

(Reserved on 13.12.2017)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

This the **05<sup>th</sup>** day of **April, 2018.**

**PRESENT:**

**HON'BLE MR JUSTICE DINESH GUPTA, MEMBER-J  
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A**

**ORIGINAL APPLICATION NO. 330/1353/2016**

Rakesh Kumar Shukla aged about 52 years son of late Sukhdev Prasad Shukla, r/o V&P Tulapur, via Devrajpur Shahjahanpur, posted as Post Master Grade I, Ujhani Sub Post Office under HPO Badaun.

..... Applicant

By Advocate : Shri Bhagirathi Tiwari

***Versus***

1. Union of India through Secretary to Government of India, DOP&T, New Delhi.
2. Post Master General, Bareilly Region, Bareilly.
3. Director Postal Services, Bareilly Region, Bareilly.
4. Superintendent of Post Offices, Badaun Division, Badaun.

..... Respondents

By Advocate : Shri L.P. Tiwari

**O R D E R**

**Delivered by :**

**Hon'ble Mr. Gokuel Chandra Pati, Member (A):**

By way of the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for following main reliefs:-

- “1. To issue directions/orders/ writ in the nature of certiorari quashing the impugned orders dated 27.5.2016 (A-1), 20.7.2016 (A-2) and 24.8.2016 including minutes dated

20.8.2016 (A-3) by calling the original records related thereto.

2. To issue directions/orders/ writ commanding respondents in the nature of mandamus for revoking suspension orders/ withdrawing/ setting aside the impugned orders dated 27.5.2016 (A-1), 20.7.2016 (A-2) and 24.8.2016 including minutes dated 20.8.2016 (A-3).
3. To consider for quashing orders or directions/ writ, in the nature of mandamus commanding the respondents to reinstate the applicant immediately by revocation of irregular suspension orders.”

2. The brief facts emerging from the O.A. are that the applicant was appointed as Post Man on 23.4.1992 and promoted as Postal Assistant on 1.1.1996 and also officiated as Inspector of Post Offices from April 2004 to October 2006. He was promoted as Post Master Grade I vide Memo dated 22.7.2011 and applicant was transferred vide order dated 7.8.2012 (Annexure A-4) on promotion to the cadre of Post Master Grade I from Saharanpur to Ujhani Sub Post Office, Budaun where he came to know that at Kheri an FIR was lodged against one Sri Manish Sahani Postal Agent on 18.7.2012 (Annexure A-5) under Section 406 IPC with case No. 97/2012 for embezzlement of deposits at Sub Post Office Palia Kheri in respect of 34 accounts of depositors. The applicant was then served with a chargesheet dated 04.02.2016 (Annexure A-6), under the Rule 14 of CCS (CCA)

Rules, 1965 for negligence of duty to supervise postal agent Sri Manish Sahani who succeeded in causing loss to the department by embezzlement during the year 2008 to 2011 in different accounts of the depositors. Enquiry officer and presenting officer were appointed vide order dated 19.2.2016 (Annexure A-7). After lapse of about three months of the charge sheet issued and pending the disciplinary proceedings, the SPO Budaun vide the impugned order dated 27.5.2016 (Annexure A-1) suspended the applicant under Rule 10(1) of CCS (CCA) Rules, 1965. The applicant submitted representation on 2.6.2016 (Annexure A-8) against the suspension order dated 27.5.2016 before Director, Postal Services, Bareilly for revocation of the suspension order. SPO's Budaun vide order dated 20.7.2016 (Annexure A-2) issued another order to correct the suspension order dated 27.5.2016 by stating that disciplinary proceeding is pending against the applicant. The Review Committee vide order dated 24.8.2016 extended the suspension for 180 days from 25.8.2016. It is stated in the O.A that the Review Committee was constituted in contravention to the provision of Rule 10(23) O.M. No.11012/4/2003-Estt (A) dated 7.1.2004 (Annexure A-9) issued by DOP&T, which states that the Review Committee should constitute of officer of the level of the disciplinary authority and 2 officers of the rank of the appellate authority. Since the Review Committee is not as per these provisions, the extension of suspension by 180 days

vide the impugned order dated 24.08.2016 (Annexure A-3) is illegal.

