

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 492 / 2008

Friday, this the 27th day of March, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

A. Gopalan,
Deputy Postmaster,
Calicut Head Post Office.Applicant

(By Advocate Mr P.C. Sebastian)

v.

1. The Senior Superintendent of Post Offices,
Calicut Division,
Calicut-673 003.
2. The Director of Postal Services,
Northern Region,
Kozhikode-673 011.
3. The Union of India represented by
Secretary to Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi.Respondents

(By Advocate Mr Mr P.A. Aziz, ACGSC)

This application having been finally heard on 8.1.2009, the Tribunal on 27.3.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in this O.A is against the Annexure A-1 memorandum dated 24.7.2008 issued by the first respondent proposing to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965 (CCA Rules for short) and calling for written statement of his defence. Along with the said OM the statement of article of charge, statement of imputations of misconduct in



support of the article of charge, list of documents and the list of witnesses/whom the article of charge are proposed to be sustained have also been enclosed.

The charges were as under:

"Article-I"

That the said Sri A Gopalan, while working as Postmaster, Kalpetta Head Post Office, during the period from April 2002 to 19.3.2003, failed to regulate funds in respect of Pulpalli SO, and also to scrutinise the daily accounts of Pulpalli SO, while affording additional credits to the SPM, Pulpalli SO as required under Rule 10, 58 and 59 of Postal Manual Vol VI Part III and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (1)(ii) of CCS (Conduct) Rules 1964.

Article-II

That the said Sri A Gopalan, while working as Postmaster, Kalpetta Head Post Office, during the period from April 2002 to 19.3.2003, failed to report the retention of excess cash by Sub Postmaster, Pulpalli SO, promptly to the Senior Superintendent of Post Offices, Calicut Division, Calicut, as required under Rule 59(a) of Postal Manual Vol.VI part III, and thereby failed to maintain devotion to duty contravening the provisions of Rule 3(1)(ii) of CCS(Conduct) rules 1964."

The statement of imputations in support of the above charges were also as under:

"Article I"

That the said Sri. A. Gopalan, while working as Postmaster, Kalpetta Head Post Office, during the period from April 2002 to 19.3.2003, failed to regulate funds in respect of Pulpalli SO, and also to scrutinize the daily accounts of Pulpalli SO , while affording additional credits to the SPM, Pulpalli SO as required. under Rule 10, 58 and 59 of Postal Manual Vol VI part 111, and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (1) (ii) of CCS (Conduct) Rules 1964.

Article II

That the said Sri. A, Gopalan, while working as Postmaster, Kalpetta Head Post Office, during the period from April 2002 to 19.3.2003, failed to report the retention of excess cash by Sub Postmaster, Pulpalli SO, promptly to the Senior Superintendent of Post Offices, Calicut Division, Calicut, as required under Rule 59 (a) of Postal Manual Vol VI part III, and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (I) (ii) of CCS (Conduct) Rules 1964."



Earlier the applicant was served with the Annexure A-2 show cause notice dated 16.3.2005 which is as under:

"You were working as Postmaster Kalpetta in Calicut Postal Division from April 2002 to 19.3.2003.

ASP, Kalpetta sub division visited Pulpally SO under Kalpetta HO on 26.3.2003 and found a shortage of Rs.2,73,318.65 in the cash balance of the office. Pulpally SO was linked with the Pulpally Branch of Canara Bank for meeting its cash requirement. The initial credit placed at the disposal of SPM was Rs.75,000/- which was later raised to Rs.1,00,000/-. A credit register to watch the drawings from the Bank had been maintained at the Kalpetta HO, but no entries were made therein since 11.10.2002 in respect of Pulpally SO, though additional credits were placed at the disposal of the SPM over and above the initial credit on several occasions thereafter, as revealed from the following instances.

- (i) On 31.1.03 credit of rupees one lakh was placed as per message coded P/0950/31.
- (ii) On 4.2.03 rupees two lakhs were placed as per message coded P/1630/4.
- (iii) On 6.3.03 rupees two lakhs were placed as per message coded P/1000/6.
- (iv) On 19.3.03 rupees two lakhs were placed as per message coded P/1200/19.

