

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 629/2011

DATE OF ORDER : *10th* December, 2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Arjun Lal Saini S/o Shri Ruda Ram Saini, Aged about 62 years, resident of Seva Das Ki Dhani, Village and Post: Barvasi, Via : Nawalgarh, District : Jhunjhunu and retired on 31/08/2009 from the post of Postal Assistant (BCR) Jhunjhunu Head Post Office.

....Applicant

Mr. C.B. Sharma, counsel for the applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. Director, Postal Services, Rajasthan Western Region, Jodhpur-342001.
4. Superintendent of Post Office, Jhunjhunu Postal Division, Jhunjhunu-333001.

....Respondents

Mr. Gaurav Jain, Counsel for the respondents.

ORDER

The applicant has filed this Original Application claiming for the following reliefs:

- (i) That the respondents be directed to refund Rs. 1,56,452/- alongwith interest at the market rate by quashing letter dated 24/03/2011 (Annexure-A/1) with the memos dated 17/04/2009 (Annexure-A/2) and 28/11/2007 (Annexure-A/3) with all consequential benefits.

Anil Kumar

- (ii) The charge memo dated 30/08/2007 (Annexure-A/4) be quashed and set aside, as the same is not justified as per facts & circumstances.
- (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.

2. The facts of the case, as stated by the learned counsel for the applicant, are that the applicant was working as Postal Assistant in the year 2005-2006. He was directed to work as Assistant Post Master. He performed his duties sincerely.

3. Learned counsel for the applicant further submitted that the respondents No. 4 taking into consideration some irregularities in final withdrawal of recurring deposit accounts, served minor penalty charge sheet dated 30.08.2007 (Annexure-A/4) under Rule 16 of CCS (CCA) Rules 1965 on the allegations that applicant while working as Assistant Post Master from 30/11/2005 to 09/09/2006 not compared the signatures and also failed to act as per procedure and by this other officials took fraudulent withdrawals. In the charge memo, it was not mentioned that the department suffered any financial loss.

4. Learned counsel for the applicant also stated that the applicant submitted effective representation on 22-09-2007 (Annexure A/5) against charge memo stating therein that allegations in the charge memo are against the facts and also made request for oral inquiry under Rule 16 (I-A) with the

Anil Kumar

further request that applicant also not allowed to go through documents for which he made request.

5. Learned counsel for the applicant submitted that the respondents No. 4 being Disciplinary Authority without due consideration of representation of the applicant and without allowing oral inquiry which is mandatory on request as per provisions of Rule 16 (I-A) imposed punishment of recovery of Rs. 1,56,452/- out of which Rs. 56,452 to be recovered from pay & allowances in 22 installments of Rs. 2566/- per month and remaining amount of Rs. 1,00,000/- from gratuity vide memo dated 28-11-2007 (Annexure-A/3).

6. Learned counsel for the applicant also submitted that the respondent No. 3 is Appellate Authority under Rule 23 and 27 of CCS (CCA) Rules 1965. However, applicant preferred revision petition under Rule 29 (I-V) on 11-02-2008 and the same within 45 days i.e. the period of appeal and respondent No. 3 instead the same as appeal decided as revision petition vide memo dated 20/04/2009 in spite of fact that respondent No. 3 is not competent to act as revising authority as per provisions of Rule 29 or in the time granted for appeal.

7. Learned counsel for the applicant further submitted that the respondents No. 3 should have forwarded revision petition to the competent authority. This Tribunal in O.A. No. 450/2010 (Ram Khilari Meena Versus Union of India and others) decided vide order dated 03/05/2011 held that appellate

Anil Kumar

authority cannot act as revising authority under provisions of rule 29 of CCS (CCA) Rules 1965 (Annexure-A/7).

8. Learned counsel for the applicant further submitted that the applicant stand retired on 31/08/2009 and recovered the amount from gratuity sanctioned vide letter dated 13/08/2009 and further preferred revision petition before the respondent No. 2 who is revising authority on 03/05/2010.

