

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No. 504 of 2011

Order Reserved on 05.01.2015

Order Pronounced on 15/1/15

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Anoop Singh Chauhan
Aged about 50 years
S/o Sri Ram Autar Shashi
R/o 238 Garuvan Mainuri
at present working as ASPM
Mahanagar Post Office Lucknow.

Applicant

By Advocate Sri R. S. Gupta.

Versus

1. Union of India through
The Secretary Ministry of Communication
& I.T. Government of India
Department of Post Dak Bhawan,
New Delhi.
2. D.P.S.
O/o Chief Postmaster General
U.P. Lucknow.
3. S.S.P. Os. Lucknow.

By Advocate Sri Ashish Agnihotri.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Apphcation is preferred by the
applicant under Section 19 of the AT Act, 1985 with the
following reliefs:

(a) That the Hon'ble Tribunal may kindly be pleased to quash the order dated 30.11.2011 as contained in Annexure No. A-1 and refund the recovery made from pay of applicant.

(b) Any Other relief deemed, just and proper may also kindly be allowed in favour of applicant.

(c) award cost.

2. The brief facts of the case are that the applicant was initially appointed as Postal Assistant in 1982 and subsequently was granted financial up-gradation of OTBP and BCR Scheme w.e.f. May 2002 and July 2008. The applicant was served with a charge sheet under Rule 16 of CCS (CCA) Rules 1965 dated 16.8.2011 for the alleged misappropriation of Rs. 4503778/-. The applicant submitted a request for inspection or supply of photo copies of the 20 documents/records and the statement for the purposes of preparation of his representation against the charge sheet issued to him. Subsequently, the applicant was asked to inspect the relevant documents which he inspected, but he has given in writing for providing him the photo copies of the relevant documents so that he may give the effective reply to the charge sheet. Apart from this, the applicant also requested for holding full fledged inquiry. It is also vehemently argued by the applicant that neither the photo copies of all the records/statements were supplied to the applicant nor he was allowed to inspect all the documents. Not only this, even the respondents have not done the proper inquiry. As such, the respondents have violated the provisions of principles of

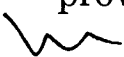
natural justice. It is also argued by the applicant that without proper opportunity of hearing, the respondents have finally imposed a recovery of Rs. 1,00,000/- in 20 equal monthly installments of Rs. 5000/- per month. The applicant also preferred the appeal under Rule 32 of the CCS (CCA) Rules 1965 through his appeal dated 10.12.2011. It is also submitted by the applicant that the said appeal is still pending and they have not taken any decision on the appeal of the applicant.

3. On behalf the respondents, the counter reply is filed and through counter reply, it is indicated by the respondents that the applicant was proceeded against Rule 16 of CCS (CCA) Rules, 1965 and he was identified as one of the offenders in the case of misappropriation of Government money by the then Sub-Postmaster, Blunt Square Post Office and the applicant who was working as Assistant Post Master, SBSO at Chowk Head Office had the duty of checking and monitoring the work of the Sub Postmaster. The respondents also indicted that on account of failure to perform his prescribed duties misappropriation of Government money and accordingly, the charge sheet was served upon the applicant. Not only this, it is also categorically mentioned in the counter reply that the applicant was allowed to inspect the relevant records of the case and after that he submitted his defence reply and after taking into consideration of aspects of the case and evidence from the relevant records, the charges against the applicant stands proved. Accordingly, the penalty of withholding of one increment for a period of one year without cumulative effect

along with recovery of Rs. 1,00,000/- from his pay and allowances in 20 equal monthly installments of Rs. 5000/- was awarded vide office order dated 30th November, 2011.

4. The respondents have also not denied the filing of the appeal by the applicant, but they are silent in their counter reply that whether the said appeal of the applicant was finally disposed of or is still pending for consideration. On behalf of the respondents, it is again reiterated through their counter reply that the applicant was allowed to inspect all the documents. As such, there is no violation of principles of natural justice and the orders passed by the disciplinary authority are fully legal and are according to the principles of natural justice. The learned counsel for the respondents also vehemently argued and submitted that it is the discretion of the respondents to hold an inquiry if a charge sheet is issued under Rule 16 of CCS (CCA) Rules, 1965. It is once again reiterated by the learned counsel for the respondents that since the applicant has already inspected the relevant documents as such there is no illegality in conducting the inquiry.

5. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. The learned counsel for the applicant has also relied upon a decision of the Tribunal passed in O.A. No. 642 of 1993 and indicated therein that in case, the relied upon the documents are not provided to the applicant a direction is issued to the



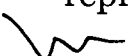
respondents to hold the de novo enquiry from the stage of furnishing the documents. As such, in this case also, the documents so demanded were not supplied as such it requires interference by the Tribunal.

