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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A.No.O A 51/ 2013

Date of order: 16.8.18

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Shri Naba Kumar Saha, son of Late
Amullya Charan Saha, aged about 49 years,
working for gain as Postal Assistant, Alipore
Head Post Office, Belvedera Road,
Kolkata-700 027, residing at No.48 of Kalitala
Park, South Kolkata – 700 070

.....Applicant

- Versus -

1. Union of India, service through the Secretary,
Ministry of Communication & Information
Technology, Department of Post, Dak Bhawan,
New Delhi-110041
2. The Chief Postmaster General, West Bengal Circle,
Yogayog Bhawan, C.R. Avenue, Kolkata – 700 012;
3. The Director of Postal Services, Kolkata Region,
Yogayog Bhawan, C.R. Avenue, Kolkata-700 012;
4. The Sr. Postmaster Alipore Head Post Office,
Belvedera Road, Kolkata-700 027

.....Respondents

For the applicant : Mr. A. Chakraborty, counsel
Mr. S. Panda, counsel

For the respondents : Mr. L.K.Chatterjee, counsel
Mr. M.K. Ghara, counsel

ORDER**Bidisha Banerjee, Judicial Member**

Brief facts of this case as narrated by the applicant, Naba Kumar Saha are
that he was issued with a Charge Sheet dated 17.09.2002 on the ground of

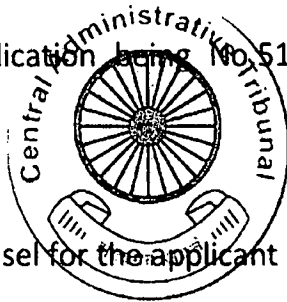
causing loss of hundred pieces of Kishan Vikas Patra (KVP) denomination of Rs.10,000/- each. Inquiry was held, report was submitted and thereafter Disciplinary Authority issued office order dated 10.12.2003 imposing penalty of dismissal from service. Thereafter the applicant preferred an appeal on 22.12.2013 and the Appellate Authority modified the penalty of dismissal to reduction of pay from 4900/- to 4400/- in the scale of pay Rs.4000-6000/- for a period of five years with effect from 11.12.2003 with a further direction that the applicant would not earn any increment of pay during the period and on expiry, such reduction would have effect of postponing his future increment of pay. Further, a recovery of Rs.50,000/- from the pay of the applicant was also ordered against which a revision was preferred by the applicant. The competent authority modified the order of the appellate authority by reducing the recovery amount from Rs.50,000/- to Rs.20,000/- vide order dated 21.09.2004. The applicant thereafter preferred a review petition under Rule 29A of CCS(CCA) Rules, 1965 on 11.03.2005 but it was rejected on 23.05.2012 by the Director, Postal Services.

Challenging the same and seeking quashing of the charge sheet, report of the Inquiry Officer and Order of dismissal dated 10.12.2003, the order of the Appellate Authority dated 19.03.2004 and modified order by the revisioning authority dated 21.09.2004 as well as the order of the Reviewing Authority dated 23.05.2012 the applicant has preferred the present Original Application.

2. This Original Application was taken up by this Tribunal on 21.03.2013 and vide order dated 21.03.2013 this Tribunal was pleased to dismiss the same holding that the applicant has failed to make out a prima-facie case.

Aggrieved by and dissatisfied with the said order of dismissal dated 21.03.2013 a Review application was preferred being No. REVT 12 of 2013. The said review application was posted on 24.05.2013. This Tribunal being primarily prima facie satisfied directed issuance of notice and also directed the respondent to file reply and rejoinder. The matter was finally taken up on 27.01.2016 when upon contested hearing this Tribunal was pleased to allow the review application by setting aside the dismissal order dated 21.03.2013 and directed for hearing of the Original Application by allowing the applicant to file all such documents used in the review application and other relevant documents by way of Supplementary Affidavit, which could not be produced when Original application was initially heard out for the first time, for proper adjudication of the case.

Thus the Original Application being No. 51 of 2013 came up for fresh hearing.



