

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of May, 2011

Original Application No.178/2007

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Anil Pandey
s/o Shri Rajendra Prasad
r/o E-431, Shastri Nagar, Ajmer
and presently working as
Sub-Post Master,
Arain Sub Post Office,
Ajmer Postal Division, Ajmer

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur
3. Director Postal Services, Southern Region, Ajmer.
4. Senior Superintendent of Post Offices, Ajmer Postal Division, Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

The present OA has been preferred by the applicant seeking following reliefs:

- (i) That entire record relating to the case be called for and after perusing the same memo dated 25.5.2006 (Ann.A/1) order of revising authority with the memo dated 19.10.2005 (Ann.A/2) order of Appellate Authority and memo dated 1.8.2005 order of disciplinary authority (Ann.A/3) with the further orders passed by respondent No.4 be quashed and set-aside with all consequential benefits.
- (ii) That show cause notice dated 7.8.2006 (Ann.A/4) and memo dated 28.9.2006 order of revising authority (Ann.A/5) for treating the period as not spent on duty for all purposes be quashed and set aside with the direction to respondents to treat the period 2.8.2005 to 30.5.2006 i.e. removal to reinstatement as spent on duty for all purposes including pay and allowances.
- (iii) That the charge memo dt. 14.3.2005 (Ann.A/10) be quashed and set aside with the enquiry proceedings, as the same are not justified as per facts and circumstances with all consequential benefits.

2. Brief facts of the case are that in the year 2004 the applicant while holding the post of Sub Postmaster, Ganj Post Office, Ajmer on the request made by Shri Ramdhan paid arrears of pension Rs. 46,262/- on 22.7.2004. This payment was found irregular by the Senior Postmaster, Ajmer on the ground that as per provisions of Rule 126 (1), P&T Manual FHB Vol. II payment of arrears of pension for more than three years cannot be made without permission of competent sanctioning authority and as soon as objection came to the knowledge of the applicant, he immediately informed Shri Ramdhan to credit Rs. 46,262/- vide letter dated 24.7.2004. Shri



Ramdhan on receipt of the aforesaid letter credited Rs. 10,000/- with further information that rest amount will be deposited shortly and thereafter he further deposited Rs. 10,000/- on 6.11.2004 and Rs. 10,000/- on 2.2.2005 and after depositing the total amount he made request to Accounts Officer of Telecom Department to allow to draw his pension vide his request dated 4.2.2005 (Ann.A/8).

3. A chargesheet for major penalty under Rule 14 of the CCS (CCA) Rules, 1965 was served upon the applicant alleging therein that applicant paid Rs. 46,462/- to Shri Ramdhan on 22.7.2004 against the provisions of Rule 126(1) of Postal Financial Handbook, Vol.II and also failed to maintain devotion to duty as per CCS (Conduct) Rules, 1964.

4. The Enquiry Officer after considering reply and the documents as well as witnesses submitted the enquiry report against which the applicant submitted representation on 27.7.2005. Having considered the representation so submitted by the applicant and the report of the enquiry officer, the Disciplinary Authority imposed a punishment of removal from service vide memo dated 1.8.2005 (Ann.A/3). Against the aforesaid removal order, the applicant preferred appeal as per the provisions of CCS (CCA) Rules, 1965 before respondent No.3 on 8.8.2005. The appeal was rejected vide memo dated 19.10.2005 (Ann.A/2).

5. Against the order of the Disciplinary Authority and the Appellate Authority dated 19.10.2005, the applicant preferred revision petition before respondent No.2 on 14.11.2005. The revision petition was partly allowed by modifying the penalty of removal



from service to reduction of pay from the stage of Rs. 5375/- to 5250/- in the scale of Rs. 4300-7000 for a period of 3 years with immediate effect with further direction that applicant will not earn increments of pay during reduction and reduction will not have the effect of postponing the future increments vide memo dated 25.5.2006 (Ann.A/1).

6. The present OA has been preferred against the order dated 25.5.2006 passed by the Revising Authority.

7. We have heard the learned counsel for the parties and carefully perused the material available on record as well as the order passed by the Disciplinary, Appellate and Revising Authorities and have also thoroughly considered the judgments relied upon by the respondents and provisions of law.

8. It is not disputed that while working as Sub Postmaster, Ganj Post Office, Ajmer, the applicant made payment of pension amounting Rs. 46,462/- to Shri Ramdhan for the period from 1.8.95 to 31.10.98 which remained undrawn for a period of more than three years without prior approval of the competent authority as per Rule 126(1) of the Postal Financial Handbook Vol. II which provides that if service pension remained undrawn for 3 years it cannot be paid without prior permission of Director/Dy. Director Accounts (Posts), and admittedly Shri Ramdhan has not drawn pension for more than 3 years and as per Rule 126(1), it is mandatory for the applicant to obtain proper approval from the competent authority. Therefore, chargesheet under Rule 14 of CCS (CCA) Rules was issued and in the enquiry the Enquiry Officer provided opportunity to the



applicant to defend his case. The Disciplinary Authority having considered the representation of the applicant and the report submitted by the Enquiry Officer and also the material available on record as well as the witnesses and a penalty of removal from service has been inflicted upon the applicant which was upheld by the Appellate Authority vide memo dated 19.10.2005. The Revising Authority has considered the case of the applicant as well as the orders of the Disciplinary Authority and Appellate Authority observing as under:-

