

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 81/2006

Date of Order: 27th May 2011

C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER[J]
HON'BLE MR. AKHIL KUMAR JAIN, MEMBER[A]

Kanhaiya Jha S/o Late Baldeo Jha Retd. Sub Post Master, Balua Bazar, SO under Saharsa Division at and P.O. Balua Bazar, Distt. Supaul.

..... Applicant.

By Advocate: - Shri Pramod Mishra

-Versus-

1. The Union of India through the Secretary, Ministry of Communication, Department of Post, New Delhi.
2. The Assistant Director General (V.P.), Department of Post, New Delhi.
3. The Post Master General, Bihar, Patna.
4. The Superintendent of Post Office, Saharsa.

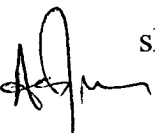
..... Respondents.

By Advocate: -Shri S.K. Tiwary

O R D E R

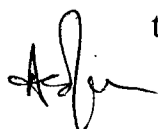
Akhil Kumar Jain, Member [Administrative] :- This application has been filed by the applicant to set aside the impugned order dated 23.02.2000 passed by respondent no. 2, Assistant Director General (V.P.), Department of Posts, New Delhi (Annexure A/1) and to remit back the matter to the appropriate authority for passing proper order after giving proper opportunity to the applicant for placing his defence.

2. The facts of the case, in brief, are that in the year 1983 when the applicant was posted as Sub Post Master, Balua Bazar, S.O. under Saharsa Division, he was served a charge memo on nine charges relating to selling of Kisan Vikas Patra, Indira Vikas Patra, non-maintenance of ledger of Pass Book, shortage of cash of stamps, misappropriation, leaving office without proper



permission and making over charge, ^{etc.} The applicant denied the charges. Thereafter, an enquiry as laid down under Rule 14 and 15 of CCS(CCA) Rules, 1965 was held. An FIR was also lodged against the applicant in the matter and in the said criminal case he was reportedly granted bail. The criminal case is still pending. During the pendency of the departmental proceedings, the applicant retired on 30.09.1995 and as such the pending departmental proceedings had been deemed to be continued under Rule 9 of CCS(Pension) Rules, 1972. The applicant did not attend the enquiry proceedings. Therefore, the enquiry was held ex-parte. The Enquiry Officer held all the article of charges proved except Article VI and IX which were held partially proved. A copy of enquiry report was given to the applicant who submitted his representation on 11.07.1997, The disciplinary authority came to the conclusion that the proved misconduct was very grave deserving action under Rule 9 of CCS(Pension) Rules, 1972. He submitted a report in this regard to the President, who after examining the case came to the tentative conclusion that the charges proved against the applicant were of grave nature and action under Rule 9 of CCS(Pension) Rules, 1972 was called for. The case was referred to UPSC for obtaining their advice. The Commission gave their advice inter alia holding that articles I to V, VII and VIII of charges are proved, article VI of charge is proved partially and article IX of charge is proved on the basis of preponderance of probability. The Commission recommended that ends of justice would be met in this case if full pension of the applicant is withheld and gratuity forfeited. The advice of the UPSC was accepted by the President and it was ordered that full pension of the applicant, otherwise admissible to him, be withheld permanently and his gratuity amounting to Rs. 43,419.00 be forfeited. The order of the President was communicated vide order dated 23.02.2000 (Annexure A/1) which is under challenge.

3. The applicant claims that he submitted a review petition addressed to the President through proper channel which was sent by registered post on



18.07.2000 to the Superintendent of Post Offices, Saharsa. As per the order of the Tribunal dated 28.08.2007, a copy of the said representation was filed by the applicant through supplementary affidavit dated 15.02.2008. Vide letter dated 23.10.2005, issued by Superintendent of Post Offices, Saharsa, the applicant was informed that Rules do not provide for any review/mercy petition on the order issued by the President.

4. Heard the learned counsels for both the sides.

5. The main grounds on which the applicant has challenged the impugned order and sought direction upon the respondents are as follows:-

(i) As claimed by the applicant, he was never apprised properly about the proceedings and as such he did not attend the enquiry proceedings. The impugned order is ex-parte, only on the basis of preponderance of probability. The entire proceedings and the impugned order are, therefore, against the principle of natural justice.

(ii) For the same allegation, a criminal case against the applicant is pending in a Criminal Court. As such, any departmental proceedings should have been kept in abeyance till conclusion of the judicial proceedings.

