

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/651/2016

Date of Order : 08-06-2018

Between :

M.Ravi Krupakar Rao S/o P.Mark,
Aged about 47 years, working as Office Assistant,
O/o Superintendent, Postal Stores Depot,
Guntakal, District Ananthapur.

Applicant

AND

1. The Union of India, rep by The Director General,
Posts, Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi-1.
2. The Chief Postmaster General, A. P. Circle, Hyderabad.1.
3. The Postmaster General, Kurnool Region, Kurnool-2.
4. The director of Postal Services, O/o The Postmaster General,
Kurnool Region, Kurnool-2.
5. The Superintendent of Post Offices,
Ananthapur Division, Ananthapur.
6. The Superintendent, Postal Stores Depot,
Guntakal, District Ananthapur.
7. The Manager, Postal Stores Depot,
Guntakal, District Ananthapur.
8. Smt.D.Parvathi, Inquiry Officer/Asst.Suptd. of Post Offices,
Guntakal Sub-Division, Guntakal-515801, Dist. Ananthapur.
9. Smt.K.Meenakshi W/o Iyyanna, Aged about 56 years,
Working as Postal Assistant, H.P.O,Ananthapur.Respondents

Counsel for the Applicant: Mrs. Rachana Kumari

Counsel for the Respondents : Mr. A. Surender Reddy, Addl.CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

Heard Mrs. Rachna Kumari, learned counsel appearing for the applicant and Mr. A. Surender Reddy, learned Addl. Standing Counsel appearing for the Respondents.

2. This OA is filed assailing

(i) the order dated 04.03.2016 passed by the 5th Respondent imposing the punishment of recovery of Rs. 3,92,400/- in 36 instalments of Rs.10,900/- from the pay and allowances payable from the month of March, 2016, and the Appellate Authority's order No. INV/R-14/MRR/2016 dated 16.06.2016 rejecting the appeal of the applicant and confirming the punishment order of the 5th Respondent and set aside the same declaring as arbitrary, illegal, unwarranted and in violation of Articles 14 and 16 of the Constitution of India;

(ii) to direct the Respondents to conduct denovo inquiry providing reasonable opportunity of perusing records duly providing the various documents sought for, with a time frame for such completion of de-novo enquiry from the stage of perusal of documents along with his defence assistant;

(iii) to direct the Respondents not to make any recoveries pursuant to the impugned orders dated 04.03.2016 of the 5th Respondent and to refund the recoveries already made earlier with all the consequential benefits.

3. The brief facts necessary for considering the OA may be stated as follows :-

The applicant while working as Office Assistant in Postal Stores Department, Guntakal was issued a charge memo dated 17.07.2014 by the 1st Respondent and the imputations in the charge memo are as follows :

The applicant while working as SB Ledger cleark III, Guntakal HO during the period from 01.01.09 to 08.08.09 failed to check the correctness of Balances [BAT] of the SB accounts of Rajendranagar SO, Guntakal some of which are tabulated below. Had the said Sri M.Ravi Krupakar Rao pointed out the difference in balance, the fraud could have been detected much earlier and thus furtherance of fraud to an extent of Rs.22,96,341/- could have been averted.

2. According to the Department, the applicant was working on OTA basis as SBL Clerk from 01.01.2009 to 08.08.2009 and during the said period as the applicant failed to check the correctness of the balance, the fraud took place. Therefore the Departmental Enquiry was initiated against him and the Enquiry Officer at the conclusion of the enquiry found the applicant guilty of facilitating the aforementioned fraud and directed recovery of an amount of Rs.3,92,400/- from the salary of the applicant. Feeling aggrieved, the applicant filed OA No.324/2016 before the Tribunal and the same was disposed of directing the applicant to exhaust the remedy of appeal. Thereafter the applicant preferred the appeal and the appeal was also dismissed by the Appellate Authority confirming the order passed by the Disciplinary Authority. The Tribunal noticed that by the date of filing of the OA, the appeal was pending before the Appellate Authority. Therefore the Tribunal directed the applicant to exhaust the remedy of the appeal before approaching the Tribunal and disposed of the OA with the said direction. The Appellate Authority by order dated 04.03.2016 confirmed the order

passed by the Disciplinary Authority and dismissed the appeal filed by the applicant. Thereafter the applicant again approached the Tribunal by filing the present OA challenging the order of the Disciplinary Authority as well as the Appellate Authority besides challenging the charge memo itself on the ground that the charge memo itself is not maintainable against the applicant having regard to the facts and circumstances of the case.