3. The respondents have contested the claim of the applicant and filed counter reply. It is stated that the applicant had worked as S.B. Postal Assistant Palia S.O. as well as SPM Palia, under Kheri Head Post Office during the period from 26.10.2006 to 15.10.2011. During the preliminary enquiry a fraud was detected at Palia S.O. and grave misconduct and irregularities were found in the working of the applicant. Details are as under:-

- i) Improper use of date stamp entrusted to him during working hours. Admittance of SAS agent inside the S.B. counter of Post Office, Palia, Misappropriation of amount made deposit entries in passbooks by way of not accounting for money to the tune of Rs. 3,22,000/- in Govt. account.
- ii) Misappropriation of amount made deposit entries in R.D. passbooks by way of receipt of deposit amount from agent and not accounting for money to the tune of Rs. 44,000/- in Govt. account.
- iii) Making withdrawals to the tune of Rs.5,54,000/- from S.B. account without adopting procedure/departmental rules.

4. It is stated in the counter reply that the Respondent No. 4 being the competent authority issued chargesheet under Rule 14 of CCS (CCA)Rules, 1965 (Annexure CA-1) in accordance with provision of Rule 13(2) of CCS (CCA) Rules, 1865 and Directorate letter dated 5.4.2013 (Annexure CA-2). The applicant was identified as Co-offender due to his involvement in misappropriation of Govt. money and facilitation of the fraud. As per Standard Question form of Palia S.O. fraud case, the total loss of Govt. money to the tune of Rs. 34,29,434/- arrived so far. The Post Master General, Bareilly Region Bareilly vide RO letter dated 26.5.2016 (Annexure CA-3) directed the respondent No. 4 to place applicant under suspension and in compliance of the same, respondent No. 4 vide order dated 27.5.2016 (Annexure CA-4) issued suspension order against the applicant. Suspension order of the applicant was reviewed timely by Suspension Review Committee on 20.8.2016 (Annexure CA-5) with the order that the suspension of the applicant may be continued for further 180 days w.e.f. 25.8.2016. The representation dated 2.6.2016 of the applicant against the suspension order was considered in accordance with provisions of Rule 27 (1) of CCS (CCA) Rules 1965 and decided accordingly. The respondent No. 2 directed the respondent No. 4 to convey the applicant about the order dated 31.8.2016 (Annexure CA-6).

5. Rejoinder reply is filed by the applicant where no new issue was raised by the applicant.

6. Heard learned counsel for applicant Sri Bhagirathi Tiwari and learned counsel for respondents Sri L.P. Tiwari.

7. Learned counsel for the applicant emphasized on the point that the Review Committee which reviewed the extension of suspension of the applicant vide the impugned order dated 24.08.2016 and the minutes of the Committee dated 20.08.2016 (Annexure A-3) was in violation of DOPT OM dated 07.01.2004 (Annexure A-9). He further submitted that the extension of suspension should be a reasoned order. Instructions of DG P&T to keep the period of suspension to the minimum has not been complied. It was further submitted that the suspension order should not be issued after issue of chargesheet. Learned counsel for respondents countered the contentions of the applicant's counsel by submitting that the Committee to review the suspension has been properly constituted as per the DOPT instructions. He further submitted that the charges against the applicant constitute grave misconduct.

8. We have considered the submissions as well as the pleadings of the learned counsel for the parties.

9. As per the judgments of Hon'ble Apex Court in catena of cases, this Tribunal has limited power to interfere in the disciplinary proceedings as well as impugned suspension order, which is a part of the disciplinary proceedings initiated against the applicant for allegations which constitute serious misconduct. Main point to be decided in the case is whether the Review Committee consisting of DPS, Bareilly Region (respondent No. 3), SSPOs, Bareilly and SPOs, Budaun (respondent No. 4) is in accordance with DOPT OM dated 07.01.2004 (Annexure A-9).

