

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD**

(This the 04<sup>th</sup> Day of October 2018)

**Hon'ble Mr. Gokul Chandra Pati, Member (A)**  
**Hon'ble Mr. Rakesh Sagar Jain, Member (J)**

Original Application No.1313 of 2008

(U/S 19, Administrative Tribunal Act, 1985)

Amod Kumar Chaturvedi son of Shri Daya Shankar Chaturvedi,  
G.D.S. Branch Post Master (Put off duty) R/o Village Chhachah, Post  
Office Chhachha, District Mainpuri.

..... Applicant

By Advocate: Shri S.K. Trivedi/Shri P. Srivastava

Versus

1. The Union of India through Secretary, Ministry of Communication & IT Department of Post Dak Bhawan, Sansad Marg, New Delhi 110001.
2. The Post Master General, Agra Region, Agra.
3. The Director Postal Services office of the Post Master General Agra Region, Agra.
4. The Superintendent of Post Offices, Mainpuri, District Mainpuri.

..... Respondents

By Advocate: Shri R.P Singh

**ORDER**

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. Applicant's case is that he was appointed as G.D.S. Branch Post Master on 12.10.1988 and while working as Branch Post Master Chhachha was put off duty w.e.f. 23.9.2003 by Superintendent of Post Office Mainpuri Division. He was issued

a memo under Rule 10 of G.D.S. (Conduct and Employment) Rules 2001 after lapse of more than 1 year 3 months vide memo dated 17.12.2004, which is against G.O.I Instruction (3) of Rule 13 of G.D.S. (Conduct and Employment) Rules 2001 (D.G. Post L.R. No. 294 (E-Trag dated 26<sup>th</sup> July 1990). Since the Disciplinary proceedings were not completed within the statutory period of 45 days, applicant filed O.A. No. 2897 of 2004 in C.A.T., Principal Bench, New Delhi, which was disposed of vide order dated 23.8.2006 whereby respondents were directed to complete the disciplinary proceedings against the applicant within the period of 6 months with the specific condition that no further time would be accorded to the respondents in this regard.

2. Despite direction of the Tribunal, the Disciplinary Authority did not complete the enquiry within the period of 6 months and in this regard, applicant also sent a legal notice to the Disciplinary Authority on 21.9.2007. Becoming annoyed by the notice, the Disciplinary Authority vide order dated 23.10.2007 (Annexure A-2) dismissed the applicant from the service. Applicant filed an appeal against order dated 23.10.2007 before respondent No.3 on 14.1.2008 which was not decided till August 2008 which constrained the applicant to file OA No. 806/2008 wherein direction was given to respondent No.3 to decide the appeal and the same was dismissed by respondent No.3. The allegation against applicant was that an F.I.R. No. C-21 of 2004 for offence under section 420/467/468/418/421 IPC was lodged in Police Station Bhagaon Mainpuri and thereafter disciplinary proceeding was initiated. The Investigating Officer on conclusion of the investigation filed the final report (Annexure A-4 to Compilation II) that no offence is made out which was accepted by C.J.M. Mainpuri vide order dated 6.11.2006 (Annexure A-5).

3. The action of respondents violates Rule 7 of P&T Extra Departmental Agents (Conduct and Service) Rules 1964 since it is mentioned in Rule 7 that the Authorities are required to impose one of the specified penalties in the Rule (See judgment Annexure A-6).

4. The reliefs sought by applicant are as under:-

*“(i) The order dated 23.10.2007 passed by Superintendent of Post Offices, Mainpuri Division Mainpuri and order dated 20.8.2008 passed by respondent No. 3 is quashed.*

*(ii) Any other relief as this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case.*

*(iii) Cost of applicant may be awarded”.*

5. In reply, respondents in their counter affidavit averred that on complaints against applicant that he had made fraudulent withdrawals from Accounts of deceased Account Holders after forging documents, enquiry was conducted by Asstt. Superintendent of Post Offices, Mainpuri who in his report dated 11.3.2003 observed that the matter requires a thorough investigation.

