

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 09.01.2014

OA No. 04/2012

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 09th day of January, 2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 658/2011

N.L. Khandelwal son of Late Shri Ram Niwas, aged about 64 years, resident of 1346-B, Barkat Nagar, Tonk Phatak, Jaipur 302015 and retired on 31.07.2007 from the post of Post Master, Shastri Nagar, Head Post Office, Jaipur.

Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Senior Post Master Jaipur, GPO, Jaipur.
5. Shri B.L. Bhargava, Ex-Assistant Director, Postal Life Insurance, Office of CPMG, Rajasthan Circle, Jaipur 302007, resident of E-59, Shyam Nagar Extension, New Sanganer Road, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

2. ORIGINAL APPLICATION NO. 666/2011

K.L. Munjal son of Late Shri Banwari Lal, aged about 68 years, resident of 6 Kha-40, Jawahar Nagar, Jaipur and Retired on 30.06.2003 from the post of Accountant Jawahar Nagar, Head Post Office, Jaipur.

Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Senior Post Master Jaipur, GPO, Jaipur.
5. Shri Anil Kumar, Director, Postal Services, Office of Chief Post Master General, Bihar Postal Circle, Patna (Bihar).
6. Shri B.L. Bhargava, Ex-Assistant Director, Postal Life Insurance, Office of CPMG, Rajasthan Circle, Jaipur 302007, resident of E-59, Shyam Nagar Extension, New Sanganer Road, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORIGINAL APPLICATION NO. 04/2012

3.

Chandi Prasad Dobriyal son of Late Kishan Dutt Dobriyal, aged about 63 years, resident of 93/80, Vijay Path, Agarwal Farm, Mansarovar, Jaipur -302020 and retired on 31.01.2009 as Assistant Post Master (Accounts), HSG-I, Jaipur GPO, Jaipur.

Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Jaipur Region, Jaipur.
4. Senior Superintendent of Post Master Jaipur City, Postal Division, Jaipur.
5. Shri Anil Kumar, Director, Postal Services, Office of Chief Post Master General, Bihar Postal Circle, Patna (Bihar).
6. Shri B.L. Bhargava, Ex-Assistant Director, Postal Life Insurance, Office of CPMG, Rajasthan Circle, Jaipur 302007, resident of E-59, Shyam Nagar Extension, New Sanganer Road, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

Since the controversy involved in all these three OAs is the same, therefore, these are being disposed of by a common order. The facts of OA No. 658/2011 (N.L. Khandelwal vs. Union of India & others) have been taken as a lead case. The applicant in this OA has prayed for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same memo dated 28.06.2011 (Annexure A/1) with the charge memo dated 11.10.2004 (Annexure A/6) with the further action which is beyond the time granted by the Hon'ble High Court Bench, Jaipur be quashed and set aside with all consequential benefits.
- (ii) That the respondents may further be directed to refund amount recovered from the applicant along with interest @ 12% p.a. from the date of recovery to till payment.
- (iii) Any other order/direction of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant are that the applicant was working in the Accounts Branch with the respondents. The Postal Life Insurance is being carried out by the respondents department. The work relating to sanction for payment are being issued by the office of respondent no. 2. All the records of the policies and transaction with regard to deposits and payments are being maintained by respondent no. 2 and deposits and payment are being carried out through Post office.

3. In the year 1998-2001, one Shri N.K. Chabariya, Postal Assistant, who was working in the Postal Life Insurance Section Office of respondent no. 2, fraudulently manage to take payment from various Head Post Offices situated in Jaipur City i.e. Jaipur GPO, Shastri Nagar and Jawahar Nagar Head Post Offices, Jaipur. The matter was reported to CBI authorities for investigation and further action. The CBI authorities after due investigation filed Challan against Shri N.K. Chabariya. Shri N.K. Chabariya was also placed under suspension. The department initiated action to recover the amount as per the provisions of P.D.R. Act through Revenue Authorities. Shri N.K. Chabariya has been dismissed from service. Shri N.K. Chabariya also deposited Rs.10,000/- on 21.06.2001 and Rs.40,000/- on 22.06.2001. In fact Shri N.K. Chabariya is wholly responsible for these fraudulent transactions. The learned counsel for the applicant further stated that respondent no. 2 took a decision to recover the amount from the officials working in the Post Office who processed the order for payment. On that basis, respondent no. 4 served Charge Memo to the applicant under Rule 16 of the CCS (CCA) Rules, 1965 on 11.10.2004 (Annexure A/6).