"4. The petition has been given a considered and dispassionate thought taking into account all relevant record of the case. Undoubtedly, the issue of payment of the un drawn pension without proper authorization and lateron it's recovery is not disputed. Rather this has been admitted by the petitioner himself with the excuse that he was not aware of the rule for want of training and refresher course. This plea is not tenable as every employee is supposed to know and follow the rules and regulations. The next plea taken by the petitioner that he was not afforded reasonable opportunity to defend is not acceptable. The record of inquiry reveals that the I.O. completed the inquiry in eight seatings, out of which five were attended by the petitioner. For the remaining three seatings i.e. 20.4.2005, 3.6.2005 & 7.6.2005, the petitioner did not join the inquiry as he submitted medical certificate of sickness to abstain from inquiry. The proceedings of inquiry held in his absence were supplied including the statements of four witnesses examined on 3.6.05. The petitioner's request dated 7.5.05 demanding cross examination of the witnesses was rightly turned down which does not tantamount to denial of reasonable opportunity, as the Inquiry Officer who happens to be impartial officer and he has to exercise his discretion in the interest of natural justice and to complete the inquiry timely. The petitioner has admitted the irregular payment of undrawn pension due to ignorance/neglect of rules. He could not have proved his innocence from the charge if he had been given opportunity again to cross examine four witnesses by the I.O. As regards access to the additional documents, the requisition of the petitioner was



properly discussed and disposed of logically. Petitioner's allegation in absence of any substantial proof of bias prejudice and hasty action on the part of I.O. and pressure on the appellate authority are not tenable.

I have observed from records that the demeanour of key witness of the case i.e. the pensioner who received the payment was not examined properly by the I.O. as while disowning the said payment he bluntly told that he is even not a pensioner. On the other hand there are a number of applications from the said pensioner asking for payment of his pension and refund of the amount deposited by him against the unauthorized payment under reference. Further the audit had authorised subsequently the whole amount of undrawn pension to the pensioner for which the petitioner was proceeded against on the charge of irregular payment of undrawn pension. Surprisingly, the appellate authority has also given undue weight to the said deposition and observed that the payment of the said amount is under cloud. It is pertinent to mention here that the petitioner was charged only for the payment of the pension amount without proper authorization and not for fraudulent payment. The charge against the petitioner was fully proved. Ignorance of rules is no excuse even though it is bonafide and not malafide.

5. In view of what has been discussed above, I find that proper procedure was followed before imposition of the penalty. The appellate authority also appreciated properly all the points of appeal but the penalty of removal from service does not commensurate with the gravity of charge. Since there was no charge related to lack of integrity nor any loss caused to the govt. for the action of gross ignorance of rules, the penalty of removal from service is excessive. I am therefore inclined to take lenient view in this case. For meeting the ends of justice the penalty of removal from service imposed by SSPOs Ajmer vide order dated 1.8.2005 and upheld by DPS Ajmer vide order dated 19.10.2005 be modified to that of reduction of pay from the stage of Rs. 5375/- to Rs. 5250/- in the scale of pay of Rs. 4500-7000/- for a period of three years with immediate effect. He will not earn increments of pay during the period of reduction. However, the reduction will not have the effect of postponing the future increments of pay. "



9. We have considered the order passed by the Revising Authority which is under challenge in this OA. The Revising Authority has considered that the penalty of removal from service does not commensurate to the gravity of charge. Since there was no charge relating to lack of integrity nor any loss caused to the Govt. for the act of gross ignorance of rules, the penalty of removal from service was found excessive and modified the same to that of reduction of pay from the stage of Rs. 5375/- to Rs. 5250/- in the scale of pay of Rs. 4500-7000 for a period of three years with immediate effect and he will not earn increments of pay during the period of reduction. However, the reduction will not have the effect of postponing the future increments of pay.

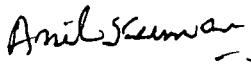
10. We have also perused the judgment of the Hon'ble Apex Court in the case of State of Meghalaya and Ors. vs. Mecken Singh N.Marak, reported in (2008) 7 SCC 580 which has been relied upon by the learned counsel appearing for the respondents. In this case, The Hon'ble Apex Court has held that scope of judicial interference in the departmental enquiry is very limited and restricted to exceptional cases. Punishment unless shockingly disproportionate, not subject to judicial interference. Since the Revising Authority has considered this aspect and considering the fact and looking to the gravity of charge leveled against the applicant, the penalty of removal from service was excessive the same was modified to reduction of pay from the stage of Rs. 5375/- to Rs. 5250/- in the scale of pay of Rs. 4500-7000 for a period of three years with immediate effect and he will not earn increments of pay during the



period of reduction. However, the reduction will not have the effect of postponing the future increments of pay. The applicant not satisfied with the reduction of punishment by the Revising Authority filed the present OA.

11. We have examined the memorandum of charge and the act of negligence which has been admitted by the applicant as due to ignorance of law, he made payment without prior approval of the competent authority. Thus, we are fully satisfied with the order passed by the Revising Authority by which the Revising Authority has already reduced the penalty of removal from service to that of reduction of pay from the stage of Rs. 5375/- to Rs. 5250/- in the scale of pay of Rs. 4500-7000 for a period of three years with immediate effect and he will not earn increments of pay during the period of reduction. Accordingly, we find no illegality in the order passed by the Revising Authority which does not require any interference by this Tribunal.

12. The OA stands disposed of in the aforesaid terms with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/