(iii) The applicant has claimed that he filed a petition to postpone the departmental proceedings till the criminal case is finalized which was kept under consideration in the department, and that the applicant was under bonafide belief that he would be informed about decision on his petition as also about the date fixed in the departmental proceedings. But no information was ever given to the applicant and the departmental proceedings was done ex-parte.

(iv) The judicial proceedings against the applicant is with regard to same set of allegations for which departmental proceedings were instituted. It is settled law that if the delinquent employees states that his defence disclosed in the departmental proceeding may prejudice his defence in criminal case, then the departmental proceedings may be stayed. This principle has not been followed by the respondents.



(v) So far as allegations with regard to the records of selling Kisan Vikas Patra and Indira Vikas Patra are concerned, it has been stated by the applicant that the same is matter of accounting and if the applicant had participated in the proceedings, he would have clarified the facts. If the whole allegation is taken into consideration, it would be evident that this is not a case of misappropriation of public money, rather it is a case of non maintenance of the records properly for which the punishment awarded is not commensurate with the allegations.

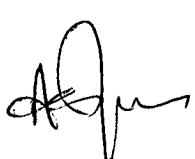
(vi) During the pendency of the proceedings, the applicant retired and judicial proceedings on the same set of allegation is still sub-judice. As such, withholding of full pension and gratuity amount is not proper.

(vii) In the representation claimed to have been filed by the applicant on 18.07.2000 which was filed in supplementary affidavit as per the orders of the Tribunal, the applicant has also made the following points:-

[a] The Commission's letter which was enclosed with the impugned order and was to be served to the applicant along with the order through the Post Master General, Northern Region, Muzaffarpur was withheld without any reason. This has deprived the applicant from preferring more appropriate and effective petition which is not possible in the absence of that advice which is expected to be self contained, speaking and reasoned one on which contradictory submissions wherever possible as per facts and circumstances of the case and the materials on record could have been made by the applicant.

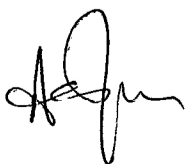
[b] Neither para 2 nor para 3 of the impugned order under reference can be termed as speaking and reasoned order, discussing the points under controversy. Some points raised in the representation dated 11.07.1997 which has been referred in para 2 of the order, have not been discussed at all.

[c] The applicant has reasons to believe that the severe punishment awarded in the order under reference may be the result of feeding the higher authorities with insufficient materials even concealing vital ones and distorting whole



thing in such a manner that an air of condemnation is created against him at that level and also at the level of UPSC. It has been added that the real reason for his non participation in the enquiry was concealed from higher authorities. As would be explicit from the facts, no need of speaking order was felt and non participation of the applicant was assumed as acceptance of guilt. The applicant has claimed that he represented to the disciplinary authority to keep the departmental proceedings in abeyance till finalisation of the criminal proceeding under trial in the Court. But the request was rejected summarily and arbitrarily vide letter No. F7-1/93-94/Disc. /K. Jha dated 02.01.1997 stating " your request for keeping the departmental proceeding as mentioned above in abeyance till finalisation of the criminal proceedings under trial in Court, cannot be admitted. The departmental proceedings will continue and it can not be stayed." Against this arbitrary order he preferred an appeal to the Director of Postal Services, Northern Region, Muzaffarpur endorsing a copy to Superintendent of Post Offices, Saharsa and Shri K.N. Singh, the Inquiry Officer on 27.01.1997. However, no order of appellate authority was communicated to the applicant. The enquiry officer or disciplinary authority also did not wait for the order of appellate authority and started the enquiry and concluded proceedings which is clearly in contravention of the statutory rules. The question of participation in the enquiry by the applicant on the face of pending appeal does not arise.

