

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. 144/2005

This, the ^{11th} day of August, 2009

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

R.R. Kori aged about 61 years, Ex- Postal Assistant, Shahpur Bhagoli R/o Village Kishhuti, Kishandasapur, P.O. Soneraganpur (Tikri) Faizabad.

Applicant

By Advocate: Sri R.S.Gupta.

VERSUS

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, U.P., Lucknow.
3. Director, Postal Services, Office of Chief Post Master General, U.P., Lucknow.
4. Superintendent of Post Offices, Barabanki.

Respondents.

By Advocate : Sri Deepak Shukla for Sri S.K.Awasthi.

ORDER

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

The applicant is aggrieved with the order of punishment dated 2.5.2003 (Annexure No.1) and Appellate order dated 6.5.2004 (Annexure No.2), whereby the pay of the applicant was reduced by two stages from Rs. 6950 to 6650/- in the pay scale of s. 5000-150-8000/- till his retirement in pursuance of the charge sheet dated 15.9.99 under Rule 14 of CCS (CCA) Rules, 1965.

2. The facts are that the applicant while posted as Sub Post Master (BCR) Barabanki Division was proceeded against under Rule 14 of CCS (CCA) Rules, 1965. The Enquiring authority submitted its report on 22.6.2001. The applicant submitted his representation against the enquiry report on 13.8.2002. The disciplinary authority passed the order of punishment on 2.5.2003.
3. The respondents have filed reply, supporting the order of punishment and order of appeal.
4. Heard the counsel for parties and perused the records.



5. Three charges were levelled against the applicant. First charge was that the applicant while functioning as Sub Post Master received a sum of Rs. 7824/- on 28th June, 1997 in respect of 15 R.D. Accounts but failed to get the amount accounted for in R.D. journal, while the deposit entries were made in the pass book of depositors. Thus, in effect, the applicant was charged with mis-appropriation of Rs. 7824/- The Inquiry officer, however, returned a finding that the aforesaid amount was received by Om Prakash, S.B. Counter Assistant on 28.6.97 and he had made the entries in the pass book. The applicant had nothing to do with it on the date of transaction. A finding has also been recorded by the Inquiry Officer that the said Om Prakash deposited the amount of Rs. 7824/- on 18.6.1998 vide receipt No. 61. Thus, the applicant, according to Inquiry Officer, did not play any part in the transaction. However, the Inquiry Officer had drawn a conclusion on his own without any charge to that effect that the applicant at the time of payment of commission to the agent failed to verify and check whether the amount of Rs. 7824/- was entered in R.D. journal. The applicant's contention is that the finding on charge No. 1 is in his favour and the charge was never amended to enable the Inquiry Officer to record a finding of 'lack of supervision' on the basis of a subsequent event about his negligence to check and verify the entries in R.D. journal other than on the date of transaction. The Inquiry Officer has recorded a finding that on a subsequent date, the papers were put up before the applicant to secure his order for payment of Commission to the agent, namely, Smt. Nirmala Nigam. The Inquiry Officer concluded that the applicant failed to verify and check the entries in R.D. journal at that time. The charge to that effect was never levelled against the applicant. Therefore, the conclusion is inevitable that the findings recorded by the Inquiry Officer is in respect of a different charge which was not before him. The disciplinary authority as well as appellate authority failed to take notice of the same. Therefore, the applicant's contention is that the enquiry officer has travelled beyond the charge.

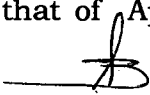
6. In respect of charges No. 2 and 3 as well, the Inquiry Officer found that the evidence was wanting to hold that the applicant was responsible for the loss of R.D. ledger for the period 1.12.93 to 27.4.94 or the omission to make entry in respect of receipt of Rs. 4300/- for 37 new R.D. A/cs. dated 29.2.96. The Inquiry Officer has recorded a finding in clear words that the records were kept by S.B. Counter



Assistant under lock and key in a almirah provided for the purpose. The Inquiry Officer has further held that the applicant had directed S.B. Counter Assistant to make an entry in respect of 37 new RD A/c in R.D. ledger. The report of Inquiry Officer also discloses that the applicant had made a mention in the error book about the omission of entry in regard to 37 new R.D. A/c opened on 29.2.96 and that the Counter Assistant was directed to make the entry. The error book, according to the Inquiry Officer report, was not produced by prosecution before him despite a direction to that effect. Thus, in effect, the finding of the Inquiry Officer, on the basis of evidence on record, was a) R.D. ledger was not required to be in personal custody of applicant; and b) the omission of entry in regard to 37 R.D. A/c dated 29.2.96 was detected by the applicant, a note to that effect was made by the applicant in error book, that S.B. Counter Assistant was given a specific direction to rectify the error.

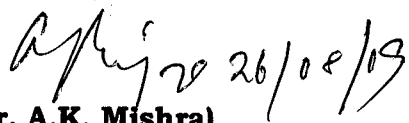
7. Surprisingly, the disciplinary authority did not take notice of findings of Inquiry Officer and proceeded to hold that all the three charges were proved against the applicant. The appellate authority also did not comply with the requirement of Rule 27 (2) of CCS (CCA) Rules, which mandates the Appellate Authority to consider whether the findings of the Disciplinary Authority are warranted by evidence on record. The Apex Court in the case of R.P. Bhatt Vs. UOI and others have laid down the law to the effect that Appellate Authority must apply its mind to the requirement of Rule 27(2) while deciding an appeal, failing which the impugned order becomes liable to be set aside.

8. In the backdrop of above facts and circumstances, we are of the opinion that the order of Disciplinary Authority dated 2.5.2003 and Appellate Authority dated 6.5.2004 are liable to be set aside. They have concluded contra to the evidence on record, that the charges were proved as framed. The fact is that the charges as framed were not proved. Inquiry officer has only concluded that the applicant being Sub Post Master must be held responsible for whatever happens in the office. If so, the punishing authorities were required to consider to what extent the applicant could be held responsible. Instead a short cut was adopted. A finding was recorded that the charges were proved. Neither the Disciplinary Authority nor Appellate Authority took care to take notice of evidence referred to by Inquiry Officer. Thus, we are constrained to set aside the order passed by the Disciplinary Authority as well as that of Appellate Authority. In normal course, we would have remanded the case



but since the applicant has already retired on reaching the age of superannuation on 31.1.2004, we simply set aside the orders of the Disciplinary Authority dated 2.5.2003(Annexure No.1) and Appellate Authority dated 6.5.2004(Annexure No.2).

Resultantly, the O.A. is allowed. The impugned orders dated 2.5.2003 and 6.5.2004 are hereby set aside. The recovery, if any made from the applicant till the date of his retirement be refunded. His pensionary benefits will be revised accordingly. There will be no order as to costs.


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


(Sadhna Srivastava)
Member (J)

HLS/-