

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

**OA/020/47/2016 &
MA/20/149.2018**

Date of Order: 16.08.2018

Between:

B. Vijayakumar Naik,
S/o. Late B. Rama Naik,
Aged about 37 years,
Occ: Postal Assistant,
Hindupur Head Post Office,
Hindupur, Ananthapur District.

... Applicant

AND

1. Union of India rep. by
The Chief Postmaster General,
A.P. Circle, Dak Sadan,
Hyderabad – 1.
2. The Postmaster General,
Kurnool Region,
Kurnool.
3. The Director of Postal Services,
O/o Postmaster General,
Kurnool Region,
Kurnool.
4. The Director of Postal Services,
O/o. Postmaster General,
Hyderabad Region,
Hyderabad.
5. The Superintendent of Post Offices,
Hindupur Division,
Hindupur – 515 201.

.....Respondents

Counsel for the Applicant
Counsel for the Respondents

: Dr. A. Raghu Kumar
: Mr. A. Surender Reddy, Addl.CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MR. B.V. SUDHAKAR, ADMIN. MEMBER

ORAL ORDER

(Per Hon'ble Mr. Justice R. Kantha Rao, Judicial Member)

Heard Dr. A. Raghu Kumar, learned counsel appearing for the Applicant and Shri A. Surender Reddy, learned Standing Counsel appearing for the Respondents.

2. The short facts require consideration for disposing of the O.A. may be stated as follows:

While the Applicant was working as a Postal Assistant at Dharmavaram, a charge memo was issued against him levelling certain allegations as follows:

“Article-I That the said Sri B. Vijaya Kumar Naik, Postal Assistant, Dharmavaram HO while working as MPCM Postal Assistant, Prasanthinilayam SO during the period from 5.6.2006 to 20.12.2007 collected Rs.180/- (one hundred and eighty only) on 17.12.2007 towards postage for Regd parcel No.2443 and Rs.52/- towards postage for Regd parcel no.2444 a/t Sri Sathya Sai Baba Puttaparthi, booked the parcels under the option postage prepaid (Pre.PS) but no postage was affixed on the parcels and failed to account for the amount of Rs.232/- (two hundred and thirty two only) in to Post office accounts. Thus, Sri B. Vijayakumar Naik, Postal Assistant, Dharmavram HO contravened the provisions contained in Rule 171 of Postal Manual Volume VI part I (VIth edition) and Rule 4(1) of F.H.B. Volume I.

It is, therefore, alleged that Si B. Vijaya Kumar

Naik, Postal Assistant, Dharmavaram HO failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of a Govt. Servant as required under Rule 3(1)(i)(ii) & (iii) of CCS (Conduct) Rules 1964.

Article-II That the said Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO while working as Postal Assistant, Prasanthinilayam SO during the period from 5.6.2006 to 20.12.2007 collected Rs.3395/- (three thousand three hundred and ninety five only) in to post office accounts. Thus, Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO contravened the provisions contained in Rule 171 of Postal Manual Volume VI para I (VIth edition) and Rule 4(1) of F.H.B. Volume I.

It is, therefore, further alleged that Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of a Government servant as required under Rule 3(1)(i)(ii) & (iii) of CCS (Conduct) Rules 1964.

Article-III That the said Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO while working as Postal Assistant, Prasanthinilayam SO during the period from 5.6.2006 to 20.12.2007 collected Rs.2605/- (two thousand six hundred and five only) on 15.12.2007 towards postage for Regd Foreign parcel No.RR 627406235 IN destined to Australia and booked the parcel under the option postage prepaid (Pre.PS) but no postage was affixed on the parcel and failed to account for the amount of Rs.2605/- (two thousand six hundred and five only) in to post office account. Thus Sri B. Vijayakumar Naik, Dharmavaram HO contravened the provisions contained in Rule 171 of Postal Manual Volume VI part-I (VIth edition) Rule 4(1) of F.H.B. Volume-I.

It is, therefore, further alleged that Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of a Govt. Servant as required under Rule 3(1) (i) (ii) & (iii) of CCS (Conduct) Rules, 1964.

Article-IV That the said Sri B. Vijayakumar Nail, Postal Assistant, Dharmavaram HO while working as Dharmavaram HO while working as Postal Assistant, Prasanthinilayam SO during the period from 5.6.2006 to 20.12.2007 collected Rs.165668/- (Rupees one lakh sixty

five thousand six hundred and sixty eight only) from the senders towards the postal fee under the option cash collected and granted receipts to the senders and pasted the concerned receipts on the face of the articles and transmitted the said 73 registered parcels to the destination as usual and failed to account for the amount in to Post office accounts as detailed below. Sri B. Vijayakumar Naik, Postal Assistant, P.S. Nilayam SO cancelled the receipts subsequently and no corresponding error book entry was made regarding cancellation of receipts.

Thus Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO contravened the provisions contained in Rule No.171 of Postal Manual Volume VI part-I (VIth edition) and Rule 4(1) of F.H.B. Volume-I.

It is, therefore, further alleged that Sri B. Vijayakumar Naik, Postal Assistant, Dharmavaram HO, failed to maintain absolute integrity and devotion to duty and acted in a manner of unbecoming of a Govt. Servant as required under Rule 3(1)(i) (ii) & (iii) of CCS (Conduct) Rules, 1964.”

