

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.020/00665/2017
Date of order : 22-06-2018

Between :

Smt.K.B.Usha Rani
W/o B.S.Vidhya Sagar
Aged about 60 years,
Occ : Postal Assistant,
(Under orders of Compulsory Retirement),
Hindupur Post Office,
Hindupur-515201.Applicant

AND

1. The Union of India,
Ministry of Posts and Telecommunications,
Represented by the Director General, Posts,
Department of Posts, DAK Bhavan,
Sansad Marg, New Delhi-110 001.
2. The Chief Post Master General,
A.P.Circle, Hyderabad.
3. The Director of Postal Services,
O/o Postmaster General,
Kurnool Region,
Kurnool 518 002.
4. The Superintendent of Post Offices,
Hindupur Division,
Hindupur – 515 201.Respondents

Counsel for the Applicant : Mr. K. Sudhakar Reddy
Counsel for the Respondents : Mr. M. Brahma Reddy

CORAM :

THE HON'BLE MR.JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER

ORDER

(per Hon'ble Mr.Justice Vishnu Chandra Gupta, Judicial Member)

(per Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member)

This reference under section 26 of Administrative Tribunal's Act, 1985 has been made by an order of the Hon'ble Chairman dated 30.05.2018 to me to settle the difference of opinion expressed by Hon'ble Member of Division Bench of this Tribunal in OA No.665/2017.

2. The question referred for consideration reads as under :

“ The main point of disagreement is as to whether in view of the circumstances, namely the applicant denied the charges levelled against her in response to her reply to the charge memo and depositing an amount of Rs.5,57,000/- into Government account against the alleged misappropriation of Rs.13,900/- which are not denied by the respondents, the order of compulsory retirement is required to be set aside giving liberty to the respondents to initiate a fresh enquiry.”

Before further proceeding with the matter, at the very outset, few facts need to be looked into to resolve the issue.

3. The applicant who has been serving in the Postal Department since 1981 and when she was working as Postal Assistant in the Department of post at Hindupur Post Office, was put under suspension by an order dated 30.10.2015 passed under Rule-10 of CCS (CCA) Rules, 1965. Aggrieved by the order of suspension, the applicant filed OA No.306/2016 praying for revocation of the suspension order. This Tribunal disposed of the aforesaid OA vide an order dated 12.04.2016 directing the respondents to consider the representation of the applicant for revocation of suspension dated 04.01.2016. In pursuance of the order passed by this Tribunal, the representation was considered but instead of reinstating the applicant, the

suspension of the applicant was further extended for 180 days with effect from 10.07.2016 on the advice of the Review Committee. The applicant thereafter filed a Contempt Petition on 18.07.2016. During these proceedings of contempt, the applicant deposited a sum of Rs.5,57,000/- (Rupees five lakhs and fifty seven thousand only) on 28th July, 2016 with the department after withdrawing the amount from her GPF account vide UCR Receipt No.A6213, for which the applicant pleaded that she deposited this amount on the oral instructions of Superintendent of Post Offices. Thereafter she was served with memo of charge dated 29.08.2016. The Article of charges mentioned therein reads as under :

“Article-I:

Accepted deposits amounting to Rs.6000/- in fictitious RD account even without account number during the period from 23.02.2013 to 15.05.2013 thereby exhibited lack of integrity and devotion to duty as required under Rule No.3 (1)(i) and (ii) of the CCS (Conduct) Rules, 1964.

Article-II:

Accepted TD deposits amounting to Rs.4010/- in RD account No.706031 at Muddireddipalle P.O made entries in the pass book, impressed date stamp authenticating the transactions but failed to account for the balance thereby exhibited lack of integrity and devotion to duty as required under Rule No.3 (1)(i) and (ii) of the CCS (Conduct) Rules, 1964.

Article-III:

Accepted SB deposits amounting to Rs.3500/- in SB account No.1050167 at Muddireddipalle S.O on 30.04.13 and 15.01.14 made entries in the pass book, impressed date stamp authenticating the transactions but failed to account the balance apart from failing to enter withdrawal of Rs.400/- in the pass book though allowed in the same account on 29.08.2012 by obtaining signature of a person other than the depositor thereby exhibited lack of integrity and devotion to duty as required under Rule No.3 (1)(i) and (ii) of the CCS (Conduct) Rules, 1964.”