On these days, SPM Pulpally had not furnished the details of the amount drawn from the bank and the balance during the relevant period as required vide Rule 34(1) of Postal Manual Vol. VI Part-III. While affording the above credits you had not ensured the correct maintenance of the credit register and the required information is furnished in the SO daily accounts.

SPM Pulpally was irregularly retaining excess amount of cash showing fictitious liabilities from 1-2-03 as revealed in the following table.

| Date | Cash in hand | Liabilities shown |
|----------|--------------|-------------------|
| 01/02/03 | 254877.1 | 430000 |
| 03/02/03 | 242262 | 245000 |
| 04/02/03 | 230495.3 | 270000 |
| 05/02/03 | 254055.9 | 230000 |
| 06/02/03 | 364076.4 | 550000 |
| 07/02/03 | 335774.9 | 550000 |

These liabilities were not cleared on the following days. This should have been critically analysed by you with a view to make sure whether or not the liabilities were genuine. Later the liabilities shown as above were found to be not genuine. As the Postmaster, you had

not exercised any of the checks prescribed in Rule 58 and 59 of Postal Manual Vol. VI Part-III and also failed to report the irregularities to the Divisional Head as required under Rule 59(a) ibid. No error entries were also made in the error book of Kalpetta HO regarding excess liabilities of Pulpally SO from 16-1-02 to 23-3-03. You had also not taken into consideration the irregular retention of cash by SPM Pulpally brought to your notice by Shri K. Jaffar and Shri V. Murali the then sub Account PAs of Kalpetta HO.

In your statement dated 12-5-04 before the ASP Vigilance of PMG's office, Northern Region, Calicut you stated that you knew that Smt. Jayasree was placed under suspension as a result of financial embezzlement. You also stated that though you were shown the credit Register of Kalpetta HO the error book of Sub Accounts Branch from 18.1.02 to 24-3-03 of Kalpetta HO, Office copy of message P/1630/4, Copies of SO daily accounts of Pulpally SO, Copies of the statements dated 11-6-2003 and 12-6-03 of Shri Jaffar and Shri Murali, Sub Account PAs of Kalpetta HO, you were not aware of any lapses on the part of SPM, Pulpally. You were placed under suspension with effect from 19-3-2003 from the post of PM, Kalpetta and Shri T. Kunhi Mohammed who took over charge as PM, Kalpetta noticed the irregular retention of excess cash by SPM Pulpally and intimated Divisional Office vide EE No. 126 dated 24.3.03 and the resultant visit of ASP Kalpetta revealed a shortage of Rs. 273318.65 in the cash balance of that office on 26-3-03.

As Postmaster Kalpetta your failure to ensure the correctness of liabilities furnished by SPM Pulpally in SO daily accounts and your continued authorisation to her to draw more cash from Bank against imaginary liabilities without exercising proper check by way of entries in the credit Register had emboldened her to indulge in misappropriation of cash unabatedly. She had actually indulged in misappropriation of office cash and the shortage was detected immediately after you were kept off the charge of Postmaster, Kalpetta. You are directed to show cause within 10 days why disciplinary action against you shall not be taken for contributory negligence on your part as explained above to the commission of this fraud and loss thereto."

2. The applicant had submitted the Annexure A-3 reply dated 11.4.2005 to the aforesaid show cause notice stating that the allegations made against him were highly misconceived and ill-motivated. He denied that he was responsible for any fraud deliberately committed by an official in independent charge of an LSG office and he has not contributed in any manner to the commission of the said fraud by failure in his duties. Having not satisfied that the aforesaid reply, the Superintendent of Post offices, Tirur Division under whom he was working at the relevant time informed him vide Annexure A-4 Memorandum dated 8.8.2005



that he was proposing to take action against him under Rule 16 of the CCA Rules and the following statement of imputation of misconduct or misbehaviour on the part of the applicant was also served on him:

"Article I"