9. Learned counsel for the applicant submitted that the respondent No. 4 vide letter dated 24/03/2011 (Annexure A-1) informed the applicant that revision petition preferred by the applicant cannot be entertained because applicant has already availed channel of revision before the appellate authority and nowhere forwarded the revision petition before the respondents No. 2 inspite of fact that respondents No. 3 is appellate authority and cannot act as revising authority.

10. Learned counsel for the applicant argued that Rule 11 (iii) prescribed recovery from pay and nowhere prescribed recovery from gratuity and CCS (Pension) Rules 1972 also nowhere prescribed any recovery on account of pecuniary loss and prescribed recovery of outstanding Government dues. Besides this applicant nowhere responsible for any lapses because GDS SPM Bai took fraudulent withdrawals and thereafter duties of ledger clerk in Head Post Office and also passed withdrawals with the direction to the GDS SPM that amount be paid after taking proper witnesses. In fact applicant acted as per procedure.

Anil Kumar

11. To support his averments, that recovery cannot be made from gratuity, he referred to order dated 11/09/2013 of this Tribunal passed in O.A. No. 498/2011 (Shri K.L. Dithwania Vs. Union of India) and 437/2012 (Shri K.L. Dithwania Vs. Union of India).

12. Therefore, he prayed that the charge memo dated 30/08/2007 (Annexure-A/4), penalty order dated 28/11/2007 (Annexure A/3), the memo dated 17/20-04-2009 (Annexure A/2) and letter dated 24/03/2011 (Annexure A/1) be quashed and set aside with all consequential benefits.

13. On the other hand the learned counsel for the respondents submitted that the applicant Shri Arjun Lal Saini while working as Assistant Post Master (RD) Jhunjhunu Head Post Office was identified as subsidiary offender in the fraud case relating to misappropriation of government money by a principle offender Shri Ram Gopal Sain, Gramin Dak Sewak Sub Postmaster Bai under Jhunjhunu Head Post Office to the tune of Rs. 3,56,009/- during the inquiry conducted by the Assistant Superintendent of Post Offices Jhunjhunu as well as by the Postmaster General Rajasthan (W) Region Jodhpur, the applicant was found guilty for committing serious irregularities in his supervisory work and was served with a charge sheet under Rule 16 of CCS (CCA) Rule 1965 vide memo dated 30/08/2007. The charge sheet was served upon him on 31.08.2007 as per AD available on record. The applicant was relieved for inspection of the documents on 08.09.2007 and 10.09.2007 on his request

Anil Kumar

through his application dated 03.09.2007. The applicant again applied through his application dated 07.09.2007 for supply of photocopies of some statements and documents elaborated S. No. 01 to 12 of his application. But in disciplinary action under Rule 16 of CCS (CCA) Rule 1965 there is no provision to provide the photocopies of the documents except inspection of documents. The applicant inspected all of the documents/records desired by him on 18.09.2007 and he has given a certificate in writing stating that "today I attended D.O. Jhunjhunu and inspected all the relevant documents" with his date and signature (Annexure R/1).

14. Learned counsel for the respondents further submitted that the memo of charge sheet was served to the applicant on 31.08.2007 and he submitted his defence representation dated 22.09.2007, which was received on 24.09.2007 as per record. After due consideration and detailed discussion on the representation dispassionately the case was decided on 28.11.2007 by the disciplinary authority with a punishment of recovery of Rs. 156,452/- from the pay of the applicant. Out of Rs. 1,56,452/-, Rs. 56,452/- has been recovered from his pay in 22 equal installments of Rs. 2566/- each per month starting from the salary for the month of Nov, 2007 and remaining amount Rs. 1,00,000/- (Rs. One lac) will be recovered from his DCRG payable at the time of his retirement as per provision of Rule 73 of Pension and Gratuity rules (Annexure R/2).