4. After serving the charge sheet, the suspension of the applicant was revoked vide order dated 18.11.2016. Thereafter the Disciplinary Authority (for short 'DA') called for reply of the applicant with regard to the Article of charges as required in Rule 14(4) of CCS (CCA) Rules, 1965. The applicant submitted her first representation on 03.09.2016 and requested for supply of documents as contained in the list of documents annexed to the charge memo but copies of documents were not supplied to the applicant by DA. The applicant again represented on 08.09.2016 disowning the charges and specifically denied the same in general. Thereafter the DA after exercising the power under Rule-14 (5) of CCS (CCA) Rules, 1965, appointed Inquiry Officer (IO) to conduct the enquiry against the applicant and also appointed Presenting Officer (PO) by its order dated 10.11.2016. Thereafter the first date for preliminary hearing was fixed by the IO under Rule-14 (7) and issued notice to the applicant to appear on 30.01.2017. On the day of preliminary hearing, the applicant appeared before the IO and the IO read over the charges as per memo dated 29.08.2016 to the applicant and explained in vernacular. The applicant also read the charges. Thereafter the IO asked the applicant as required under Rule 14(9) of CCS (CCA) Rules whether she pleads guilty or not? Thereafter the applicant admitted all the Articles of charges framed against her and requested the IO to close the enquiry without any further sitting. The statement of admission of applicant was recorded on the same day by IO which was duly signed by the applicant and has been annexed with the OA at page-61, which reads as under :

“ Deposition dated 30.01.2017 given by Smt.K.B.Usha Rani, P.A (U/s), Hindupur HO.

My name is K.B.Usharani, w/o B.S.Vidyasagar, aged 59 years. I have been working as Sub accounts PA at Head Post office since 2014.

I worked as SPM, Mudireddipalli SO from 10.03.2010 to 07.07.2014. I was relieved from M.R.Palli SO on 07.07.2014 under Rotational transfer and I was posted as PA at Hindupur HO. I was working as PA, Hindupur Head Post office from 07.07.2014 and I was suspended on 10.10.2015 for 13 Months and revoked on 18.11.16. I was issued charge sheet on 29.08.16 vide SPOs Memo No.F/4-01/15-16/I, dated 29.08.2016. The memo of charges vide SPOs Hindupur memo no.F/4-01/15-16/I dated Hindupur the 29.08.2016 has been read out to me in vernacular. Myself also read all the articles framed against me and understood the charges.

Knowingly and unknowingly some mistake occur. I has already left the office on transfer and working at Head Post Office for one and half year. I had no public complaint and remarks in my duty period at Mudireddipalle S.O. Anyhow with due respect I am admitting the charges voluntarily admitting all the three articles framed against me vide SPOs, Hindupur Memo No.F/4-01/15-16/I dated 29.08.16 at Hindupur. I apologies if any inconvenience caused for the smooth working of the administration I request the I.O kindly to close my inquiry without any further sittings and oblige.

With this Inquiry concluded at 12.30 hours.”

5. Thereafter the enquiry officer prepared the inquiry report and submitted to the DA in terms of Rule 14 (10) of CCS (CCA) Rules. The DA after considering the report submitted by the IO dated 21.02.2017 sent it to the applicant and requested the applicant to submit her representation within 15 days against the report submitted by the IO. Thereafter the applicant again admitted the charges before the Disciplinary Authority by giving her representation dated 08.03.2017 annexed with reply of Respondents as annexure R-5 at page-30 of reply. The same is reproduced herein below for ready reference :-

“From :
Usha Rani, SCB,
Postal Assistant,
Head Post Office,
Hindupur.

To
The Superintendent of PO's,
HINDUPUR.

Sir,

Sub:- Rule-14 Enquiry against Smt.K.B.UshaRani, Postal Assistant, HIndupur-515201.

Ref:- DO letter No.7/4-01/15-16, Dtd 8/3/2017.

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With reference to above I wish to state that **I am innocent of all the charges in Article I, Article II & Article III levied on me by SPO's Hindupur.** I was also kept under suspension from 10th Oct 2015 to 18th Oct 2016 in this regard.

Since I am **in the verge of retirement on 30th April 2018** I don't want to prolong into it.

Hence I admit the charges of Article I, Article II & Article III levied on me by SPOs HINDUPUR 515201.

Thanking you Sir,

Yours faithfully,

Usha Rani ”

6. The DA found the charges proved against the applicant and punished her with the punishment of compulsory retirement with immediate effect and reduction of pension to the extent of 5% and granting 95% pension to the applicant by order dated 27.04.2017. The relevant portion of the findings recorded and the punishment awarded by the Disciplinary Authority is quoted as under:

“ DISCUSSIONS & FINDINGS

Article 1:- The Charges framed against the said Smt.K.B.Ushaarani in brief is that while she was working as Sub-Postmaster Muddireddipalli SO from 03.10.2010 to 09.06.2014 had resorted to misappropriation of Rs.6000/- in fictitious RD account opened in the name of Smt G.Santhamma and thereby contravened the provisions contained in Rule 105 & 106 of POSB Manual volume I and Rule 4(1) of the Volume I.