4. On receipt of the charge memo, the applicant requested to make available certain document for submitting his effective representation. All the relevant documents were not showed to the applicant. However, the applicant submitted his effective reply on 23.04.2005 against the charge memo.

5. That respondent no. 4 without due consideration of the representation, submitted by the applicant, imposed the punishment of recovery of Rs.54,883/- from the pay of the applicant.
6. Being aggrieved by this order, the applicant preferred an appeal before respondent no. 3. Respondent no. 3 reduced the recovery of Rs.54,883/- to Rs.49,310/-.
7. Being aggrieved by the penalty order passed by the Disciplinary Authority and the Appellate Authority, the applicant filed an OA No. 268/2006 before this Tribunal. The Tribunal after considering the matter disposed of the OA vide order dated 25.02.2009 by quashing the order passed by the Disciplinary Authority as well as Appellate Authority with a further direction to the Disciplinary Authority to supply the copies of documents and thereafter take further action.
8. That during the pendency of the OA, the applicant retired from service on 31.07.2007.
9. The respondents approached the Hon'ble High Court, Jaipur Bench, Jaipur against the order dated 25.02.2009 passed by this Tribunal in DB Civil Writ Petition No. 1424/2010 (**Union of India & Others vs. CAT & Others**). The Hon'ble High Court, Jaipur Bench, dismissed the Writ Petition vide order dated 09.08.2010 with the direction to the Disciplinary Authority to

decide the departmental proceedings strictly in accordance with the service regulations applicable to the case within a period of six months from today i.e. 09.08.2010 (Annexure A/22).

10. The learned counsel for the applicant further argued that the Disciplinary Authority i.e. respondent no. 4 did not take any action for supplying copies of documents as per the directions of the Tribunal as well as the Hon'ble High Court, Bench Jaipur, within the period of six months i.e. upto 08.02.2011. The respondent no. 4 made available copies of certain documents on 25.04.2011 i.e. after the expiry of eight months period. The Disciplinary Authority did not supply the complete documents as per the request of the applicant dated 23.10.2004.

11. The learned counsel for the applicant submitted that no action can be taken against the applicant after the expiry of six months from the date of the order of the Hon'ble High Court. However, the respondent no. 4 again imposed the penalty of Rs.54,883/- vide order dated 28.06.2011 (Annexure A/1). In this order the Disciplinary Authority has stated that the recovery of a sum of Rs.54,883/- is confirmed as ordered vide this office memo of even no. dated 27.06.2005 (Annexure A/18).

12. The learned counsel for the applicant submitted that the order dated 27.06.2005 had already been quashed by the Tribunal vide its order dated 25.02.2009 (Annexure A/21) and once the order has been quashed by the Tribunal, the same

A. D. Sharma

order cannot be confirmed by the Disciplinary Authority. To support his averments, the learned counsel for the applicant referred to the following case laws:-

- (1) H.S. Shekhawat vs. The Union of India & Others
ATJ 2004 (1) 458
- (2) Union of India & Others vs. H.S. Shekhawat & Another (DB Civil Writ Petition No. 2737/2004 decided on 19.10.2010 by Hon'ble Rajasthan High Court, Bench at Jaipur).
- (3) OA No. 443/2001 (S.K.Sharma vs. Union of India & Others) dated 28.03.2002 decided by CAT, Jaipur Bench.

The learned counsel for the applicant argued that in these cases, it has been held that once the time limit has been given to complete the disciplinary proceedings and if the disciplinary proceedings are not completed in time, then they would abate.

13. The learned counsel for the applicant also argued that the applicant has since retired on 31.07.2007, therefore, no disciplinary proceedings could have been initiated under Rule 16 of the CCS (CCA) Rules, 1965 against the applicant after his retirement. Therefore, the order passed by the Disciplinary Authority dated 28.06.2011 (Annexure A/1) is against the provisions of the CCS (CCA) Rules, 1965.

14. The learned counsel for the applicant also submitted that the applicant is not responsible for fraudulent transaction. All the working relating to Postal Life Insurance is being done in the office of respondent no. 2. Shri N.K. Chabariya was working in the office of respondents and was responsible for these

fraudulent payments. Therefore, the applicant is not responsible for loss, if any, to the Department. The applicant performed his duties as per the prescribed norms. Therefore, the order dated 28.06.2011 passed by the Disciplinary Authority may be quashed and set aside and the recovery made from the applicant, be paid to him alongwith interest @ 12% from the date of recovery.

