

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA 62/2013

New Delhi, this the 26th day of September, 2018

Hon'ble Mr.K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member(J)

1. Smt. Mamta D.Mahulkar
W/o D.D. Mahulkar
C-3-108B, MIG Flats
Keshavpuram
New Delhi – 110035.

...Applicant

(By Advocate : Mr. Arun Birbal)

Versus

1. Union of India
Through Secretary
M/o Communication and Information
Department of Posts
Sansad Marg
New Delhi - 110001.
2. Department of Posts
Through Senior Post Master
Indraprastha Head Post Offices
New Delhi – 110002.

...Respondents

(By Advocate : Mr. U. Srivastava)

ORDER (ORAL)

Mr. K.N. Shrivastava:

At the relevant point of time, the applicant was posted as Assistant Post Master at Indraprastha Head Office, New Delhi. She retired from service on attaining the age of superannuation on 28.02.2005. Annexure A-8 charge memorandum dated 31.05.2007 came to be issued to her under Rule 9 of CCS (Pensions) Rules,

1972. The charge memorandum is accompanied with a statement of articles of charge framed against her. There were three articles of charge, which are reproduced herein below:

“Article – 1

That the said Smt. Mamta D. Mahulkar, Asstt. Postmaster (HSG-II) Indraprastha Head Post Office, New Delhi-110002 while performing the duties of Dy. Postmaster (HSG-I) counter on 04.11.2003 is alleged to have seen an Error recorded by the then APM(SB) Shri B.S.Negi under EB No. 145 dated 04.11.2003 with regard to loss of three MIS Pass Books duly stamped with date stamp impression dated 04.11.2003 to be prepared by the cheque clearance P.A. Smt. Amita Sahu, But Smt. Mamta D. Mahulkar did not take any action to get the case investigated for the loss of Pass Books which caused misuse of said Pass Books by the agent Smt. Anita Aggarwal. Out of these three lost Pass Books, one Pass Book bearing MIS A/c No. 951225 after making the forged entries in the Name of Kusum Lata and showing the bogus deposit of Rs. 1,20,000/- was handed over to investor by the Agent.

Thus the said Smt. Mamta D. Mahulkar, Asstt. Postmaster (HSG-II) by the above acts is alleged to have failed to maintain devotion to duty and thereby violated the provision of Rule 3(1) (ii) of CCS (Conduct) Rules, 1964.

Article – 2

The said Smt. Mamta D. Mahulkar while working in SB Branch as a APM (HSG-II) on 05.02.2003 and 06.02.2003 is alleged to have failed to supervise the work of KVP/NSC counter PAs who accepted cheques Nos. 798965 & 798966 dated 03.02.2003 of Rs. 3 Lacs each along with applications for purchase of KVP from the Agent but did not check the endorsement with reference to the KVP purchase applications from the investors as required under the Rule 11(3) (b) of POSB Manual Volume-II.

Due to negligence of counter PAs, as well as poor supervision of Incharge the Agent succeeded in defrauding the investors money of Rs. 6 Lacs of the said cheques.

Thus the said Smt. Mamta D. Mahulkar, Asstt. Postmaster (HSG-II) by the above acts is alleged to have failed to maintain devotion to duty and thereby violated the provision of Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964.

Article-3

The said Smt. Mamta D. Mahulkar while working in SB Branch as a APM (HSG-II) and also while performing the duties of DPM (HSG-I) counter during the different spells of period from 2002 to 2004 as mentioned in Article-3 of Annexure II, is alleged to have issued Agents Receipts Books in excess of the prescribed limit of one Receipt Book at a time to the Agents. The act on the part of the said official supported to make a frauds by the SAS Agents. Thus, thereby violated the provisions as contained in Rule 17(8) of POSB Manual Volume-II.

Thus the said Smt. Mamta D. Mahulkar, Asstt. Postmaster (HSG-II) by the above acts is alleged to have failed to maintain devotion to duty and thereby violated the provision of Rule 3(1) (ii) of CCS (Conduct) Rules 1964.”

2. Pursuant to the charge memorandum, the enquiry was conducted against the applicant. The enquiry officer submitted his report on 09.03.2009 (Annexure A-14), wherein he concluded that article of charge-1 is not proved, whereas article of charge - 2 and 3 are proved. Acting on the EO's report, the disciplinary authority (DA) vide impugned Annexure A-1 order dated 29.09.2011, imposed the penalty of "Recovery of Rs. 1 lakh from Gratuity towards loss incurred and also a 10% cut in monthly pension for a period of 3 years" on the applicant. Since Annexure A-1 is a Presidential order, there was no scope of appeal against it.