Article.2:- The charge in brief in Article II is that Smt.K.B.Usharani while working as SPM Muddireddipalli SO during the period from 03.10.2010 to 09.06.2014 had resorted to misappropriations to the tune of Rs.4010/- in RD account No.706031 of Smt.U.B.Jyothsna and thereby contravened the provisions contained in Rule No.105 and 106 of POSB Manual volume I and Rule No.4(1) of FHB volume I.

Article.3:- The Charge in brief in Article III is that the said Smt.K.B.Usharani while working as SPM Muddireddipalli SO during the period from 03-10-2010 to 9-06-2014 had resorted to misappropriations to the tune of Rs.3900 in SB account no.1050167 of Smt D.S.Raziya and thereby contravened the provisions contained in Rule No.31&33 of POSB Manual volume I and Rule 4(1) of FHB Volume I.

The Inquiry Officer in his report dated 21-02-2017 has held all the three Articles of Charge as Proved beyond any reasonable doubt, since the Charged Official had pleaded guilty of all the Articles of Charge in the first sitting held on 30—1-2017 for preliminary hearing. The Charged Official has also pleaded guilty of all three Articles of Charge in her written defense Representation dated 13-03-2017. Therefore, I agree with the findings of the Inquiry Officer fully and hold all the three Articles of Charge framed against the said Smt.K.B.Usha RAni in the Memo cited under reference No.1 above as proved beyond any reasonable doubt.

The Charges framed against Smt.K.B.Usharani are very serious in nature, which warrant deterrent action. Continuing such Official in service is undesirable. The misdeeds of the Charged Official have tarnished the image of the Department in the view of the customers. However keeping in view the fact that the official has voluntarily credited a huge amount towards adjustment of loss sustained by the Department and also her long length of service in the department, I order as follows :

ORDER

I, B.Mohd Ismail, Supdt of Post Offices, Hindupur Division, Hindupur hereby order that Smt K.B.Usha Rani, Postal Assistant, Hindupur HO be compulsorily retire from Service with immediate effect. It is further ordered that under the provisions of Rule 40 of CCS (Pension) Rules 1972, the said Smt.K.B.Usha Rani shall be paid pension @ 95% only.

The period of Suspension from 14-10-2015 to the date of reinstatement i e 18-11-2016 is treated as such for all purposes. “

7. Aggrieved by the aforesaid order, the applicant preferred an appeal to the Director of SPOs, Kurnool on 03.05.2013 but the same was also dismissed by the Appellate Authority on 03.07.2017 affirming the findings and punishment awarded by the DA.

8. Aggrieved by these orders, this OA has been filed seeking the following relief :

“ to quash and set aside the impugned memo No.F-4-01/15-16/I, dated 27.04.2017 issued by the 3rd Respondent imposing the penalty of Compulsory Retirement on the applicant with immediate effect with further orders that the official will be paid pension @ 95% only and the period of suspension from 14.10.2015 to the date of reinstatement i e 18.11.2016 is treated as such for all purposes and the Memo No. Inv/13-KBUR/2017 dtd @ Knl the 03.07.2017 issued by Respondent No.2 rejecting the appeal of the applicant as malafide, illegal, arbitrary and violation of the Rule 14 of CCS (CCA) Rules, 1964 and also is clear violation of applicants fundamental rights guaranteed under Article 14, 16 and 21 of the Constitution of India and consequently direct the respondents to reinstate the applicant back in service with all consequential benefits”.

9. The reply has been filed by the Respondents alleging therein that the applicant who joined the Department on 05.12.1981 as Postal Assistant worked as a Postal Assistant, Hindupur Post Office till 12.10.2015. Thereafter, she was compulsorily retired from service on 27.04.2017 prior to her normal date of retirement of 30.04.2018, on the basis of an enquiry conducted against her. It was further alleged that after investigation, Superintendent of Sub Division, Hindupur, submitted reports of investigation dated 18.04.2015 and 13.10.2015 disclosing therein the fraud in Savings Bank accounts and Recurring Deposit accounts to the tune of Rs.10,05,474-00 in 75 accounts during the period of 16.04.2010 to

26.04.2015. The applicant during this period worked as Sub Post Master, Muddireddipalli Sub Post Office from 03.03.2010 to 09.06.2014.