The Assistant Superintendent of Post Offices, Kalpetta Sub Division ((ASP), visited Pulpalli SO on 26.3.2003 and took up verification of cash & stamp balance of the office, as per the direction of the Sr. Superintendent of Post Offices, Calicut Division Calicut on receipt of an Error Extract No. 126 dated 24.3.2003, from the Postmaster, Kalpetta Head Post Office. On verification, the ASP found a shortage of Rs. 2,73,318.65 (Rupees Two lakhs seventy three thousand three hundred and eighteen and paise sixty five only) in the cash & stamp balance of the office. Further verification revealed that by furnishing inflated liabilities in the SO daily accounts sent to the Head Post Office, and making requisition for unjustified additional credits, Smt. Jayasree Rajkumar, Sub Postmaster, Pulpalli SO had managed to retain cash in excess of the authorised balance from 31.7.2002, in order to siphon out excess cash for her personal purposes. Pulpalli SO is in account with Kalpetta Head Post Office and Sri A. Gopalan was working as Postmaster Kalpetta Head Post Office from April 2002 to 19.3.2003. Pulpalli SO is linked with the Pulpalli branch of Canara Bank for meeting its cash requirements. The initial credit placed in favour of Pulpalli SO was Rs. 75000/-.. A credit register to watch the drawings from Bank had been maintained at Kalpetta Head Post Office, and the said Sri. A. Gopalan failed to make entries in that register after 11.10.2002 and thereby failed to regulate funds in respect of Pulpalli SO, which he was required to do as per Rule 10 of Postal Manual Vol.VI Part III. Sri. A. Gopalan also placed additional credits at the request of the SPM Pulpalli, over and above the initial credit, in the following cases, in spite of the fact that the SPM, Pulpalli had not furnished the details of amounts drawn from the Bank, and the balance thereto, on the back of SO daily account, as required under Rule 34 (I) of Postal Manual Vol.VI Part.III.

1. On 4.2.03, Rs. Two lakhs were placed as per phone message coded P/1630/4.
2. On 6.3.03 Rs. Two lakhs were placed as per phone message coded P/1000/6
3. On 19.3.03, Rs..Two lakhs were placed as per phone message coded P/1200/19.

SPM, Pulpalli was irregularly retaining excess amount of cash showing fictitious liabilities from 1.2.2003, as shown below

| | <u>Date</u> | <u>Cash in hand</u> | <u>Liabilities shown</u> |
|----|-------------|---------------------|--------------------------|
| 1. | 1.2.2003 | 254877.10 | 430000 |
| 2. | 4.2.2003 | 230495.50 | 270000 |
| 3. | 7.2.2005 | 335774.90 | 550000 |

The Postmaster's duty involves to verify the reasons for

retention of excess cash and critical analysis of liabilities with a view to make sure whether or not those are genuine. Later, the liabilities shown as above were found to be not genuine. It is therefore imputed that Sri. A. Gopalan, while working as Postmaster, Kalpetta Head Post Office had failed to exercise any of the checks prescribed in Rule 10, 58 and 59 of Postal Manual Vol VI Part III and thereby failed to maintain devotion to duty contravening the Provisions of Rule 3 (I) (ii) of CCS (Conduct) Rules 1964.

Article II

Verification of cash & stamps of Pulpalli SO carried out by the Assistant Superintendent of Post Offices, Kalpetta Sub Division, on 26.3.03, brought out by the Assistant Superintendent of Post Offices, Kalpetta Sub Division, on 26.3.03, brought out a shortage of Rs. 2,73,318.65 (Rupees Two lakhs seventy three thousand three hundred and eighteen and paise sixty five only) in the cash & stamp balance of the office. Detailed verification revealed that by showing inflated liabilities in the SO daily accounts sent to the Head Post Office, and making requisition for unjustified additional credits, Smt. Jayasree Rajkumar, the Sub Postmaster Pulpalli SO had managed to retain cash in excess of the authorised balances from 31.7.2002, Pulpalli SO is in account with Kalpetta Head Post Office and Sri. A. Gopalan was working as Postmaster Kalpetta Head Post Office from April 2002 to 19.3.2003. Pulpalli SO is linked with the Pulpalli branch of Canara Bank, for meeting its cash requirements. The initial credit placed in favour of Pulpalli SO was Rs. 75,00/- (Rupees Seventy five thousand only) Sri. A. Gopalan also placed additional credits at the request of the SPM, Pulpalli, over and above the initial credit, in the following cases in spite of the fact that the SPM, Pulpalli had not furnished the details of amounts drawn from the Bank, and the balance thereto on the back of the SO daily account, as required vide Rule 34 (1) of Postal Manual Vol. VI Part III.

