

**Central Administrative Tribunal
Madras Bench**

OA/310/01176/2015

Dated the 31st October Two Thousand Eighteen

P R E S E N T

Hon'ble Mr.P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

N.J.Uthayakumaran
S/o N.Jebamani,
No.43-D, Manakad,
Kayamozhi 628 205. .. Applicant
By Advocate **M/s.S.Ramaswamyrajarajan**

Vs.

1. Union of India, rep by
The Chief Post Master General,
Tamilnadu Circle,
Chennai 600 002.
2. Director of Postal Services (Additional Charge),
Southern Region – Tamilnadu,
Madurai 625 002.
3. Senior Superintendent of Post Offices,
Tuticorin Division,
Tuticorin 628 008. .. Respondents

By Advocte **Mr.K.Rajendran**

ORDER

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

The applicant is a Postal Assistant and he had filed this seeking the following relief(s):-

“(i) To quash the impugned Revision Order dated 27.2.2015 having Memo No.VIG/12-13/135/14/MA passed by the 2nd respondent and the impugned Charge Memo dated 23.5.2015, having Memo No.B1/CPT-Staff/2014-15 passed by the 3rd respondent and

(ii) To pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case with cost.”

2. The case of the applicant is that while he was working under the 3rd respondent, he was issued with a Charge Memo dated 24.6.2014 under Rule 16 of CCS (CCA) Rules, 1965 alleging that he had acted himself in a manner unbecoming of a government servant in the front of staff of Tuticorin HO in the retirement function on 31.12.2012 and thereby violated R3(I)(III) of CCS (Conduct) Rules and he had acted unbecoming of a government servant by breaking the glass door of the speed post counter and used unparliamentary words etc. The applicant after receiving memo had made a representation dated 14.8.14 to the Disciplinary Authority and requested to provide an opportunity for oral inquiry. But the Superintendent of Post Offices (DA) denied an oral inquiry and passed the penalty order dated 05.9.14 imposing penalty of pay reduction by one stage ie. From Rs.14670/- to 14120/- in the pay band of Rs.9300-34800/- with GP Rs.4200/- for a period of 6 weeks without cumulative

effect. The applicant suffered the penalty imposed. When the punishment period was about to complete, without any notice or intimation, he received an order from the 2nd respondent (Revisional Authority) under R29 exercising revisional authority remitting back the case to the DA for conducting a denovo inquiry from the stage of issue of charge memo on 27.2.2015 under R14 of CCS (CCA) Rule, 1965. Applicant filed representation denying the charges on 03.6.15 to R3. Without passing any order on the representation, R3 appointed an inquiry officer to inquire into the charges framed against him. The applicant counsel would contend that R2 the Director of Postal Services (who was holding additional charge) has no revisional authority and the action of R2 remitting the report to conduct denovo inquiry is illegal. R2 is liable to give notice to him before passing the revisional order. There is no provision for a denovo inquiry. Hence, the impugned order passed by R2 is produced as Annexure A3.

3. The respondents entered appearance and filed reply denying the allegation made. They admitted the issue of a charge memo to the applicant under Rule 16 of CCS (CCA) Rules on 24.6.14 for violation Rule 3(I)(III) of the rules. The applicant was permitted to go through the documents dated 18.7.14, but applicant did not appear for the same. On 06.8.14 he appeared and perused the documents and filed his reply statement on 14.8.14. According to the counsel, since the charge memo was issued under Rule 16, oral inquiry was not allowed as it was not mandatory and

imposed a punishment as stated by the applicant in OA.

4. The 2nd respondent who is the appellate and revisional authority reviewed the order passed by 3rd respondent and found that the punishment given was not commensurate with gravity of the offences committed and remitted the order back to disciplinary authority for conducting denovo trial from the stage of issue of charge memo under Rule 14 of CCS (CCA) Rules.

5. Accordingly, R3 issued a fresh charge memo under Rule 14 on 23.5.15. Applicant denied the charges in her representation dated 03.6.15. The applicant raised objection regarding the revisional order of 2nd respondent and asked Chief Postmaster General to cancel the order. The inquiry is not completed as applicant filed OA. According to the counsel for the respondent, the 2nd respondent, there is no merit in the contention that 2nd respondent is not competent to exercise the powers of revisional authority. 2nd respondent is the Director of Postal Training Centre, Madurai and he is also holding revisional powers in his post and hence his exercising of power cannot be considered as illegal. Respondent has not increased the punishment. So there is no illegality in the action of 2nd respondent in this case.

6. We have perused the application and reply filed by the parties and heard them in detail. The main point raised is whether 2nd respondent who was holding the charge of Director of Postal Services, Southern Region can exercise the statutory duties of the said post and set aside the penalty imposed and pass an order for denovo

inquiry. As per G.O.I decision MHA OM No.F7/14/61-Ests(A) dated 24.1.63, an officer performing current duties of a post cannot exercise statutory power under the CCA (CCS) Rules. If the officer has to exercise such duties, he should be notified in the gazette (G.I, MF, OM No.F12(2)-E II(A)/60 dated 15.10.63). Here the 2nd respondent is admittedly holding additional charge and it is evident from the impugned order dated 27.2.2015. There is no case for the respondents that the order was passed because he was invested with such powers by notification. So, the action of 2nd respondent in using the revisional power is in excess of his authority and it cannot be sustained in the eye of law.

7. Another contention raised is that under Rule 29, there is no provision for denovo trial and only a further inquiry can be conducted (vide Rule 29(1)(c)). Here in this case, the inquiry conducted earlier was for a charge under Rule 16 for minor penalties and there is no need of a detailed inquiry as contemplated under charge under Rule 14. If the earlier charge memo and procedure undertaken was under Rule 14, only a further inquiry is sufficient. Here the procedure adopted was that for imposing minor penalty. So no challenge can be made under this ground.

8. It is needless to say that the allegation made against the applicant is serious in nature and requires deterrent punishment. In this case, the respondents had not produced any order or notification authorising the revisional authority to exercise the statutory powers of the post which he is holding as additional charge. So, it is clear that the revisional order passed by 2nd respondent under Rule 29 was beyond the

power of an officer holding additional charge. So, the order passed by the 2nd respondent invoking statutory powers of the post of 2nd respondent, which he is not having, is illegal and liable to be set aside.

9. In the result, the impugned order No.VIG/12/13/135/14/MA dated 27.2.2015 of the 2nd respondent is accordingly set aside. Accordingly, the OA is allowed. No costs.

(T.Jacob)
Member(A)

31.10.2018

(P.Madhavan)
Member(J)

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