

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

07.08.2012

OA No. 149/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

The applicant does not wish to file rejoinder. Thus the pleadings are complete.

Put up for final disposal at this stage on 28.08.2012.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

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28/08/2012

OA No. 149/2011

Mr. C. B. Sharma, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

Heard.

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

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 28th day of August 2012

CORAM:

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

ORIGINAL APPLICATION No. 14/2011

Kanhaiya Lal Morya
s/o Shri Mali Ram Morya,
r/o Biroj Road, Ward No.23,
Regar Mohalla,
Nawalgarh, Tehsil Nawalgarh,
District Jhunjhunu.

... Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India
through the Secretary
to the Government of India,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Director Postal Services,
West Zone, Jodhpur.
4. Superintendent Post Offices,
Jhunjhunu.

5. Inspector,
Post Offices,
Nawalgarh (Raj.)

... Respondents

(By Advocate : Shri Gaurav Jain)

ORIGINAL APPLICATION No. 149/2011

Kanhaiya Lal Morya
s/o Shri Mali Ram Morya,
r/o Virol Road, Ward No.23,
Regar Mohalla,
Nawalgarh, District Jhunjhunu.
Holding the post of Sub Postmaster,
Parasrampura, Nawalgarh,
Distt. Jhunjhunu (under suspension).

... Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India
through its Secretary
to the Government of India,
Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bhawan, New Delhi.
2. Chief Post Master General,
Rajsthan Circle,
Jaipur
3. Director Postal Services,
Western Region, Jodhpur.
4. Superintendent Post Offices,
Jhunjhunu Postal Division,
Jhunjhunu

... Respondents

(By Advocate : Shri Gaurav Jain)

ORDER (ORAL)

Facts and the controversy involved in these cases is similar, as such, these are being disposed of by this common order. Facts of OA No. 149/2011 are taken as leading case.

2. Brief facts of the case are that the applicant while working as Sub Postmaster, Parasrampura Post Office was placed under suspension vide memo dated 4.6.2009 (Ann.A/4) on the ground that disciplinary case is contemplated invoking Rule 10(1) of CCS (CCA) Rules, 1965 and further vide another memo dated 4.6.2009 (Ann.A/5) the applicant was directed to hand over the charge to Shri Shiv Kumar Jangir. The applicant was placed under suspension on 4.6.2009 and inquiry was initiated against the applicant. Vide memo dated 24.6.2009 (Ann.A/7), respondent No.4 allowed 50% of pay and allowances as subsistence allowance.

3. The applicant was informed vide letter dated 8.7.2009 that he is absenting from Headquarter during the suspension and directed to remain at Headquarter and also mark attendance in the office.

4. The suspension of the applicant was reviewed and the Review Committee continued his suspension for further period of 180 days as informed by respondent No.4 vide memo dated 27.8.2009 and 28.8.2009.

5. Despite of the fact that he was asked to remain present at the Headquarter, the applicant remained absent, therefore, respondent No.4 warned the applicant for reducing subsistence



allowance from 50%. The suspension of the applicant was further reviewed and continued for a further period of 180 days vide memo dated 21.1.2010 and vide another memo dated 21.1.2010 respondent No.4 reduced subsistence allowance by 50% i.e. 25% of pay and allowance.

6. The applicant aggrieved and dissatisfied with the reduction of subsistence allowance made representation before the respondents on 15.4.2010 and the same was rejected vide memo dated 30.11.2010 on the ground that applicant is not cooperating in the enquiry.

7. It is also contended on behalf of the applicant that the applicant was placed under suspension on 4.6.2009 and the respondents have not been able to serve any charge memo within one year and thereafter served charge memo dated 15.7.2010 for major penalty under Rule 14 of CCS (CCA) Rules, 1965 and on the allegation of misappropriation of Government money also filed FIR on 1.7.2010. Thereafter, the Review Committee further reviewed suspension of the applicant and rejected revocation of suspension and not enhanced the subsistence allowance as informed by respondent No.4 vide memo dated 24.1.2011 (Ann.A/3).

8. The reduction of subsistence allowance is challenged by the applicant on the ground that the respondents cannot reduce the subsistence allowance as allowed vide memo dated 28.8.2009 (Ann.A/10) for further period of 180 days w.e.f. 6.8.2009 i.e. upto 5.2.2010 and thereafter for further 180 days from 19.1.2010 i.e. upto 18.7.2010, but without any base reduced subsistence allowance

vide memo dated 21.1.2010 (Ann.A/2). Thus, action of the respondents is arbitrary, illegal and unjustified and also against the rules/instructions issued by the respondents from time to time and by way of filing this OA prayed that the respondents be directed to revoke suspension of the applicant forthwith by quashing memo dated 30.11.2010 and 24.1.2011 with all consequential benefits. Further prayed to allow subsistence allowance as 75% of pay and allowances after three months of suspension i.e. 4.9.2009 by quashing memo dated 21.01.2010.

9. Per contra, the learned counsel appearing for the respondents strongly controverted the submissions made on behalf of the applicant and stated that on 1.6.2009, the Postmaster, Jhunjhunu HO has reported vide his letter that SPM, Parasrampura retained excess cash frequently and did not send ECB memos. On receipt of report from Postmaster, Jhunjhunu HO, the Inspector Posts Nawalgarh was directed on 1.6.2009 to investigate the matter.