1. On 4.2.03, Rs. Two lakhs were placed as per phone message coded P/1630/4.
2. On 6.3.03, Rs. Two lakhs were placed as per phone message coded P/1000/6.
3. On 19.3.03, Rs. Two lakhs were placed as per phone message coded P/1200/19.

SPM Pulpalli was irregularly retaining excess amount of cash showing fictitious liabilities from 1.2.03 as shown below:

| <u>Date</u> | <u>Cash in hand</u> | <u>Liabilities shown</u> |
|-------------|---------------------|--------------------------|
| 1. 1.2.2003 | 254877.10 | 430000 |
| 2. 4.2.2003 | 230495.30 | 270000 |
| 3. 7.2.2003 | 335774.90 | 550000 |

Sri K Jaffer, the then Sub Account PA, Kalpetta HO in his statement dated 11.6.2003 had stated that though he had pointed out the irregularities in respect of retention of excess cash by SPM, Pulpalli SO to the Postmaster, Kalpetta HO, he was told not to make

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any error book entry etc. The duty of the Postmaster involves to verify the reasons for retention of excess cash. Even if there is slight suspicion, the matter should be reported to the Senior Superintendent immediately furnishing full facts to enable him, if necessary, to have detailed enquiries at the office. Sri. A. Gopalan had also not taken into consideration, the observation of irregular retention of cash by SPM, Pulpalli brought to his notice by Sri. K. Jaffer, the then Sub Account PA of Kalpetta HO. Thus Sri. A. Gopalan had failed to report the irregularities to the Senior Superintendent of Post Offices, Calicut Division Calicut, as required under Rule 59 (a) of Postal Manual Vol VI Part III. and thereby failed to maintain devotion to duty contravening the provisions of Rule 3(1)(ii) of CCS (Conduct) Rule, 1964."

3. On receipt of the aforesaid Annexure A-4 memorandum along with the statement of imputations, as provided in sub rule 1-A of Rule 16 of the CCA Rules, the applicant vide Annexure A-5 letter dated 2.9.2005 sought an enquiry in the matter as provided in sub rule 3 to 23 of the CCA Rules. However, the Superintendent of Post Offices, Tirur Division rejected his aforesaid representation stating that the applicant had not given any specific reasons and circumstances for holding the enquiry and according to the Superintendent of Post Offices, the enquiry was not necessary in the case. For the sake of convenience, the said sub rule 1-A is extracted below:

"Notwithstanding anything contained in Clause (b) of sub-rule(1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

4. Thereafter the Superintendent of Post Offices, Tirur Division held that the applicant was guilty of the charge and his failure to discharge his official duties has heavily contributed to huge loss to the department. Accordingly, the Superintendent of Post Offices, vide Annexure A-7 proceedings dated 25.1.2006

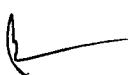


ordered to recover Rs.36,000/- (Rupees thirty six thousand) from the pay of January, 2006 in 30 equal instalments. The appeal dated 1.3.2006 submitted by the applicant against the Annexure A-7 was rejected by the Director of Postal Services, Northern Region, Calicut vide Annexure A-8 order dated 14.11.2006. It was held by the Appellate Authority that the disciplinary authority has rejected his request for an oral enquiry as envisaged in Rule 3 to 23 of Rule 14 of CCA Rules because the said authority felt that the facts and circumstances of the case did not warrant for such an enquiry. The appellate authority has also held that the disciplinary authority had complied with the procedure laid down in the rules and its findings were warranted by evidence on record and the penalty imposed on the loss caused by his negligence to the Government was adequate and not severe.

5. Challenging the aforesaid penalty order and the appellate order, the applicant filed O.A.870/2006 before this Tribunal. The contention of the applicant was that if an enquiry were held under Rule 14 of the CCA Rules, he would have in a position to cross examine the persons referred to and also to adduce additional documents. In this regard, the applicant's counsel relied upon the judgment of the Apex Court in **O.K.Bharadwaj v. Union of India and others** [2002 SCC(L&S) 188] in which it has held as under:

"3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principles of natural justice and the said requirement cannot be dispensed with.

