

**Central Administrative Tribunal
Principal Bench**

OA No. 340/2010

Order reserved on: 23.05.2016

Order pronounced on: 13.07.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Vinod Kumar Yagik
S/o Sh. Shri Ram Baboo Yagik,
Postal Asstt. Agra Fort Head Post office,
Agra.

Residential Address

Jangjeet Nagar, Agra.

- Applicant

(By Advocate: Sh.G.S.Lobana)

Versus

1. Union of India
Through Secretary,
Ministry of Communication and I.T.,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.
2. The Director Postal Services,
O/o the Postmaster General,
Agra.
3. The Senior Supdt. Of Post offices,
Jhansi Division, Jhansi.

- Respondents

(By Advocate: Sh.S.N.Sharma)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant in the present OA was served with a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 on 23.11.2006 containing the following allegations:

“Article-I

That the said Sri Vinod Kumar Yagyik while working as SB Counter Asstt. Lalitpur HO during the period 08/1/02 to 06/02/02 received the clearance of eight forged manipulated bankdrafts amounting to Rs.781000/- from Sri Laxman Prasad CC-I Lalitpur HO for depositing the amount of Rs.682000/- in SB a/c no.527944 and for Rs.99000/- in SB a/c no.527946 standing in the name of forgers Sri Kamal Kumar Tiwari and Sri Sanjay Pathak respectively while these bankdrafts were not produced at counter for deposit by the depositors. The said Sri Yagyik did not bring this fact to the notice of APM (SB)/PM. Also he did not make his initial/signatures on pay in slip (SB-103).

By acting in the above manner the said Shri Vinod Yagyik is alleged to have failed to maintain his absolute integrity and devotion to duty and thereby violated the provision of following departmental Rules:-

- (1) Rule-31 (6) (a) of PO SB Manual Volume-I read with rules of appendix I to the said Manual.
- (2) Rule-3 (1)(i) and 3 (1)(I)(ii) of CCS (Conduct) Rule-1964.

Article-II

That the said Sri Vinod Kumar Yagik (*sic*) while working as SB counter Asstt. Lalitpur HO on 06/2/02 made the payment of Rs.90000/- (Rs. Ninety thousand only) from SB a/c no.527946 (Cheque accounts) without comparing the signatures of the depositor with SB-3. Due to which the forgers would have been succeeded to commit the fraud of Rs.90000/- (Rs. Ninety thousand only) from the above SB a/c no.527946 standing in the name of forger named as Sri Sanjay Pathak.

By acting in the above manner the said Shri Vinod Yagyik is alleged to have failed to maintain his absolute integrity and devotion to duty and thereby violated the provision of following department Rules:-

- (3) Rule-36 (a) of PO SB Manual Volume-I.
- (4) Rule-3(1)(i) and 3 (1)(ii) of CCS (Conduct) Rules-1964.”

2. The applicant denied the charges and the matter was enquired into by the enquiry officer appointed by the Disciplinary Authority (DA). A copy of the enquiry report was supplied to the applicant who submitted his representation on the same on 17.12.2007. The DA imposed the penalty of reduction of pay by eleven stages for a period of seven years with cumulative effect

postponing his future increments as well. Applicant filed a statutory appeal with the respondent no.2. The Appellate Authority (AA) after considering his representation modified the penalty to a minor penalty of recovery of Rs.1,76,000/- from the pay of the applicant @ Rs.4,000/- p.m. The applicant has filed the present OA challenging the orders of the DA and AA dated 30.04.2008 and 16.12.2008 respectively. After the completion of pleadings the matter came up for hearing on 09.12.2011. At that time it was submitted before this Tribunal that the main offender in this case, i.e., Laxman Prasad was also awarded penalty of recovery of Rs.5,80,000/- from his pay in hundred equal monthly instalments. He had filed OA No.2561/2009 before this Tribunal which was decided in favour of Laxman Prasad vide judgment dated 29.04.2010. The order of the Tribunal in OA No.2561/2009 was challenged before the Hon'ble High Court of Delhi in WP(C) No.7078/2010 and the same had been stayed vide order dated 25.10.2010. Counsel for both the sides agreed that the final decision of the Hon'ble High Court would have a direct bearing on the present OA also. Considering these facts, the present OA was disposed of giving liberty to the applicant to make an appropriate application, if necessary, before this Tribunal after the WP (C) No.7078/2010 filed in OA No.2561/2009 was finally decided by the Hon'ble High Court of Delhi. On 20.11.2012 the learned counsel for the petitioners (Union of India and others) sought

