

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1997/2011
MA 3031/2013

Reserved on 25.07.2018
Pronounced on 27.07.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Ajab Singh
Aged about 50 years
S/o Late Shri Bhag Singh,
R/o Village & P.O. Bishara,
Distt. Gautam Budh Nagar,
Noida (UP).

... Applicant

(By Advocate: Mr. S.K. Gupta)

VERSUS

1. Union of India,
Through its Secretary,
Deptt. Of Post,
Ministry of Communication,
Ashoka Road, New Delhi.
2. Director Postal Services,
Ghaziabad Division, Ghaziabad.
3. Superintendent of Post Offices,
Ghaziabad Division, Ghaziabad.
4. Assistant Superintendent of Post
Offices,
Noida Sub Division, Noida-201301(UP).
5. The Enquiry Officer,
C/o Asstt. Supdt. of Post Offices,
Noida Sub Division, Noida.

... Respondents

(By Advocate: Mr. S.M.Arif)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

Heard Shri S.K.Gupta, counsel for applicant and Shri S.M. Arif,
counsel for respondents, perused the pleadings and all the documents
produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

“i) quash and set aside the enquiry report dated 09.04.2010 (Annexure A-1) order or removal dated 29.04.2010 (Annexure A-2) and the order of Appellate Authority dated 23.12.2010 (Annexure A-3) with all consequential benefits like reinstatement salary, seniority etc.”

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant under Rule 10 of Gramin Dak Sewak (Conduct & Engagement) Rules for the following three articles of charge.

“Article No.1

The charge is made against Sh. Ajab Singh, GDSMD, Khatana on dated 03/06/06 misused the postal stamps earlier that while working in Branch Dak Pal on the post of GDABPM affixed on registered letter No. 279, 280 and 281 dated 03/06/06 totaling postal stamps of Rs.66/- of these registered letter.

Article-2

The charge is made against Sh.Ajab Singh, GDMS, Khatana while working Executive Branch Dak Pal on the post of GDSBPM, Bisada, by violating order No.DO/Bisada dated 13/09/06, 12/12/06 and 15/12/06 of this office not transferred the charge of Branch Post Office, Bisada to Sh. Jagdish Singh, GDSMD.

Article-3

The charge is made against Sh. Ajab Singh, GDSMD, Khatana while working Executive Branch Dak Pal on the post of GDSBPM, Bisada, that even after making him put off duty vide Memorandum No.A/Bisoda/07 dated 04/01/07 of this office, during the period of termination after receiving deposits from the public in the alleged R.D Accounts unauthorizedly by Sh.Ajab Singh and the amount of alleged public was misused/ appropriated.”

The procedure to be followed under the said rule is extracted below:

“10. Procedure for imposing a penalty

(1) No order imposing a penalty shall be passed except after-

(a) the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make; and

(b) such representation, if any, is taken into consideration by the Recruiting Authority:

Provided that the penalty of dismissal or removal from engagement shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges:

Provided further that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry.

(1) The record of proceedings shall include-

- (i) a copy of the intimation to the Sevak of the proposal to take action against him;
- (ii) a copy of the statement of allegations, along with a list of evidence in support thereof, communicated to him;
- (iii) his representation, if any;
- (iv) the records of the enquiry proceedings along with the enquiry report of the Recruiting Authority or Enquiry Officer, if any, appointed in a case where a formal enquiry is necessary;
- (v) the representation, if any, of the Sevak on the Inquiry Officer's report;
- (vi) findings of the Recruiting Authority in respect of the allegations, with reasons therefore; and
- (vii) the order imposing the penalty.”

4. According to the above said rule, enquiry was conducted. Article of charge, list of documents and list of witnesses were furnished to the applicant. Witnesses were examined as per the above said rule and some witnesses were examined on behalf of the applicant as defence witnesses. The Inquiry Officer held the enquiry as per the above said

rule. He has discussed about the statement of each of the witnesses. He has analyzed the evidence and came to the conclusion that the article of charge leveled against the applicant are proved. The translated copy of the enquiry report is available from page 28 to 50 of the paper book. The disciplinary authority considered the enquiry report as per rules and by a speaking and reasoned order held that the charges leveled against the applicant are serious in nature and passed an order of removal of the applicant from service. Translated copy of the order of the disciplinary authority is available from page 64 to 70 of the paper book. Thereafter, the applicant filed an appeal. The appellate authority once again going through the entire material before him and considering the appeal filed by the applicant upheld the penalty order of removal passed by the disciplinary authority rejecting the appeal.

