

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 161/2013

Reserved on : 05.08.2016

Jodhpur, this the 20th day of September, 2016

CORAM

Hon'ble Dr Murtaza Ali, Judicial Member

Hon'ble Ms Praveen Mahajan, Admn. Member

Smt. Usha Nigam W/o Late Shri Pankaj Kumar Nigam, R/o C/o S.L. Nigam, 2-B, Railway Colony, City Station, Udaipur.

.....Applicant

By Advocate: Mr S.K. Bishnoi.

Versus

1. The Union of India through the Secretary, Govt. Of India, Ministry of Communication, Deptt. Of Posts, Dak Bhawan, Sanshad Marg, New Delhi.
2. The Chief Post Master General Circle Jaipur – 302007.
3. Sr. Superintendent of Post Offices, Udaipur Division, Udaipur.

.....Respondents

By Advocate : Mr B.L. Bishnoi.

ORDER

Per Ms Praveen Mahajan, Member (A)

The present Original Application has been filed u/s 19 of the Administrative Tribunals Act, 1985 seeking to quash inquiry report dated 29.03.2012 (Annex. A/2) and penalty order dated 30.03.2012 (Annex. A/3) whereby husband of the applicant Late Shri Pankaj Kumar Nigam was dismissed from service with

immediate effect. The applicant without prejudice to aforesaid prayer, has prayed for reduction of penalty of dismissal from service.

2. Smt. Usha Nigam, the applicant states that her husband Late Shri Pankaj Kumar Nigam while posted as Junior Postmaster at Sub Post Office Fatehpura, Udaipur was issued charge sheet on 15.11.2011 (Annex. A/1). In Article-I of the said charge sheet, it was alleged that her husband between the period from 22.07.2008 to 30.08.2010 was posted to Fatehpura, Udaipur, and, on 22.07.2009, withdrew the amount of Rs. 5,94,000/- from the account of one Shri Sumer Singh Rathore by forging the signature on withdrawal form without any authority and the amount was not disbursed to the original account holder. Out of Rs 5,94,000/-, he kept Rs 2,30,000/- in his possession and Rs 3,64,000/- were deposited in his account Nos. 154140 and 152765. Subsequently, the said amount had been withdrawn. In the Article-II, it was alleged that her husband withdrew Rs 1,00,000/- on 15.05.2010 from Saving Bank Account No. 153284 by forged signature on withdrawal form and the said amount was kept in his possession. Thereafter, he credited the said amount of Rs 1,00,000/- in the account of original account holder in two instalments on 01.07.2010 and 07.07.2010. Thus, he misappropriated a sum of Rs 1,00,000/- for 35 days and violated Rule 9, 31 and 33 of Post Office Saving Bank Rules Book Vol-I and Rule 58 of Post Office Financial

Rules Book Vol-I. She further states, that as per version of the respondents, reply of the charge sheet was not submitted by her husband and therefore, inquiry was initiated against the incumbent. The opportunity to defend the charges was provided to her husband. Her husband was called to appear on 12.03.2012 before the Inquiry Officer but he did not appear. Then subsequently, a permission was sought from the District Magistrate vide order dated 29.03.2012 and inquiry committee meeting was held on the same day in the premises of District Jail, Udaipur as her husband was in judicial custody. Her husband was found guilty in the inquiry report dated 29.03.2012 (Annex. A/2), on the basis of confession made by her husband. The Disciplinary Authority i.e. Sr. Superintendent Post Office, Udaipur Division, Udaipur imposed penalty of dismissal from service on her husband vide order dated 30.03.2012 (Annex. A/3). Applicant states that her husband was HIV positive and undergoing continuous treatment for various ailments prior to conduct of inquiry. In this regard she submits prescription slip (Annex. A/4). She further states that on 29.03.2012 when the inquiry meeting was convened in the premises of District Jail, the health of her husband was very poor, which is evident by order dated 29.03.2012 (Annex. A/5) passed by Superintendent, Central Jail, Udaipur. The applicant avers that on that on 29.3.2012, he has taken to the hospital on account of his poor health condition, so he

