

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

O.A.No.573/2005

This the 1st day of July 2007.

HON'BLE SHRI A.K. SINGH, MEMBER (A)

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

J.P. Soni, aged about 49 years, S/o Sri Mevalal Seth, R/o 448/241/1,
Bhuiya Devi Lain, Nagari Thakur Gunj, Lucknow-3.

... Applicant.

By Advocate:-Shri Arvind Kumar.

Versus.

1. Union of India through Director, Postal Service (Headquarters),
Office of Chief M.M.G., U.P. Circle, Hazratganj, Lucknow.
2. Chief Post Master General, Postal Service (Headquarters), U.P.,
Lucknow.
3. Senior Superintendent of Post Offices, Lucknow Division,
Lucknow.

... Respondents.

By Advocate:-Shri P.K. Srivastava for Shri M.H. Khan.

ORDER

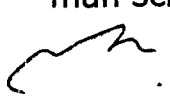
BY HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicant has filed this Original application with a prayer to set aside the impugned order of dismissal dated 29.7.2005 (Annexure-13) along with Appellate order dated 5.10.2005 (Annexure-16) dismissing him from service and with all consequential benefits with the following averements on the ground that such orders are passed without any reasons and in a mechanical way.

2. While the applicant was working as Postal Assistant Lucknow Chowk Head Post Office, Lucknow during the years 2000 there was scandal by Smt. Rucksana and her alias in respect of fraudulent withdrawal on the basis of forged documents reported in the local News papers.

Upon which local Police registered a case against her and investigated the matter on the basis of the complaints of the original depositors in the post office. During that period, the applicant was placed under suspension vide order dated 24.5.2000 under Sub. Rule -1 of Rule 10 of Central Civil Services (Classification & Appeal) Rules, 1965. Annexure-1 is the copy of said order. One Sri R.D. Saxena also made a complaint on 24.9.2000 in respect of Smt Rucksana fraudulent withdrawal of Rs. 37,230/- on 24.2.2000 from Head Post Office, Chowk Lucknow from his P.P.F. A/C. No 139304. Annexure-2 is the copy of said complaint. Upon which the departmental inquiry was initiated against the applicant and the inquiry officer came to the conclusion that the applicant failed to maintain devotion to duty as required under rules, which is without any evidence. Annexure-5 is the copy of inquiry report Dt. 21.4.2004. Basing on such report of the inquiry officer, the Disciplinary authority imposed punishment of dismissal from service of the applicant, which is cryptic, non speaking passed in disproportion to the gravity of charges. Annexure-13 Dt. 29.7.2005, the copy of order. When the applicant made an appeal, the appellate authority also rejected his appeal and confirmed the order of the Disciplinary authority. Thus he challenged the said impugned order passed by Disciplinary authority and Appellate Authority directing the applicant from his service. Annexure-16 Dt. 5.10.2005 is the copy of Appellate authority.

3. The respondents have filed Counter Affidavit admitting the complaint made by one of the depositor Sri R.D. Saxena and upon which a departmental enquiry was held. They pleaded that the inquiry officer clearly held in his report that the applicant was responsible for his failure of not detecting minor modification in man script in SB-7 form, while making withdrawal from PPF account



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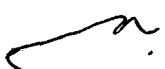
on 24.2.2000, which resulted in forged withdrawal from PPF account. Non observing the procedure laid down in Rules and procedure by the applicant, put the department in heavy loss. It is also their case that the inquiry report shows that the applicant committed mistakes and omission in withdrawal form and thus facilitated fraudulent withdrawal from PPF account of the depositor. Coming to the disagreement memo issued by the disciplinary authority, they stated that the Disciplinary authority having power for accepting or non-accepting the findings of the Inquiry officer. When the Inquiry Officer on one side says establishment of omission and mistakes of the applicant and on other part, he did not give any opinion on such findings, which was taken by Disciplinary authority in his disagreement memo. They further stated that after careful consideration of all aspects in inquiry report and charges the disciplinary authority came to such conclusion for his disagreement with inquiry report and imposed punishment of dismissal basing on gravity of the charges and thus there was no illegality in issuing such orders. Thus justified the impugned order passed by respondents with a prayer to dismiss the OA.