10. It was further contended that the applicant deposited a sum of Rs.5,57,000/- to the Department on her own accord on account of loss occurred to the Department by her misdeeds and misconduct. It was also contended that she admits her guilt with regard to misconduct committed by her. Consequently she was punished. After punishment was imposed, the allegations were levelled by the applicants against the Postal Authorities which are based on after-thought and not sustainable from the record. The petition is liable to be dismissed.

11. No rejoinder affidavit has been filed in this case. However Photostat copy of representation alleged to have been given on 08.09.2016 to the Disciplinary Authority is placed on record.

12. After hearing counsel for the parties, the Hon'ble Members differed in their opinion and consequently the matter was referred under section 26 of the A.T.Act, 1985, for opinion of the third Member.

13. I have heard the learned counsel for the applicant Mr.K.Sudhakar Reddy and Mr.M.Brahma Reddy, learned Standing Counsel for Respondents at length and perused the record of the case.

14. The applicant's counsel would submit that the order awarding punishment aforementioned by the DA and confirmed by the Appellate Authority are not sustainable on the following grounds :-

"I have gone through the Memo of Charges, Representation dtd.13-03-2017 of the Charged Official and other connected records of the case carefully. I find from the records of the Inquiry that the Inquiry has been held in accordance with the provisions contained in Rule 14 of CCS (CCA) Rules, 1965 and I am satisfied that the Charged Official was provided with an adequate opportunity during the inquiry to defend her case

- (i) The applicant asked for the copies of the documents from DA by giving representation dated 03.09.2016 the copy of which was not only annexed by applicant with OA but the same was also annexed with counter affidavit as annexure R-3 but copies were admittedly not furnished and in absence thereof the applicant has been deprived of fair opportunity in defending his case and principles of natural justice were grossly misused and violated by the Respondents. In support of this contention the applicant relied upon the judgment of the Hon'ble Apex Court rendered in the case of **State of UP Vs. Shatrughan Lal & Anr [1998 (6) Supreme 587 = (1998 6 SCC 651]**;
- (ii) That the applicant specifically denied all the charges by her representation dated 08.09.2016 before the Disciplinary Authority and after relying upon such denial of charges, an enquiry officer was appointed to conduct the enquiry and also appointed Presenting Officer. In such situation, if at any later stage the applicant admits her guilty, the Enquiry Officer ought to ask the Presenting Officer to establish the case of the Department and only thereafter when Department able to establish its case, the punishment could be awarded.
- (iii) If the applicant denied the charges at earlier stage and on subsequent stage of enquiry if she admits the charges, it may lead to a presumption that there was some understanding between the applicant and the Enquiry Officer for short circuiting the enquiry. In support of his contention, he relied upon a judgment rendered in **G. Siva Prasad Rao Vs. Bank of India & Ors [1990 (1) SLR 325]** by Hon'ble High Court of Andhra Pradesh.
- (iv) If the Inquiry Officer based his finding not only on the sole admission of the charged officer but also relied upon other evidence to support its findings to establish the guilt of the delinquent which has not been proved during the enquiry proceedings, the same would be liable to be set aside. He relied upon in support of his contention on

the judgment of the Hon'ble Apex Court in **Roop Singh Negi Vs. Punjab National Bank & Ors [2009 (2) SCC 570]**.

- (v) There is no provision to impose the penalty of reduction of pension by the Disciplinary Authority under the Rules. The reduction in pension could only be imposed by the President of India under CCS (Pension) Rules, 1972. In this regard the applicant relied upon the judgment of **R.B.Singh Vs. Union of India [1992 (2) SLR 545]** rendered by the **Calcutta Bench** of this Tribunal.
- (vi) While awarding the punishment, the Disciplinary Authority has not considered the circumstances in which the admission was made by the applicant. The admission made by applicant cannot be said to be made voluntarily in view of attending circumstances and facts.

15. The counsel for the Respondents vehemently opposed the submissions raised by the counsel for the applicant and heavily relied upon the admission made by the applicant alleging it to be voluntarily made. It was further contended that the Enquiry Officer was right in observing the provisions of Rule-14(9) of CCS (CCA) Rules while recording the admission made by the applicant on the date of preliminary hearing and as such there is no violation of CCS (CCA) Rules and the applicant's admission was rightly relied upon to prove the guilt of the applicant by the IO as provided in Rule-14(10) of CCS (CCA) Rules. It was further argued that not only at the stage of preliminary hearing the applicant made the admission regarding the charges levelled against her but she again reiterated her admission before the DA when an opportunity of hearing was provided to the applicant after serving the enquiry report. As such there was no mistake in awarding the punishment after finding the applicant guilty of the alleged misconduct mentioned in the charge memo dated 29.08.2016. There is no illegality in passing the order by the DA. Therefore, the appeal preferred by the applicant was also rightly dismissed by the Appellate Authority.