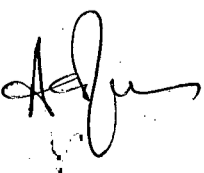
[d] As per provisions under Sub Rule-4 of Rule 9 of CCS Rules, 1972, in the case of a Government servant, who has retired on attaining the age of superannuation and otherwise and against whom any departmental and judicial proceedings are instituted or when departmental proceedings are continued under Sub-Rule-2, provisional pension as provided in Rule 69 would be sanctioned. As per Govt. of India instructions payment of provisional pension is mandatory which should be 100% pension which is otherwise admissible to a Govt. servant in case of normal retirement. Statutory Sub Rule (1) (b) of Rule 69 of CCS(Pension) Rules, 1972 provides that




provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after conclusion of departmental or judicial proceedings, final orders are passed by the competent authority. Sub rule (e) provides that no gratuity shall be paid to the Govt. servant until the conclusion of departmental or judicial proceedings and issue of final orders thereon. Since the provisions of Rule-69 are not only statutory but mandatory also it is the duty of the Accounts Officer to carry out the command under the rules as the mandate just like judicial order. Any order cannot obliterate the commanding position of Rule-69 and if issued it cannot be applicable effective and operative. It is, therefore, clear that provisional pension which is not to be less than full pension admissible has mandatorily to exist so long as either departmental or judicial proceedings are pending till finalisation and passing of order therein. The departmental proceeding has its existence only along with provisional pension and not alone. Similarly, judicial proceeding has its existence only along with provisional pension and not alone. Since in the instant case, judicial proceedings are pending trial and the applicant is on bail, the payment of provisional pension under Rule-69 of CCS(Pension) Rules, 1972 authorised by Accounts Office vide D.A.(P) Patna Memo No. Pen-1/VII/699 dated 17.05.1996 has mandatorily to continue to be paid as no order including the order under reference can negate the commanding position of Rule 69 ibid and since the provisional pension has to be full pension admissible the order passed ipso-facto becomes inoperative so far as withholding of full pension is concerned.

6. In view of the foregoing submissions, the applicant has prayed for allowing the OA.

7. The respondents in their written statement have submitted that the applicant was working as Sub Postmaster Balua Bazar S.O. since January, 1989 and Shri Madan Mohan Das as Postal Assistance since August, 1990 . On



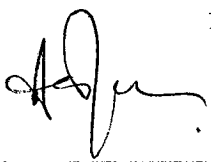
13.05.1993 Shri Das intimated that the applicant who was the Sub Postmaster, Balua Bazar left the office on 12.05.1993 due to illness in the evening giving Mr. Das one application for two days casual leave for 13.05.1993 and 14.05.1993 addressed to the Superintendent of Post Offices, Saharsa without giving him full charge of the office. He gave the key of the main gate of the office to Shri Mallick EDDA, Balua Bazar. Shri Das has stated that he checked the main gate in the night of 12.05.1993 and found it locked correctly. In the morning of 13.05.1993 at 7.00 A.M., the EDDA Shri Mallick reported to him that the hinge of the main gate of the office was broken and the door was found opened. Shri Das and Shri Mallick rushed to the post office where everything was found as usual except the iron chest embedded in the Post office. The chest was found opened keeping its lock aside in open condition. Shri Das stated that he had no knowledge of the contents of that iron chest and the applicant herein can only state the details. He lodged an F.I.R. at the Balua Bazar P.S. on 13.05.1993. The police visited the Post Office and advised to lock the iron chest with new locks. Shri Das accordingly locked it and gave one key of the lock to Shri Mallick EDDA and kept another with him. It was found that Shri Das held up the accounts of Balua Bazar due to non receipt of cash and stamps from the applicant. For smooth functioning of the Post Office, the order to charge the short found amount of Rs. 2,67,436.47 as unclassified payment was issued on 22.05.1993 on the spot and SDI(P) Madhepura was ordered to enquire into the case and if necessary, lodge an FIR. On 27.05.1993 the wife of the applicant credited Rs. 1,15,000/- under head unclassified receipt in the Govt. account at Balua Bazar S.O. in the absence of the applicant. In connection with enquiry by the SDI(Madhepura) on 28.05.1993 the applicant in his written statement stated that he kept every valuables of the office in the iron chest but kept Rs. 1,67,436.47 with his villager Shri Ranjit Kumar Mishra who was outsider. It was also informed that the incident of theft was actually fraud in SB/NSC/KVP/TD/IVP etc. amounting to Rs. 6,85,536.47



committed by the applicant who was SPM at the relevant time. The total amount of loss in fraud case detected by the squad formed by the office headed by the SPOs, Saharsa came to Rs. 6,85,536.47 out of which Rs. 1,32,014.00 was adjusted taking into account Rs. 1,15,000 deposited by the wife of the applicant. Net loss came to Rs. 5,53,522.47. The applicant surrendered on Court on 22.02.1994 and was taken into custody, but subsequently released on bail by the ADJ, Supaul on 11.03.1994.