3. At hearing learned counsel for the applicant would submit his written notes of argument whereby he brought to the notice of this Tribunal the following documents that he had failed to furnish earlier, as detailed hereunder:-

- a) Stock Register;
- b) MDW(Memorandum Distribution Work);
- c) Nominal Roll;
- d) Hand 2 Receipt Book;
- e) POSB Manual Form-II;
- f) Departmental Charge Sheet dated 17.09.2002 &
- g) Police Charge Sheet dated 1-3-2009.

a) **Stock Register** : Which is known as NC-12, which is a Register where all the supplies of certificates of KVP/NSC Certificates must be entered and the

same has to be maintained by Deputy Postmaster and Assistant Postmaster accordingly. From the said Stock Register, receipt and issue of certificates can be determined. The same was produced during Inquiry Proceeding but there was no signature of the applicant Naba Kumar Saha. Assistant Postmaster who was the custodian of such certificates also admitted in his cross-examination at page-32-33 of the Supplementary Affidavit that said Naba Kumar Saha was not entrusted to issue the said certificates. He also said that for handing of any valuables including certificates, the same cannot be done or handed over or exchanged between officials without proper receipt.

b) **MDW (Memorandum of Distribution of Work)** : The said document shows the designation of officials employed in a Post Office, their hours of attendance and the duties assigned to them. Herein it has come in evidence from the witnesses that Naba Kumar Saha, the applicant was sitting at NSC Counter No.2 whereas preparation of Invoice and supply of KVP to Sub-Post Offices is the sole responsibility of NSC Counter No.1. Therefore, it is evidently clear that the applicant was never entrusted with the said KVP Certificates as alleged in the Charge Sheet dated 17.09.2002.

c) **Nominal Roll** : The same is also known as MS-12 and is the daily roster which serves as records of the clerks actually working on any given day. Whenever there is a change in the duty roster of any clerical staff during the day the same is entered into the Nominal Roll. Herein it is seen that Naba Kumar Saha was entrusted to NSC Counter No.2 only on 2 days i.e. 16.05.2000 and 17.05.2000 but the counter for dispatching or issuing certificates was NSC Counter-1 and therefore, preparation of Invoices and

supply of KVP to Sub-Post Offices have been done from NSC Counter No.1 only, if at all and not by Counter No.2 which was in charge of the applicant. The Senior Postmaster, one of the witnesses, in his evidence has also admitted the same and stated that Naba Kumar Saha, the applicant, was holding NSC Counter No.2 on 17.05.2000. Therefore, from both the MDW and Nominal Roll which were produced before the Inquiry Proceeding it transpires that the applicant Naba Kumar Saha was never in NSC Counter No.1 and he had no chance to deal with or issue or supply the said certifies on the relevant dates as alleged in the charge sheet.

d) MS-7 or Hand to Hand Receipt Book : It is a register which denotes the cash or articles which are handed to any official in the Post Office on day to day basis and the same is recorded in the said receipt book upon taking his signature. It has been more specifically stated in Rule 26 Post and Telegraph Manual Volume-6 Part-1. Herein the receipt book was called by the charge official Naba Kumar Saha as an additional document during the enquiry proceeding but the same was not produced to his prejudice and which was only document which could have clearly proved that his signature was not there and as such purposely the same was not produced for some vested interest known to the respondents.

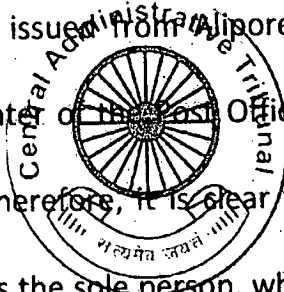
e) Post Office Savings Bank Manual Volume-2, Rule 42(3): If there is a loss of KVP or NSC before issue, immediate enquiry is required to be held and responsibility needs to be fixed and Indemnity Bond needs to be obtained from the concerned official. Here in this case, no such Indemnity Bond was sought from the applicant. Neither any responsibility was fixed and fact finding enquiry was started on 25.04.2011 and Charge Sheet was

issued on 17.09.2002. Since no responsibility was fixed upon Naba Kumar Saha and no Indemnity Bond was taken from him also, it prima-facie proves that nothing was against him and the charges mentioned in the charge sheet was also vague, stale and no legs to stand.

f) **Charge Sheet:** Charge Sheet issued against the applicants, in no uncertain terms stated that there has been a fraudulent issue of KVP or denomination of Rs.10,000/- each purported to have been issued from Alipore Head Post office on different dates during the period 19.02.1999 to 17.10.2000. It has further held in the Charge Sheet that Naba Kumar Saha, the applicant by not preparing the invoices of KPV on 17.05.2000 and by not checking the invoices whereby causing loss of 100 pieces of KVP has shown lack of integrity and devotion of duty in contravention of Rule 3(i),3(ii) of CCS(Conduct and Discipline) Rules, 1962. When the Charge sheet itself is saying that stock of KVPs were stolen/issued from 1999, then how the applicant Naba Kumar Saha could issue the said KVP certificates again on 16.05.2000 and 17.5.2000.