3. Aggrieved by Annexure A-1 impugned order, the applicant has approached this Tribunal in the instant OA, praying for the following reliefs :

- “a) Set aside the impugned Order dated 20.09.2011 as modified vide Order dated 09.11.2011;
- b) Direct the respondents to release the amount withheld by the respondents in pursuance of above orders along interest @24% per annum w.e.f. from the date of her retirement;
- c) direct the respondent to release the other pensionary benefits due to her along with interest @24% per annum from the date of her retirement.”

4. On completion of pleadings, the case was taken up for hearing the arguments of both the parties. Arguments of Mr. Arun Birbal, learned counsel for applicant and Mr. U. Srivastava, learned counsel for respondents were heard partially on 06.09.2018 and today.

5. The main contention of Mr. Arun Birbal, learned counsel for applicant, was that no loss has been caused to the exchequer and as such, the penalty order seeking recovery of Rs. 1.0 lakh from gratuity of the applicant is not proper and is unjustified.

6. The second argument was that the applicant has followed the same practice in discharge of duties as Assistant Post Master in regard to KVP and NSC remittances through agents as was invoked in all the Post Offices in Delhi. He further submitted that the penalty order is passed under Rule 9 of CCS (Pension) Rules, and as such orders can be

passed only in the event of grave misconduct. He stated that at the most the applicant can be held guilty of misconduct but certainly not of grave misconduct. He further argued that Annexure A-1 order was passed by the DA after obtaining the advice of Union Public Service Commission (UPSC) but a copy of the same was not made available to the applicant for representing against it, which is a mandatory requirement in terms of law laid down by Hon'ble Apex Court in **Union of India & others vs. S.K. Kapoor (2011) 4 SSC 589**.

7. Per contra, Mr. U. Srivastava, learned counsel for respondents stated that the applicant miserably failed in discharge of the supervisory duty in handling the KVP/NSC remittances. It is established from the records that instruments of KVP/NSC had been issued to persons other than those who had made remittances through the agents and in the process, a fraud of Rs. 6.0 lacs had taken place. He thus, argued that the applicant has been rightly punished by the DA.

8. We have considered the arguments for learned counsel of the parties and have also perused the pleadings.

9. It is an admitted fact that KVP instruments were issued by the Postal Assistants (PAs) working under the applicant to persons other than the persons, who had actually made the remittances through the agents. As a matter of fact, the primary duty of verification and issuing the instruments to the correct persons rested with the PAs concerned.

Needless to say that the applicant was required to exercise the supervisory control over such transactions. Be that as it may, the fact remains that no loss has caused to the exchequer and the irregularity committed was detected well in time and corrective action was taken to issue the instruments to the right recipient.

10. Since the penalty has been passed under Rule 9 of CCS (Pension) Rules, it was mandatory to obtain UPSC advice in the matter, which, apparently, was done by the DA before passing the penalty order and the UPSC advice had been kept in view while doing so. It is not in dispute that a copy of UPSC advice was not made available to the applicant for representing against it, which was a mandatory requirement in terms of law laid down by Hon'ble Apex Court in the case of S.K. Kapoor (supra). The OM dated 14.07.2016 issued by DOP&T, on the basis of the judgment of Hon'ble Apex Court in S.K. Kapoor, has also not been considered by the DA. Hence, we hold that the impugned order suffers with serious legal lacunae and on this ground itself, it deserves to be quashed and set aside.

11. The applicant retired way back on 22.02.2005, i.e. 13 years ago. The alleged misconduct took place in the year 2003. She is almost 74 years old as of now. She has never been subjected to any disciplinary action during her service spanning over four decades.

12. Taking into consideration the discussions the pre-paras, we quash and set aside Annexure A-1 impugned order dated 20.09.2011

passed by DA. As a consequence of it, the applicant is entitled for all the consequential benefits, including refund of the amount already recovered from her gratuity as well as refund towards cut in her pension with interest @8% per annum. This shall be done within a period of three months from the receipt a copy of this order.

13. OA stands allowed. No costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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