

**Central Administrative Tribunal
Principal Bench**

OA No. 2921/2012

This the 19th day of August, 2016

***Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)***

Sh. R.K. Lathwal,
Son of Late Shri Surat Singh Lathwal,
Working as Postal Assistant (BCR),
Nangal Raya Post Office, New Delhi-110046
Under New Delhi West Postal Division,
New Delhi-110028.
R/o H.No.RZ-2C/173, Gali No.3-A, Durga Park,
New Delhi-110045
Address for service of notices
C/o Sh. Pradeep Kumar, Advocate
CH. No.665, Western Wing,
Tis Hazari Courts,
Delhi-110054.

- Applicant

(By Advocate: Mr. Pradeep Kumar)

Versus

1. Union of India
Through the Secretary,
Ministry of Communications & I.T.,
Department of Posts, Dak Bhawan,
New Delhi-110001.
2. The Director Postal Services (O),
O/o the Chief Postmaster General,
Delhi Circle, Meghdoot Bhawan,
New Delhi-110001.
3. The Sr. Superintendent of Post Offices,
New Delhi West Division,
Naraina,
New Delhi-110028.

- Respondents

(By Advocate: Mr. Rajinder Nischal)

ORDER (ORAL)

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

The applicant while working as SPM, DESU Colony Post Office was served a charge-sheet on 22.01.2010 containing the following allegations:

“ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SH. R.K.LATHWAL, THE THEN SPM, DESU COLONY PO, NOW WORKING AS POSTAL ASSISTANT, SUNDER VIHAR PO, NEW DELHI-110087

ARTICLE OF CHARGE No.1

That the said Sh. Ram Kumar Lathwal while working as SPM DESU Colony PO during the period from 20-12-99 to 14-02-2000 is alleged to have shown gross negligence while performing his duty as SPM, and discharged KVPs / NSCs worth Rs.3,46,000/- and caused the loss of Rs.3,46,000/- to the Govt. and thereby alleged to have violated the provisions of Rule-23 [1] [b] and [c] Rule-37 and Rule-42 [2] [ii] of PO SB Manual Volume-II. By doing so he is further alleged to have failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Govt. servant and is, therefore, alleged to have violated the provisions of Rule 3 [1] [i] [ii] and [iii] of CCS (Conduct) Rules-1964.

ARTICLE OF CHARGE No.2

Clear instructions were issued from this office letter vide endorsement no. F/Circular-05 /97-98 dated 16-05-1997 in pursuance of Circle Office letter regarding fraudulent encashment of lost / stolen certificates and it was clearly instructed that no KVP / NSC should be allowed to be encashed without proper verifications. Sh. R.K. Lathwal in his written statement dated 24-1-2005 has admitted to have made the payment without the prescribed check under Rule-23 [1] of PO SB manual Volume-II. Therefore, he is found responsible for violation of Rule-23 [1] [b] and [c] and failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Govt. servant and is, therefore, alleged to have violated the provisions of Rule 3 [1] [i] [ii] and [iii] of CCS (Conduct) Rules-1964.”

2. As the applicant denied the charge, a departmental enquiry (DE) followed, which was completed on 08.04.2011. The

Disciplinary Authority (DA) furnished a copy of the report to the applicant and after considering his representation passed an order on 27.07.2011 imposing the penalty of reduction of pay from Rs.13800 + GP Rs.4200 to the stage of Rs.8560 + GP Rs.2800 in the pay band of Rs.5200-20200 for a period of two years with immediate effect and also recovery of an amount of Rs.3,46,000/- to be recovered @ Rs.13,000 p.m. in 26 instalments and balance of Rs.8000 in 27th instalment. It was further ordered in the impugned punishment order that during the period of reduction the applicant will not earn increments of pay and on expiry of this period the reduction will not have the effect of postponing his future increments. The applicant appealed against this order but the same was dismissed by the Appellate Authority (AA) on 09.05.2012.

3. Learned counsel for the applicant challenged the impugned orders saliently on the following grounds:

- (i) the allegation against the applicant pertains to the period of 20.12.1999 to 14.02.2000 while the charge-sheet was issued on 22.01.2010, i.e., after more than 10 years. Quoting the judgment of this Tribunal in **Bani Singh vs. State of M.P.**, 1998 (1) ATR 592, which was upheld by Hon'ble Supreme Court, the learned counsel submitted that the proceedings in this case are vitiated on the ground of abnormal delay. He also relied on

Mahender Singh vs. M.C.D., 82 (1999) DLT 840, **Zile Singh vs. Govt. of NCT of Delhi**, 1998 (1) ATJ 511, CAT New Delhi, **K.G. Lakshmi Narayanappa vs. UOI**, 2005 (1) SLJ 260 CAT BG and **Mukhtyar Ahmad vs. UOI**, 2005 (1) SLJ 275, CAT Ahd.

