

**Central Administrative Tribunal, Lucknow
Bench, Lucknow**

Original Application No. 22/2009

Date of Reserved : 23rd July, 2012

Date of Pronouncement: 26.7.2012

Hon'ble Dr K.B.S. Rajan Member (J)

Hon'ble Sri S.P.Singh, Member (A)

Chandra Kumar Gupta aged about 50 years son of Sri G.L. Gupta resident of 637, Avas Vikas, Sitapur working as Postal Assistant at Sitapur Head Office.

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 (Head Quarter) Office of the Chief Post Master General, U.P., Lucknow.
4. Superintendent of Post Offices, Sitapur

By Advocate: Sri S.P. Singh and G. K. Singh

Opposite Parties

ORDER

BY Dr. K.B.S. RAJAN, MEMBER (J)

The applicant in this case was subjected to a chargesheet vide Annexure A-4 dated 10.4.2002. The Inquiry Officer after conducting an inquiry held that the charges against the applicant stood proved. The applicant was served with a copy of inquiry report and representation was invited from him and after completing of that process, on consideration of entire case, the disciplinary authority has arrived at a conclusion that the applicant has been guilty of misconduct as alleged in the chargesheet and hence penalty of recovery of Rs. 1,71,000/- in monthly installments of Rs. 3000/- each towards loss caused to the Government on account of lapses attributable to the applicant and also reduction his basic pay at the minimum of the Pay scale of Rs. 4000-6000/- was imposed vide order dated 30.6.2005. Appeal preferred by the applicant as well as Revision Petition were rejected by the respective authorities while

upholding the punishment imposed. The applicant has filed this O.A. challenging the penalty order as well as orders passed by the Appellate authority and Revisional authority. He has sought the following relief(s):

- “(i) quash and set-aside the order dated 30.6.2005, 21.7.2007 and 14.11.2008 as contained in Annexure nos. 1, 2 & 3 with all consequential benefits including the promotion of the applicant to OTBP and BCR cadre.*
- (ii) Any other order in the interest of justice in favour of the applicant.*
- (iii) allow the Original application with costs.”*

2. The respondents have contested the O.A. They have stated that the act of omission and commission of the applicant while working from 1.10.1997 to 24.5.2000 as Assistant Saving Bank Counter at Maholi, there occurred an incidence of misappropriation of huge Government funds. In order to dilute the loss suffered by the government, recovery of Rs. 171,000/- was ordered from the applicant. In addition, as penalty his basic pay has been reduced to minimum of the Pay scale of Rs. 4000-6000/-. The respondents have further stated that there is no procedural irregularity in conducting the inquiry and the appellate as well as Revisional authorities have considered the case of the applicant meticulously.

3. The applicant has filed Rejoinder reply stating that he was not at all responsible for the loss of misappropriation of huge public funds. He has also brought in Rule 14(18) of CCS (CCA) Rules by the Inquiry Officer has been violated and this has been overlooked by the disciplinary, appellate and Revisional authorities.

4. In reply to the Rejoinder, the respondents have stated that due process of inquiry had been followed at every stages.

5. Counsel for the applicant argued that it is against a number of employees that action was taken and as Rule 18 of CCS (CCA) Rules thereof provides for common inquiry proceedings, the same has to be conducted, which has not been followed in this case. The counsel has further submitted that the penalty imposed against the applicant amounts to double jeopardy. According to the counsel, recovery part of the penalty order relates to minor penalty, while reduction in pay relates to major penalty and as such these cannot be combined. In

addition, counsel submitted that the applicant was not at all connected with the alleged misappropriation as he served the said Post Office Maholi only for a very short period. Lastly, counsel submitted that the department has taken action for recovery of entire amount (Rs. 58 lacs) from one Sri Shukla and as such there cannot be further recovery from the applicant towards the same amount.

6. Counsel for the respondents submitted that Rule 18 of CCS (CCA) Rules is discretionary provision and it is for the authorities to decide as to whether proceedings should be under the said rule 18 or independent proceedings is left with the disciplinary authority and the applicant cannot choose a forum for the same. In any event, according to the respondents' counsel in the instant case such common proceedings need not be followed since the entire amount of Rs. 58 lacs mis-appropriated does not relate to single installment or transaction, but many of which the applicant's involvement is in respect the part thereof and as such recovery is affected from his salary to the extant loss which is attributable to the applicant. He has invited reference of paragraphs 9 and 11 of Counter Reply. The counsel also submitted that about common proceedings, the applicant has never raised such an objection so far and for the first time, he has raised this ground.