Anil Kumar

15. The learned counsel for the respondents further submitted that the applicant without submitting his appeal submitted revision petition dated 11/02/2008 to the appellate authority i.e. the Director Postal Services, Rajasthan Western Region, Jodhpur. The revision petition was rejected by the Director Postal Services vide memo dated 20.04.2009.

16. The learned counsel for the respondents also submitted that against the decision dated 20.04.2009, the applicant submitted his second petition dated 30.05.2011 addressed to the Chief Post Master General, Rajasthan Circle, Jaipur. The same was not considered by the Competent Authority stating that revision petition can be made only once by the applicant/official (Annexure R/3).

17. He further submitted that the appellate authority can exercise the powers to revising authority as per provisions contained in Rule 29 (1) (V) CCS (CCA) Rules 1965. To support his averments, he referred to the following case law:

1. O.A. No. 260/2004, Dhola Ram Choudhary V/s Union of India Decided by the Central Administrative Tribunal, Jodhpur Bench on 28.05.2007.
2. Civil Appeal No. 2602/2006, Union of India V/s Vikram Bhai Maganbhai Choudhary decided by the Hon'ble Supreme Court on 01.07.2011.

18. The learned counsel for the respondents further argued that recovery was made as per provisions contained in

Anil Kumar

Rule 73 (3) of CCS (Pension) Rules 1972 provided that those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of (retirement gratuity) becoming payable to the Government servant on his retirement. Therefore, he submitted that an amount of one lac recovered from gratuity is as per rules.

19. He argued that there is no illegality or arbitrariness on the part of respondents in issuing the charge memo, passing the penalty order and rejecting the revision by the appellate authority. His second revision petition was also not considered because it was not permissible under the rule. He prayed that the O.A. has not merit and the same deserves to be dismissed with cost.

20. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties.

21. The learned counsel for the applicant argued that the applicant was working in supervisory capacity and, therefore, he was not responsible for any irregularity as alleged by the respondents in the charge sheet. On the other hand, the learned counsel for the respondents submitted that during the inquiry conducted by the Assistant Superintendent of Post Office, Jhunjhunu as well as by the Post Master General, Western Region, Jodhpur, the applicant was found guilty of committing

Anil Kumar.

serious irregularities in supervisory work and, therefore, he was served with a charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 vide Memo dated 30.08.2007 (Annexure A/4). As a supervisory officer, it was his responsibility to maintain strict watch on the financial transaction being done under his supervision. I am inclined to agree with the averments made by the learned counsel for the respondents that merely because the applicant was working in a supervisory capacity, it cannot be said that he was not responsible for the work of his subordinates. It is the duty of the supervisory officer to exercise proper check on the work of his subordinates so that no irregularity is committed by them. In the present case, an inquiry was conducted by the Assistant Superintendent of Post Offices, Jhunjhunu as well as by the Post Master General, Rajasthan Western Region, Jodhpur and when the applicant was found guilty for having committed serious irregularity in his ^{role} ~~supervisory~~ only thereafter he was served with a charge sheet. Therefore, I do not find any irregularity/illegality in the issuance of the charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 to the applicant.

22. With regard to the submission of the learned counsel for the applicant that he made a request for oral inquiry under Rule 16 (1-A) and, therefore, it was mandatory for the Disciplinary Authority to allow the oral inquiry, the learned counsel for the respondents submitted that under Rule 16 (1-A), it is not necessary or mandatory to order for an oral inquiry if the Charged Officer makes a request for a oral inquiry. I have

Anil Kumar.

carefully gone through the Rule 16 (1-A) of the CCS (CCA) Rules, 1965. I find that there is no provision in this Rule to the effect that if a Charged Officer requests for an oral inquiry then it is mandatory for the Disciplinary Authority to order such an oral inquiry. Government of India's instructions as contained in Government of India, Department of Personnel & Training OM No. 11012/18/85-Estt. (A) dated 28.10.1985 clearly states that where a minor penalty is to be imposed, Rule 16(1) leaves to the discretion of the Disciplinary Authority to decide whether an inquiry should be held or not. Therefore, I am of the view that if the Disciplinary Authority did not order for an oral inquiry inspite of the request made by the applicant then he did not violate any provision of the CCS (CCA) Rules, 1965. Thus on this ground, the applicant is not entitled for any relief.