- (ii) Rule 14 (18) of CCS (CCA) Rules, 1965 is a mandatory provision envisaging that the enquiring authority (EA) shall examine the Government Servant, if he has not examined himself during the enquiry. The EA in the present case did not conform to this provision of the CCS (CCA) Rules, causing prejudice to the applicant. Learned counsel relied on the order of this Tribunal in **Ministry of Finance vs. S.B. Ramesh**, (1998) 3 SCC 227 and **R. Robert vs. UOI**, 1991 (16) ATC 671.
- (iii) The penalty imposed by the respondents is an amalgam of minor or major penalty because while the penalty of reduction of pay to a lower stage is a major penalty within the meaning of Rule 11 (v) of the CCS (CCA) Rules, the recovery of Rs.3,46,000/- from his pay would come within the purview of minor penalty under Rule 11 (iii) of CCS (CCA) Rules. This order cannot be sustained under the law and in support of this contention learned counsel

quoted **Union of India vs. S.C. Parashar**, 2006 SCC (L&S) 496.

(iv) This was also a case of no evidence. The enquiry officer has already held that the charge no.1 which is the substantial charge has not been proved.

(v) There was no misconduct proved against the applicant. In the worst scenario the action of the applicant can be classified as negligence which does not constitute misconduct. The respondents have not been able to establish any motive or any personal gains on the part of the applicant. Learned counsel relied on the judgment of Guwahati Bench of this Tribunal in **Dilip Kumar Rabidas vs. UOI**, 2005 (1) ATJ 40.

(vi) It was further argued that the orders passed by the DA and AA are non-speaking. Learned counsel also mentioned the issue of the punishment which is disproportionate to the alleged misconduct of the applicant.

4. Learned counsel for the respondents, on the other hand, denied various submissions of the learned counsel for the applicant but fairly admitted that the records, which speak for itself, do not show that the requirement of Rule 14 (18) was met in the enquiry against the applicant.

5. We have heard the learned counsel for the parties and perused the record. Rule 14 (18) of CCS (CCA) Rules reads thus:

"The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

6. From the enquiry report annexed to the OA it is seen that after closing the prosecution evidence, the EA closed the enquiry and gave his finding. The aforementioned rule mandates that once the Government Servant closes his case, the EA may generally question him on the circumstances bearing against him in the evidence. However, if the Government servant has not examined himself during the enquiry as is the case here, the EA shall examine the applicant by generally questioning him. Non-adherence to this procedure is a fatal shortcoming in the enquiry that would make it liable for being quashed. In **S.B. Ramesh**(supra), the Hyderabad Bench of this Tribunal has taken the following view:

"..... This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18.6.91. Under Sub-Rule 18 of Rule 14 of the CCS (CCA) Rules. It is incumbent on the Enquiry authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry authority.

7. The Hon'ble Supreme Court while upholding the view taken by this Tribunal observed thus:

“....On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it.”

8. The Madras Bench of this Tribunal in **R. Robert** (supra) has held:

“9. We also find that the Enquiry Officer has not questioned the applicant as per rule 14 (18) of the Disciplinary Rules. In this case the Enquiry Officer has examined the applicant in general about the facts and circumstances of the case. However Rule 14 (18) of the Disciplinary Rules obliges the Enquiry Officer to question the applicant on the circumstances appearing against him in evidence for the purpose of enabling the Govt. Servant to explain any circumstances appearing in evidence against him. As seen from the daily order sheet dt. 6.2.86, the Enquiry Officer had only examined the applicant in general without drawing his attention to the circumstances appearing against him in evidence as required under the rule. This has deprived the applicant of a reasonable opportunity.”

9. In this background, we are convinced that the disciplinary enquiry against the applicant is hit by this major omission on the part of the EA to comply with the provision of Rule 14 (18) of CCS (CCA) Rules. We, therefore, deem it appropriate, without going into the merits of other contentions of the applicant lest it should prejudice the case of the either side, to remand the matter back to the DA to start the disciplinary proceeding from the stage of general examination of the applicant and complete the disciplinary proceeding in accordance with the rules and law.

10. The impugned orders dated 27.07.2011 and 09.05.2012 are, therefore, quashed and set aside with liberty to the respondents to

start the disciplinary proceeding from the stage of general examination of the applicant under Rule 14 (18) (*ibid*) within a month from the date of receiving a copy of this order. If the DA decides to do so, it shall be ensured that the disciplinary proceeding is completed within a period of three months from the date of start of the proceeding. Needless to say, the applicant will be at liberty to challenge the order of DA or AA in case his grievance still subsists.

(V.N. Gaur)
Member (A)

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

‘sd’

August 19, 2016