7. Arguments have been heard and documents on record have been perused.

8. In so far as the first legal issue is concerned namely whether common proceedings should have been invoked in this case, it has to be clarified here that the same is only enabling provision to facilitate the disciplinary authority to hold an inquiry together. Possibly, compelling to hold an inquiry in common proceedings could arise if any of the witnesses of the respondents in the case of the applicant happens to be an employee against whom such a chargesheet has been issued. That is not the case here (atleast nothing has been brought to our notice). No prejudice is caused to the applicant in holding separate proceedings.

9. In so far as double jeopardy is concerned, **Depot Manager, APSRTC Vs. N. Ramulu reported in 1997 (11) SCC 310** the Apex Court has held that the penalty of recovery from the pay of

whole or part of any peculiar loss caused to the employer by any employee's negligence or breach of orders may be imposed in addition to any other penalty, which may be inflicted in respect of same act of negligence or breach of orders. And identical decision has been taken in the case of **Commissioner of Rural Development & Others Vs. A.S. Jaganathan reported in 1999 (2) SCC 313**. It has been held in the case of **B.C. Chaturvedi Vs. Union of India reported in 1995 (6) SCC 749** that it is duty of the disciplinary authority, which is invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of misconduct.

10. The only question that remains to be answered is whether the Inquiry authority has attempted to question the delinquent employee under rule 14(18) of CCS (CCA) Rules. Rule 14(18) of CCS (CCA) Rules reads as under:

"The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

11. In the case of **Ministry of Finance Vs. S.B. Ramesh**, the Apex Court has signified the significance gravity and character of this provision as under:

13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:

"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority.when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in

the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority.

12. In the case of **Moni Shanker Vs. Union of India reported in 2008 3 SCC 484** the Apex court has referred to the provision of Railway Servants (Discipline & Appeal) Rules (Rule 9(21)) which is parimateria of the above Rule of 14(18) of CCS (CCA) Rules and held as under:

"Strangely enough, the enquiry officer started re-examining him. Even in the re-examination he accepted that he could not read and write English.

20. *The enquiry officer had put the following questions to the appellant:*

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence ~~as~~ brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?"

21. *Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.*

13. The above two decisions would go to show that an important opportunity available to the delinquent would be deprived of in case the provision of Rule 14(18) of CCS (CCA) Rules (under analogous rule 9(21) of Railway Servant (Discipline & Appeal Rules), are not meticulously followed. This vital legal issue raised in para 3 of his Rejoinder has not been properly met with by the respondents in their Reply to the Rejoinder. Thus, the applicant succeeds on the above legal issue. While the applicant's case of double jeopardy or not following Rule 18 (common proceedings) would not assist him..

14. Counsel for the respondents has brought to our notice the following decisions of Apex Court/Tribunal to ~~hammer~~^{hammer} home the point that the applicant's claim should not be allowed.

- (i) **State of U.P. & Others Vs. Ramesh Chandra Mangalik reported in (2002) 3 SCC 443.**
- (ii) **State of U.P. Vs. Sheo Shanker Lal Srivastava & Others reported in (2006) 3 SCC 276.**
- (iii) **State Bank of India & Others Vs. Ramesh Dinkar Punde reported in (2006) 7 SCC 212.**

- (iv) **State Bank of India & Another Vs. Somvir Singh reported in (2007) 4 SCC 778.**
- (v) **H.V. Nirmala Vs. Karnataka State Financial Corporation & Others reported in (2008) 7 SCC 639.**
- (vi) **Ram Sumiran Vs. Union of India & Others (O.A. no. 222 of 2007 Lucknow Bench decided on 20th May, 2009)**
- (vii) **Ambrish Kumar Mishra Vs. Union of India & Others (O.A.354 of 2008 Lucknow Bench decided on 18th May, 2011) .”**

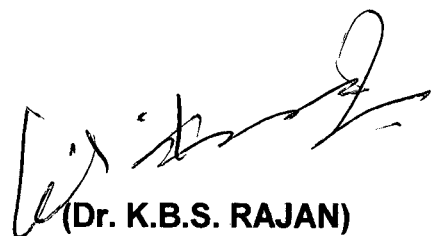
15. As the decisions of the Apex Court cited in para 12 above, are posterior to the aforementioned cases, the Tribunal is inclined to follow the same.

16. It is worth mentioning that the observation of Apex Court in the case of **Laxmi Ram Bhuyan Vs. Hari Prasad reported in 2003 (1) SCC 197** wherein Apex Court has held that “*an inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stick in time would have save nine.*”

17. In view of the above, O.A. is allowed. Impugned orders dated 30.6.2005, 21.2.2007, and 14.11.2008 are set-aside. However, it is open to the disciplinary authority to conduct the proceedings if so desired from the stage of following Rule 14(18), if found necessary on this score. However, the penalty order impugned shall not be executed as they stand set-aside. No costs.



(S.P. Singh)
Member (A)



(Dr. K.B.S. RAJAN)
Member (J)