

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...

**Original Application No.290/00100/2014**

Reserved on : 15.11.2018  
Pronounced on : 20.11.2018

**CORAM:**

**HON'BLE MR. A.MUKHOPADHAYA, MEMBER (A)  
HON'BLE SMT. HINA P.SHAH, MEMBER (J)**

Manish Kumar Suwalka s/o Shri Jagdish Chander Suwalka, aged about 30 years, R/o House No. 1406, Jingaron Ki Gali Mandal, District Bhilwara, Raj. Presently working on the post of Postal Assistant at Head Post Office, Bhilwara, Rajasthan.

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Director Postal Services, Rajasthan, Southern Region, Ajmer.
3. The Superintendent of Post Offices, Bhilwara Division, Bhilwara

...Respondents

(By Advocate: Shri B.L.Bishnoi)

**ORDER**

**PER HON'BLE SMT. HINA P.SHAH**

The applicant in the present OA has prayed for the following reliefs:-

- i) By an appropriate writ order or direction impugned order dated 30.11.11 at Annx.A/1, order dated 27.02.12 at Annx. A/2, impugned charge sheet dated 15.10.12 at Annx. A/3 and impugned order dated 26.02.14 at Ann.A/4 be declared illegal and be quashed and set aside as it were never issued against the applicant.
- ii) By an order or direction respondents may be directed to refund the amount if any recovered from the salary of the applicant in view of impugned orders along with interest @ 12% per annum with all consequential benefits.
- iii) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Brief facts, as stated by the applicant and so far relevant for disposal of this are as under:-

The applicant was appointed on the post of Postal Assistant w.e.f. 17.05.2010 and posted at Head Post Office, Bhilwara. He was issued charge sheet dated 3.11.2011 under Rule 16 of CCS (CCA) Rules, 1965 to the effect that while working as Postal Assistant at Bhilwara HO, he allegedly produced bogus TA bill of staying at Bhagat Niwas, Mandalgarh amounting to Rs. 3600/- but he did not stay at Mandalgarh during the period of deputation to Mandalgarh Post Office for the period from 15.12.2010 to 1.1.2011, hence, he violated Rules 152 and 153 of Postal Manual Vol- III and Rule 51 of FR SR Part-II. The applicant submitted his reply to the chargesheet and stated that during the

period 15.12.2010 to 1.1.2011, while on deputation to Mandalgarh, he stayed in Bhagat Niwas Guest House and the difference of time in TA bill is by mistake, as he filled the TA bill for the first time and in future he will not commit such type of mistake. However, respondent No.3 vide order dated 30.11.2011 imposed a penalty of reduction of one grade increment for a period of six months without cumulative effect (Ann.A/1). Thereafter, respondent No.2 vide order dated 26.2.2012 under Rule 29 of CCS (CCA) Rules, 1965 remitted the case to respondent No.3 for de-novo proceedings from the stage of framing charge sheet under Rule 14 of CCS (CCA) Rules, 1965 and accordingly, respondent No.3 vide memo dated 15.10.2012 issued chargesheet under Rule 14 of CCS (CCA) Rules, 1965 with the same charges/allegations as made earlier. The applicant did not file any reply to the said chargesheet and after completion of period prescribed for this, respondent No.3 appointed an Enquiry Officer and a Presenting Officer vide order dated 6.2.2013 (Ann.A/6). Full fledged inquiry was conducted under Rule 14 of CCS (CCA) Rules and the Inquiry Officer submitted inquiry report dated 19.10.2013 wherein the charges levelled against the applicant were found proved. Thereafter, respondent No.3 in exercise of

powers under Rule 12 (2) of CCS (CCA) Rules vide the impugned order dated 26.2.2014 (Ann.A/4) imposed a punishment of reduction of pay from Rs. 8440+ Grade Pay Rs. 2400 to Rs. 8120 + Grade Pay Rs. 2400 for a period of one year with cumulative effect.

The applicant has raised grounds that Rule 29 of CCS (CCA) Rules, 1965 does not provide for de-novo inquiry and it does not confer any power to the competent authority to convert action taken under Rule 16 of CCS (CCA) Rules to that of under Rule 14 of CCS (CCA) Rules. Clause (c) of Rule 29(1) allows remittance of the case to the authority which made the order or any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case. Further, while exercising power under Rule 29, respondent No.2 has not assigned any reason as to why and on what account he seeks to revise/review the punishment order. Hence, aggrieved by the impugned orders, the applicant has approached this Tribunal for redressal of his grievance.