6. Thereafter Ram Mahesh, Sub Divisional Inspector Mainpuri started verification of the Chhachha Branch and looking to the interference by the applicant, the applicant was placed off duty vide order dated 23.9.2003 (Annexure 2) but the applicant refused to receive the put off duty memo and also the transfer order whereby atleast the charge of Chhachha Branch could be transferred on 13.10.2003 with the help of Police Authority. Thereafter applicant was chargesheeted vide memo dated 17.12.2004 for the fraudulent withdrawal from the accounts of deceased persons by indulging in forgery. The Asstt. Superintendent of Post Offices and

Rajendra Rao Sub Divisional Inspector were appointed as Enquiry Officer and Presenting Officer respectively on 24.1.2005 and on 1.2.2005 and 4.2.2005, the dates fixed in the enquiry, applicant did not attend the enquiry proceedings.

7. The first challenge to the entire enquiry proceeding by applicant is that it was not completed with the time frame fixed by the Tribunal and, therefore, being vitiated are to be quashed.
8. The case set up by the respondents finds mention in of the counter affidavit as :

*"29. That the contents of paragraph No.4 (vi) of the original application is not admitted as stated, hence denied. In reply, it is submitted that the copy of judgment dated 23.8.2006 was received on 28.11.2006, thus the period provided by the Court would elapse on 28.5.2007.*

*As regards completion of inquiry within stipulated period, it is submitted that due to transfer of Shri Rajan Rao, Sub Divisional Inspector (Posts), Mainpuri and Presenting Officer in this case, Shri R.S. Yadav, P.A. Mainpuri Head Office was appointed as Presenting Officer vide Superintendent of Post Offices Mainpuri Memo dated 22.8.2006. The inquiry officer fixed 16.10.2006 and 24.11.2006 but the Presenting Officer could not attend the enquiry as he fell ill all of sudden and ultimately died on 08.01.2007. Observing the situations, the Presenting Officer was changed and Shri Awadhesh Singh, Officiating C.I. was appointed as Presenting Officer on 04.01.2007. The Inquiry Officer was directed to complete the enquiry within one month vide his letter dated 4.1.2007 (Annexure CA-1), keeping in view the Court orders.*

*The Inquiry Officer was again requested to complete the enquiry at once vide Superintendent of Post Offices Mainpuri letter dated 07.02.2007. The inquiry officer fixed 23.2.2007 for submitting list of additional documents and defence witness. The Inquiry Officer*

was again requested to complete the enquiry vide letter dated 15.3.2007. The Inquiry Officer fixed 03.04.2007 to hold the enquiry at D.O. Mainpuri and 04.4.2007 to hold it at Bhongaon and notices were sent to all concerned.

The Defence Assistant vide his application dated 02.04.2007 addressed to the Inquiry Officer and sent it through special messenger on 3.4.2007 to the Inquiry Officer when he was holding the enquiry at D.O. Mainpuri requested that he was unable to attend the enquiry on 3.4.2007 and 4.4.2007 due to death of his father. The notice sent by Inquiry Officer was also delivered to the applicant on 29.3.2007. However, the applicant came to the Post office and tore off the receipt of the said letter posted on the Branch office slip. The Photostat copy of the letter sent by the Branch Post Master Chhachha in this regard is being filed herewith and marked as Annexure CA-22 to this affidavit.

The applicant did not attend the enquiry. The Inquiry Officer fixed next date as 13.4.2007 on the order sheet dated 03.04.2007, requesting the PWs named Sri R.M Shakya Assistant Superintendent of Post Offices and Sri Hori Lal Shakya G.P. VDO Sultanganj.

On 13.4.2007, the applicant as well as his Defence Assistant attended the enquiry and PWs named Sri Ram Mahesh Shakya Assistant Superintendent of Post Offices was cross-examined by the applicant. The second PW did not attend the enquiry. The Inquiry Officer fixed next date as 25.4.2007 and 26.4.2007 for examination of PWs on 25.4.2007, Sri Ram Mahesh Shakya Assistant Superintendent of Post Offices Mainpuri was cross examined by the applicant and Defence Assistant but on 26.4.2007, the applicant through a messenger submitted an application dated 26.4.2007 to the Inquiry Officer requesting that he came to attend the enquiry but suddenly fell ill. So, he could not attend the enquiry. He also informed that no further proceedings should be held. The Photostat copy of his application dated 26.4.2007 is being filed herewith and marked as Annexure CA-23 to this affidavit.