3. After the formalities contemplated under CCS (CCA) Rules, 1965 have been complied with, the disciplinary authority appointed an Inquiry Officer to conduct an inquiry into the allegations levelled against him. The Inquiry Officer, after conducting inquiry, recorded a finding that Articles 1,2,3 are not proved and Article 4 is partly proved. He submitted the inquiry report to the disciplinary authority. The disciplinary authority, having gone through the inquiry report disagreed with the findings recorded by the Inquiry Officer and arrived at the conclusion that the charges were proved against the Applicant and imposed a penalty of recovery of Rs.21600/- from the pay and allowances of the applicant in five instalments @ Rs.5000/- per month for first four instalments commencing from the pay and allowances from November 2015 and the remaining sum of Rs.1600/- in the 5th instalment

and reduction by three stages from Rs.11380/- + GP of Rs.2400/- to Rs.10200/- + GP of Rs.2400/- in the pay band of Rs.5200-20200 + GP Rs.2400/- (PB-I) for a period of three years w.e.f. 01.11.2015 with a further direction that the applicant will not earn increments of pay during the period of reduction and on expiry of this period the reduction will not have the effect of postponing his future increments of pay by final order dated 21.10.2015. The 3rd Respondent who is the appellate authority, in exercise of powers conferred on him under Rule 29 (5) of CCS (CCA) Rules passed the impugned order. The relevant portion of the order is extracted hereunder:

“Shri B. Vijaykumar Naik is the main offender in a fraud case of Rs.171900/-. The Divisional Head held all the charges as proved. Charges framed and proved are grave in nature. The punishment imposed appears to be not commensurate with the gravity of the offences. The disciplinary authority while issuing punishment order stated considering that the official has voluntary credited a huge amount of Rs. 171900/- to the department and also his social status, was inclined to take a lenient view, with the hope that he will not resort to such things in future and accordingly imposed the punishment. The appellate authority having referred to the said observation made by the disciplinary authority held that the orders issued by the disciplinary authority should have attributes of judicial order and the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency and hence the authority exercising disciplinary powers should issue self contained speaking and reasoned orders conforming to the legal requirements(extracted from O.M. dated 13.7.1981 communicated vide letter dated 17.12.1982). The appellate authority also stated that the said instructions were again reiterated by the Directorate vide letter dated 3.1.1986 and in turn by circle office vide letter dated 28.1.1986. The order further reads that while issuing the penalty, the Disciplinary Authority has drawn reference to ‘voluntary crediting of money’ without mentioning when credited and whether voluntarily or not. As seen from the statement given by

the government servant dated 22.10.2008 before Inspector Posts, Penugonda Sub Division, he had not credited the amount voluntarily. Further the disciplinary authority has drawn unnecessary reference to the 'social status' of the Government servant which is not part of the charges. The statutory penalty imposed should enumerate from the logical and legal evaluation of evidence which is part of inquiry process. In other words, penalty cannot be diluted nor discounted on extraneous reasons nor any imported material which are not part of charges framed and inquired into.

Therefore, I, Dr. Vennam Upender, Director of Postal Services, Kurnool Region in exercise of powers under Rule 29 of CCS (CCA) Rules, 1965 hereby order that the punishment given to Sri B. Vijaya Kumar Naik is set aside and de novo is ordered from the stage of issuing speaking and self-contained punishment proceedings by taking into consideration the representation of the Government servant to the Inquiring Authority Report and the disagreement note attached and communicated to the government servant."

4. Dr. A. Raghu Kumar, learned counsel appearing for the Applicant contended that the order is illegal as it is not in conformity with the revisionary powers conferred on the 3rd Respondent under Rule 29(5) of CCS (CCA) Rules. According to the learned counsel the Revisional authority in exercise of powers conferred under Rule 29(5) of CCS (CCA) Rules cannot remit the matter back to the disciplinary authority only for the purpose of imposing appropriate punishment.

5. On the other hand, learned Standing Counsel appearing for the Respondents would submit that it is well within the revisional powers of the 3rd Respondent and, therefore, the order needs no interference.

6. Under Sub Rule (vi)(c) of Rule 29, the appellate authority who exercises the powers of revision which were conferred on him under Sub Rule 5, may remit the case to the authority which made the order to or

any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case

7. In the instant case, the disciplinary authority gave adequate reasons in support of the punishment order passed by him. The Revisional authority found fault with the reasoning given by the revisional authority while imposing the punishment. If that is so, it is well within the powers of the revisional authority to impose appropriate punishment without remitting the matter back to the disciplinary authority only for the sole purpose of imposing punishment. Therefore, the order passed by the 3rd Respondent, appellate authority who exercises the powers of revision under Sub rule 5 of Rule 29 of CCS (CCA) Rules is not in accordance with the procedure laid down under the said Rules. Obviously, the order remitting the matter back to the disciplinary authority is not for the purpose of conducting any sort of inquiry. When it was not for the purpose of conducting inquiry, then the revisional authority ought not to have remitted back the matter at all. He should himself have exercised the powers of revision conferred on him under Sub Rule 5 of Rule 29 of CCS (CCA) Rules. The order passed by the revisional authority, therefore, is unsustainable in law. Therefore, the order deserves to be set aside in the present O.A. Consequently, the order dated 31.12.2015 passed by the 3rd Respondent remitting the matter back to the disciplinary authority to impose appropriate punishment is set aside. The appellate authority, if so wishes, can pass appropriate punishment order in exercise of powers under Rule 29(5) of CCS (CCA) Rules. If he so chooses to exercise such power and imposes any

punishment, the Applicant is at liberty to approach this Tribunal to challenge the said order and also the order passed by the disciplinary authority and also the inquiry report itself by filing a fresh O.A. The O.A. is, therefore, disposed of. MA/20/149/2018 stands closed. No order as to costs.

(B.V.SUDHAKAR)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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