8. It is further submitted by the respondents that the applicant was proceeded against under Rule 14 on 16.08.1995. During the period of enquiry under Rule 14 he retired on 30.09.1995 and the proceedings were converted into Rule 9 of CCS(Pension) Rules, 1972. In the said matter with the approval of President, penalty of withholding of his full pension permanently and gratuity of Rs. 43,419.00 was ordered by order dated 16.02.2000. It is the further contention of the respondents that the applicant was present upto the completion of preliminary hearing in the proceedings and thereafter he evaded attending the enquiry which means he did not like to face the enquiry. Hence, enquiry was conducted/concluded ex-parte. Furthermore, there is no bar in the rules for initiation of disciplinary proceedings in cases in which criminal proceedings are also pending. Hence, the request of the applicant to keep the departmental proceeding in abeyance was turned down and an enquiry was conducted as per extant rules. The official had issued Kishan Vikas Patra and Indira Vikasn Patra to the public without deducting the same from stock, took money and misappropriated the amount and did not account for it in Government account. The amount of fraud committed by applicant came to Rs. 6,85,536.47. The charges were well proved and punishment was awarded as per rules.

9. The review application filed by the applicant was turned down as there is no provision to review against the order of the President. In view of the foregoing submissions, the learned counsel for the respondents have prayed for



dismissal of the OA.

10. We have perused the records and considered the rival submissions made by the parties.

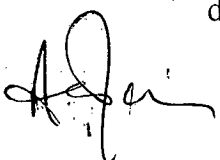
11. At the outset, we note that the main plea taken by the applicant is that the departmental proceedings should not have been conducted or continued pending the judicial proceedings in a criminal Court on the same set of charges and based on same facts and evidence. He has cited instructions of Govt. of India issued vide M.H.A. O.M. No. F 39/30/54-Estt. Dated 7.6.1995 and No. 39/8/64-Ests (A) dated 4.9.1964 incorporated as Govt. of India's decision No. 1 below Rule 14 in Swamy's Compilation of CCS(CCA) Rules. The relevant extracts of para 2 of these instructions are,

“2. It has been decided that prosecution should be the general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such case, departmental action should not precede prosecution.”

12. We note that the first sentence of the said instructions cited by the applicant states

“ The following procedure should normally be adopted in cases of alleged criminal misconduct of Government servant.”

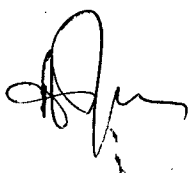
This clearly implies that normally, the procedure as stipulated should be followed but this does not debar holding departmental proceedings concurrently with the judicial proceedings in a criminal case. The Hon'ble Supreme Court has held in various judgments; some of which being State of Rajasthan Vs. B.K. Meera and Others [1996(6) SCC 417], Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. [1993(3) SCC 679], Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas [2004(6) SCLE 467] that merely because a criminal trial is pending, a departmental enquiry involving the very same charges as involved in the criminal



proceedings is not barred. The approach and objective in criminal proceedings and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is, whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be whereas in the criminal proceedings, the question is, whether the offences registered against the Government servant are established and if established, what sentence can be imposed on him. In the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry [2004 (10) SCALE Page 340], it has been held on para 9 that "it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back-drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. The Apex Court has referred to the conclusions given in para 22 of Captain M. Paul Anthony's case.

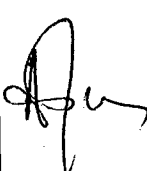
13. It is, thus, clear that it is upto the authority to take a view whether the departmental proceeding should also be initiated and continued pending judicial proceedings in a criminal case, depending on facts of each case and after considering whether any complicated question of law is involved or not. In the instant case, we are, therefore, of the view that there is no illegality in instituting and concluding the departmental proceeding and awarding punishment in spite of pending criminal case under trial.

