, Sambalpur for finalization of the case vide letter No. B-21/8/2004 dated 10.04.2007.

AND WHEREAS the Director of Postal Services, Sambalpur Region, the Disciplinary Authority finalized the case vide Memo No. Vig/Misc.5/02-03 dated 31.08.2007 and ordered that the pay of the said Sri Tajan be reduced by two stages from Rs.8500/- to Rs.8100/- in the scale of pay of Rs.6500-200-10500/- for a period of two years with effect from September, 2007 with further direction that he would not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will not have the effect of postponing his future increments of pay;

AND WHEREAS the said Sri Tajan has preferred the petition dated 29.02.2008 against the aforementioned orders of the Disciplinary Authority;

AND WHEREAS the undersigned on a careful consideration of the facts and circumstances of the case considers that the quantum of penalty imposed on the said Sri Tajan is not commensurate with the gravity of offence committed by him and proposes to enhance the punishment to that of 'removal from service'.

NOW, THEREFORE, the said Sri Madhukar Tajan is given an opportunity of making representation on the penalty proposed above. Any representation, which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15 days from the date of receipt of this memorandum by Sri Tajan. If no representation is received from him within the stipulated time, it will be presumed that he has no representation to make and orders will be passed against him *ex parte*."

As it appears, the memorandum of charge under Annexure-A/1 dated 14th June, 2005 was issued by the Superintendent, RMS K Division, Jharsuguda (who has not been made as party in this OA); enquiry was conducted through ASPO (Investigation) O/O the Supdt. of Post Offices, Sambalpur (Respondent No.5), the punishment under Annexure-A/5 dated 31st August, 2007 was imposed by the Director Postal Services, Sambalpur Region, Sambalpur (Respondent No.4), no appeal was preferred by the Applicant whereas a petition was

preferred against the order of punishment to the Chief Post Master General, Orissa Circle, Bhubaneswar (Respondent No.2) under Annexure-A/6 dated 29.2.2008 i.e after expiry of the period of appeal provided in the Rules. The CPMG issued the enhancement notice under Annexure-A/7 dated 14.10.2009. Applicant filed this OA on 10.11.2009 challenging the order under Annexure-A/7. This Tribunal vide order dated 16.11.2009 while issuing notice to the Respondents, as an ad interim measure directed that no action shall be taken by the Respondent pursuant to the order under Annexure-A/7. Thereafter the applicant submitted his reply to the notice under Annexure-A/7 on 25.11.2009 as at Annexure-R/2. Applicant's contention is that the CPMG, Orissa, Bhubaneswar should not have issued the notice of punishment beyond the period provided under Rule 29(1)(v) of the CCS (CC&A) Rules, 1965. Respondents' stand is that the CPMG being the next higher authority to the Appellate authority as per rule 29(VI) of the Rules, 1965 has the power to revise the order of punishment at any time. Hence the notice under Annexure-A/7 is in no way illegal. Relevant rules are quoted herein below:

"29. Revision

(1) Notwithstanding anything contained in these rules-

- (i) the President; or
- (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be revised; or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from **which no appeal has been preferred or from which no appeal is allowed**, after consultation with the Commission where such consultation is necessary, and may-

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

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

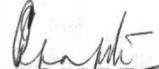
Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary :...”

6. The above notice is conspicuously silent in which capacity this notice for enhancement of punishment has been issued and under which provision of the Rules. The Director of

Postal Services being the Disciplinary Authority imposed the punishment on the Applicant against which as per the Rules appeal lies to the Postmaster General within a period of 45 days as per the Rules. Admittedly, the Applicant has not preferred any appeal and preferred a petition under Annexure-A/6 much after the expiry of the period of preferring appeal to the Respondent No.2. The DA imposed the punishment on the applicant vide order under Annexure-A/5 dated 31st August, 2007 and the punishment was reduction of pay by two stages from Rs.8,500/- to Rs.8,100/- in the time scale of pay of Rs.6500-200-10500/- for a period of two years with effect from September, 2007 which expired in September, 2009 whereas this notice of enhancement has been issued on 14.10.2009 i.e. much after the expiry of the period of punishment. Further it is seen that no reason has been given in the show cause under Annexure-A/7 as to on what ground the Respondent No.2 came to the conclusion that the punishment imposed on the applicant is not commensurate with the gravity of the offence committed by the Applicant. Unless reason is given, it is difficult on the part of an employee to answer the notice. Issuance of show cause notice is not an empty formality especially when the authority seeks to convert the punishment from reduction to removal which has a permanent adverse effect on the applicant. Any

executive decision should be free from arbitrariness and must disclose the reason especially where a person is going to be deprived of his source of livelihood. The notice under Annexure-A/7 fraught with dangerous consequences could not have been issued in a cavalier manner. This apart, it has been noticed that imposition of additional punishment imposed after the first punishment which the applicant had already undergone is not only bad but perverse. Though show cause notice per se need not be interfered with but if the same is contrary to Rule or law or in violation of principles of natural justice, interference by this Tribunal is fully justifiable. For the reasons stated above, we find sufficient ground to quash the notice under Annexure-A/7 and accordingly, the same is quashed. However, we make it clear that the order of punishment by the Disciplinary authority is allowed to stand as we find no infirmity in the same. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)