

**Central Administrative Tribunal
Madras Bench**

OA 310/00907/2018

Dated Monday the 6th day of August Two Thousand Eighteen

P R E S E N T

**Hon'ble Shri. R.Ramanujam, Member(A)
&
Hon'ble Shri. P. Madhavan, Member (J)**

S. Vijayalakshmi
Postal Assistant
Dindigul HO
Dindigul 624 001. .. Applicant

By Advocate **M/s. S. Arun**

Vs.

1. Union of India rep. by
Chief Postmaster General
Office of the Chief Postmaster General
Tamil Nadu Circle
Chennai – 600 002.
2. The Senior Superintendent of Post Offices
Dindigul Division
Dindigul – 624 001. .. Respondents

By Advocate **Mr. M. Kishore Kumar**

ORAL ORDER

Pronounced by Hon'ble Mr.R.Ramanujam, Member(A)

Heard. The applicant has filed this OA seeking the following relief:-

“To set aside Charge Memo No. F1/9/08-09/SV-I dated 29.05.2018 issued by the 2nd respondent and pass such other orders as are necessary”

2. It is submitted that the applicant was proceeded against under Rule 16 of CCS (CCA) Rules 1965 by issue of a charge memorandum dated 10.12.2010. An order was also issued against the applicant dated 02.02.2012 for negligence of duty and a penalty of recovery of Rs. 2 lakh was imposed on the applicant. The order was challenged in OA 404/2013 which was disposed of by an order of this Tribunal dated 16.09.2014 setting aside the impugned penalty order dated 02.02.2012 and the order of the Appellate Authority thereon dated 14.11.2012 and directing the respondents to refund the recovered amount to the applicant. However, it was left open to the respondents to hold a full fledged inquiry in accordance with law to establish the charges leveled against the applicant and pass appropriate orders.

3. The authorities, thereafter issued Annexure A3 charge memorandum dated 02.11.2015 under Rule 16(1)(b) of the CCS(CCA) Rules 1965. Although the charge memorandum was issued under Rule 16 (1)(b), a regular inquiry following the procedure laid down for inquiry under Rule 14 was held and the Inquiry

Officer submitted his report dated 31.07.2017 holding the charges I and II framed against the applicant as proved beyond doubt. The applicant on being given an opportunity, submitted Annexure A5 representation against the report of the Inquiring Authority on 05.09.2017. However, instead of taking the matter to its logical conclusion, the respondents issued Annexure A6 order dropping the disciplinary proceedings initiated against the applicant without prejudice to take further disciplinary action against her in due course. Pursuant to such orders, the respondents have now issued Annexure A7 charge memorandum dated 29.05.2018 levelling the same charges against the applicant and proposing to conduct a detailed inquiry under Rule 14.

4. Learned counsel for the applicant would submit that the respondents had conducted a full fledged inquiry on the same charge as per procedure laid down for a Rule 14 inquiry although the charge memorandum itself was issued under Rule 16(1)(b). The authorities are precluded from withdrawing the same and issuing a fresh charge memorandum under Rule 14 at a time when the inquiry officer has completed the inquiry and submitted his report and the applicant has also submitted her representation against the findings recorded therein. Annexure A6 impugned order dated 28.11.2017 and the fresh charge memorandum dated 29.05.2018 were bad in law as such a flip-flop by the respondents in a serious matter of inquiry could not be permitted.

5. The respondents have filed their reply in which it is contended that the charge memorandum issued on 02.11.2015 was found not to have been preceded

by a recording of statement from the applicant and no inquiries were made with her before initiating the disciplinary proceedings.

6. We have considered the matter. It is not in dispute that the respondents first proceeded to impose penalty on the applicant without following due procedure on account of which this Tribunal set aside the order of penalty of recovery of an amount of Rs. 2 lakh from the applicant by an order dated 16.09.2014 in OA 404/2013. The respondents were, however, granted liberty to commence a full fledged inquiry in accordance with law and pass appropriate orders. Accordingly the charge memo dated 02.11.2015 came to be issued against the applicant. Admittedly on the basis of the applicant's denial of charges, an inquiry officer was appointed who conducted the inquiry and submitted his report on 31.07.2017, a copy of which was provided to the applicant and the applicant submitted her representation dated 05.09.2017. If any lapse had occurred in the conduct of inquiry and had been highlighted by the applicant, it was open for the respondents to withdraw the subsequent proceedings and continue the inquiry from the stage where the irregularity or lapse occurred in the conduct of the inquiry. However, we find it strange that after concluding the inquiry in accordance with the procedure laid down under Rule 14 of CCS (CCA) Rules, the respondents pass the impugned order dated 28.11.2017 to the effect that no statement was recorded from the applicant and no inquiries were made before initiating the disciplinary proceedings against her and, therefore, the inquiry was not in order. When a full fledged inquiry had been concluded after granting due opportunity to the applicant,

the question of granting the opportunity to the applicant before commencement of the inquiry and issue of the charge memo itself could not arise. As such, it is for the respondents to carry the inquiry conducted following the issue of charge memo dated 02.11.2015 to its logical conclusion in accordance with law and, therefore, we are of the view that Annexure A6 order dated 28.11.2017 and Annexure A7 charge memorandum dated 29.05.2018 are liable to be quashed and set aside.

7. If any event or point of fact amounting to misconduct had not been covered in the said charge memo and inquiry thereon is considered justified, it is for the respondents to consider issue of separate charge memo without withdrawing the previous charge memo. However, the legality of such action including time limit within which departmental inquiries are to be initiated shall be subject to judicial review, if the applicant is aggrieved and chooses to challenge it.

8. In view of the above Annexures A6 and A7 orders/charge memo dated 28.11.2017 and 29.05.2018 respectively are quashed. Accordingly the respondents are directed to conclude the process of inquiry that commenced with the issue of charge memorandum dated 02.11.2015 in accordance with law.

9. OA is disposed of in the above terms. No costs.

(P. Madhavan)
Member (J)

AS

06.08.2018

(R.Ramanujam)
Member(A)