was not in a condition to participate in inquiry proceedings. Shortly thereafter, her husband died on 02.04.2012. The applicant submits that her husband was HIV positive and was undergoing treatment of this serious disease. Applicant alleges that Inquiry Officer has not inquired the matter independently and her husband was found guilty merely on the basis of confession made by him. Therefore, the inquiry report is vitiated. She further alleges that inquiry was conducted in a very hasty manner as inquiry was conducted on 29.03.2012 and on the very next day i.e. 30.03.2012, the penalty order was passed by the Disciplinary Authority. In the impugned order, the Disciplinary Authority has mentioned that the inquiry report was supplied to the incumbent on 30.03.2012, on the same day the incumbent replied in the affirmative about the findings of the inquiry report, that he did not want further time to explain about the allegations of inquiry report. No prosecution witness was summoned to prove the charges levelled against her husband. Even if, without admitting, it is presumed that her husband pleaded guilty before the Inquiry Officer then also the same cannot be treated as conscious and independent confession in true sense as her husband was suffering from serious disease and was also in a state of depression. For avoiding the inquiry, he made a confession before the Inquiry Officer, which cannot be treated as confession or pleading guilty in the true sense. Thus, the applicant seeks to

quash the inquiry report (Annex. A/2) and penalty order (Annex. A/3), which is extremely harsh, given the above background.

3. In reply, the respondents while reiterating the Article of Imputations against Late Shri Pankaj Kumar Nigam as mentioned in inquiry report dated 15.11.2011 (Annex. A/1) and averred in the OA also, have inter-alia stated that Late Shri Nigam was appointed in the respondent-department as Postal Assistant on 08.10.1980 and his past service record was also not satisfactory. A charge-sheet under rule 14 of CCS (CCA) Rules, 1965 was served upon Late Shri Pankaj Kumar Nigam on 17.11.2011 but he did not submit any representation to the same. He was further allowed 10 days time to file the reply, which he did not do. Thereafter, the Inquiry Officer and Presenting Officer were nominated on 06.02.2012 under intimation to Late Shri Nigam. The inquiry officer held the first hearing on 12.03.2012 which Shri Nigam did not attend. Therefore, Inquiry Officer held the inquiry in the Central Jail with the approval of the District Magistrate, Udaipur on 29.03.2012 (Annex. R/2) where Shri Pankaj Kumar Nigam was in judicial custody. The District Magistrate, Udaipur had granted permission to hold inquiry in jail premises for two days. During the course of inquiry on 29.03.2012 (Annex. R/1), Shri Pankaj Kumar Nigam accepted all the charges levelled against him before the Inquiry Officer, in presence of Presenting Officer, and independent witness Shri Shyamveer Singh, Assistant

Jailor of Central Jail, Udaipur. He did not object or submit any inability for participation in the inquiry. The letter of the Superintendent, Central Jail, Udaipur dated 29.03.2012 (Annex. A/5) was issued in pursuance of the order passed by the Ld. Chief Judicial Magistrate No. 2, Udaipur on 28.03.2012 for treatment of Shri Pankaj Kumar Nigam. The Inquiry Officer submitted his report to the Disciplinary authority and copy of report was also supplied to Shri Nigam on 30.3.2016. Shri Pankaj Kumar Nigam further submitted his reply dated 30.03.2012 (Annex. R/1) about acceptance of the conclusion of the inquiry report and did not desire further proceedings in the case. On receipt of reply from Shri Nigam, Disciplinary Authority passed a punishment order of Dismissal From Service under Memo dated 30.03.2012 which was delivered to Shri Nigam on the same day. The respondents state that Late Shri Pankaj Kumar Nigam presented himself in the inquiry on 29.03.2012 and attended the inquiry without furnishing reasons of his ill-health before the Inquiry Officer. He also received a copy of the Inquiry Report in presence of ASP (North), Udaipur and PRI (P) Udaipur (Annex. R/3). Shri Pankaj Kumar Nigam appeared before the Inquiry Officer without any fear, in presence of Presenting Officer, and independent witness Shri Shyamveer Singh, Asstt. Jailor, Central Jail, Udaipur and admitted the charges levelled against him, in writing. Hence, the action of

the respondent-department is just, proper and in accordance with the Rules.

4. No rejoinder has been filed as the learned counsel did not wish to file the same.

5. Heard Mr S.K. Bishnoi, Ld. counsel for applicant and Mr B.L. Bishnoi, Ld. counsel for respondent.

6. In this case, the husband of the applicant while posted as Sub Post Master, Post Office, Fatehpura, Udaipur allegedly withdrew Rs. 5,94,000/- from the account No. 31227 of Shri Sumer Singh Rathore on 22.07.2009 prematurely without pass book by creating forged signatures of the original account holder on the withdrawal form. The said amount was accounted in MIS payment of Government Account, but has not been paid to the account holder. Out of this amount, while pocketing Rs. 2,30,000/- he had deposited Rs. 364,000/- in his two different accounts which was subsequently withdrawn. On 15.5.2010 also, he withdrew Rs. 1,00,000/- from the saving bank account of other persons creating forged signatures and the amount was kept in his possession and subsequently, the said amount, was deposited into the account of the account holder in two instalments on 01.07.2010 and 07.07.2010. It is alleged that the amount of Rs. 1,00,000/- was misappropriated by the husband of the applicant in his possession for a period of 35 days. For the above misconduct, chargesheet dated 15.11.2011 was issued and delivered to him on 17.11.2011.