15. On the other hand, the learned counsel for the respondents argued that the applicant was working as Accountant in the Jawahar Nagar Head Post Office, Jaipur from 27.10.1998 to 22.03.2001. During this period, he made pay orders to various bogus Postal Life Insurance, sanction purported to have been issued from the office of the Chief Postmaster General, Rajasthan Circle, Jaipur in the name of bogus claimants, which were personally brought by Shri N.K. Chabariya, Postal Assistant (PLI Section) in the office of the Chief Postmaster General, Rajasthan Circle, Jaipur for misappropriation of Government money.

16. That the applicant did not observe correct procedure wherein he was required to issue a notice to the insurant to take payment on receipt of sanctions for payment from the Head Post Office. The applicant by doing so violated Rule 575/11(a) of Post & Telegraph Manual Volume VI Part III and Rule 549 of FHB Manual Volume I.

A. 1.6.

17. That the applicant failed to observe the authenticity of pay order, refund order or sanction before any payment was effected with the help of specimen signature of the Assistant Director, Incharge of PLI work in the office of the Chief Post Master General, Rajasthan Circle, Jaipur that was required to be maintained in the Head Post Office in the register of specimen signature. The applicant failed to observe the above formalities and thus violated the provisions contained in Rule 575/12(b) of Post & Telegraph Manual Volume VI Part III.

18. On account of negligence on the part of the applicant a bogus payment of Rs.1,60,734/- was made. Therefore, the Department had sustained that loss. On account of the negligence of the applicant, a sum of Rs.54,883/- comes as share on his part. Therefore, disciplinary proceedings under Rule 16 of the CCS (CCA) Rules, 1965 was initiated against the applicant and the penalty of Rs.54,833/- was imposed on him by the Disciplinary Authority. The Appellate Authority modified the order of recovery from Rs.54,833/- to Rs.49,310/-.

19. It was admitted by the learned counsel for the respondents that the penalty order and the Appellate order were quashed by this Tribunal and the respondents were directed to supply the copies of the requisite documents subject to the relevancy of the same in the matter. This order of the CAT dated 25.02.2009 was challenged by the respondents before the Hon'ble Rajasthan High Court, Jaipur Bench by filing DB Civil Writ Petition No.

1424/2010. Hon'ble High Court vide its order dated 09.08.2010 dismissed the Writ Petition with the following directions:-

"Looking to the facts and circumstances of the case, we direct the disciplinary authority to ensure expeditious disposal of the departmental disciplinary proceedings in relation to the case of respondent strictly in accordance with Service Regulations applicable to the case within a period of six months from today. Both the parties are directed to produce copy of this order before the concerned departmental authorities within a period of two weeks from today to enable them to conclude the proceedings within the time fixed by this court."

20 That in compliance of the Hon'ble High Court order dated 09.08.2010, the respondent no. 4 supplied an attested Photostat copies of the documents required by the applicant vide his application dated 21.10.2004 vide letter dated 25.04.2011 and the applicant was informed to submit his representation. The Disciplinary Authority confirmed the punishment of recovery of Rs.54,883/- as imposed earlier order dated 27.06.2005 vide Memo NO. B-492/P.F. dated 28.06.2011. Thus the action of the respondents is in accordance with the law and there is no merit in the OA and it should be dismissed.

21. With regard to the submission of the learned counsel for the applicant that the Disciplinary Authority had not completed the disciplinary proceedings within the period of six months, the learned counsel for the respondents submitted that this cannot be a ground to quash the disciplinary proceedings.

22. With regard to the contention of the learned counsel for the applicant that since the applicant has retired on 31.07.2007,

the respondents cannot initiate disciplinary proceedings, the learned counsel for the respondents submitted that this contention of the learned counsel for the applicant is not tenable. He argued that respondent no. 4 did not initiate fresh disciplinary proceeding under Rule 16 of the CCS (CCA) Rules, 1965 against the applicant after his retirement. The respondent no. 4 has taken steps as per the directions of the Tribunal dated 25.02.2009, upheld by the Hon'ble High Court vide order dated 09.08.2010 vide which the matter has been remitted back to the Disciplinary Authority. Therefore, the punishment order dated 28.06.2011 (Annexure A/1) passed by the Disciplinary Authority is in compliance of this Tribunal's order and the order of the Hon'ble High Court.