16. It was further contended that supply of the copies of document at the time of serving the charge sheet is not mandatory as provided in Rule-14(4) of CCS (Pension) Rules. The DA simply required to serve the Government Servant copy of the Article of charges, the statement of imputation of misconduct or misbehaviour, list of documents and list of witnesses by which each Article of charges are proposed to be sustained and thereafter the DA shall require the Government Servant to submit written statement of defence and to state whether he desires to be heard in person. At this stage the DA has to ascertain whether the applicant is denying the charges or admitting the charges and if the applicant fails to admit the charges, the DA may appoint the IO and PO which has rightly been done in the present case.

17. It was further contended that Rule-14(9) of CCS (CCA) Rules provides that on the date of preliminary hearing, the charges shall be read over to the applicant by IO and thereafter the IO is under legal obligation to ask the Government Servant whether she/he wants to admit her guilt or has any defence.

18. In the case in hand the applicant has admitted her guilt to the Article of charges voluntarily by using specific words that "she did not want any further steps in the enquiry." The statement of admission was duly recorded by the IO and the same was duly signed by the IO as well as by the applicant and as such there is no violation of rule in recording the

statement of guilt of the applicant. The IO rightly returns finding of guilt in respect of all the Article of charges based on plea of guilt which the applicant has DA by the applicant in response to show-cause notice issued to her along with enquiry report. Therefore none of the Rules have ever been violated at any stage. The principles of natural justice have been fully complied with. The applicant has not alleged any prejudice due to non-supply of the documents at the time of submitting the reply to the DA under Rule-14(4) of CCS (CCA) Rules. The allegation levelled by the applicant against the Respondents after making the admission. The allegations levelled by applicant against the respondents are self serving based on afterthought and have no legs to stand as there is nothing on record to establish those allegations levelled by the applicant with regard to coercion or applying force upon the applicant for making the admission or for inducing the applicant for admitting the charges by making false promise.

19. I have gone through the views expressed by both the Hon'ble Members of the bench which are the basis for difference of opinion. The Hon'ble Judicial Member while writing his judgment pointed out that principles of natural justice have been grossly violated. The applicant, on the oral instructions of Superintendent of Post Offices, withdrew the amount of Rs.5,57,000/- from her GPF account and credited in the UCR and thereafter a charge sheet was served upon the applicant levying the charges only for causing loss to the Department to the tune of Rs.13,900/-. The learned Judicial Member also observed that when the applicant

specifically denied the charges levelled against her before the DA, why the applicant should admit the charges on the day of preliminary hearing of enquiry. In such circumstances, acting upon the admission of the applicant is not fair and observed that the enquiry initiated against the applicant is unfair and against the principles of natural justice and the admission in those circumstances cannot be the basis to establish the charges and was of the view that the petition deserves to be allowed after setting aside the order of the punishment and the order of the Appellate Authority with liberty to the Respondents to initiate fresh enquiry if they were so advised.

20. So far as the Hon'ble Administrative Member is concerned, she was of the view that there is no prohibition in making an admission by the applicant at a later stages of the proceedings of enquiry and if the admission has been recorded in accordance with Rules and have duly signed by the delinquent employee and if it is established that the same is voluntarily made, the same may be the basis for establishing the guilt of the applicant. Mere depositing the amount of Rs.5,57,000/- is not a circumstances in which any benefit has to be given to the applicant especially when this fact has not been established that she was forced to deposit the aforesaid amount. She deposited this amount to make the loss good which was occurred to the Department on account of her misdeeds and misconduct and that was done with intent to settle the dues which were payable to the applicant. There is a specific provision for reduction of pension by the Disciplinary Authority under Rule 40(1) of CCS (Pension) Rules, 1972. Rule 40(1) provides that in case penalty of compulsory

retirement is awarded by the DA, the DA in appropriate cases may reduce the Pension or Gratuity or both. As such after referring Rule-14(4), 14(9), 14(11) of CCS (CCA) Rules, 1965 and Rule-40 of CCS (Pension) Rules 1972 stated that there is no illegality in the impugned orders of awarding punishment as well as affirming the same by the Appellate Authority and the petition deserves to be dismissed.