10. The applicant in para 4.9 of the O.A has stated that the Review Committee recommended the extension of suspension order was not constituted as per DOPT OM dated 07.01.2004. In reply to para 4.9 of the O.A, the respondents in their counter affidavit have stated that the respondent No. 4 being the competent authority for the applicant has issued the chargesheet and the Review Committee was constituted in accordance with DOPT OM dated 07.01.2004. The applicant in para 7 of the Rejoinder has stated that for him, the SPO/ SSPO is the disciplinary authority for minor penalty only and the DPS, Bareilly (respondent No. 3) is the disciplinary authority for the applicant for major penalty as would be evident from the order enclosed at Annexure CA-2 of the counter filed by the respondents. Further, PMG (respondent No. 2) is the appellate authority for the

applicant. It was, therefore, submitted that the Review Committee was not as per the DOPT OM dated 07.01.2004 (Annexure A-9)

11. Regarding constitution of Review Committee the DOPT OM dated 07.01.2004 (Annexure A-9) states as under: -

“2. It is, therefore, necessary to constitute Review Committee(s) to review the suspension cases. The composition of Review Committee(s) may be as follows: -

(i). The Disciplinary Authority, the Appellate Authority and another officer of the level of Disciplinary / Appellate Authority from the same office or from another Central Government office (in case another officer of same level is not available in the same office), in a case where the President is not the Disciplinary Authority or the Appellate Authority.”

12. In the case of the applicant, who is admittedly the Post Master Grade-I as would be revealed from the suspension order dated 27.05.2016 (Annexure A-1), the disciplinary authority for major penalty is the Director, Postal Service and the appellate authority is the Post Master General, Bareilly (respondent No. 2) as would be clear from the order dated 26.09.2012 circulated vide letter dated 05.04.2013 (Annexure CA-2 to the counter). Since in this case the chargehssset issued against the applicant vide letter dated 04.02.2016 (Annexure A-6) is for major penalty under rule 14 of the CCS (CCA) Rules, 1965, the Review Committee to review

suspension order of the applicant has to consist of the appellate authority i.e. PMG, Bareilly region (respondent No. 2) as per the notification dated 26.09.2012 (Annexure No. CA-2 of the counter) and the DOPT OM dated 07.01.2004 (Annexure A-9) as extracted at paragraph 11 of this order. It is clear from the minutes of the Review Committee dated 20.08.2016 (Annexure A-3 to the O.A) and the order dated 24.08.2016 (Annexure CA-5 to the Counter) that the Committee was headed by the DPS, Bareilly who is the disciplinary authority for the applicant and the appellate authority i.e. PMG, Bareilly (respondent No. 2) was not a member of the said Committee.

13. In view of the above, it is clear that the Review Committee which reviewed the suspension order of the applicant was not the competent authority for reviewing the applicant's suspension order dated 27.05.2016 as per the DOPT OM dated 07.01.2004 (Annexure A-9). Hence, the impugned suspension order has not been extended after review by the competent Review Committee as per the rule 10 of the CCS (CCA) Rules, 1965 and the DOPT OM dated 07.01.2004. As a result, the impugned suspension order dated 27.05.2016 is not valid after 90 days.

14. In the circumstances, the impugned suspension order dated 27.05.2016 (Annexure A-1) is not sustainable under law

as it is not legally valid after 90 days as per the rule 10 (7) of the CCS (CCA) Rules, 1965. Hence, the said order dated 27.05.2016 is set aside and quashed. The respondents are directed to reinstate the applicant with effect from 90 days after date of service of the suspension order dated 27.05.2016 on the applicant with consequential benefits. It is made clear that the respondents are at liberty to initiate fresh action to place the applicant under suspension as per the provisions of CCS (CCA) Rules, 1965, if it is deemed appropriate, by the respondents.

15. The O.A is allowed as above. No costs.

**(Gokul Chandra Pati)**  
**Member (A)**

**(Justice Dinesh Gupta)**  
**Member (J)**

**Anand...**