

**Central Administrative Tribunal Lucknow Bench
Lucknow**

Original Application No. 209 /2009

This, the ⁶_{th} day of October, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (Judicial)
Hon'ble Dr.A.K.Mishra, Member (Administrative)**

Laxmi Prasad Mishra aged about 61 years son of Sri Ram
Sewak r/o village Balapur P.O. Pure Shiv Dayalganj
District Gonda, retired SPM, Bankatwa (Gonda)

Applicant

By Advocate: Sri R.S.Gupta

VERSUS

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. D.P.S.O/ I.P.M.G., Gorakhpur.
3. SPOs, Gonda
4. Sri K.K.Maurya, SPOs, Gonda.

Respondents

By Advocate: Sri S.P.Singh

ORDER

By Hon'ble Ms. Sadhna Srivastava, Member (J)

The applicant is seeking quashing of charge sheet dated 8.5.2008 (Annexure 2), enquiry report dated 18.11.2008 (Annexure 7) and the order of Superintendent of Post Offices, Gonda Division dated 19.12.2008 (Annexure 1) refusing the prayer of the applicant to drop disciplinary proceedings.

2. The facts are that the applicant while posted as Sub Post Master, Pure Shiv Dayal Ganj, got duplicate Kisan Vikas Patra (KVP) held in the name of one Ram Prasad issued under the forged signature of Ram Prasad and received payment of Rs. 73,000/- on behalf of Ram Prasad. The applicant, it is alleged, made an application under the forged signature of Ram Prasad for issue of duplicate of 5 K.V.Ps. each of denomination of Rs. 10,000/- on the ground that the originals were lost. The duplicate KVPs were issued on 28.6.96 and the payment was made on 15.7.96.

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The holder of said KVPs made a complaint on 5.8.97. A preliminary enquiry was conducted by K.K. Maurya, Superintendent of Post Offices, Gonda wherein taking into the complaint of Ram Prasad dated 5.8.97 and also the statements of Ram Prasad dated 7.8.97 and 17.9.98 as well as the statements of others, a finding was recorded that the applicant had committed forgery and misappropriation of Rs. 73,000/- . Thereafter, a minor penalty charge sheet was issued in which punishment of reduction of pay for one year without cumulative effect was ordered on 31.12.99 (Ann.-10). Aggrieved by the aforesaid order, the applicant filed revision under rule 29(1)(v) of CCS (CCA) Rules, 1965 before appellate authority i.e. Director, Postal Services, Gorakhpur. Treating it as an appeal, the Director, Postal Services by order dated 18.9.2000 (Annexure-11), quashed the entire proceedings and directed initiation of de-novo proceedings against the applicant. It is only then that the applicant was served with major penalty charge sheet dated 8.5.2008. Instead of submitting reply to the said charge sheet, O.A. No. 207/2008 was filed for quashing the charge sheet. This Tribunal did not quash the charge sheet. Instead a direction was given to the applicant to file reply of charge sheet. The respondents were also directed to pass a reasoned and speaking order thereafter. Pursuant to these directions, the applicant submitted the representation dated 1.8.2008 and the respondents passed a speaking order on 19.12.2008 (Annexure 1) informing the applicant that on account of his retirement, the proceedings have been converted under rule 9 of the Pension Rules as Presidential proceedings. The applicant was also informed that the disciplinary authority was competent to frame the

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charge sheet for major penalty based on facts as initially disclosed.

3. The applicant, however, did not participate in the enquiry. Consequently, the Inquiry Officer concluded the enquiry ex-parte and submitted its report on 18.11.2008. The applicant again did not approach the competent authority for redressal of his grievance. Instead, he has approached this Tribunal by means of instant O.A. filed on 18.5.2009. The applicant has been granted an interim order on 28.5.2009 for maintaining status quo. Therefore, no progress has been made in the proceedings.