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

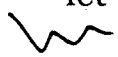
7. The applicant was initially appointed in the respondents organization and was granted financial up-gradation under the OTBP and BCR schemes. The applicant was served with a charge sheet vide charge sheet dated 16.8.2011 in which the statement of imputation of misconduct is mentioned. As per the said charge sheet it is mentioned that while the applicant was working as APM SBSO-I, II and III Chowk Head Office, he failed to ensure upto date posting of SB transaction of Blunt Square PO from vouchers in the ledger of the P.O., submission of vouchers of all category of SBCO Chowk HO, maintenance of special error book by subordinate SB ledger assistant and submission of list of account to the inspecting authority in which interest has not been posted in the respective pass books upto 30th June of the concerning year. On account of such lapses on the part of the applicant a huge amount of Rs. 45,03,778/- was misappropriated by the then SPM Blunt Square by way of non accounting for the money received for deposit in SB/RD and MIS accounts. After service of the said charge sheet, the applicant submitted an application asking for inspection of 8 documents through his letter dated 27.8.2011 and subsequently, he has submitted another application on

5.10.2011 asking for inspection of certain more documents . In reply to the letter dated 27.8.2011, the respondents intimated the applicant for inspection of relevant documents and thereafter another letter was issued on 30.9.2011 intimating the applicant that since he has already inspected the documents, as such, he may submit his reply within three days failing which ex parte decision would be taken. Subsequently, the respondents have written a letter on 10.10.2011 to the applicant indicating there in that the relevant documents as desired by him vide his application dated 27.8.2011 have already been allowed for inspection. Accordingly there is no justification of another request of inspecting records and he was again asked to submit his defence statement failing the ex-parte decision would be taken. The respondents again wrote a letter to the applicant on 13.10.2011 indicating there in that the applicant has already inspected the relevant documents and the time has sought for filing the reply is unjustified . Accordingly, he was asked to submit the reply within a period of three days failing the respondents will proceed further.

8. Not only this, the learned counsel for the applicant tried to indicate that in response to the letter dated 10.10.2011, he has written a letter on 12.10.2011 that he has not been given the relevant documents as such, the same may be provided so that he can give a proper reply to he charge sheet. Finally, the applicant submitted the reply to the charge sheet vide his representation dated 20th October, 2011. The respondents



taking into account the reply of the applicant and also indicating the relevant documents passed an order of imposing punishment of with holding of one increment for a period of one year with cumulative effect along with recover of Rs. 1,00,000/-. While imposing the punishment, it is categorically indicated by the respondents that the charged official i.e. the applicant attended the office on 29.9.2011 and also inspected the documents. The disciplinary authority has also indicated there in that the grounds taken by the applicant in his defence representation and has also given the reply to the same. It is also indicated by the disciplinary authority that the applicant submitted the list of 8 documents out of which the documents mentioned at serial No. 1 to 3 were relevant as such they were made available for inspection and the documents mentioned at serial No. 4 to 8 were not related to the aforesaid specific allegations as such not allowed for inspection and were not shown to the applicant. Subsequently, the applicant submitted a long list of many irrelevant documents for inspection which could not be allowed as the applicant has not given any justification for inspection. It is also mentioned by the disciplinary authority that since the applicant was not directly involved in the misappropriation as such, there were number of documents which were not relevant in respect of the applicant as such, they were not shown to the applicant and the applicant was allowed only to the extent of non performance of his duties as APM SBSO that let to delayed detection for the misappropriation committed by



the then SPM Blunt Square. As regard the posting of the applicant as APM SBSO is concerned, the same is a matter of record and the applicant being a senior Postal Assistant was deployed for the post of APM SBSO by Senior Postmaster Chowk Head Office as per requirement of the H.O and the applicant has also signed the attendance register and other documents in designation as APM SBSO. The disciplinary Authority after considering all the material available on record, passed the order of punishment upon the applicant which is impugned in the O.A.

9. The holding of an inquiry under Rule 16 of the CCS (CCA) Rules is discretion of the authorities concerned. For ready reference, Rule 16 of CCS (CCA) Rules, 1965 reads as under:-

“16. Procedure for imposing minor penalties.

(1) Subject to the provisions of sub-rule(3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior 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;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule, 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration.

(d) recording a finding on each imputation of misconduct or misbehavior; and

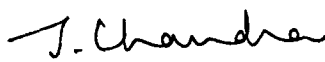
(e) consulting the Commission where such consultation is necessary.


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10. Undisputedly, the punishment was imposed upon the applicant is a minor penalty as provided under Rule 11 of CCS (CCA) Rules, 1965, the applicant was given due opportunity to submit the representation and he was also allowed to inspect the relevant documents, as such, a full fledged opportunity is given to the applicant and only after that the disciplinary authority has passed the orders but the entire pleadings are silent in respect of the decision of the appeal.

11. Since the pleadings of the O.A. are silent in respect of the decision of the appeal as such, it is open to the Appellate Authority to consider and decide the appeal of the applicant if not already be decided.

Considering the submissions made by the learned counsel for the parties and also after perusal of the records, we do not find any reason to interfere in the present O.A. As such the O.A. is fit to be dismissed. Accordingly, it is dismissed. No costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)