14. Another plea of the applicant is that the order of the President withholding his full pension permanently and forfeiting the gratuity has been passed based on an ex-parte enquiry. As such, the same is without giving him reasonable opportunity to present his defence. In this connection, it has been submitted by the applicant that after rejection of his prayer by the disciplinary



authority to pend the disciplinary proceedings in view of pending judicial proceedings in criminal Court on the same set of charges and based on same facts and evidence, he filed a representation before the appellate authority. He was neither informed of any decision on his representation nor about the proceedings. He has claimed that after filing the representation, he was under bonafide belief that he will be informed of the decision and date fixed in the proceeding which was not done. As such, ex-parte order passed amounts to denial of natural justice. This plea of the applicant is not convincing. When the Disciplinary authority had rejected his prayer, merely the filing of representation to Appellate authority does not make it obligatory on the part of the Disciplinary authority to pend the proceedings. If no order was passed by the Appellate authority on his representation, the applicant should have approached the appropriate forum. Again, we note that as per averment made in written statement, and not denied by the applicant, he participated in the enquiry till the stage of preliminary hearing. Hence, we are of the view that non participation of applicant in enquiry was on his own volition and on this count, the enquiry can not be held as illegal or irregular.

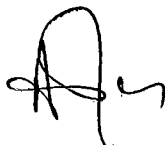
15. We also note that the applicant was served with the chargesheet and he filed his representation against the chargesheet. Similarly, a copy of the enquiry report was also given to him for making representation against it and he submitted his representation on 11.07.1997. However, the applicant has not furnished any copy of the representation dated 11.07.1997. It also transpires from the order dated 23.02.2000 that his representation was duly considered by the President and thereafter tentative conclusions were arrived at. Then the advice of the UPSC was obtained before passing the final order. The applicant has stated that full facts were not submitted before the higher authorities, especially the reasons for his non-participation in enquiry. These are only apprehensions of the applicant and no supporting evidence has been furnished. Again he has stated that the advice of the UPSC was not furnished with the order. We note that in the



order, there is a clear mention that a copy of the said advice is enclosed. This plea of the applicant is also not very convincing. It is also clear from the order that the same was passed after considering all facts and circumstances of the case.. Hence, we find no reasons to accept the pleas of the applicant mentioned above in this paragraph.

16. In the review petition claimed to have been filed by the applicant, which has been submitted along with supplementary affidavit filed on 15.02.2008, we note that the applicant has not annexed the complete representation and some pages at the end appear to be missing. There is no date on the petition though in the margin some notings have been made that the same had been sent to the Superintendent of Post Offices vide registered post on 18.07.2000. A receipt of P.O. is also annexed. On the other hand, in the letter dated 25.10.2005 as contained in Annexure A/2, the date of representation has been mentioned as 16.08.2005. Even in the said representation he has only raised some technical/procedural points, but has not made any comment on the charges against him explaining his position. In view of discussions in this para as well preceding paragraphs, we are of the view that the plea of denial of giving reasonable opportunity to the applicant to explain his case is not convincing.

17. Next plea taken by the applicant that as per Rule 9(4) read with Rule-69 of CCS(Pension) Rules, 1972 which are statutory rules, he is entitled to full pension as admissible in his case till the final order is passed in the criminal proceedings and that the impugned order withholding his pension is, therefore, against the statutory provisions and hence cannot be operated or given effect as no order by an authority can supersede statutory provisions. As regards this question of payment of provisional pension till the judicial proceedings against the applicant are concluded, we note that Rule 9(1) of the CCS(Pension) Rules provides as follows:-




“9. Right of President or withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered under re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.”

18. Thus, it is clear that if a penalty is imposed in either a departmental or a judicial proceeding, there is nothing wrong in passing the order of withholding the pension and forfeiting the gratuity as per rules. Rule 9(4) and the Rule-69 quoted by the applicant read with Rule 9(1) makes it very clear that when both the departmental and judicial proceedings are against an employee, penalty can be imposed as per rules even on culmination of any one of those. The plea of the applicant that departmental or judicial proceedings go with the payment of provisional pension is not tenable.

19. As regards the review petition filed by the applicant, we note that as per rules, the President has power to review any order passed earlier, including an order passed earlier in revision, when any new facts or material which has the effect of changing the nature of the case comes to his notice. In the instant case, we note that the copy of representation dated 11.07.1997 has not been filed. Again in the review petition claimed to have been filed, the applicant has raised some procedural issues. In view of discussion in this order and observations made, we do not think it necessary to pass an order directing the respondents to consider the review petition at this stage. In any case when the criminal case against the applicant is decided and if he is acquitted, he may file representation for review and the respondent authorities should then review the order.

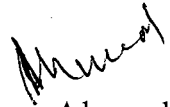


20. In view of the foregoing discussions, we find that the OA is devoid of any merit and hence it is dismissed. No order as to costs.



[Akhil Kumar Jain]
Member[A]

srk.



[Anwar Ahmad]
Member[J]