23. The learned counsel for the applicant had submitted that the applicant was not allowed to go through the document with which he made request. The respondents in their reply have stated that under Rule 16 of CCS (CCA) Rules 1965, there is no provision to provide the photo copy of the document except inspection of documents. The applicant inspected the documents/record, desired by him on 18.09.2007 and he has given a certificate dated 18.09.2007 (Annexure R/1) in writing stating that he had inspected all the relevant documents (Annexure R/1). I have perused the certificate dated 18.09.2007 (Annexure R/1) which clearly states that the applicant attended DOJN and inspected all the relied documents. Thus in my opinion, he was given fair opportunity to inspect all the relied

Anil Kumar

documents and on this ground, the applicant is not entitled to any relief.

24. The learned counsel for the applicant also submitted that in the charge memo, it was not mentioned that the Department suffered any financial loss. In reply, the respondents have submitted that the amount of the fraudulent transaction have been mentioned in the charge memo due to laxities on the part of the applicant. Due to negligence of the applicant, the applicant facilitated GDS SPM Bai (Nawalgarh) to commit a fraud to the tune of Rs.3,56,009/- which was ultimately loss to the Department. If there was no loss to the Department, the question of recovery does not arise.

25. I have perused the charge memo dated 30.08.2007 (Annexure A/4). The statement of imputation of misconduct or mis-behaviour on the basis of which the disciplinary action was taken against the applicant, which is annexed with the charge sheet, clearly shows the amount of fraudulent transaction. Therefore, the contention of the learned counsel for the applicant that the amount of loss to the Government has not been mentioned in the charge memo cannot be accepted and the applicant cannot be given any relief on this point.

26. The learned counsel for the applicant vehemently argued that the applicant had preferred a Revision Petition dated 11.02.2008 under Rule 29 (1)(v) of the CCS (CCA) Rules, 1965 (Annexure A/6). This Revision Petition was submitted within 45

Anil Kumar.

days i.e. the period of appeal and the respondent no. 3 instead of forwarding it to the Revising Authority decided himself. The respondent no. 3 is not competent to act as Revising Authority as per the provisions of Rule 29 for the time granted in appeal. To support his averments, he referred to the order of this Tribunal in OA No. 450/2010 (**Ram Khilari Meena vs. Union of India & Others**) decided on 03.05.2011 (Annexure A/7). He submitted that it has been held in this order that the Appellate Authority cannot act as Revising Authority under the provisions of Rule 29 of the CCS (CCA) Rules, 1965. On the contrary, the learned counsel for the respondents argued that the Appellate Authority can exercise the power of Revising Authority as per the provisions contained in Rule 29 (1)(v) of the CCS (CCA) Rules, 1965. To support his averments, he referred to the following case laws:-

1. O.A. No. 260/2004, Dhola Ram Choudhary V/s Union of India Decided by the Central Administrative Tribunal, Jodhpur Bench on 28.05.2007.
2. Civil Appeal No. 2602/2006, Union of India V/s Vikram Bhai Maganbhai Choudhary decided by the Hon'ble Supreme Court on 01.07.2011.