He had also relied upon the following instructions under Rule 16 of the CCS (CCA) Rules according to which when the applicant had requested for an enquiry



to the charges based on verifiable facts and denied by the delinquent, the request for enquiry should not be rejected before imposition of minor penalty:

"(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 imputations 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 naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry 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."

7. The Tribunal agreeing with the submissions made by the applicant's counsel, vide Annexure A-9 Order dated 28.11.2007 held that the respondents have not followed the principles of natural justice and the impugned orders of the disciplinary authority as well as the appellate authority were set aside and quashed. However, the respondents were granted liberty to take up the *denovo* enquiry in the matter, if so warranted giving full opportunity to the applicant as provided under the rules and as directed by the judgment of the Apex Court in **O.K.Bharadwaj's case (supra)**. The operative part of the said order dated 28.11.2007 was as under:



"7. IN view of the discussions above, we are of the opinion that in the instant case, the principles of natural justice have not been followed and the exparte finding rendered by the impugned orders by the disciplinary authority is vitiated and deserve to be quashed. Accordingly, we quash the Annexure A-1 order. Similarly for the reasons that the Appellate Authority also failed to take note of the factual position and the circumstances urged by the applicant for conduct of a regular enquiry enabling cross examination of witnesses etc., giving a go by to the minimum requirements of the principles of natural justice, A-11 order of the appellate authority is also quashed. The respondents are directed to refund the amount, if any, recovered from the applicant pursuant to the impugned orders.

8. However, the respondents are at liberty to take up a *denovo* enquiry in the matter, if so warranted, giving full opportunity to the applicant as provided under the Rules and as directed in the judgment of the Hon'ble Supreme Court, referred to above. The O.A is allowed. No costs."

8. It is after the aforesaid orders of this Tribunal, the respondents have issued the Annexure A-1 memorandum dated 24.7.2008 now proposing to hold an enquiry under Rule 14 of the CCA Rules. The applicant has challenged the aforesaid Annexure A1 memorandum on the ground that once the disciplinary authority has made up his mind for imposing a minor penalty under Rule 16 of the CCA Rules and the penalty imposed pursuant to the proceedings under the said rules has been quashed and set aside by this Tribunal for not following the principles of natural justice, the *denovo* enquiry permitted to be held by this Tribunal cannot be for initiating major penalty proceedings under Rule 14 of the CCA Rules and should be under Rule 16 itself for imposing a minor penalty by affording an opportunity for him to have for a full fledged enquiry as envisaged in sub rule 1-A of Rule 16 of the CCS Rules.

9. He has also relied upon Rule 130 of the P&T Manual Vol.III according to which it is not open to the disciplinary authority to cancel or revise its own orders. The said rules is as under:

"130. It is not open to the punishing authority to cancel or revise its own orders. In case the orders require any revision or cancellation, the matter should be reported to the appellate authority or to the competent



reviewing authority. If, however, the order is inoperative, e.g. withholding of increment of an official who has reached the maximum of his scale of pay, it can be revised by the same punishing authority. It would also be within the competence of the punishing authority to cancel punishment orders passed on an official as a result of his conviction in a Court of Law when the conviction is set aside on appeal by the appellate authority. It cannot, however, itself set aside its own orders even when it discovers any procedural irregularities."

10. The respondents in their reply have justified the issuance of Annexure A-1 memorandum proposing to hold an inquiry under Rule 14 of the CCS(CCA) Rules, 1965 against the applicant as this Tribunal in Annexure A-9 order dated 28.11.2007 in O.A.870/2006 filed by him earlier had given liberty to them to initiate de novo inquiry in the matter and in all de novo proceedings, the original proceedings containing the charge sheet are deemed to be quashed and it was open to the disciplinary authority to frame any other charge in addition to or in substitution of the original charge sheet subject to the condition that it is based on facts of the case as initially disclosed for taking departmental action against the Government servant. In this regard, they have relied upon the DG (Posts) Order No.3 below Rule 27 of the CCA Rules, which reads as under:

"(3) Effect of de novo proceedings – When, on appeal, the Appellate Authority sets aside the punishment orders and remits the case for de novo trial, the original proceedings containing the charge sheet are to be deemed as quashed unless the stage from which the re-trial should be conducted is specified in the order. It would be open to the Disciplinary Authority to frame any other charge in addition to or in substitution of the original charge sheet subject to the condition that it is based on facts of the case as initially disclosed for taking departmental action against the Government servant."