permission to withdraw the writ petition with liberty to file a review petition before the Tribunal. Accepting the request, the Hon'ble High Court dismissed the writ petition as withdrawn with the aforesaid liberty. The respondents in OA No.2561/2009 thereafter filed RA No.80/2013 which was disposed of by this Tribunal as not maintainable by order dated 10.03.2014. We are not aware whether that order attained finality or not. However, the applicant in this case filed MA No.1508/2013 for revival of the OA which was allowed on 17.04.2014. Accordingly, the matter was heard on 23.05.2016.

3. Brief facts of the case are that Laxman Prasad, the Cheque Collection Assistant, directly received 8 forged bank drafts in the name of two forgers, instead of being presented at the Savings Bank counter, and got those drafts cleared from State Bank of India, Lalitpur under a conspiracy. He handed it over to the applicant who was working as SB Counter Assistant at Lalitpur HO. The applicant did not question Laxman Prasad about the violation of the procedure while obtaining the bank draft and credited it to the respective savings bank accounts. He also did not inform his Supervisor about this incident. Further, the applicant did not compare the signature of the depositor available on withdrawal form with the signature available on the SB-3 while allowing withdrawal of Rs.90,000/- on 06.02.2002 to Sanjay Pathak who was holding the forged account no.527946.

4. The applicant has challenged the revised penalty of recovery of Rs.1,76,000/- in the monthly instalments of Rs.4000/- p.m. on the following grounds:

(i) There was no specific allegation against the applicant of any liaison or any undue favour to the forgers. The saving bank account opened by the forgers was not irregular. It is also not alleged that the payment was not made to the depositor or that payment was made without obtaining a clearance from the bank and hence there was no misconduct on the part of the applicant.

(ii) The charge no.2 is contradictory and vague and, therefore, in terms Hon'ble Supreme Court judgment in the case of **M.V.Bijlani vs. UOI and others**, (2006) SCC (L&S) 919, a vague charge sheet was not sustainable in law.

(iii) It was a case of 'no misconduct', and therefore, the entire disciplinary proceeding was *non est* in view of Hon'ble Supreme Court judgment in the case of **Inspector Prem Chand vs. Govt. of NCTD**, (2007) 4 SCC 566.

(iv) There was no pecuniary loss to the Government, and therefore, the respondents could not have asked for deduction of amount from salary.

(v) The order passed by the DA and AA are not self-contained reasoned and speaking order, and therefore, not

sustainable in terms of the judgment in **Mahabir Prasad vs. State of U.P.**, AIR 1970 SC 1302 and GOI Instruction I of Rule 15 of CCS (CCA) Rules 1965. It was also a case of no evidence.

5. Learned counsel for the respondents responding to the various grounds taken by the applicant submitted that except one bank draft the rest of the drafts were received by Laxman Prasad, Cheque Collection Assistant, who instead of tendering these at the counter got it cleared from SBI Lalitpur before handing over to the applicant. Applicant ought to have brought this to the knowledge of his superiors besides questioning the presenter, i.e., Laxman Prasad. Had the applicant been vigilant in performing his duty, it should have been possible for him to detect the forgery in the draft because the manipulation in the drafts was quite obvious. He also denied that there was any irregularity in the enquiry conducted by the enquiry officer or that the enquiry officer was biased against him. No specific facts have been placed on record in support of this contention. Since the applicant was responsible for comparing the signatures of Sanjay Pathak available in the withdrawal form with the signature available as the specimen in SB-3, he cannot take a plea that he did his job and what happened beyond his desk he was not responsible. Actually he did not perform the duty and role assigned to him according to the distribution of work. The bank authorities have already

raised a demand on the department to pay Rs.8,80,000/-, and therefore, it cannot be said that there was no pecuniary loss to the Government. Notwithstanding these submissions the AA after taking into account the totality of facts, drastically reduced the penalty imposed on the applicant from a major penalty of withholding of eleven increments with cumulative effect to a monetary penalty of Rs.1,76,000/-.