4. The applicant has filed Rejoinder Affidavit reiterating his claim as made in the OA.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief as prayed for.

7. The admitted facts of the case are that Sri C.P. Misra, ASP was appointed to conduct Preliminary inquiry on the complaint of Sri R.D. Saxena and he recorded the statement of R.D. Saxena, complainant, Prem Kumar, Assistant Post Master and Jagdish Prasad Srivastava, Ledger Assistant and verified all the connected documents and also verified the signature of the depositor. After the preliminary




inquiry a detailed charge sheet was issued to the applicant alleging violation of the Rules and committed the misconduct while permitting withdrawal of the amount of Rs. 37,230/- on 24.2.2000 from the PPF A/c of Sri R.D. Saxena by Smt Rucksana. Annexure-3 is the copy of charge sheet. The applicant submitted his written reply denying the charges leveled against him and Annexure-4 is the copy of reply. Thereafter Sri R.A. Verma, retired SSPO, Faizabad was appointed as Inquiry Officer and after completion of inquiry, he filed his report Dt. 21.4.2004 with a finding that the charges framed against the applicant found are to be partially proved to the extent that he fails to maintain devotion to duty as required under the CCS (CCA) Rules, 1964 and other charges of doubtful integrity and acting in a manner of unbecoming of a Govt. servant covered under Rule 3 Sub Rule-1 (i) and (iii) are not proved. Annexure-5 is the copy of inquiry report. After receipt of inquiry report, applicant also submitted his reply in which he denied any of his responsibility in making payment to Smt Rucksana Annexure-6 is the copy of said reply Dt. 12.6.2004 to the inquiry report. Not satisfied with the said reply, the Respondent No.3 passed order, dismissing the application, upon which he filed an appeal on 12.7.2004 before the 1st Respondent. Annexure-7 is copy of dismissal order Dt. 23.6.2004 and Annexure-8 is the copy of said appeal.

8. Aggrieved by the said punishment order dt. 23.6.2004, when the applicant filed an O.A. on the file of this Tribunal the same was disposed of by this Tribunal on 27.4.2005 with the direction to the respondents to decide the appeal of the applicant within one month from the date of order passed by this Tribunal. Annexure-9 is the copy of order dated 20.4.2005 in O.A. No.166/2005. In compliance of the order of the Tribunal, the Appellate authority by its order dated 19.5.2005 had set aside the punishment order of dismissal



and remanded back the case to the Disciplinary authority for de nova proceedings from the stage of issuance of Memo of disagreement with the finding of the inquiry officer. Annexure-10 Dt. 19.5.2005 is the copy of the orders passed by the appellate authority. Thereafter, disciplinary authority without providing any personal hearing, served a Memo of reasons for disagreement to the inquiry finding and upon which he preferred a representation on 14.7.2005. But the disciplinary authority passed a fresh punishment order Dt. 29.7.2005 of dismissal from service. Against which, the applicant also preferred an appeal before the department and also filed O.A. 447/2005 on the file of this Tribunal and the same was decided with a direction to the respondents to decide the appeal within one month. Annexure-15 is the copy of judgment Dt. 12.9.2005 in O.A.no.447/2005 on the file of this Tribunal. In compliance of the said directions, the appellate authority passed an order Dt. 5.10.2005 dismissing the appeal and Annexure-16 is the copy of the appellate order. Against the said orders passed by the disciplinary authority, and appellate authority, the applicant has filed this O.A.