Further, they have stated that if a minor penalty proceeding was to be initiated against the applicant it had to be completed before his date of retirement in terms of the Instruction 11 of the CCA Rules, issued by the Government of India (Annexure R-7). Since the applicant was to retire on 31.7.2008, only minor penalty proceedings could be initiated against him so that the proceedings are completed before his date of retirement. Respondents have also denied the contention of the applicant that there was violation of Rule 130 of the Postal



Manual Vol.III which relates to cancellation/revision or order passed by the disciplinary authority and stated that since the respondents had not cancelled or revised its own order, the aforesaid rule would not apply in the case.

11. The applicant has filed a rejoinder reiterating his contentions in the O.A.

12. We have heard the learned counsel on both sides. The question to be considered in this O.A is whether the disciplinary authority who had earlier initiated minor penalty proceedings against the applicant and a minor penalty was in fact imposed upon him, can later initiate the major penalty proceedings and have the liberty to impose even a major penalty as listed in Rule 11 of the CCS Rules which reads as follows:

Minor Penalties

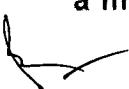
- (i) censure
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iii)(a) reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
- (iv) Withholding of increments of pay.

Major Penalties

- (v) save as provided for in Clause (iii)(a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the government servant was reduced and his seniority and pay on such restoration to that grade post or Service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government"



According to Rule 11, there shall be good and sufficient reasons to impose any Minor or Major penalty on a delinquent Government servant. The reasons for imposing a minor or major penalty are based on the charges levelled against the delinquent Government servant. In other words, the gravity of the misconduct alleged against the delinquent government servant, if proved, is the determining factor for the disciplinary authority to come to a decision as to what penalty, minor or major, is to be imposed upon him so that the ends of justice would be met. It is only after arriving at this crucial decision, the disciplinary authority has to choose the procedure to be adopted for imposing the penalty. If the decision of the disciplinary authority is to impose only a minor penalty, it has the discretion of holding a limited inquiry to satisfy the principles of natural justice as provided in sub rule 1(a) of Rule 16 of CCS Rules by informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal. The other option is to hold a full fledged enquiry as provided in sub rule 1(b) of Rule 16 of CCA Rules following the same procedure being followed before imposing a major penalty. By inserting sub rule 1(a) in Rule 16, for imposing certain minor penalty also a full fledged inquiry as provided in sub rule 1(b) of Rule 16 is compulsory. In any case, after the procedures of imposing minor penalties are completed, only any one of the minor penalties alone can be imposed and not any of the major penalties. Therefore, once the disciplinary authority has taken the basic decision that by imposing a minor penalty, the ends of justice will be met for the misconduct alleged to have committed by the Government servant and held an enquiry following the procedure as laid down in Rule 16 of the CCA Rules, there is no discretion left to the disciplinary authority to change that decision and to impose a major penalty. On the other hand, after following the prescribed procedure for



