

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA⁸²⁰, 94

Hon'ble Vice Chairman / Member (J) / Member (A)
may kindly see the above Judgment for
approval / signature.

S. (S) /
V.G. / Member (J) / Member (A) (K/S)

Hon'ble Vice Chairman

for
D
26/1/2022

Hon'ble Member (J)

Hon'ble Member (A) (K/S)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 820/94

DATE OF DECISION: 28/10/99

Smt. Surekha Rejendra Dabhole Applicant.

Shri S.P.Kulkarni Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri P.M.Pradhan. Advocate for
Respondent(s)

CORAM

Hon'ble Shri D.S. Bawaja, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.

S.L.JAIN
(S.L.JAIN)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:820.94

the 28th day of October 1999.

Smt. Surekha Rejendra Dabhole.
residing at
B-1/8, Building No.9
Yashodham Society,
Chintamani Nagar, Phase II
Bibve Wadi, Pune
...Applicant.

By Advocate Shri S.P.Kulkarni

V/s

1. Union of India through
Senior Superintendent of
Post Offices
Pune (West Division)
Pune.
2. Director of Postal Services
Pune Division Pune.
3. Post Master General
Pune Region, Pune.
...Respondents

By Advocate Shri P.M.Pradhan.

ORDER

{Per Shri S.L.Jain, Member(J)}

The applicant has challenged the Disciplinary proceedings
Punishment orders dated 24.11.1992, Appellate order dated
29.7.1993 letter dated 22.10.1992 as arbitrary and illegal
quashing the same in alternative punishment disproportionate and
to hold an enquiry as per Rules 16(1)(b) of CCS Rules 1965 read
with Rule 77 of Postal Manual Volume III with costs Rs.1000/-.

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2. The applicant was working as Postal Assistant on 26.12.1989 at Pune was handling the acceptance and discharge of savings certificate. It was her duty to accept and pay the proceeds of savings certificates to the holder or his agent after observing all the formalities and Assistant Post Master has ordered payment vide pay order passed on such certificates. One person claiming to be Shri Mukund Mahadeo Date residing at 137 Shukruwar Peth Shindhe Ali Pune Non-residesnt came with six NSCS of Rs.5000/-each registration numbers 973496,973500 and 978401 F5 the value being Rs. 45,600/-, including interest Rs. 25,600/-, sought encashment thereof, the applicant compared the signature on the identity slip and those of NSCS and found to tally, duly signed on the reverse in red ink, tried to locate the purchase application form in the relevant folder under R.No.16 but could not locate as such she expressed inability to entertain the transaction and returned to Shri S.B.Tite. The Assistant Post Master for ultimate return to the party tendering it at the counter. He also tried to locate the 'original purchase application' but could not locate it since NSCS were not marked as NRI. After words it was revealed that Shri Pingle was working as A.P>M.(NSC) on 25.1.1985- the day on which the purchase of NSCS were made. He wrote on each NSCS Rs.7600/- in words and figures in his own handwriting, brought the payment, she paid the amount and discharged the NSCS tendered for payment.

S. (S)

3. Shri M.M.Date holder of NSCS disclaimed having received the payment, lodged a report to the Postmaster Pune City Head Post office on 1.1.1991 regarding having disappeared NSCS twelve in number including the above six NSCS from the cupboard of his house, not reported the matter to the Police. The senior Postmaster Pune City Head Post office after obtaining Indemnity Bond with Bank Guarantee issued the Duplicate NSCS of the identical value in lieu of missing ones, which were later discharged on 16.3.91. After the matter was detected by Accounts Officer, the Senior Superintendent of Post Offices, Pune City West Division also lodged a complaint to the Police against Shri B.K.Oak. Shri M.M.Date was willing and offered a conditional post dated cheque for the whole amount but was not accepted by the respondents.

4. A charge sheet was issued to the applicant on 29.1.1990, she submitted her representation, she was found guilty for contravention of Rule 23(i) &(ii) of P.O.S.B. Rules and punished "Amount of Rs.14400/- be recovered from pay of Smt. S.R.Dabhole LSG PA Pune City Head Office at the rate of Rs.400/- p.m. for 36 months from the pay of November 1992 to be paid on 30.11.1992." An appeal against the same was rejected vide appellate order dated 29.7.1993.

5. The applicant claims that Shri S.G.Pingle(APM) told her that the party is personally known to him and payment be made, directed her to pay and discharge the same. Accordingly the amount was paid through SG.Pingle, who handed over the amount to the party tendering the NSCS. She was working under heavy

pressure 12 to 14 hours on the said date. Shri Pingle who assured to trace the file in the evening did not turn up later on hence discharge could not be made on the purchase application. The cheque which Shri M.M.Date was tendering was not accepted arbitraryly otherwise the loss could have been met out. She demanded enquiry which was refused. The appellate order is passed mechanically without applying the mind. Hence this OA for the above said reliefs.