30. That in reply to the contents of paragraph No. 4 (vii) of the original application, it is submitted that the proceedings went on to be held by the inquiry officer who fixed next date as 03.05.2007 and 4.5.2007 for examination of prosecution witnesses keeping in view that the stipulated period fixed by the Hon'ble Court would elapse on 28.5.2007. The applicant did not attend the enquiry but served a legal notice dated 02.05.2007 through Shri D.P Sharma, Advocate stating that the disciplinary proceedings stand abetted from 01.04.2007 and examination of prosecution witnesses at this stage will be contempt of the Court.

As such the inquiry officer had to continue inquiry ex parte. The proceedings so held were sent to the applicant who was also asked to send his defence representation but the applicant did not comply with the Inquiry Officer's directions and ultimately the inquiry officer submitted his enquiry report which was sent to him on 3.9.2007 for sending his representation, if any, but no representation was received from him.

In order to avoid any lacuna, the department filed a Miscellaneous Application No. 1052 of 2007 on 24.5.2007 for extending time for 3 months from 30.5.2007 but it was disposed of with liberty to the respondents to take appropriate proceedings. Complying with such directions another Miscellaneous Application No. 1948 of 2007 for granting two months extension of time was filed on 21.9.2007 and it was allowed by the Hon'ble Court vide its judgment dated 26.10.2007, a copy of which is being filed herewith and marked as Annexure CA -24 to this affidavit. When the matter was recalled by the applicant, it was deeply heard with special reference to the circumstances that the proceedings could not be completed because of non cooperation of the applicant as mentioned at Serial No. 7 and 8 of the order dated 13.11.2007 copy of which is being filed herewith and marked as Annexure CA-25 to this affidavit. Thus there is no question of being annoyed with the applicant as everything bears the judicial stamp".

9. It is the argument of the learned counsel for the applicant that as per the order of tribunal, respondents were to complete the disciplinary proceedings, pass the final order and communicate to applicant within a period of six months from the date of receipt of order, which the respondents could not do and therefore the entire proceedings are vitiated. Learned Counsel for applicant argued that as per the order dated 23.8.2006 of the tribunal, the enquiry proceedings were to be completed within 6 months from receipt of order. The order, as mentioned in the counter affidavit was received by their counsel on 28.11.2006 and by the Superintendant of Post Offices Mainpuri Division on 14.12.2006 and the six month period would expiry on 28.05.2007 or at the most on 14.6.2007 but the Disciplinary Authority completed the enquiry proceeding by its order dated 23.10.2007, which is beyond the time limit of six months fixed by the Tribunal, therefore, entire enquiry proceeding is non est.
  
10. The scope of directive given by the Central Administrative Tribunal, Principal Bench in O.A. No. 2897/2004 titled Amod Kumar Chaturvedi v/s Union of India vide order dated 23.08.2006. The directive reads as under-
 

*“Having regard to the facts of the case and the submissions made before us by the parties, we are inclined to agree with the submissions of the learned counsel for the applicant and dispose of the present OA with the following directions-*

  - (i) *The respondents shall complete the disciplinary proceedings against the applicant and pass the final order in it and communicate it to the applicant within a period of six months from the date on which the copy of the order is received provided the delay is not attributable on the part of the applicant. We*

*make it clear that no further time will be accorded to the respondents in this regard.*

- (ii) *The respondents shall consider the revision of the ex gratia payment/compensation which is to be granted to the applicant during the period the applicant remained of duty in accordance with the Rules 12 (3) of GDS (Conduct and Employment) rules 2001. This order will be implemented within a period of two months from the date on which copy of the order is received by the competent authority"*

11. The essential conditions of this direction are:

- A. Respondents to complete the disciplinary proceedings, pass the final order and communicate to applicant within a period of six months from the date of receipt of order provided the delay is not attributable to applicant;*
- B. Clear that no further time will be accorded to the respondent in time limit given by the Tribunal*

12. So, the respondents while controverting the plea of applicant that the enquiry was completed with the time limit set by the Tribunal have taken the plea that they had filed an application before the Tribunal for extension of time in completing the enquiry and which was granted by the order dated 13.11.2007 (Annexure CA25).