21. The question which has been referred is a complex one and includes everything which has been argued by the learned counsels in the present case. There certain points in issue and are necessary to be dealt with to resolve the difference of opinion expressed by the Hon'ble Members. Therefore this Tribunal will take all those issues one by one.

(i) Whether the procedure was fully complied with while conducting the enquiry against the applicant?

22. To see the compliance of the relevant rules it would be necessary to reproduce certain relevant rules. Rule-14 under Chapter-VI of CCS (CCA) Rules deals with procedure for imposing major penalties. The relevant Rule 14(3), 14(4), 14(5), 14(6), 14(7), 14(9), 14(10) and 14(23) are extracted hereunder :

14. Procedure for imposing major Penalties

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3); evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

.....

14(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

14(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty.

.....

14(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

EXPLANATION- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include :-

- (a) the report prepared by it under clause (i).
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

23. A perusal of the Scheme of Rule-14 as mentioned herein above provides that after satisfaction of DA that misconduct has been committed by the Government Servant, the DA shall deliver the government servant the copy of the Article of charges along with statement of imputation of the misconduct, a list of documents and witnesses which are required to establish the proposed charges and after serving the charge memo the DA shall ask the government servant to furnish his written statement of defence and further require whether he is desires to be heard in person. At this stage of proceedings, it would not be incumbent to the DA to furnish the copies of the documents. At this stage, the main purpose of serving the charge sheet is to ascertain whether the Government Servant admits his guilt or not. In case of admission of charges by the charged officer, the DA may proceed on the basis of admission and pass appropriate order but when the delinquent employee submits his written statement of defence denying the charges, the DA has an option to enquire the matter itself into such Article of charges which were not admitted or if he considers necessary may appoint IO for the purpose. The similar procedure may be adopted by the Disciplinary Authority when no written statement has been submitted by the government servant. If the disciplinary authority decided to hold the enquiry by appointing IO may also appoint the PO to present the case on his behalf. However sub-rule 6 of Rule-16 is very material and deals with the copies which are to be provided to the IO. Under clause (iv) of Sub-Rule-6 of Rule-14, the DA is under legal obligation to place the

"evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant."

(3) to the Government servant." It shows that before start with the enquiry by the IO all the documents referred in sub rule (3) must be provided to the Government Servant. The applicant at the very beginning of the inquiry demanded the copies of documents mentioned in the list of documents before submitting her defence.

24. Under sub rule 4 of rule 14 of CCS (CCA) Rules the government servant requires to file his statement of defence. This statement of defence is the foundation of his defence. This statement of defence shall be the basis to decide by the disciplinary authority whether to proceed further or to drop the proceedings against the government servant. If disciplinary authority decided to proceed against the government servant he may proceed to enquire the matter himself or may appoint any inquiry officer. Thereafter, the IO shall further proceed with the enquiry on the basis of defence already submitted by the government servant before DA. Only in those cases where the government servant failed to appear before DA or did not file his defence statement before DA, appears before IO the IO is required to ask the government servant whether he has nay defence or he pleads guilty to the charges levelled against him.

25. As such if the government servant ask for the copies from DA before filing his defence of those document which are mentioned in the list of documents annexed with the memo of charge, normally the same should be provided unless all or some are voluminous, of which inspection should

be allowed to the government servant. This right of inspection of record must be communicated by DA to the government servant.

26. If this valuable right of get the copies of document is denied and government servant is thereafter compelled to file his statement of defence, it will amount to violation of principals of natural justice as well as violation of mandatory rules governing the enquiry intended to award major penalty and shall cause serious prejudice in his defence to the government servant.

27. In the case in hand the applicant demanded the copies of such document mentioned in the list of document annexed with the memo of charge but his request was neither rejected nor allowed by the DA. In absence of such document she left with no option except to deny all the charges in general as she actually done. Admittedly the DA as well as IO failed to take any decision for supply of copies demanded by her before further proceeding with enquiry. In such circumstances the applicant's admission to the guilt involving an amount of Rs.13900/- considering the deposit already made by her of Rs 557000/- , her retirement in near future and with such disturbed state of mind by making a general statement without specifying the contents of each and every charge in unequivocal terms, such admission could not be the sole basis for finding the applicant guilty for the charges levelled against her.

(ii) Whether the admission made by the applicant has been voluntarily made?