4. Heard the learned counsel for the parties and perused the record.

5. This is a second round of litigation against the charge sheet dated 8.5.2008. Earlier, the applicant, as said above, had filed an O.A.No. 207/2008 soon after the said charge sheet was served on the applicant. Thereafter, the applicant submitted representation dated 1.8.2009 requesting to drop the proceedings. The competent authority did not agree to drop the proceedings. The question before us is whether the order of competent authority suffers from any illegality. We have given our anxious consideration to the facts of the case. The delay in initiating fresh proceedings undoubtedly remains unexplained. It is also true that the applicant has meanwhile retired from service. However, delay in initiation of fresh proceedings or continuance of enquiry after retirement is possible depending upon the facts of the case and seriousness of the charges. We say so on the basis of verdict of *Apex Court in UOI and others Vs. Mohd. Ibrahim*, 2004 (10) SCC 87 and *Govt. of A.P.Vs. V. Appala Swamy*, 2007 (14) SCC 49 and some other cases. The facts in the

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instant case do reflect serious misconduct on the part of the applicant. What is reflected at this stage is that the holder of 5 KVPs of the value of Rs. 50,000/- made a complaint on 5.8.97 and thereafter, supported his complaint by his statement during preliminary enquiry to the effect that he never applied for issue of duplicate KVP instruments and that he had not receive the payment of Rs. 73000/. It is also a fact that the applicant had identified the holder of KVPs on the application for issue of duplicate KVP. It s also a fact that the duplicate KVPs were issued the very next day. Further it is also a fact that the payment of Rs. 73,000/- was made on the identification of the holder by the applicant. The holder, Ram Prasad denied having made a request for issue of duplicate KVP. The holder had never misplaced the instruments. Therefore, there was no need for him to apply for issue of duplicate. All the same he was subsequently approached by the applicant and made to retract his earlier statement by means of an affidavit dated 31.8.98. The stand of the applicant that since no loss was caused to the Government in view of the affidavit dated 31.8.98 of the holder admitting receipt of Rs. 73,000/-, the proceedings are liable to be dropped, is not at all convincing. The loss to the Government is secondary. The primary question is whether any forgery was committed as alleged in the charge sheet. We do not consider it appropriate to stall the proceeding without evidence. To stall the disciplinary proceeding midway is not the function of the Tribunal. The applicant could seek redressal of his grievance through the authority empowered under the rules. We can not substitute ourselves in place of competent authority to assume their functions and proceed to assess the evidence on the basis of which a

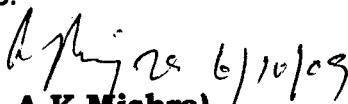


decision has been taken by the competent authority to draw disciplinary proceedings.

6. The question that the charge sheet dated 8.5.2008 is one for major penalty while the earlier charge sheet dated 9.11.99 was for minor penalty has lost significance. The reason is that the proceedings under Rule 9 of Pension Rules empowers the President to withhold or withdraw pension. No other punishment can be awarded to the pensioners.

7. We have already discussed about two Supreme Court judgments on the question of delay in initiating departmental enquiry. Two other judgments (1) *State of M.P. Vs. Bani Singh & another, 1990 (Suppl.) SCC 738* (2) *P.V. Mahadevan Vs. M.P.T.N Housing Board, (2005) 6SCC 636* have been relied upon by the applicant. We have gone through both the judgments. We may mention that the case in hand is not one where there was delay in initiating the departmental enquiry. It is a case where the second charge sheet was issued with delay. We are of the opinion that the factor of delay in continuance of the enquiry has to be judged in the facts and circumstances of each case coupled with the gravity of the charge. Taking into account the facts and circumstances of the present case, we do not consider it appropriate to quash the charge sheet or the order of competent authority to proceed with the enquiry.

8. Resultantly, the O.A is dismissed. The interim order dated 28.5.2009 stands vacated. There is no order as to costs.


(Dr. A.K. Mishra)
Member (A)


(Sadhna Srivastava)
Member (J)

HLS/