27. I have carefully gone through the order of this Tribunal in the case of OA No. 450/2010 (**Ram Khilari Meena vs. Union of India & Others**) decided on 03.05.2011 (Annexure A/7) and I am of the view that the ratio decided in this case is not applicable under the facts & circumstances of the present OA. While deciding the OA, this Bench has relied upon the **DG Posts Notification No. C-11011/1/2001-VP** dated

Anil Kumar

29.05.2001. This notification has been quashed by the Ahmedabad Bench of the Tribunal in OA No. 333/2004 vide order dated 20.04.2005. This fact was not brought to the notice of the Tribunal at the time of hearing of that OA. Moreover, the decision of the Tribunal to quash this notification has been upheld by the High Court Gujarat at Ahmedabad in Special Civil Application No. 16565/2005 vide judgment dated 12.08.2005. Further the decision of the Tribunal and the Hon'ble High Court of Gujarat at Ahmedabad has been upheld by the Hon'ble Supreme Court in the case of **Union of India & Others vs. Vikrambhai Maganbhai Chaudhari**, 2011(2) SCC (L&S) 250. Moreover, **D.G. P&T letter No. 6/13/72-Disc. I dated 12.01.1973** instructions are relevant on this point, which are quoted below:-

"Rule 29 [Revision]

Government of India's Instructions

(4) Submission of revision petition to the revising authority without submission of an appeal.-

(i) An employee may prefer a revision petition to the revising authority without submitting an appeal. If the revising authority to whom the revision petition has been preferred is the appellate authority, the revision petition should be submitted well before six months of the date of the order sought to be revised so that the appellate authority can decide to revise the case within six months under Rule 29(1)(v) of CCS (CCA) Rules, 1965. In so far as a petition for revision to the P & T Board/President is concerned though CCS (CCA) Rules, 1965, do not lay down any time limit, it would be advisable to prefer such petition within six months of the date of the order sought to be reviewed.

In view, however, of the provisions of Rule 29(2) of the CCS (CCA) Rules, 1965, the revising authority can take up the petition for consideration only after the period of limitation for an appeal has expired."

Amit Kumar

28. I have perused the Revision Petition filed by the applicant dated 11.02.2008 (Annexure A/6), which is addressed to the Director Postal Services, Rajasthan Western Region, Jodhpur. Under the Heading "Subject", the applicant has written as follows:-

"Subject: Submission of revision petition under Rule 29(1)(v) of CCS (CCA) Rules 1965 against the penalty imposed vide the SPOS Jhunjhunu Memo No. F7-1/BAI/07-08 dated the 28.11.2007"

29. From the perusal of the Revision Petition, it is clear that the applicant has exercised his discretion of not filing an appeal according to the instructions of the **D.G. P&T letter No. 6/13/72-Disc. I dated 12.01.1973**, as quoted above and it is addressed to the Director Postal Services, Rajasthan Western Region, Jodhpur, who is also the Appellate Authority in this case. Under Rule 29 (1)(v) of the CCS (CCA) Rules, 1965 which provides for Revision & Review and it clearly mentions that the Appellate Authority can exercise the power of review within six months of the date of the order proposed to be revised. In this case, the order of penalty has been passed on 28.11.2007 by the Disciplinary Authority and the applicant has filed the Revision Petition before the Appellate Authority on 11.02.2008. Thus this Revision Petition was filed by the applicant within six months from the order passed by the Disciplinary Authority. Therefore, the Appellate Authority was well within his right to consider this Revision Petition filed by the applicant. Therefore, the applicant is not entitled for any relief on the ground that the Appellate

Anil Saeman

Authority could not have decided the Revision Petition filed by the applicant dated 11.02.2008 (Annexure A/6).

30. The applicant submitted the second petition dated 03.05.2010 addressed to the Chief Post Master General, Rajasthan Circle, Jaipur. The same was not considered by the competent authority stating that the Revision Petition can be made only once by the applicant. I do not find any infirmity in this decision of the respondents.

31. Thus on the basis of the above discussion, I am of the opinion that the charge sheet was served on the applicant according to the rules and there is no infirmity in the issuance of the charge sheet and hence charge sheet cannot be quashed. The Disciplinary Authority followed the due procedure before passing the penalty order. The applicant was allowed the inspection of the documents and the applicant also filed his representation against the charge memo. The Disciplinary Authority after considering his representation and other relevant documents and facts passed the Disciplinary order. Thus a proper procedure was followed by the Disciplinary Authority.