6. We have heard the learned counsel for the parties and perused the record. The main grounds taken by the applicant are that:

- (i) there was no misconduct;
- (ii) the charge sheet was vague;
- (iii) there was no pecuniary loss to the Government;
- (iv) there was no evidence; and
- (v) the orders passed by the DA and AA were not reasoned and speaking.

7. The respondents have established from the instructions contained in the Annexure CA-IX and CA-XI that all the cheques were to be presented at the savings bank counter. In this case Laxman Prasad collected the cheques and got it cleared from SBI Lalitpur before presenting the same to the applicant. Before crediting the amount to the forged accounts, the applicant ought to have questioned Laxman Prasad after having discovered that the cheques were taken to the SBI directly for clearance. Not only

that, such a deviation should have been brought to the knowledge of superior officers. The applicant did not do either. Therefore, it cannot be said to be merely a case of oversight or negligence and not a 'misconduct'. The applicant has alleged that the article of charge no.2 is self-contradictory and is not sustainable in law. This contention has been raised without any elaboration or supporting argument and therefore cannot be examined further. The allegations are specific and directed to the violation of the departmental instructions by the applicant resulting into pecuniary loss, which stands proved in the departmental inquiry. Therefore, it cannot be stated to be a case of vague chargesheet or no evidence.

8. Another argument of the applicant is that the respondents could not have resorted to Rule 11 (iii) of CCS (CCA) Rules, 1965 while ordering the recovery of Rs.1,76,000/- when there was no pecuniary loss to the Government. The respondents, on the other hand, have stated in the counter, on oath, that the SBI has raised demand of Rs.8,80,000/- on account of encashment of forged drafts.

9. Learned counsel for the applicant has taken further plea that Laxman Prasad, who was also charged in a similar manner and finally awarded penalty of recovery of an amount of Rs.5,80,000/- had filed OA No.2561/2009 which, as discussed

above, stands decided by this Tribunal in favour of Laxman Prasad. Claiming parity with Laxman Prasad, learned counsel for the applicant submitted that the same benefit ought to have been given to the applicant. We have considered this argument but are not persuaded to accept the same. The respondents had issued individual charge sheets and the enquiry was also conducted separately. The enquiry officers examined the evidence against each individual and gave recommendations. The DA and AA have also passed separate orders for each person's involvement in this case. Further OA No.2561/2009 was decided in favour of the applicant of that case, i.e., Laxman Prasad vide order dated 29.04.210 mainly on two grounds:

- (i) The first charge sheet in the case had been dropped without assigning any reason, and thereafter, a fresh charge sheet had been given.
- (ii) The respondents were not able to explain the reason for doing so and therefore, the Tribunal, found this action of the respondents not sustainable under the law. Similarly, the argument that the Government did not suffer any pecuniary loss was not rebutted by the respondents.

10. In the present case there is no pleading on behalf of the applicant that there was any charge sheet earlier which was dropped before issuing a fresh charge sheet. Regarding pecuniary

loss, the respondents have submitted that the SBI has already raised a demand on the department to pay back Rs.8,80,000/-. Since the facts and chain of events of OA No.2561/2009 and the present case are quite different, the applicant cannot claim any parity.

11. In the background of the findings above, the judgment of Hon'ble Supreme Court cited by the applicant which relate to the issues of vague charge sheet, no evidence and orders of DA and AA not being reasoned and speaking, are not applicable.

12. Keeping in view the preceding discussion and the reasons stated above, we do not find any merit in the OA and the same is dismissed. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

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