9. It is the case of the applicant that in the enquiry the charges leveled against him were not proved and the finding of the enquiry officer in his report Annexure-5 that charges leveled against C.O. May be taken to be partially proved to the extent that C.O. failed to maintain devotion to duty as required under Rule 3 Sub Rule 1 (II) of C.C.S. (Conduct) Rules, 1964 is baseless and against the conclusion of the enquiry report. Further, the disciplinary authority after considering the report of the enquiry officer given reasons for his disagreement under Annexure-11 stating that the charges proved against the applicant was without any material and further no reasons are assigned for coming to such conclusion and
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as such the same is not at all sustainable either on facts or on law for imposing major penalty for dismissal from service and thus the same is bad and liable to be quashed.

10. It is also the argument of the applicant that the finding of the Appellate authority under Annexure-16 confirming the punishment imposed by the disciplinary authority without proving any charges against him is unreasonable, illegal, unjust and that too harsh. Thus he challenged the impugned order of disciplinary authority and Appellate authority, covered under Annexure-13 and 16 respectively imposing major punishment of dismissal from service. The respondents have denied the arguments of the applicant stating that the applicant has put the department in huge loss by way of not following the procedure of withdrawal from PPF account and thus co-operated the messenger in forged withdrawal.

11. In view of such rival contentions of the parties, the following are the main points for discussion.

i. Whether the charges leveled against the applicant was proved and report of the enquiry officer is sufficient to take any action against him.

ii. Whether the findings of the disciplinary authority, disagreeing with the opinion of enquiry officer and imposing major punishment on the applicant is reasonable and justified.

iii. Whether the orders of the Appellate authority, confirming the order of punishment imposed on the applicant, dismissing him from service by disciplinary authority is valid and reasonable.

iv. To what relief.

12. Point No. I :- Basing on the complainant of depositor Sri Saxena, departmental inquiry was initiated and basing on the inquiry report, the disciplinary authority imposed punishment on the applicant. It is the case of the applicant that none of the charges have been



proved against him and thus inquiry report is not helpful to impose any penalty upon him.

13. The inquiry report became the basis, for the disciplinary authority and also Appellate authority for their respective conclusion, while taking decision on the delinquent officer and imposing penalty. As such without touching the findings of the inquiry officer and inquiry report, going into the merits of the decision of disciplinary authority and Appellate authority under impugned order Annexure-13 and 16 is not at all possible. As such for giving any finding on such impugned orders, the conclusion of the inquiry officer and its report is required to be discussed within the purview of judicial review.

14. In respect of the alleged misconduct or misbehavior charges, against the applicant that he co-operated with Smt. Rucksana in making forged withdrawal of Rs.37,320/- from PPF account of Sri R.D. Saxena and he did not observe the instructions of the department, the inquiry officer categorically stated that there was no fault on the part of the applicant and thus not committed any such irregularity. While giving such clean chit to the applicant, he came to such a conclusion that charge may be taken to be partially proved to the extent that charged officer failed to maintain devotion to duty as required of under Rule 3 sub rule 1 (II) of CCS (Conduct) Rules, 1964, which is without any evidence. It is the argument of the learned counsel for the applicant that when such conflicting finding was given by the inquiry officer, it is the duty of the Tribunal while exercising the power of Judicial review to examine/ consider the contradictory finding of the inquiry officer and also report for arriving such conclusion and relied on the following decision (2001) 1 SCC-65 UOI/ K.A. Kittu.

The above judgment clearly supporting the contention of the applicant stating that when the finding of the inquiry officer was



based on no evidence and also his contradictory findings, it is the duty of the Tribunal to review it.