28. To decide this point, first of all it is necessary to look into the statement given by the applicant before the Enquiry Officer on the preliminary date of hearing on 30.01.2017. This statement has been recorded in three paragraphs and has been quoted in the forgoing para-4 of this judgment. The first paragraph is with regard to the identity of the applicant. Second paragraph deals with postings of the applicant and also contain other facts. She stated in this paragraph that she remained posted during 10.3.2010 to 07.07.2014 in Muddireddipalli SPO and thereafter she was transferred to Hindupur. She also stated the date of suspension and revocation thereof. She also acknowledged the receipt of the charge memo and acknowledged the fact that charge memo has been read out to her in vernacular and she also read all the Article of charges framed against her and she understood the same. The third para is very important wherein she stated that she voluntarily made the admission.

29. The opening words used by her in the third paragraph are "knowingly and unknowingly some mistake occurred". Thereafter she stated that, "she had already left the office on transfer and working at Head Post Office for one and half year". She also made statement that no public complaint and remarks on her duty period at Muddireddipalli SO. She also expressed that anyhow she is admitting the charges voluntarily and stated that, "**I apologise if any inconvenience caused for the smooth working of the administration**". In this paragraph, in the last she made a request to the Enquiry Officer to close the enquiry without any further sitting. This is the admission which has been relied upon by the IO. Other

admission is said to be made by her before the DA in response to show cause notice against Enquiry Report. This admission is in the form of a representation as has been reproduced in para-5 of this order. Para-1 of this representation contains a categorical statement of applicant that she is innocent of all the charges levelled against her in Article-I, II and III. She was also under suspension from 10.10.2015 to 18.10.2016. In second paragraph, she disclosed her difficulties and circumstances for not intending to prolong the enquiry and made a statement that, "she is at the verge of retirement which was due on 30.04.2018, she did not want to prolong into it". In the third paragraph, she started with "hence I admit the charges". At this stage the applicant categorically stated that 'she is innocent' which means she has not committed any misconduct as alleged against her in Article I, II and III. It is also clear that she is making the statement with a view that she is going to retire on 30.04.2018 so, she do not want to prolong this enquiry and thus in these circumstances she is admitting her guilt. These statements were considered by the DA. The representation given by applicant on 13.3.2016 to the Disciplinary Authority cannot be said to be the admission voluntarily made by the applicant. It cannot be treated as unequivocal admission. It is a fact that at initial stage of the proceedings when the memo of charge was given, she not only demanded copies of the documents to file her written statement of defence but she categorically denied all the charges in specific terms and consequently the DA appointed the IO. In these circumstances and the language which the applicant used while making admission leave no room to doubt that she was under some mental pressure and want to get rid of

this enquiry as early as possible as she had already deposited the alleged loss of the Department. In these circumstances, the aforesaid admission of the applicant cannot be the sole basis for determining the guilt of the applicant.

(iii) Whether the applicant established that she was induced or compelled to make the admission by IO and DA ?

30. From the perusal of the record it reveals that while making the admissions the applicant, nowhere stated the allegation levelled by her after recording of punishment. Such allegations neither stated in her statement on 30.01.2017 which was recorded by the IO nor again on the representation dated 13.03.2017 before the DA. Though after award of punishment she started saying that she is compelled to make the said statement, she was induced to admit the guilt on false premises. Those allegations have been stated in his representations only after award of punishment. Therefore, the inference cannot be drawn that the applicant was forced by IO or DA to make such statement recorded on 30.1.2017 or on 13.03.2017. There is nothing on record except the statement of the applicant which in the opinion of the Tribunal are not sufficient to establish the allegations levelled by her against the Respondents for inducement for giving the statement on the basis of the false promises or she was compelled by the authorities to make the statement.

31. Anyhow this Tribunal is of the view that even if the applicant fails to establish these facts, the Tribunal cannot shut the eyes to see the other aspect of the matter.

(iv) Whether the order of the DA reducing the pension by 5% is within the competence of the Disciplinary Authority?

32. Rule-40 of CCS(Pension) Rules specifically provide that when the Government Servant is being punished with the penalty of compulsory retirement, the authority competent to impose such penalty may reduce the pension or Gratuity or both. As such the order of punishment does not violate the provisions of Rules in awarding the punishment of reduction of pension in the aforesaid circumstances.

33. After aforesaid discussion now it is necessary to examine the citations relied upon by applicant. The law cited by the applicant in **Ram Brick Singh (supra) of Calcutta Bench** of this Tribunal is not at all applicable because in that case the penalty was imposed when the applicant was already not in service and was already compulsorily retired. In this case the applicant was compulsorily retired on 11.2.1987 but no order of reduction in pension was passed on the said date. The Pension and Gratuity was reduced by another order imposing the cut in pension to the extent of 2/3rd portion passed on 29.1.1988, the Tribunal observed that there was no relationship of employer and employee on the date when the order of reduction of pension was passed. As such the DA was not having any authority to pass any order of reduction of pension. After retirement, the

punishment of reduction of pension could only be awarded by the President. As such on facts this judgment could not extending any help to the present applicant in so far as award of 'reduction of pension' is concerned.