The husband of the applicant did not submit reply to the said chargesheet. Thereafter, the Inquiry Officer was appointed and who held the hearing on 12.3.2012, which the husband of the applicant did not attend. Since the husband of the applicant was in judicial custody, therefore, permission of the District Magistrate, Udaipur was sought and inquiry was held in the Central Jail, Udaipur in the presence of Presenting Officer and independent witness Shri Shyamveer Singh, Asstt. Jailer on 29.3.2012. The husband of the applicant accepted all the charges and did not desire further proceedings in the matter. The inquiry report was given to the husband of the applicant on 30.3.2012 (Ann.R/3). Vide order dated 30.03.2012 (Ann.A/3), the Disciplinary Authority imposed upon him penalty of Dismissal From Service. The husband of the applicant expired on 02.04.2012. All the above facts are not in dispute.

7. In support of his contention, the learned counsel for the applicant cited the judgment of the Hon'ble Supreme Court in Roop Singh Negi vs. Punjab National Bank and Ors., reported in JT 2009 (2) SC 176. The ratio laid down in the above case is not applicable in the facts and circumstances of the present case. In the present case, the CO has not contested the proceedings at any point of time, whereas in the aforecited case, the CO contested the proceedings.

8. From the available record, it is evident that chargesheet was served on the husband of the applicant on 17.11.2011. The Inquiry Officer and the Presenting Officer were appointed on 06.02.2012. The sequence of events, thereafter show that the respondents hurriedly concluded the disciplinary proceedings without recording statements of any prosecution or defence witnesses. The first hearing was held on 12.03.2012, which was not attended by Shri Pankaj Nigam, presumably, because he was in jail and in a frail state of health. The 2nd hearing was held on 29.03.2012. Again while Shri Nigam was in judicial custody, in other words- when he was not a free man and also precariously placed- healthwise. It is doubtful whether he was in a position to offer any defence, being in such a weak physical and mental condition.

9. We note that the respondents acted with lightening speed on 29.03.2012 and 30.03.2012. Firstly, the respondents sought permission from District Magistrate to conduct inquiry in the premises of the Central Jail, Udaipur on 29.03.2012. The permission was granted on the same day, and inquiry committee meeting was also held on the said date itself. Further, the Inquiry Report was concluded on 29.03.2012 on the basis of confession of Shri Pankaj Nigam. The Inquiry Report was shown to Shri Nigam on 30.03.2012, who accepted the allegations made therein. The Inquiry Officer submitted the inquiry report to the Disciplinary


Authority on 29.03.2012, who issued the penalty of Dismissal From Service on Shri Nigam on the next day i.e. on 30.03.2012. All these facts go to show that the respondents wanted to hasten and conclude the inquiry against Shri Nigam. It leaves us with an uneasy feeling that perhaps the respondents were aware about the health condition of Shri Nigam and wanted to conclude and award the punishment on the husband of the applicant.

10. The haste with which the inquiry proceedings were concluded on 30.03.2012 and order of penalty of Dismissal From Service issued by the Disciplinary Authority on 30.03.2012 itself, speaks volumes about the mindset of the respondents. Applicant has stated that her husband was suffering from depression and serious disease. Due to his ill health, he could not defend himself in the inquiry. The husband of the applicant did not file any appeal against the penalty of dismissal from service, also because there was no time left with him to do so, since he expired on 02.04.2012. The respondents contend that husband of the applicant admitted the charges and did not want the proceeding to continue further. Had the husband of the applicant been alive, he could have perhaps defended himself in a better way and taken more opportunities or time, in his favour. But in the peculiar facts and circumstances of this case, the same could not be taken/afforded to him.

11. In view of the unique circumstance of the case, we are of the view that in the interest of justice, it will be proper if the matter is reconsidered by the Disciplinary Authority. Accordingly, the order dated 30.03.2012 (Ann.A/3) is quashed and the matter is remitted back to the Disciplinary Authority to reconsider the matter on the point of quantum of punishment and pass appropriate fresh order within a period of three months from the date of receipt of a copy of this order.

12. The OA stands disposed of accordingly with no order as to costs.


[Praveen Mahajan]
Administrative Member


[Dr Murtaza Ali]
Judicial Member

Ss/R-

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