15. Before going into the discussion of the charges leveled against the applicant, it is prerequisite to see what allegations are made by the original complaint Sri Saxena, which is the root cause for initiating enquiry against the applicant. Annexure-2 is the copy of the said complaint of Sri R.D. Saxena Dt. 27.10.2000. The sum and substance of Annexure-2 is "that he opened his P.P.F account No. 139304 at Head Post Office Chock, Lucknow on 1.1.1993 and he used to deposit amount each year through Smt. Ruksana, National Savings Agent and he also given his pass book to that lady in February 2000 for deposit of Rs.44,000/- in the account. On enquiry about the scandal of Smt Ruksana and her alias, he verified his account and found a withdrawal of Rs. 37,230/- on 24.2.2000 in fraudulent manner by Smt Ruksana and her allies in connivance with postal staff of Head Post Office, Chowk, Lucknow. Thus he sought for restoration of withdrawal amount of Rs. 37,230/- in his account with interest either from Post Office staff or Smt Ruksana and her alias. From the said complaint, he made allegations against the postal staff their connivance with his messenger for withdrawal of amount from his account and for restoration of the same either from the department or from his messenger Smt Ruksana.

16. Coming to the charges framed against the delinquent officer, that he co-operated with Smt. Ruksana, while withdrawing amount of Rs. 37,320/- on 24.3.2000 from P.P.F account of depositor Sri R.D. Saxena (complainant) by way of cheating him, and while permitting Smt Ruksana, for withdrawal he did not observe the instructions contained in Rule 151 (v) of POSB Manual and Rule 9 of PPF Scheme 1968 and thereby failed to maintain integrity, devotion to

duty and also acted in a manner of unbecoming of a Govt. servant as required under Rule 3 Sub Rule-1 (i) (ii) and (iii) of CCS (Conduct) Rules , 1964.

17. Admittedly, the complaint of R.D. Saxena, on whose instance, the inquiry had been initiated against the applicant did not attend and not supported his complaint or allegations either against the department or the applicant, to show any of their collusion with his messenger Smt Rucksana for withdrawal of amount of Rs. 37,320/- from his PPF account. The other witnesses SW-2 Prem Kumar, the then APM (SB) and SW-3 Jagdish Prasad Srivastava, PA, Ledger, Lucknow chowk did not support the charges against the applicant. Similarly the evidence of SW-1 C.P. Misra, who conducted preliminary enquiry deposed in respect of recoding statement of SW-2 , SW-3 and SW-4 R.D. Saxena (Complainant) and collected documents and thus his evidence is not helpful to prove the charges against the delinquent officer.

18. In the instant case, from the report of inquiry officer, it is clear that the charges against the applicant that he co-operated with the messenger of the depositor, for withdrawal of amount from PPF account of the depositor by cheating him or in fraudulent manner was not at all proved and no such evidence was available to give any conclusion against the applicant. Admittedly,, the complainant did not attend the inquiry proceedings to give his evidence inspite of several adjournments and other witness who deposed did not say anything against the applicant including deviation or non-observance of any departmental instructions, permitting Smt Rucksana, for withdrawal of amount. Similarly, there is no evidence to prove the allegations made by the complainant Sri R.D. Saxena, that the departmental authorities colluded with his messenger, for withdrawal of amounts from his deposit and no finding for his claim




for restoration of his amount from the department.

19. Thus from the above discussion, it is clear that the conclusion of the inquiry officer in his report is not at all helpful either to say that the allegations of the complainant or major charges that the applicant co-operated with Smt Rucksana while withdrawing amount from the account of depositor Sri Saxena and non observance of any departmental instructions were proved. Further, he gave clear findings in respect of doubtful integrity and acting in manner of unbecoming of a Govt. servant alleging contravention of Rule 3 sub rule 1 (I) and (III) of CCS (Conduct) Rules, 1964 may not be taken as proved.

20. When such a finding was there from the report of the inquiry officer, how he came to a conclusion that the charge may be taken to be partially proved to the extent that he failed to maintain devotion to duty as required under Rule 3 sub rule 1 (II) of the CCS (Conduct) Rules, 1964. For coming to such finding, no evidence is available on record and none of the witnesses deposed and no document was placed. Thus it is clear that the finding of the inquiry officer that the applicant violated Rule 3 sub rule 1 (II) of CCS (Conduct) Rules, 1964 is without any basis and it is only imaginary.