13. Looking to the plea of the respondents it would be imperative to go into the scope of the Order dated 13.11.2007 of the Tribunal. The relevant portion of the order reads as under:

*"(5) The present application according to the applicants (original respondents) is maintainable since there is a definite averment that proceedings have been delayed because of*



non-cooperation of the applicant and it came well within the mischief of the order of the Tribunal. Since it is felt that there was no cooperation on the part of the applicant, necessarily the time had to be enlarged even on the basis of the earlier order of the Tribunal.

(6) On behalf of respondent (original applicant), Shri D.P Sharma submits that application is misconceived. A second application for extension which has been rejected once is not maintainable. It is also submitted that the time in the matter of implementation could not be granted from 28.11.2006, since as a matter of fact, the orders had been delivered on 23.8.2006. He submits that in view of the specific observations, the orders should have been complied with by 17.3.2007. It is pointed out that the alleged non-cooperation of the applicant could not be taken as a ground for enlarging of time as it was beyond this date.

(7). In the totality of circumstances, we do not think that the present application is to be rejected, as there is reference to the circumstances that the proceedings could not be completed because of non-cooperation of the applicant. The matter, therefore, required to be examined when materials are presented. We note that as a matter of fact, they had received orders only on 28.11.2006. The anxiety of the Tribunal was that the matter should not be indefinitely delayed and excepting that there was no particular sanctity in the prescription of time.

(8) Taking notice of the totality and facts and circumstances of the case, we are constrained to hold that the application is maintainable. Petitioners (original respondents) are granted time as prayed in MA 1984/2007. Result of the above being that the enquiry was permitted to be completed this cannot itself be a reason for the applicant

*to agitate that he is entitled to take advantage of technicalities.*

*(9) We dispose of the MA as above. The observations in the order and the decision itself, may not preclude the applicant to raise any legal contentions which he can raise in any connected proceedings".*

14. Learned counsel for applicant in support of his arguments placed reliance upon the decision of ***K.B. Bharadwaj Vs. UOI and Ors, 2002 (2) A.T.J 477, H.S Shekhawat Vs. UOI and Ors, 2004 (1) A.T.J 458*** and ***State of Bihar and others Vs. Subhash Singh (1997) 4 SCC 430*** . Undoubtedly in all the citations, the findings are that enquiry completed beyond the time limit set by the concerned forum being null and void are to be quashed. It be noted that in none of the citations, the department has sought time for extension of the period to complete the enquiry proceedings.
15. On the other hand, learned counsel for the respondents submitted that in the present case, the period for completing the enquiry proceedings was extended by the learned Tribunal, as such, the contention of applicant has no legs to stand upon and deserves to be rejected out-rightly.
16. Order dated 13.11.2007 of the Tribunal, extended the period within which the enquiry is to be completed. In the said order, the learned Tribunal taking note of the non-cooperation of the applicant observed that the anxiety of the Tribunal was that the matter should not be indefinitely delayed and accepting that there was no particular sanctity in the prescription of time and that the enquiry was permitted to be completed cannot itself be a reason for the applicant to agitate that he is entitled to take advantage of technicalities

and, therefore, time for completing the enquiry was extended.

17. In fact, in **C.Veerathevar vs The State Of Tamilnadu** decided on 30.04.2014 by the Madurai Bench of Hon'ble Madras High (Source IndianKannon.com) it was held that *"At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice."*
18. It may be noted that applicant has not agitated the order of extension of time in the appellate forum and allowed the order to stand as it is. In fact the applicant has acquiescence in the order of extension of time since he took part in the enquiry proceeding and even filed an appeal against the order of Disciplinary Authority, therefore, the first ground of challenge to the enquiry proceeding on the ground of non-completion within the time stipulated by the Tribunal as projected by the applicant is devoid of force and is to be rejected. The report of the Inquiry Officer cannot be considered to be invalid on the ground that it was not completed within the time stipulated by the Tribunal.
19. The second challenge to the order of the Disciplinary Authority is the punishment/penalty imposed upon the applicant. In this regard, learned counsel for applicant submitted that the disciplinary authority vide its order dated 24.10.2007 has imposed the penalty of 'removal from service' under GDS (Conduct and Employment) Rules 2001, which is

not one of the penalties listed in the rules and placed reliance upon OA No. 621 of 1997 titled Madan Mohan Vs. UOI decided by C.A.T, Calcutta Bench vide order dated 16.7.2003. Whereas learned counsel for respondents submitted that penalties have been imposed in accordance with the rules.