5. The counsel for applicant vehemently and strenuously contended that in view of the Director General's instruction contained in D.G.P&T letter No. 151/4/77-Disc.II dated 16.01.1980, the provisions of Rule 14 of the CCS (CCA) rules have to be followed in the disciplinary proceeding of the applicant. From the perusal of the said letter, it is seen that the said provisions of CCS (CCA) have to be followed not literally but to be followed in spirit. Meaning thereby that reasonable opportunity should be provided to the applicant and principles of natural justice are required to be followed. The said instructions are extracted below:-

“(1) Enquiries against ED Agents following Rule 14 of CCS (CCA) Rules in spirit.- While it may not be necessary to follow the provisions of Rule 14 of CCS (CCA) Rules, 1965, literally in the cases of ED Agents, it would be desirable to follow the provisions of that rule in spirit so that there may be no occasion to challenge that the opportunities under Article 311 (2) of the Constitution were not provided.”

6. The applicant further submitted that in so far as article of charge no.1 is concerned, the enquiry officer has not called Sh.Satish Shishpal and Sh.Umesh as witnesses who authored of some exhibits. He has submitted that the said exhibits were being introduced and confirmed by other witness. The exhibits introduced by the said other witness were taken into consideration and thereby the principle of natural justice are violated. Counsel for the applicant further submitted that the enquiry officer has not complied with rule 14 (18) of the CCS (CCA) Rules and thereby the enquiry report is vitiated. In support of his claim, the counsel for the applicant relied upon the following judgments of the Hon'ble Supreme Court and CAT, Principal Bench.

- (1) Para 27 in the case of **Kuldeep Singh Vs. Commissioner of Police and others** (1999) 2 SCC 10)
- (2) Para 14 in the case of **Union of India Vs. T.R.Varma** (1958) SCR 499).
- (3) Para 6 in the case of **Ministry of Finance & Anr.Vs. S.B.Ramesh** (Civil Appeal No. 3091 05 1995)
- (4) Para 15 of the order passed in the case of **Santosh Yadav Vs. Union of India** (OA 4211/2015)
- (5) Para 6.3 and 6.4 of the order in the case of **Ravi Shankar Kumar Sinha Vs. UOI and Others** (OA 804/2015).

From the perusal of the facts in the above said judgments, it is clear that the delinquent employees involved in the above said cases were all directly governed by CCS (CCA) Rules. Whereas in the case of the applicant he is governed by, as stated above, Gramin Dak Sevak (Conduct & Engagement) Rules and by virtue of the above stated letter of DG P&T dated 16.01.1980, basic principles of natural justice and reasonable opportunity of hearing the Charged Officer is to be followed in principle.

7. Further in so far as the article of charge no. 2 is concerned, the applicant was placed under put off duty and directed on 15.12.2006 to handover the charge. Meaning thereby he was suspended from carrying out any official work. Though the applicant had secured status quo order by this Tribunal vide order dated 08.03.2007 passed in OA 336/2007, yet he had not handed over the charge. Further as per article of charge no. 3, when he was in the status of being on put off duty, he received deposits from the public unauthorizedly. In so far as the positive findings of the Enquiry Officer regarding charge no.2 and charge no.3 is concerned the counsel for the applicant submits that by virtue of the status quo order the applicant did not hand over the charge and went on receiving the deposits from the public. But the status quo order passed by this Tribunal on 08.03.2007 makes it clear that his put off duty status is continued as such he could not have accepted the deposits from the public any more and as such the acceptance of the deposits from the public was clearly unauthorized.

8. The counsel for the respondents have filed a detailed counter reply. They have stated that all the relevant rules and the principle underlying the provisions of CCS (CCA) rules are followed and that the concerned witness Sh. Chandra Pal Singh who had recorded the statements of the above stated Sh.Satish Shishpal and Sh.Umesh and the said Sh. Chandra Pal had authenticated the version of the said two witnesses, though they were not examined.

9. In view of the facts and circumstances recorded above, we do not find any violation of any procedural rules applicable to the applicant in conducting the enquiry by the Enquiry Officer and in consideration of his case by the disciplinary authority or the appellate authority.

10. In view of the same, the enquiry report dated 09.04.2010 (Annexure A-1), order of removal dated 29.04.2010 (Annexure A-2) and the order of Appellate Authority dated 23.12.2010 (Annexure A-3) do not suffer from any illegality and accordingly OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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