21. It is the main contention of the respondents and also disagreement of disciplinary authority under Annexure-11 that the applicant failed to get modification in SB-7 form as required under Rule 151 (v) POSB Manual and such mistake and omission on the part of the applicant was accepted by the inquiry officer in his report. In such circumstances, inquiry officer giving opinion that the above omissions or mistake has no effect of facilitating the commitment of so called irregularity/fraudulent withdrawal, is not justified and thus the disciplinary authority, disagreed with such opinion in his disagreement memo (Annexure-11).



22. Admittedly, the messenger of the depositor presented SB-7 form along with pass book of the depositor and the recital of SB-7 form when contains the word of "withdrawal", the omission or non observance of any minor modification in such manuscript of SB-7 form by the applicant does not arise.

23. What Rule 151 (v) of POSB Manual says while using withdrawal form SB-7, minor modification are to be made in respect of withdrawal by way of loan, withdrawal or final closure. But in the instant case, SB-7 form was presented with a word of "withdrawal" from depositor amounts and in such circumstances, committing of any omissions or mistakes by the applicant and also non-observance of any minor observances does not arise. Though inquiry officer did not distinguish such wording in SB-7 form in accordance with Rules, he opined that above omission or mistake has no effect of facilitating the commitment of so called irregular/ fraudulent withdrawal, which is sound and reasonable. In such circumstances, the reasons of Disciplinary authority in disagreement memo is without any material and thus not valid.

24. From the above discussion, the argument of the learned counsel for the respondents that inquiry officer accepted or found fault with the applicant for non observing the minor modification in manuscripts as required under Rules 151 (1) (v) of POSB, Manual is not at all correct and the same is not maintainable. In view of the above circumstances, the inquiry report is not at all helpful to say that any of the charges levelled against the applicant and also to say that the allegations and claims made by the depositor in his complainant against the respondent department. As such, the report of the inquiry officer is not at all helpful to take any action against the applicant, hence this point is decided against the respondents and in favour of the applicant.



25. Point No. II :- After receipt of inquiry report, the disciplinary authority disagreed with the opinion of the findings of the inquiry officer and came to his own conclusion under Memo of disagreement (Annexure-11), stating that inquiry officer accepted that the applicant infringed the procedure under Rule 151 (1) (v) of POSB, Manual while accepting SB-7, without minor modifications in manuscript for withdrawal, which clearly proved the charge and as such he did not agree with the finding of the inquiry officer to be partially proved to the extent of devotion of duty. They also further says that when inquiry officer accepted the omissions on the part of the applicant, it is not correct on the part of inquiry officer to give opinion that this act of omission has not resulted in irregular withdrawal from the account and thus he disagreed with such finding of the inquiry officer. With such disagreement reasons, he imposed punishment of dismissal from service on the applicant under impugned order (Annexure-13) which is under challenge.

26. In the departmental inquiry, none of the charges leveled against the applicant that he in collusion with Smt Rucksana, facilitated her to withdraw the amount from PPF account of depositor Sri Saxena on 27.2.2000 by way of cheating him are proved. Similarly, in respect of non-observation of Rule 151 (V) of POSB Manual also, nothing was found against the applicant by inquiry officer in his report. Though he made a stray observation that he failed to get particulars / modification in SB-7, this Tribunal has dismissed the same and came to the conclusion that there was no omission on the part of the applicant. Basing on such observation, of omission of minor modification in SB-7 form, the disciplinary authority arrived to a conclusion that the charges levelled against the applicant are proved, which is not at all sustainable.

27. When none of the allegations and claims made by the depositor in

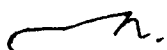


his complaint are not proved in the inquiry and similarly none of the charges levelled against the applicant are proved in respect of collusion or co-operation with Smt Rucksana , to cheat the depositor and also non-observation of the instructions contained in Rule 151 (V) of POSB Manual and thereby failed to maintain integrity and also acted in a manner of unbecoming of a Govt. servant as required under Rule 3(1) and (III) of CCS (Conduct) Rules, committing of any violation of devotion to duty does not arise, coming to the findings of inquiry officer that the charges against the applicant that he failed to maintain devotion of duty as required under Rule 3 (II) of CCS (Conduct) Rules and not obeyed to get minor modification of SB-7 form before allowing payment of Rs.37,230/- when, no material is available on record and with such findings , it is not open to the disciplinary authority, to come to the conclusion that the charges are proved against the applicant.