20. Nature of penalty which can be imposed upon a delinquent official in terms of Rule 9, read as under-

*"9. Nature of penalties.*

*The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Sevak by the Appointing Authority, namely-*

- (i) Censure;*
- (ii) Debarring of a Sevak from appearing in the recruitment examination for the post of Postman and/or from being considered for recruitment as Postal Assistant/Sorting Assistant for a period of one year or two years or for a period not exceeding three years;*
- (iii) Debarring of a Sevak from being considered for recruitment to Group D for a period not exceeding three years.*
- (iv) Recovery from Time related Continuity Allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;*
- (v) Removal from employment which shall not be a disqualification for future employment.*
- (vi) Dismissal from employment which shall ordinarily be a disqualifications for future employment".*

21. We may refer to Madan Mohan (supra) where the penalty of discharge was imposed upon the delinquent official and was set aside by the Tribunal on the ground that it is not one of the penalties specified in the list of penalties which can be imposed upon a delinquent official.

22. In Madan Mohan (supra) it was held by the Tribunal that –

*"15. We have also seen the order of the disciplinary authority and we find that the applicant has been imposed the penalty of discharge from the post. Extra Departmental Agents Conduct and Service Rules does not list out discharge from the post as a punishment under rule (7) of the rules. On our specific query regarding this, the Id. Counsel for the respondents referred to the legal dictionary meaning of the word discharge which also means removal/dismissal and submitted that all the three are one and the same according to the legal dictionary. We do not subscribe to this view or submission of the Id. Counsel for the respondents regarding the specific provisions of statutory rules. The list of the penalties has prescribed the specific penalties and the administrative authorities, namely respondents in this case, are required to impose one of such penalties on sufficient cause and justification. They cannot invent new penalty and impose the same taking help of dictionary etc... We find on this account the order dated 18.7.96/16.8.96 enclosed as annexure -A against the provisions of Rule (7) of the E.D.A Conduct and Service Rules and the same cannot be sustained as it is illegal and against the provisions of Rules.....".*

23. So, in the present case, the Disciplinary Authority has not imposed the penalty specified by Rule 9. It is also noted that the applicant had refused to participate in the inquiry towards the end on the ground that it was not completed within time. But we have not accepted this ground as discussed in para 9 to 18 of this order. We also do not find anything in the pleadings if the applicant had not submitted any representation about the report of the Inquiry Officer to

the disciplinary authority or to the appellate authority. There is nothing in the pleadings of the respondents to show that reasonable opportunity was given to the applicant to represent against the report of the Inquiry Officer.

24. In view of above, the impugned order dated 24.10.2007 (Annexure A-2) is set aside and quashed and consequently, as a corollary, the impugned order of the Appellate Authority dated 20.8.2008 (Annexure A-1) would also be rendered null and void. Case is remanded back the Disciplinary Authority to allow a reasonable opportunity to the applicant to represent against the report of the Inquiry Officer, copy of which shall also be furnished to the applicant. The applicant is directed to submit his representation, if any, against the report of the Inquiry Officer to the disciplinary authority within time stipulated by him. Thereafter, the disciplinary authority shall consider all relevant documents including representation of the applicant against the report of the Inquiry Officer and pass a fresh order as per the provisions of the applicable rules within three months from the date of receipt of a certified copy of this order. If he applicant is aggrieved by such fresh order to be passed by the disciplinary authority, then he may file an appeal under the Rules to the Competent Appellate Authority who shall consider and dispose of the same as per the Rules.

25. This O.A. is allowed in part as above. No costs.

**(RAKESH SAGAR JAIN)**

Member (J)

**(GOKUL CHANDRA PATI)**

Member (A)

Manish/-