CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA Nos.461/2005 with OA No.524/2005.

Jaipur, this the 7th day of November, 2006.

CORAM : Hon'ble Mr. Kuldip Singh, Vice Chairman.
Hon'ble Mr. J. P. Shukla, Administrative Member.

1. OA No.461/2005.

Bhogi Ram
S/o Late Shri Sawaria Ram,
Aged about 61 years,
R/o 36/476, Sahyog Nagar,
Behind Shiv Talkies,
Bharatpur.

2. OA No.524/2005.

Bhogi Ram
S/o Late Shri Sawaria Ram,
Aged about 61 years,
R/o 36/476, Sahyog Nagar,
Behind Shiv Talkies,
Bharatpur.

... Applicants

By Advocate : Shri C. B. sharma in both OAs.

Vs.

1. Union of India through
Secretary to the Govt. Of India,
Department of Posts,
Ministry of Communication & Information Technology,
Dak Bhawan,
New Delhi 110 001.

2. Chief Post Master General,
Rajasthan Circle,
Jaipur 302 007.

3. Director,
Postal Services,
Jaipur Region,
Jaipur 302 007.

4. Superintendent of Post Offices,
Bharatpur Postal Division,
Bharatpur.

... Respondents.

By Advocate : Mr. B. N. Sandu.

: O R D E R (ORAL) :

By this common order, we decide to dispose of these two OAs (OA No.461/2005 & 524/2005).

2. In OA No.461/2005, the applicant has prayed for the following reliefs:-

(i) That the respondents may be directed to release Pension Payment Order for full Pension and all retrial dues i.e. Gratuity, Commutation, Leave Encashment and Insurance amount along with interest @ 12%p.a. with effect from 1.8.2005 till payment by quashing memo dated 24/8/2005 (Annexure A/1).

(ii) That the respondents may be further directed not to proceed for any further action and any action initiated by them be quashed and set aside with all consequential benefits.

(iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

In OA No.524/2005, the applicant has prayed for the following relief :-

(i) That the entire record from the respondents may be kindly called for and after perusing the same charge memo dated 22/7/2005 (Annexure A/1) with the corrigendum dated 5/10/2005 (Annexure A/2) may be quashed and set aside with all consequential benefits.

(ii) That the respondents be directed to release Pension Payment Order for full pension and all retrial dues i.e. Gratuity, Commutation, Leave

Encashment and Insurance amount along with interest @ 12% p.a. with effect from 1.8.2005 till payment.

(iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

3. The facts which are relevant for the decision of these two OAs almost succinctly are stated in OA No.524/2005 which are as under :-

The applicant was proceeded departmentally under Rule 16 of CCS(CCA) Rules, 1965 and a minor penalty was imposed vide memo dated 24.11.2004 (Annexure A/3) on the allegation that while working as Sub-Post Master, Bharatpur H.O. w.e.f. 20.11.2001 onwards continuously he failed to keep watch over the cash drawn by the SPM Bhusawar Town TSO from its cash office Bhusawar DSO against the authorized limit of cash every month and balance available out of monthly limit with reference to SO daily account which facilitated the SPM Bhusawar Town to commit fraud to the tune of Rs.9,64,079.05. Thus, the applicant had violated the provisions of Rule 34(3) of Postal Manual Volume VI Part III, so he was proceeded under Rule 16 for imposing him minor penalty. The said charge memo was served to the applicant to submit his reply. However, a punishment was imposed upon him for recovering of Rs.1 lac towards fraud committed by Sub Post Master, Bhusawar Town with a direction to recover

the amount of Rs.1 lac as per Annexure A/4. The applicant preferred an appeal against the said order before Respondent No.3 vide his appeal dated 7.4.2005 (Annexure A/5), which was disposed of vide order dated 19.07.2005 (Annexure A/6). The Appellate Authority on examination of the case observed that the charges leveled against the applicant are not specific and were of general nature and the fact that the applicant was also denied supply of some documents and an ex-parte decision was taken without giving any opportunity for submission of his representation to the charge sheet. So the appellate Authority came to the conclusion that the penalty awarded is irregular and it is also found that there is no provision of recovery from the retrial benefits of an employee in disciplinary cases under rule 16 of the CCS (CCA) Rules, 1965. Hence the Appellate Authority held that the punishment order is not sustainable and the same was set aside vide Annexure A/6.

4. The applicant stood retired on 31.7.2005 and he was hopeful that since after the decision of the Appellate Authority he will get the retiral benefits but the same was withheld without any reason. However, provisional pension was sent thereafter vide Annexure A/8. Since the applicant was not informed as to why his retrial benefits have been withheld so he made a representation vide Annexure A/10.

5. The applicant had filed OA for quashing the order of provisional pension and seeking direction to release the entire retrial benefits. However, Respondent No.4, in order to, justify the action served a back dated charge sheet upon the applicant by back dating dated 22.7.2005 with corrigendum dated 5.10.2005 as the applicant stood retired on superannuation on 31.7.205. The charge memo dated 22.7.2005 and corrigendum dated 5.10.2005 were received by the applicant on 10.10.2005. The applicant also annexed the copy of the envelope as Annexure A/11. The applicant further submitted that the minor penalty charge sheet is at all not justified and for reviewing the same he submits representation for this fact. Hence the present OA.