28.Coming to his reasons for disagreement with the opinion of the inquiry officer, which we have discussed in earlier Paras (21 to 23) also clearly shows, that such conclusion of the disciplinary authority are without any material and baseless.

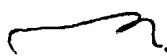
In view of the above discussion, the conclusion of the disciplinary authority under memo of disagreement (Annexure-11) and impugned punishment order (Annexure-13) that the charges proved against the applicant is not at all sustainable and thus liable to be quashed. As such this point is decided against the respondents and in favour of the applicant.

29.Point No. III :- While confirming the punishment order of the disciplinary authority , the appellate authority rejected the appeal of the applicant on the ground that the applicant cannot be spared from the responsibilities of fraudulent withdrawal and the depositor Sri Saxena, authorized his messenger Smt Rucksana for withdrawal



of his account from M/S A/c but not for PPF account. The other reasons are that permitting withdrawal from PPF account of depositor was not as per rules and non examination of the complainant Sri Saxena in the inquiry is also not at fault and with such conclusion, he dismissed the appeal and confirmed the orders of punishment of dismissal from service imposed by the disciplinary authority.

30. But in the inquiry report, there was no finding in respect of fraudulent withdrawal by the messenger and also the depositor authorized his messenger for withdrawal from his M/s A/c but not PPF account. Similarly, there was no finding from inquiry report that the applicant permitted withdrawal against rules or instructions. Coming to the conclusion that non-examination of the complainant is not at all fatal itself shows, how the conclusion of appellate authority are sound and reasonable. Admittedly, the appellate authority is aware that the statement of the complainant will be recorded in the preliminary inquiry behind the back of the delinquent officer and it is also duty of the complainant to appear before the departmental inquiry to depose in respect of his making any complaint against the delinquent officer and also to support the allegations made therein in his complaint or in his statement during the course of preliminary inquiry, by giving an opportunity to the delinquent officer to cross-examine him, enabling the inquiry officer to know the truth in his allegations made against or in connection with the delinquent officer. Without attending departmental inquiry for giving evidence, without facing any cross-examination, taking his complaint and statement before preliminary inquiry as sufficient and coming to the conclusion of proving the charges on the delinquent officer, what necessitated the the department to constitute departmental inquiry under Rule-14 of




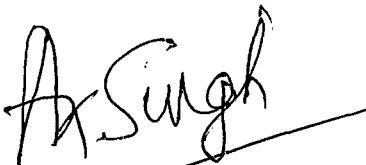
CCA (CCA) Rules and all such procedure is only a ceremonial in the eye of Appellate authority. Thus non-examination of the complaint or not giving any evidence by the complaint, definitely fatal to the case of the department in proving the case against the delinquent officer.

31. In view of the above discussion, we are of the considered opinion that the findings and reasons of the appellate authority under Annexure-16 to reject the appeal are baseless and not at all maintainable either on facts or on law and thus liable to be quashed. Hence the orders of the Appellate authority under which he confirmed the order of dismissal from service of Disciplinary authority is set aside and thus this point is decided against the respondents and in favour of the applicant.

32. Point No. IV :- Point No.1 to 3 are decided against the respondents and in favour of the applicant and as such the applicant claim has to be allowed by quashing impugned orders Annexure-13 and 16 passed by respondents respectively.

In the result, the claim of the applicant to quash impugned orders covered under Annexure- 13 and 16 is allowed and as such the applicant is also entitled for all consequential benefits. In the circumstances, no costs.


(M. KANTHAIYAH)
MEMBER (J) 18.7.02


(A.K. SINGH)
MEMBER (A)