23. With regard to the averments made by the learned counsel for the applicant that Shri N.K. Chabariya was responsible for the payment of fictitious sanction, the learned counsel for the respondents submitted that though it is correct that the main accused is Shri N.K. Chabariya but other officials including the applicant are co-offenders who failed to discharge their duties and, therefore, the Department had to suffer the loss. Had the applicant followed the procedure laid down, then misappropriation would not have taken place. The applicant cannot escape from his responsibilities in the payment of bogus sanction.

24. With regard to the submission of the learned counsel for the applicant that once the order of the Disciplinary Authority dated 27.06.2005 was quashed and set aside vide the Tribunal's order dated 25.02.2009 (Annexure A/21) then the same order cannot be confirmed by the Disciplinary Authority as that order did not exist on 28.06.2011 (Annexure A/1), the learned counsel for the respondents submitted that there is no irregularity in this order. The Disciplinary Authority has only confirmed the earlier order passed by him of recovery of Rs.54,883/- from the applicant. Thus he argued that the penalty order has been passed after following the due procedure and there is no infirmity in the penalty order dated 28.06.2011 (Annexure A/1). Therefore, the OA has no merit and it should be dismissed with costs.

25. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the applicant. It is not disputed that the applicant was awarded a punishment of Rs.54,833/- by the respondents vide order dated 27.06.2005. The Appellate Authority had reduced this amount of Rs.54,833/- to Rs.49,310/-. The Tribunal had quashed and set aside the order of the Disciplinary Authority as well as the Appellate Authority and directed the respondents to supply the documents as required by the applicant. This order of the Tribunal was upheld by the Hon'ble High Court. The Hon'ble High Court vide its order dated 09.08.2010 has issued the following directions:-

"Looking to the facts and circumstances of the case, we direct the disciplinary authority to ensure expeditious disposal of the departmental disciplinary proceedings in relation to the case of respondent strictly in accordance with Service Regulations applicable to the case within a period of six months from today. Both the parties are directed to produce copy of this order before the concerned departmental authorities within a period of two weeks from today to enable them to conclude the proceedings within the time fixed by this court."

26. I am not inclined to agree with the averments of the learned counsel for the applicant that since the applicant has retired on 31.07.2007, no departmental proceedings can be initiated under Rule 16 of the CCS (CCA) Rules, 1965 because it was not a case of fresh departmental proceeding. The order of the Disciplinary proceedings dated 27.06.2005 and the order of the Appellate Authority dated 29.06.2006 were quashed and set aside by the Tribunal vide its order dated 25.02.2009 (Annexure A/21) and the respondents were directed to supply the copies of the documents required by the applicant. Subsequently, this order of the CAT was upheld by the Hon'ble High Court vide order dated 09.08.2010. Hon'ble High Court further directed the respondents to complete the formalities within a period of six months. Therefore, the order passed by the respondents is in compliance with the directions issued by the Hon'ble Tribunal/Hon'ble High Court.

27. I am inclined to agree with the averments made by the learned counsel for the applicant that the Disciplinary Authority could not have confirmed the order dated 27.06.2005, which was already quashed by the Tribunal vide its order dated

25.02.2009 (Annexure A/21). Once the order is quashed by the Tribunal then that order ceases to be in operation. The Disciplinary Authority was required to pass a fresh order after supplying the necessary documents to the applicant for making his effective representation. However, the Disciplinary Authority while passing the fresh order has confirmed his earlier order dated 27.06.2005. There was no bar to impose the same penalty of Rs.54,833/- on the applicant by the Disciplinary Authority but that could have been done by a fresh order rather than confirming that order which has already been quashed by the Tribunal. The Disciplinary Authority while passing the fresh order did not even care to the order passed by the Appellate Authority, who had reduced the penalty awarded to the applicant from Rs.54,833/- to Rs.49,310/-. He should have taken care that Superior Authority had reduced the penalty amount then there would certainly be some genuine grounds for reducing the amount of penalty. It appears that he was bent upon confirming his earlier decision. Therefore, on this ground, the order dated 28.06.2011 (Annexure A/1) is liable to be quashed and set aside. *Amul Kumar*

28. I am also inclined with the averments of the learned counsel for the applicant that the order of the Disciplinary Authority has been passed after the expiry of six months period, which was given by the Hon'ble High Court to the respondents to complete the disciplinary proceedings. The order of the Hon'ble High Court is very clear on this point.