g) **Police Charge Sheet:** Alipore P. S. Case No.135 dated 20.07.2001 under Section 409/467/471 and 120B of I.P.C. read with 13(d) of the Prevention and Corruption Act and Charge Sheet No.27/2009 under Section 380/465/468/471/420 IPC and Section 13(1d) and 13(2) of the Prevention and Corruption Act has been initiated against one Nepal Krishna Mitra who was a Group D employee in Alipore Head Post Office. The said FIR was initiated and thereafter Charge Sheet was filed against Nepal Krishna Mitra, a group 'D' employee of Alipore Head Office. He applied for a loan of Rs.1,45,000/- from United Bank of India, Alipore Branch for house repairing

and he deposited 22 KVPs worth Rs. 2.2 lacs and loan was sanctioned and such amount was credited in his Savings Bank Account on 23.08.1998 and again on June, 2001 the said Nepal Krishna Mitra approached the said Bank for obtaining a loan of Rs. 50,000/- and deposited 8 NSCs worth of Rs. 80,000/-. The loan was again sanctioned after due process, and an amount Rs. 52,000/- was credited in the same account of Nepal Krishna Mitra. On being suspicious, the Bank Manager referred the matter to the Post Office and upon enquiry in Alipore Head Post office, no application was available there against those KVPs and NSCs as mentioned by Bank Manager, United Bank of India and which were pledged by Nepal Krishna Mitra, a Group 'D' employee. Therefore, it is evidently clear that the said certificates were never issued from Alipore Head Post Office since they never reached the counter of the Post Office and were stolen from Stock Department itself. Therefore, it is clear that the said Group 'D' staff - Nepal Krishna Mitra was the sole person, who has stolen the said KVPs and NSCs from the Stock Department of the Post Office and has taken a loan by pledging the said certificates. The said KVP and NSC, herein the KVPs, have never reached the counter and, therefore, there cannot be any question regarding issuance of the same far less to say from the custody of the applicant Naba Kumar Saha. Therefore, Nepal Krishna Mitra the principal offender in the said criminal case was the only concerned person who has done the said mischief and therefore, the entire charge sheet has become vague & concocted and all the proceedings arising out of same has become vitiated. Assuming but not admitting that Nepal Krishna Mitra was the principal offender who has stolen the said KVPs from the Stock



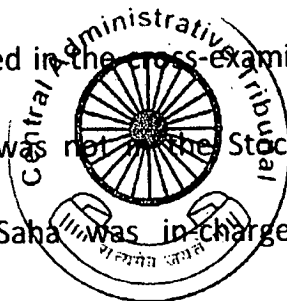
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Department and the applicant is one of the subsidiary offenders, then even nothing could be recovered from the subsidiary offender in view of the several Judgments of this Hon'ble Tribunal. But in this case, Naba Kumar Saha, the applicant, was neither involved in issuance of the said KVPs nor he prepared the invoices which have been admittedly done by Abhijit Bhowmick as per his evidence at Pg 37 of the Supplementary Affidavit, who was the concerned Postal Assistant who prepared the Invoices which he has admitted in his evidence also. Therefore, when nothing was entrusted to Naba Kumar Saha the applicant, and nothing was issued from his counter since he was not in charge of such transactions and moreover, when the said KVPs were stolen from 1999 onwards, the charge brought against the applicant is surely bound to fail. Since the applicant sat only for two days i.e. 16.05.2000 and 17.05.2000, he could not issue any certificate which has already been stolen in the year 1999 from the Stock Department of the Head Post Office, Alipore as it would be doing an ante-mortem which is not permissible and/or tenable in the eye of law.

4. The applicant has specifically alleged that the then Postal Assistant Abhijit Bhowmick was directly involved in preparing invoices which he admitted in his evidence yet he was proceeded under Rule 16 and meted out a punishment of simple stoppage of increment only for two years, whereas the applicant, who was in no way connected with the issuance of the KVP Certificates, was proceeded under Rule 14, penalised with stepping down of his pay to 5 stages with stoppage of increment for five years and with the cumulative effect which would postpone the effect of future increment coupled with a recovery of Rs.20,000/-, which according to the applicant, was legally impermissible, smacks of bias, malafide