imposing a major penalty, the disciplinary authority can still change its mind and impose only a minor penalty as provided in sub rule 3 of Rule 15 of the CCA Rules depending upon the gravity of the misconduct proved during the enquiry. Therefore, once the disciplinary authority has made up its mind that the misconduct(s) alleged to have been committed by the applicant was/were of such nature which would warrant imposition of only one of the minor penalties and have also imposed one such penalty, when it was quashed and set aside by the Tribunal/Court on the ground that the principles of natural justice in built in Rule 16(1-A) of the CCA Rules have not been followed in holding the inquiry, it would not be legal or proper for the disciplinary authority to come to a different conclusion that he can even impose any one of the major penalties also after holding an inquiry as envisaged in sub Rules 13 (3) to 23 of Rule 14 of CCA Rules. In our considered opinion, the disciplinary authority in this case has misdirected itself in issuing the Annexure A-1 memorandum dated 24.7.2008 to hold an enquiry under Rule 14 against the applicant. There is substantial difference in the scope of holding an inquiry under Rule 16 following the procedure as detailed in sub rule 3 to 23 of Rule 14 and to hold an inquiry under Rule 14 of the Rules itself. Where an inquiry is held under Rule 16, following the procedure the prescribed in sub rule 3 to 23 of Rule 14, the disciplinary authority can impose only one of the minor penalties and no major penalties can be imposed. However, after holding rule 14 inquiry procedure, the disciplinary authority has the discretion to impose any one of the 9 penalties, minor or major, as listed in rule 11. The disciplinary authority on its own cannot change its decision regarding the procedure to be followed in holding the inquiry. If it is so allowed, it would amount to enhancement of the penalty from minor to major which is not permissible within the scheme of CCA Rules. However, there may be situations where the delinquent employee deserved one of the major penalties and the disciplinary authority purposely or otherwise decided to initiate



only minor penalties proceedings against him as envisaged under Rule 16 of the CCA rules and the delinquent government servant accept it without even making an appeal. In such a situation, the appellate authority can enhance the punishment as authorised under Rule 27(2)(c)(i) of CCA Rules subject to the provisions contained in the provisos (ii) to (iv) to sub clause (2) of Rule 27 which reads as under:

"(ii) if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(iii) if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

Similar provision has been made in Rule 29 of the CCA Rules also which provides for "Revision". The authorities concerned mentioned in the sub rule (1) of Rule 29 would either on its own motion or otherwise call for the records of any inquiry and revise any order made under the CCA Rules from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed. In such circumstances, the revising authority 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."

Again, under Rule 29-A of the CCA Rules, the President has the "power of review", subject to the conditions mentioned therein, to reduce or enhance any penalty.

13. We, therefore, hold that the disciplinary authority, once it has made up its mind to impose any one of the minor penalties as listed in Rule 11 of the CCA Rules and actually imposed such a penalty, when its order has been quashed and set aside by the Courts/Tribunals for not following the principles of natural justice as made available to the delinquent government servant under sub rule 3 to 23 of Rule 16 of the CCA Rules, the disciplinary authority cannot take altogether a different stand later on and say that it could impose any one of the penalties including a major penalty upon the delinquent government servant in a de novo proceedings held under Rule 14 of the CCA Rules. Accordingly, we quash and set aside Annexure A-1 memorandum dated 24.7.2008 issued by the 1st respondent proposing to hold an inquiry against the applicant under Rule 14 of the CCS(CCA) Rules, 1965.

14. Now the question is whether the disciplinary authority can still proceed against the applicant under Rule 16 of the CCS(CCA) Rules i.e. by holding an inquiry in the manner laid down in sub rule 3 to 23 of Rule 14 for imposing any one of the minor penalties, as ordered by this Tribunal in the Annexure A-9 order



dated 28.11.2007 in O.A.870/2006. Since the applicant has already retired from service, no disciplinary proceedings under the CCA Rules can be initiated against him any more. The only course open to the Disciplinary Authority is to take recourse to Rule 9 of the CCS(Pension) Rules which reads as under:

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five (Rupees one thousand nine hundred and thirteen from 1.4.2004) per mensem.

(2)(a) The departmental proceedings referred to in sub rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,
(ii) shall not be in respect of any event which took place more than four years before such institution, and
(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub rule (2), a



provisional pension as provided in Rule 69 shall be sanctioned.

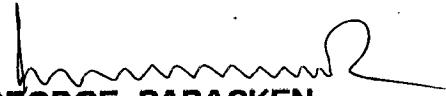
(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be instituted-
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and
 - (ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

As the Applicant has already retired from service on 31.7.2008, it is for the President to take a decision whether it is expedient or not to initiate proceedings under the aforesaid provisions of the Pension Rules. If the decision is to hold such an enquiry, it shall be communicated to the applicant within a period of 2 months and the enquiry shall be concluded as expeditiously as possible. In case the decision is otherwise, the Applicant shall be granted all retirement benefits due to him as per rules within a period of three months from the date of receipt of a copy of this order. With the aforesaid directions, this O.A is disposed of. There shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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