29. The Hon'ble High Court had directed the Disciplinary Authority to initiate expeditious disposal of the departmental proceedings in relation to the case of the respondent strictly in accordance with the Service Regulations applicable to the case within a period of six months from today i.e. 09.08.2010. Six months were over on 08.02.2011. However, from the perusal of reply of the respondents, it is clear that photostate copies of the documents, required by the applicant vide his application dated 21.10.2004, were supplied to him on 25.04.2011 i.e. after more than eight months of the date of the order of the Hon'ble High Court. The respondents neither during the course of arguments nor in their reply have indicated as to why that these documents could not be supplied to the applicant within time prescribed by the Hon'ble High Court and also that the Disciplinary proceedings could not be completed within time prescribed by the Hon'ble High Court. If there was any difficulty in completing the disciplinary proceedings within the prescribed time limit, then the respondents should have requested the Hon'ble High Court for the extension of time. From the perusal of record, it appears that respondents have not requested the Hon'ble High Court for the extension of time. After a specific and clear direction from the Hon'ble High Court to the Disciplinary Authority to complete the disciplinary proceedings within the specified time, it was the duty of the Disciplinary Authority to comply with the direction of the Hon'ble High Court or else seek further extension. In this case, the Disciplinary Authority has neither completed the disciplinary inquiry within the time frame nor sought any

extension from the Hon'ble High court. In this particular case, only photocopies of certain documents were ~~to~~^{be} supplied to the applicant. These documents could have easily been made available to the applicant within a reasonable period. In this case, no oral evidence was to be taken after the supply of the photostate copies of the documents required by the applicant. The applicant was to be given an opportunity to file his representation. The Disciplinary Authority took more than eight month to supply the photostate copies of the documents. No reason has been given for this inordinate delay.

30. I have carefully perused the case law referred to by the learned counsel for the applicant on the point that when a direction is given to complete the departmental proceeding within fixed time frame and if that time frame is not honoured by Disciplinary Authority then disciplinary proceedings would abate. This Bench of the Tribunal in the case of **H.S. Shekhawat vs. The Union of India & Others**, ATJ 2004 (1) 458, has held that the entire action taken after the prescribed time limit shall have to be treated as nullity and this order of the Tribunal was upheld by the Hon'ble Rajasthan High Court, Jaipur Bench in DB Civil Writ Petition No. 2737/2004 (**Union of India & Others vs. H.S. Shekhawat & Another**) decided on 19.10.2010.

31. While passing the order in the case of **H.S. Shekhawat vs. The Union of India & Others**, ATJ 2004 (1) 458, this Tribunal has also considered the order of this Tribunal passed in

OA No. 443/2001 (S.K. Sharma vs. Union of India & Others) and Praban Kumar Dutta vs. Union of India & Others, 2001 (1) ATJ 404. This Tribunal also considered the order passed by the co-ordinate Bench of this Tribunal at Lucknow in the case of **K.B. Bhardwaj vs. Union of India & Others**, 2002 (2) ATJ 477. The Lucknow Bench of the Tribunal in the case of K.B. Bhardwaj (supra) has placed reliance on the decision of the Apex Court in the case of **M.L. Sachdeva vs. Union of India**, 1991 (1) SCC 606 and the decision of the Apex Court in the case of State of Bihar vs. Subhash Singh, 1997 (4) SCC 430 in which the Apex Court came to the conclusion that where directions could not be complied with within the period allowed by the court an application for extension of time for with the directions was necessary.

32. The OA filed by H.S. Shekhawat (supra) was allowed and penalty order beyond the time was quashed. The ratio as laid down in these cases is squarely applicable in the facts & circumstances of the present OA.

33. As stated earlier in the present OA, the Disciplinary Authority had failed to complete the disciplinary proceedings within a period of six months as directed by the Hon'ble High Court. The Disciplinary Authority has also not sought any extension of time from the Hon'ble High Court. Thus I am of the considered view that the penalty order passed beyond the time prescribed by the Hon'ble High Court is a nullity and, therefore,

it is quashed and set aside and the respondents are directed that any recovery made from the applicant be refunded to him within a period of three months from the date of receipt of a copy of this order.

34. With these observations and directions, the OA is disposed of with no order as to costs.

35. The copy of this order be placed in the files of OA No. 666/2011 (K.L. Munjal vs. Union of India & Others) and OA No. 04/2012 (Chandi Prasad Dobriyal vs. Union of India & Others).


(Anil Kumar)
Member (A)

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