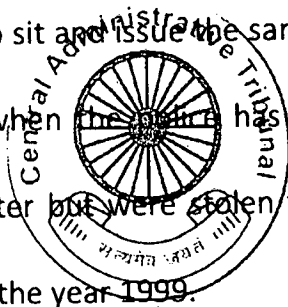
and highhandedness of the respondents only to sub-serve their vested interest while exonerating other concerned staff or letting them off with lesser punishment while making the applicant a scapegoat in the matter. Therefore, the punishment meted out to the applicant is absolutely disproportionate and also discriminatory and the applicant is entitled to the relief as has been held in two cases by Apex Court of the Country and reported in **2014(2)SCC Page 748 (Iswar Chandra Jaiswal versus Union of India)** and **2007(7)SCC 257(Union of India versus Alhuwalia)**

5. The applicant has further echoed his grievance by submitting that the Stock Register was maintained by Deputy Postmaster and Assistant Postmaster but it was not produced for the reasons best known to the respondents, and that Assistant Post Master admitted in the cross-examination that the name of Naba Kumar Saha (the applicant) was not in the Stock Register, the MDW clearly proved that Naba Kumar Saha was in charge of NSC Counter No.2 but responsibility of issue and discharge of KVP and NSC was done from NSC Counter No.1 and invoices were prepared by person manning such counter only. From the Nominal Roll i.e. the daily register prepared and signed by Post Master, it was proved that Naba Kumar Saha was not in NSC Counter-1 and it was specifically admitted by the Senior Postmaster Hiralal Roy in his evidence. From the Hand 2 Hand Receipt book it is evident that when one official hands over any valuable or certificates, the same is done by endorsing/putting a signature on the said Receipt book as per Rule 26 of the Post & Telegraph Manual Volume-6, Part-I, which could have been the best evidence to prove that the applicant's signature was not there. In spite of several requests the said Hand to Hand Receipt Book was not produced during the enquiry proceeding, to the utter prejudice to the applicant.



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entitling him to benefit of doubt. Further that Rule 42(3) of Post Office Savings Manual Volume-2 states about taking bond and making one responsible when there is a loss of KVP or NSC before issue. But although the fact finding enquiry was started and subsequently departmental charge sheet was submitted, no responsibility was fixed upon the applicant Naba Kumar Saha nor any Indemnity called from him which proved that there was no loss and the applicant was not liable for such alleged loss. Therefore, the Charge Sheet is vague and has no legs to stand upon. The allegation put in the charge sheet could not be proved by any cogent document before Inquiry proceeding, only an order was passed on oral statements and which was upheld by the various authorities in the hierarchy. When the charge sheet said that KVPs were issued from 1999-2000, it was totally impossible for the applicant to sit and issue the same on two days i.e. 16.05.2000 and 17.05.2000 particularly when the applicant has already stated that the same were never sent to the counter but were stolen from the Stock department of Head Post Office at Alipore in the year 1999.



Further and most importantly Nepal Krishna Mitra, a Group 'D' employee admitted before the police that he has stolen the KVPs and the said KVPs have been recovered and criminal case was going on. Therefore, no involvement of Naba Kumar Saha, the applicant herein, could be proved by initiating false and vague charge sheet & which culminated into this punishment. There has been no loss of Government revenue since the certificates have also been recovered from the real accused. Moreover as per Article 311 of the Constitution of India, penalty should have been issued against the applicant on the basis of evidence adduced during the inquiry and not on the basis of the Applicant's statements obtained by coercion during the fact finding enquiry. Therefore, the issuance of charge sheet,

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enquiry report and dismissal order by the Disciplinary Authority and thereafter modification by the Appellate Authority and Revisioning Authority then imposing a major punishment, all have become vitiated in view of what has transpired from the Stock Register, MDV (Memorandum Distribution Work), Nominal Roll, Hand 2 Hand Receipt Book, POSB Manual Volume-II and the Charge Sheet dated 03.01.2009 issued by the Police authorities. Therefore the said charge sheet, report of the enquiry officer, order of dismissal dated 10.12.2003 by the Disciplinary Authority, modified order dated 19.03.2004 by the Appellate Authority and finally the order dated 21.09.2004 by the Revisioning Authority are all liable to be quashed and/or set aside and the applicant be fully exonerated for the facts and circumstances stated as hereinbefore and by imposing a heavy cost upon the Department and a further direction for refund of the recovered amount.

6. We noted the facts and perused the materials on record.

In as much as the applicant has banked upon the Police report of 2009 referred to supra, which was not considered by the revisional authority, the authority who last considered the proceedings, its culmination, the penalty and its proportionality, we recall the order passed on 21.03.2013 dismissing the OA and quash the order passed on 11.03.2015 by the Authority exercising its power in terms of Rule 29-A of CCS (CCA) Rules and remand it back for consideration afresh in terms of the facts stated supra.

7. Appropriate reasoned and speaking order be issued within 3 months. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member