7. Rule 16 (1) & (1-A) of Central Civil Services (Classification Control and Appeal) Rules 1965 is as under:

(1) Subject of 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 misbehaviour 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 enquiry 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;

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

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

(1-A) Notwithstanding anything contained in clause (b) sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

8. On perusal of Rule 16(1-A) of CCS Rules 1965 and the penalty imposed it is clear that the penalty imposed is not withholding of increments of pay which is likely to affect adversely the amount of pension payable to him/ her or withholding of increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period. Hence the applicant was not entitled to have an enquiry as laid down in sub-Rule (3) to (23) of Rule 14 before making any order imposing on the Government servant any such penalty.

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9. As the disciplinary authority is bound to hold the enquiry only in the cases stated above in Rule 16(1 A) of CCS Rules 1965, there appears to be no error on the part of disciplinary authority in this respect.

10. The order of the Disciplinary authority and Appellate Authority is challenged on the ground of denial of reasonable opportunity of personal hearing, having demanded vide A/3(4), by the Appellate Authority, rejection of demand for holding of enquiry pursuant to a specific demand made by the applicant vide letter dated 17.10.1992(A-8).

11. To be specific, enquiry as per the applicant was necessitated for the reason that "NRI holding" was not appearing on the NSCS, amount was recoverable from surety or holder in view of Indemnity Bond secured from the holder while applying for duplicates, criminal and civil case is pending in respect of the alleged incident under Section 417, 418, 420, 471 IPC against Shri B.K.Oak, the father-in-law of holder of NSCS the holder of NSCS was willing to make good the losses by issue of cheque, unblemished record of the applicant, the case relates to fraudulent incashment, no fault on the part of the applicant, the other defaulting officials are allowed to be let off and the Appellate Authority failed to apply the mind while deciding the appeal.

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12. Rule 23(2) which specifies the procedure at the time of encashment of certificate is as under:

If the counter Assistant is satisfied on all the above points, he will calculate the amount payable and then ask the holder to sign the endorsement on the certificate "Received payment of Rs.....in words and figures in his presence. If the certificate is presented for encashment through a messenger, the endorsement should have been signed already and the certificate accompanied by a letter of authority containing the specimen signature of the messenger. It should be seen whether the signature below the endorsement and the letter of authority if any, agrees with that on the application or the identity slip. The certificate will then be placed before the Postmaster who will satisfy himself about the authenticity of the certificate and the title of the holder. He will also ensure that the examination of the certificate has been carried out in the manner prescribed and that the amount payable as noted on the certificate is correct. He will then pass order 'Pay' under his signature at a suitable place above the place for the holder's signature to authorise payment. Payment will then be made by the counter Assistant. When payment is made to a messenger, his signature or thumb impression must be taken in addition to the signature of the holder, below the holder's endorsement, "Received payment of Rs....."

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13. On perusal of CCS Rules 27(2) it is clear that it is not necessary while considering the appeal to allow/afford personal hearing regarding rejection of demand for enquiry as stated above in para of the order, the demand was not legally tenable.

14. The applicant does not claim that the person who brought the NSCS for encashment has made an endorsement to the effect that "Received payment of Rs. in words and figure in his presence and signed the same.

15. Shri S.G.Pingle APM(R.D.C.T.D.) who is said to have identified the holder has not made an endorsement to the said effect alongwith attestation of signature as required by rules has not been obtained by the applicant.

16. The above failure of the applicant which is disclosed by record alongwith not making of entry in respect of discharge of NSCS suggests that it was not essential to held an enquiry about the breach of the rules, the compliance of which was to be made by the applicant.

17. Rule 77 of Post and Telegraph Manual Volume III is as Rule 16 of the CCS(CCA) Rules 1965 does not make it incumbent on the part of the disciplinary authority that it should give the accused official an opportunity to inspect the relevant records provided no formal enquiry is considered necessary by the disciplinary authority. If however an accused officer in such a case makes a request for permitting him to inspect the relevant records to enable him to submit his defence, the disciplinary authority may grant the necessary permission. ^w

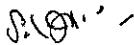
On perusal of the same , we do not find that an enquiry can be ordered under the said rule. It only provides for inspection of the documents and none else.

18. The Disciplinary Authority as well as the Appellate Authority has not erred at all in refusing to conduct the enquiry and coming to the conclusion of guilty of the applicant.

19. The punishment is entirely within the discretion of the disciplinary authority and the Tribunal cannot interfere in it until and unless the punishment shocks the conscious of the Tribunal. We do not find such a situation in the present case.

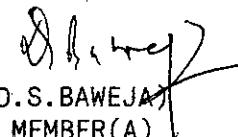
20. The applicant's counsel submitted that in case an amount is recovered in view of indemnity Bond, the amount be repaid to the applicant. In this respect only it is observed that in such a situation, the respondents may proceed to decide the representation, if filed by the applicant as per rules.

21. In the result, we do not find any merit in the OA and it is liable to be dismissed and is dismissed accordingly with no order as to costs.


(S.L.JAIN)

MEMBER(J)

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(D.S.BAWEJA)

MEMBER(A)