32. I also do not find any infirmity in the order passed by the Director, Postal Services, Rajasthan Western Region, Jodhpur while deciding the Revision Petition of the applicant.

33. However, with regard to the recovery from the gratuity, the learned counsel for the applicant drew my attention

Anil Kumar

to the order of this Tribunal passed in OA No. 498/2011 (K.L. Dithwania vs. Union of India & Others) and OA 537/2012 (K.L. Dithwania vs. Union of India & Others) decided on 11.09.2013. I have carefully perused this order of the Tribunal in which the Tribunal has held that the recovery cannot be made from the gratuity. The learned counsel for the respondents argued that the recovery was made as per the provisions contained under Rule 73(3) of the CCS (Pension) Rules, 1972 and, therefore, the recovery from the gratuity of the applicant is according to the rules and there is no illegality in the action of the respondents. I have carefully perused the Rule 73 of the CCS (Pension) Rules, 1972, which is quoted below:-

"73 Adjustment and recovery of dues other than dues pertaining to Government accommodation

- (1) For the dues than the dues pertaining to occupation of Government accommodation as referred to in Clause (b) of sub rule (3) of Rule 71, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.
- (2) The assessment of Government dues referred to in rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant.
- (3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of retirement gratuity becoming payable to the Government servant on his retirement."

34. From the perusal of this Rule 73 of the CCS (Pension) Rules, 1972, it is clear that it refers to the dues as defined under Rule 71 to this Rule. Rule 71 of the CCS (Pension) Rules, 1972 is quoted below:-

Anil Kumar

"71. Recovery and adjustment of Government dues

- (1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.
- (2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant shall be adjusted against the amount of retirement gratuity becoming payable.
- (3) The expression 'Government dues' includes-
 - (a) dues pertaining to Government accommodation including arrears of licence fee, if any.
 - (b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

35. From the perusal of the above provision, it is clear that the recovery of penalty amount due to disciplinary proceedings is not covered under Rule 71 of the CCS (Pension) Rules, 1972. The Government dues have been clearly defined in Rule 71 (3) of the CCS (Pension) Rules, 1972. Moreover in the OA No. 537/2012 (K.L. Dithwania vs. Union of India & Others), the respondents themselves in their reply in Para No. 4.9 of that OA had categorically stated that the recovery of Rs.1,90,000/- could not be made from the retirement gratuity and, therefore, recovery was made from the leave encashment as per Rule 39(3) of CCS (Leave) Rules, 1972.

36. Moreover in the case of one Shri Bhogi Ram, which was referred to by the learned counsel for the applicant in OA No. 537/2012 (K.L. Dithwania vs. Union of India & Others), the Appellate Authority vide order dated 19.07.2005 (Annexure A/8

Anil Kumar

of that OA) has clearly mentioned that the penalty awarded is irregular as there is no provision to order recovery from the retirement benefits of an employee in disciplinary cases under Rule 16 of the CCS (CCA) Rules, 1965.

37. Thus it is clear from the above discussion that recovery of Rs.1,00,000/- from the applicant's DCRG is not according to the rules and to this extent the order of the Disciplinary Authority dated 28.11.2007 (Annexure A/3) is quashed and set aside and if this recovery has been made from the DCRG of the applicant then it should be refunded back to the applicant within a period of three months from the date of receipt of a copy of this order. Accordingly, the order passed by the Revising Authority dated 17/20.04.2009 (Annexure A/2) also stands modified. It is made clear that recovery made from the applicant from his salary prior to his retirement in pursuance to the penalty order dated 28.11.2007 (Annexure A/3) shall not be refunded.

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


(Anil Kumar)
Member (A)

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