6. In the grounds to challenge the disciplinary inquiry initiated under Rule 14 of CCS (CCA) Rules, 1965 , the applicant submits that the action of the respondents is against the provisions of Article 14, 16 and 21 of the Constitution of India because once the applicant has been exonerated on the same charge though under Rule 16 of the CCS (CCA) Rules, 1965 ~~but~~ then no fresh proceedings can be initiated under Rule 14 as the same is against the provisions of Article 20(2) of the Constitution of India. Thus, the applicant is entitled to full pensions.

7. The respondents by filing reply have contested these OAs. The respondents reiterated about the facts that the

SPM, Bhusawar Town did draw cash from the office of Bhusawar DSO under account beyond the prescribed cash limit of Rs.40,000 per month without obtaining additional credit from Bharatpur HO. But the applicant never challenged the SPM Bhusawar Town/Bhusawar DSO. The SPM Bhusawar Town had committed a fraud and misappropriated Government money. Therefore, the disciplinary proceedings were initiated against the applicant under Rule 16 and penalty imposed by the Disciplinary Authority was set aside by the Appellate Authority. The respondents further stated that the Appellate Authority vide letter dated 19.07.2005 (Annexure R/3) was directed to initiate fresh disciplinary proceedings against the applicant with a view to recover the government loss. Therefore, a fresh charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued to the applicant. It is stated that the charge sheet was sent to the applicant under Registered post but since he was on medical leave till the date of his retirement, so did not take the delivery of the charge sheet ~~on~~ till 31.7.2005. However, the charge sheet has been delivered to the applicant on 10.10.2005 and after the retirement of the applicant the action was converted in Rule 9 of the CCS (Pension) Rules 1972 i.e. the provisional pension has been sanction ed for six months till finalization of the case. Thus, the respondents tried to justify their action for issuing the second charge sheet under Rule 14 of the CCS (CCA) Rules,

1965 which is stated to have been converted under Rule 9 of the CCS (Pension) Rules 1972.

8. We have heard the Learned Counsel for the parties and gone through the material placed on record.

9. As regards the fact that initially the charge sheet was issued under Rule 16 of CCS(CCA) Rules 1965 which culminated into imposition of a minor penalty by Disciplinary Authority and which was quashed and set aside by the Appellate Authority are not disputed. The fact that a charge sheet under Rule 14 was also issued is not disputed because the respondents have pleaded that the charge sheet could not be delivered to him so long he was in service, so that is why it had been converted into Rule 9 of CCS(Pension) Rules 1972. But after the receipt of the charge sheet, the applicant had approached the Court and this Court vide order dated 11.11.2005 had stayed the proceedings of the second charge sheet. So now the only ~~pertaining~~ question which requires to be answered is whether the department is within their rights to take up the disciplinary proceedings under the second charge sheet when the first charge sheet has been quashed and set aside by the appellate authority under Rule 16 of the CCS (CCA) Rules 1965.

10. Learned Counsel for the applicant in support of his case has referred to the judgment reported in 2004 (5)

SLR 247 in the case of Kunwar Sen Jain v. Secretary, Textile Committee, in which it has been held that when the disciplinary authority issues show cause notice for the imposition of a minor penalty after consideration of the reply of the delinquent it is not open for the disciplinary authority to issue another show cause notice for imposition of major penalty for the charges on the basis of the evidence led in the enquiry for which a minor penalty was proposed. Once the Disciplinary Authority decides to ~~defer~~ differ with the enquiry officer and issue a show cause notice for imposition of minor penalty on the delinquent employee, it would not be open for the disciplinary authority to change its stand and decide that major penalties should be imposed on delinquent employee especially, when no compelling reasons for taking such action have been delineated.

11. On the same lines, Learned Counsel for the applicant has also referred to another judgment in the case of Shri S. R. Nim vs. Union of India & Ors., ATJ 2005 (3) 594, in which it has been held that as per CCS(CCA) Rules 1965-Rules 14, 15 and 16- after disciplinary proceedings the charge sheet for minor penalty issued and later charge sheet dropped but nothing to show that charge sheet has been dropped without prejudice to any further action, the issuance of major penalty charge sheet held to be without jurisdiction and quashed. In this case also, when the Appellate Authority set aside the order

passed by the Disciplinary Authority and there was no indication or intention expressed by the Appellate Authority to issue a subsequent charge sheet. So relying upon both these judgment, we are of the considered opinion that the second charge sheet was issued to the applicant is bad in law and the same could not be issued particularly when no reasons have been shown in the order passed by the Appellate Authority to take any action against the delinquent employee for imposition of charge sheet. Hence we quash and set aside the impugned order vide which the charge sheet has been issued.

12. Consequently, we also direct the respondents to calculate the complete retirement benefits of the applicant and make payment of the sme within a period of three months from the date of receipt of a copy of this order. Hence, both the OAs (OA No.461/2005 & OA No.524/2005) are allowed.

(J. P. SHUKLA)
ADMINISTRATIVE MEMBER

(KULDIP SINGH)
VICE CHAIRMAN

P.C./