3. The applicant requested for supply of nine documents to prove his innocence in the enquiry but only three documents were supplied and the remaining documents were not supplied on the ground of non availability of the same. One of the crucial documents, according to the applicant is the 'order book' which was admittedly not inspected at the time of enquiry. The main contention of the applicant is that he was working in some other Branch at the relevant time and he was not working during that period in the branch where the fraud had been allegedly taken place. To prove the said fact, the applicant wanted the 'order book' to be produced during the course of the enquiry. The 'Nominal rolls' maintained by the Postmaster showed that the applicant worked in the Savings Branch during the relevant period. After some hearings in the enquiry, the applicant did not attend the enquiry on the ground that he fell sick. However, subsequently he attended the enquiry and submitted his reply to the findings recorded by the Inquiry Officer.

4. In the course of enquiry, the Postmaster, ASPM, GSTL HO was examined as DW2. He admitted that the entries in the 'nominal roll' were made by the Postmaster. He further stated in his evidence that there were

differences in Ledger Balance, the applicant worked as SBLC-111 on OTA and the same was brought to the notice of Postmaster, Guntakal HO and in turn postmaster reported the same to the DO, Anantapur. From the deposition of DW-2 the Enquiry Officer concluded that the applicant worked as SBLC-III on OTA but overlooked the important fact that the applicant orally informed about the differences in the ledger balances to DW-2. When the Inquiry Officer totally accepted the evidence of DW-2, the applicant cannot be attributed with any negligence in discharging his duties. The Inquiry Officer simply had recorded a finding that the evidence of DW-2 discloses that the applicant worked on the relevant date as SBLC-111 on OTA and there he can be attributed with negligence in discharge of the duties. The Inquiry Officer also observed in the enquiry report that to prove his innocence the applicant ought to have asked the department to produce certain documents during the course of the enquiry. This observation has nothing but overlooking the very basic point that the burden is on the Department to establish the misconduct of the applicant and the applicant can be placed with the burden of proving his innocence.

5. To find the applicant guilty of negligence, the department has to establish that there is nexus between the commission of fraud and negligence on the part of the applicant but no such evidence is produced by the Department. Moreover DW-2 specifically stated in the deposition that the applicant himself pointed out certain discrepancies in the Ledger orally to the authorities. The Inquiry Officer on the basis of the said evidence ought to have held that the applicant cannot be attributed with any

culpable negligence.

6. The crucial aspect in this case is that the Department without establishing the fraud to the tune of Rs. 22,96,341/- by vice 9th respondent and others issued charge memo to the applicant framing the charge of negligence on the part of the applicant and alleging that his negligence contributed to the commission of the fraud. From the reply statement filed by the Respondents, it appears that a charge sheet was also issued to 9th Respondent who allegedly committed fraud along with others and the enquiry is still pending. Therefore, as rightly contended by the applicant, without establishing whether the fraud was actually committed or not, the Department issued a charge memo to the applicant which is unsustainable in law.

7. To sum up, in the instant case, the applicant requested for nine documents for the purpose of proving his innocence at the time of enquiry and only three documents were supplied on the ground that the 'remaining documents were not available'. The documents requested for by the applicant are maintained in the regular course of the official work but it is not understandable as to why those documents were not produced. Moreover, the Inquiry Officer points out in the enquiry report that the applicant could have asked for some documents to prove his innocence but failed to do so. It is nothing but overlooking the basic point that the Department has to prove the charges levelled against the applicant.

8. The Department also failed to prove the charges levelled against the

applicant by any cogent evidence by producing the 'Order Book' to show that the applicant worked in the Branch where the fraud occurred during the relevant period. More over the issuance of charge memo against the applicant itself is not maintainable since the fraud which was allegedly committed by the 9th Respondent is not so far proved. Accordingly the Respondents ought not to have issued charge memo to the applicant attributing the charge of negligence.

9. Accordingly the OA is allowed without any order as to costs. The Respondents are directed to refund the amount which was already recovered from the applicant together with the interest at the rate applicable to the GPF contributions within a period of two weeks from the date of receipt of a copy of this order and shall not make any further recoveries. The order dated 04.03.2016 passed by the 5th respondent and the order dated 16.06.2016 passed by the appellate authority are set aside.

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 08th June, 2018.
Dictated in Open Court.

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