34. It has been ruled by Hon'ble Supreme Court in **State of U.P. v. Shatruघन Lal, (1998) 6 SCC 651** that in departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. It was further observed that it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further observed that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principle of natural justice would be violated. Relying upon another judgment it was held that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence. The relevant paragraphs No.4,5, and 6 are extracted herein below;

" 4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which

are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: *Chandrama Tewari v. Union of India* [1987 Supp SCC 518 : 1988 SCC (L&S) 226 : (1987) 5 ATC 369 : AIR 1988 SC 117] ; *Kashinath Dikshita v. Union of India* [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176 : AIR 1986 SC 2118] ; *State of U.P. v. Mohd. Sharif* [(1982) 2 SCC 376 : 1982 SCC (L&S) 253 : AIR 1982 SC 937] .)

5. In *High Court of Punjab & Haryana v. Amrik Singh* [1995 Supp (1) SCC 321 : 1995 SCC (L&S) 471 : (1995) 29 ATC 311] it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principle of natural justice would be violated.

6. Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India* [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176 : AIR 1986 SC 2118] wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.”

35. In view of the discussions made herein above, I am of the view that in this case the principles of natural justice have been violated. The adequate opportunity has not been given to the applicant to defend. Rule-14 (4), (5) and (6) were violated by the DA. The applicant has not been provided with the copies of the documents demanded by her. In these circumstances, if she made an admission of the charges before the IO and DA, the admission made cannot be the sole basis for awarding the punishment especially

when the flavour of admission cannot be said to make the same voluntarily or unequivocal. It is virtually involuntary and equivocal admission. Moreover, if there is violation of Rules which affects the right to defend and fair opportunity, they cannot be overlooked. The Courts should go through such violation when person has been punished after ignoring such mandatory requirements.

36. It is also worth notice that, sub Rule-23 of Rule-14 of CCS (CCA) Rules has also been violated in this case. The Disciplinary Authority required to record a separate finding in respect of the separate charges with reasons and relying upon material on the basis of which charge stands proved. This mandate ought to have been observed by the authority punishing the government servant. I fortify my view in this regard with a judgment rendered by the Hon'ble High Court of Andhra Pradesh in **G.Siva Prasad Rao Vs. Bank of India [1990 (1) SLR 325]** as contained in para-9 of the report. The Disciplinary Authority also relied upon other documents in the enquiry but it is a fact that the Presenting Officer did not adduce any evidence to prove the documents relied upon by the Disciplinary Authority. As such the reliance placed by the Disciplinary Authority on such documents which are not proved and copies of which was not furnished to the applicant during the enquiry proceedings will cause serious dent in the final outcome of the enquiry and is sufficient to set aside the order of punishment and the order affirming by the Appellate Authority as held in **Roop Singh Negi's case (supra)**.

37. In view of the above, I am of the firm opinion that the view expressed by the Hon'ble Judicial Member, that rule of Principles of Natural Justice have been violated is well founded. The admission cannot be stated to be made voluntarily or unequivocal. In terms of wordings used by the applicant in respect of the admission made at two different stages, such admission cannot be the sole basis for holding the applicant guilty unless the other material establishes the guilt of the applicant is available. In such circumstances the legal prejudice is deemed to have been caused to the applicant on account of violation of principles of natural justice and mandatory rules as discussed herein above. The reference is accordingly answered.

38. Hence in view of the above, the order of punishment No. F-4-01/15-16/I, dated 27.04.2016 and the appellate order No. Inv/13-KBUR/2017, dated 03.07.2017 deserves to be set aside.

39. Accordingly the OA is allowed. The impugned orders dated 27.04.2016 passed by the Disciplinary Authority and order dated 03.07.2017 passed by Appellate Authority are set aside.

40. As the applicant has already retired on 30.04.2018, the question of her reinstatement into service does not arise. However she would be entitled to get all the consequential benefit till the date of her retirement.

37. Liberty is granted to the Respondents that they may proceed with the enquiry from the stage of serving the charge sheet against the applicant in accordance with law and Rules.

38. No order as to costs.

(VISHNU CHANDRA GUPTA)
JUDICIAL MEMBER

Dated : 22nd June, 2018.

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