4. After issue of notices, the respondents have filed their reply dated 9.7.2014 and raised objections to the effect that the applicant has not exhausted the departmental

remedy available to him as per rules and has directly approached the Tribunal for redressal of his grievance. The respondents further stated that on establishment of a *prima facie* case during the preliminary inquiry, disciplinary proceedings under Rule 16 of CCS (CCA) Rules were initiated and the disciplinary authority has imposed a penalty of withholding of one increment for a period of 6 months @ 3% w.e.f. 1.7.2013. On revision of the aforesaid penalty by the appellate authority i.e. the Director Postal Services, Southern Region, Ajmer, under powers conferred upon him under sub-rule 1(v) of Rule 29 of CCS (CCA) Rules, the said authority came to the conclusion that penalty awarded by the disciplinary authority is not commensurate with the gravity of the offence and therefore, proposed to enhance the penalty to any one of the major penalties under Rule 11 of CCS (CCA) Rules. Therefore, the case was remitted to the disciplinary authority for *de-novo* proceedings from the stage of framing the charge sheet under Rule 14 of the CCS (CCA) Rules. Thereafter the disciplinary authority initiated *de-novo* proceedings as directed by the revising authority and issued a chargesheet under Rule 14 of the CCS (CCA) Rules. An inquiry was held in the manner laid down in Rule 14 by giving reasonable

opportunity to the applicant of being heard in person. During the course of inquiry, all the charges against the applicant were proved and therefore, the Superintendent of Post Offices, Bhilwara awarded a penalty of reduction of pay of the applicant from Rs. 8440+Grade Pay Rs. 2400 to Rs. 8120 + Grade Pay of Rs. 2400 for a period of one year with cumulative effect. The respondents have further submitted that in accordance with provisions contained in sub-rule 1(v) of Rule 29 of CCS (CCA) Rules, 1965, the appellate authority has been conferred the power, amongst others, to remit the case to the disciplinary authority for "such further enquiry as it may consider proper". Therefore, the Director Postal Services, Southern Region, Ajmer was fully empowered to take action under Rule 29 of the CCS (CCA) Rules, 1965 and direct de-novo proceedings under Rule 14 of CCS (CCA) Rules.

5. We have heard Shri S.K.Malik, counsel for the applicant and Shri B.L.Bishnoi, counsel for the respondents and perused the material available on record. The main controversy in this matter is regarding the powers of the Director Postal Services, Southern Region, Ajmer to remit the matter to the disciplinary authority to initiated de-novo inquiry from the stage of framing of charges under Rule 14

of CCS(CCA) Rules, 1965. The applicant contends that Rule 29 does not provide for a de-novo inquiry and does not confer any power to the competent authority to convert action taken under Rule 16 of CCS (CCA) Rules, 1965 and Rule 29(1)(c) which empowers remittance of the case to the disciplinary authority to make such further inquiry as it may consider proper in the circumstances of the case, does not include de-novo inquiry after conversion of Rule 16 proceedings to Rule 14 proceedings. As such, it is beyond his jurisdiction.

6. Learned counsel for the respondents contended that in sub rule (1) (v) of Rule 29 of CCS (CCA) Rules, the appellate authority is conferred with the powers to revise the penalty imposed by the disciplinary authority within six months and he can, among other things, confirm, reduce or set-aside the orders or enhance the penalty or again remit the case to the authority (which made the order) for "such further enquiry as it may consider proper". He contends that these are very broad powers and include, looking to the gravity of the charges, the initiation of proceedings under Rule 14 on the same charges.

7. Considered the rival contentions of rival parties. It would be relevant to mention here that the provisions of

Rule 29 of the CCS (CCA) Rules, 1965 empowers the appellate authority to revise the penalty imposed by the disciplinary authority, which thus reads:-

**"29. Revision**

- (1) Notwithstanding anything contained in these rules-
  - (i) the President; or
  - (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or
  - (iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or
  - (iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or
  - (v) the appellate authority, within six months of the date of the order proposed to be revised or
  - (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) 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; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary :

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

Bare perusal of the aforesaid provisions makes it clear that the competent revisional authority in exercise of the provisions of Rule 29 of the CCS (CCA) Rules can :-

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

(c) 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; or

(d) pass such other orders as it may deem fit:

8. In the instant case, the order of the disciplinary authority dated 30.11.2011 (Ann.A/1) was revised by the revisional authority i.e. Director Postal Services, Southern Region, Ajmer vide order dated 27.2.2012 (Ann.A/2) within six months from the date of the order proposed to be revised as provided in the rules. Hence, not only does Rule 29(1)(vi)(c) allow remittance of the case for "such further enquiry as it may consider proper", but, in addition, Rule 29 (1) (vi) (d) also empowers the revisional authority to pass such other orders as it may deem fit in that matter. Accordingly, we find that as per provisions of rules the matter was remitted for de-novo proceedings and after issuance of charge sheet under Rule 14 of the CCS (CCA) Rules, major penalty proceedings were held and ultimately vide order dated 26.2.2014 (Ann.A/4), a penalty of reduction of pay for a period of one year was imposed. Thereafter the applicant has not filed any appeal against the penalty order dated 26.2.2014 (Ann.A/4).

9. It is to be noted here that a chargesheet under Rule 14 of CCS (CCA) Rules was issued to the applicant vide Memo dated 15.10.2012 giving him reasonable opportunity to submit his representation against the charges levelled

against him. The applicant submitted an application dated 20.10.2012 to submit his representation. His said request was accepted and attested copies of the documents were sent to the applicant, but no representation was received from the applicant till 16.11.2012 though reasonable opportunity was granted to the applicant for the same. Thereafter, Inquiry Officer and Presenting Officer were appointed vide SPO Memo dated 6.2.2013 under sub-rule (2) and (3) of Rule 14 of CCS (CCA) Rules. The applicant participated in the inquiry which was held on several dates. On being penalised after enquiry, he should have approached the Department by way of appeal instead of approaching this Tribunal for redressal of his grievance.

10. It would be relevant here to refer to the judgment of the Chandigarh Bench of this Tribunal which has considered a somewhat similar controversy in the case of **Jai Bhagwan Chhachia vs. Union of India**, OA No.1091/CH/2013 vide order dated 8.10.2014 and in para 18 it has observed as under:-

“ 18. In so far as question no.1, whether a de novo enquiry can be initiated in terms of Rule 15 (1) of the Rules by the disciplinary authority or under Rule 29 (1) (vi) (c) of the Rules by the Revisional Authority is concerned, it would be appropriate to reproduce both the rules as under :

“15. Action on inquiry report

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

Rule 29(1)(vi)(c)

29. Revision

(1) Notwithstanding anything contained in these rules-

- (i) the President; or
- (ii) to (v) xxx
- (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

- (a) xxxx
- (b) xxxx
- (c) 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; or"

Perusal of the above extraction makes it clear that ample power has been given to the disciplinary authority and to the Revisional Authority as well to order *de novo* enquiry after recording a finding that the important evidence either to be relied upon by the Inquiry Officer or by the Disciplinary Authority has been left out to be appreciated and for not concluding the departmental proceedings in a manner provided for under the Rules. Reliance in this regard is placed on the case of K.R. Deb (supra) as followed in the case of Union of India v. P. Thayagarajan<sup>81991</sup> (1) SCC 733. In the latter case it was held that when important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore, we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a *denovo* enquiry in a case of present nature. Thus, facts and circumstances of each case has to be considered to reach to a conclusion as to whether *denovo* enquiry can be ordered or not. In this case considering the facts of the case and finding that the enquiry officer had failed to take into consideration vital evidence while acquitting the applicant, came to the conclusion that *denovo* enquiry was warranted and such decision cannot be faulted by this Tribunal as such power is provided in the rules itself to the disciplinary authority as well as Revisional authority."

11. Looking to the matter in the light of the relevant facts and circumstances, we do not find any infirmity in the impugned orders. We further note that the applicant has not bothered to file any appeal against the order passed by the disciplinary authority. The applicant should have availed the departmental channels as provided under the rules instead of approaching this Tribunal directly without exhausting the departmental remedies available to him.

12. Therefore, since the applicant had not exhausted the departmental remedy by way of appeal, the applicant is given a liberty to file an appeal, if he desires, within a period of 15 days from today, raising all the permissible grounds in his appeal and the appellate authority is directed to dispose of the said appeal preferably within a period of three months from the date of receipt of such appeal.

13. The OA stands disposed of in above terms with no order as to costs.

(HINA P.SHAH)  
JUDL. MEMBER

(A.MUKHOPADHAYA)  
ADMV. MEMBER

R/