10. The Inspector, Posts, Nawalgarh investigated the matter and submitted his report on 4.6.2009 vide which it is reported that Rs. 30,000 were found short with Shri K.L. Morya, SPM, Parasrampura (applicant) in the cash balance of Parasrampura Sub Post Office and the same was credited by him willingly in UCR at Parasrampura vide ACG-67 receipt no. 44 dated 2.6.09. In view of the report of the Inspector, Posts, Nawalgarh it was observed that the work of the applicant is unsatisfactory and integrity of the applicant is also doubtful, hence, the Superintendent of Post Offices, Jhunjhunu also verified the report and the applicant was placed under suspension



vide memo dated 4.6.2009 under the provisions of Rule 10(1) (a) of CCS (CCA) Rules, 1965 and charge of SPM, Parasrampura was handed over to Shri Shiv Kumar Jangir, PA, Nawalgarh.

11. It is also submitted on behalf of the respondents that the Headquarter of the applicant was fixed at Parasrampura during suspension vide order dated 4.6.2009 and it was stated in the order that the applicant should not leave the headquarter without obtaining previous permission. On the contrary, the applicant left the headquarter on 4.6.2009. During the enquiry, it was found that application forms for opening of Account of some MIS Accounts were not available in the office and SO Account for the period from 25.4.2009 to 1.6.2009 was incomplete. The respondents have also stated that suspension was reviewed from time to time as per provisions of law. Since the applicant has not cooperated in the inquiry and did not remain at headquarter, the Review Committee has recommended in the review dated 19.1.2010 that the subsistence allowance may be reduced by 50% of subsistence allowance paid during first 90 days as per provisions of FR-53 on the ground of non-cooperation in the inquiry and refusal to give statement and, therefore, the applicant was directly attributable for prolongation the case.

12. It is not disputed that FIR No.173/10 was lodged on 1.7.2010 at Police Station, Nawalgarh and the case is under trial in case No. 400/2010 in the Court of Additional Chief Judicial magistrate, Nawalgarh.



13. Admittedly, OA No. 14/2011 is filed by the applicant against the order of reduction and enhancement of subsistence allowance, and the present OA is also for the same relief.

14. We have heard the rival submissions of the respective parties and carefully perused the impugned orders and the material available on record as also the judgment relied upon by the applicant. In both the OAs, the main relief claimed by the applicant is to quash and set-aside the suspension order and further the order passed by the respondents during suspension after review whereby the subsistence allowance has been reduced.

15. We have also thoroughly considered the impugned orders challenged in both the OAs. In both the OAs, the reason for reducing the subsistence allowance is that the applicant has not cooperated in the enquiry, thus, the long delay is attributable to the applicant. Further, the applicant did not remain present at Headquarter and left the Headquarter without prior permission. Therefore, the Review Committee considered this aspect and thought it proper to further reduce the subsistence allowance.

16. The applicant contended that the applicant was placed under suspension vide order dated 4.6.2009 and respondents are only able to serve the charge memo dated 15.7.2010 and lodged FIR on 1.7.2010 i.e. after one year and in support of his submissions, the applicant relied upon the judgment rendered by the Central Administrative Tribunal, Ernakulam Bench in the case of S.Subashchandran vs. Supdt., Railway Mail Service and ors., reported in 2010 (3) (CAT) 393. Upon perusal of the judgment relied




upon by the applicant and applying the ratio to the facts and circumstances of the present case, in the case before Ernakulam Bench, the suspension was continued under wrong belief that proceedings were pending whereby in the instant case, the Review Committee clearly indicated that the applicant has not cooperated in the inquiry and therefore, the inquiry was delayed. Not only this, the applicant frequently left the Headquarter without seeking permission, on account of this also, the delay was caused which is directly attributable to the applicant. In this case, the Review Committee thoroughly considered this aspect and was not under the wrong belief as held by the CAT-Ernakulam Bench. Therefore, in our considered view, the judgment relied by the applicant is not applicable to the facts and circumstances of the present case.

17. We have also carefully gone through the charges leveled against the applicant and the report submitted by the Inspector, Posts dated 6.6.2009 and 12.6.2012. As the applicant committed a fraud in MIS Accounts, and also retrained excess cash for his personal use, hence the inquiry was rightly initiated against the applicant and looking to the gravity of charges, the applicant was placed under suspension on 4.6.2009 and major penalty chargesheet was issued on 15.7.2010 after one year, which is absolutely in accordance with OM dated 7.1.2004 according to which if the officer has been under suspension for one year without any charges being filed in a court of law or no charge memo has been issued in a departmental inquiry, he shall ordinarily be



reinstated in service without prejudice to the case against him. However, in case of officer is in police/judicial custody or is accused in serious crime or a matter of involving national security, the review committee may recommend the continuation of the suspension of the officer concerned. Since the applicant has committed a fraud to the tune of Rs. 9,12,728 in MIS accounts, SB Accounts and other Misc. items and breached the faith of the Government, which was a serious crime and further he did not remain at his headquarter and refused to give statement in the Divisional Level inquiry on 3.10.2009 and non-availability of the applicant at his headquarter or at his permanent address during the circle level inquiry shows his non-cooperative attitude in departmental inquiry by which case has been prolonged, which is directly attributable to the applicant. Looking to the peculiar facts and circumstances of the case, the Review Committee has not revoked the suspension order and has rightly reduced the subsistence allowance, which cannot be said to be arbitrary, illegal and contrary to the provisions of Article 14, 16 and 21 of the Constitution of India.

18. Consequently, we find no merit in these OAs and the OAs being bereft of merit fails and the same are hereby dismissed with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/