

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.142/2019

This the 09th day of April, 2019

Pathikgiri Manhargiri Gosai
(Age 41 years) (DoB being 03.1.1978)
Son of Shri Manhargiri Tejgiri Gosai
Presently serving as Assistant Superintendent of Post Offices (Hqrs.)
In Anand Division of Postal Department, at Anand
& presently residing at No.B/9, Agman Society
Chavdapura, Jitodia Road
Anand 388 001. Applicant
(By Advocate : Shri M.S.Rao)

VERSUS

1. Union of India,
To be presented through its Secretary to the Govt. of India
Department of Post, Recruitment Division,
Ministry of Communication & Information Technology,
Government of India,
Dak Bhavan, Parliament Street
New Delhi 110 001.
2. The Chief Postmaster General
Gujarat Postal Circle,
O/o. C.P.M.G.,
Department of Posts,
Ministry of Communication & Information Technology
Govt. of India, Khanpur
Ahmedabad 380 001.
3. The Postmaster General
Vadodara Region,
O/o. P.M.G.. Vadodara Region
Department of Posts,
Ministry of Communication & Information Technology
Govt. of India,
Vadodara 390 002.

4. Shri B.L. Sonal
Director of Postal Services, Vadodara Region
O/o. DPS, Vadodara Region,
Department of Posts
Ministry of Communication & Information Technology
Govt. of India,
Vadodara 390 002.
5. The Superintendent of Post Offices
Anand Division,
O/o. SPOs,
Department of Posts.
Ministry of Communication & Information Technology
Govt. of India,
Anand 388 001. Respondents

ORDER – ORAL

Per : Hon’ble Shri M.C.Verma, Member (J)

Instant OA is at notice stage. Heard. Learned counsel, Shri M.S.Rao, Advocate who appeared for applicant while pressing the OA and requesting for issuance of notice contended that the impugned Charge Memorandum, calling upon the applicant herein to submit his representation, in reply to the said Charge Memorandum has been issued by the Director of Postal Services and that he (the Director of Postal Services) can’t act as the “Disciplinary Authority” in instant matter as he is the very same person, who few months back did conduct the Circle Level Investigation of Post Office in question and has identified and concluded that the applicant herein is a ‘subsidiary offender’

in Jabugam Sub Office embezzlement case. Learned counsel referred letter dated 14.9.2018 and its annexe report (Annexure A-9) and explained that post of Assistant Director Postal Service at relevant time was manned by the present Director of Postal Services, the authority who issued the impugned Charge Memorandum (Annexure A-1). Learned counsel contended that it was not legal and valid for the Respondent No.4 herein to act as the applicant's Disciplinary Authority with regard to the very same incident and to issue the impugned Charge Memorandum.

2. Learned counsel also have referred Annexure A-12 wherein details of Power & Duties of officers and employees of in Department of Post (Directorate) are given and urged that that allegations levelled in Charge Memorandum are false and that there is every likely hood that the Disciplinary Authority might have made up his mind and giving opportunity to applicant to submit his representation is merely an formality. Learned counsel relied upon two decisions, namely (i) ***Deoraj v. State of Maharashtra Co-operative Societies, 2004 (0) GLHEL-SC 7632*** & (ii) ***Cantonment Executive Officer v. Vijay D. Wani, 2008 (0) GLHEL-SC 41175***.

3. Considered the submissions and perused the record. Applicant has challenged the legality and sustainability of Charge Memorandum dated

28.03.2019 (Annexure A-1). Charge Memorandum, which has been issued under the signature of Director of Postal Services reads as under :

“Shri P.M.Gosai, the then ASP (HQ) Vadodara EAST Division and now ASP (H/Q), Anand Dn is hereby informed that it is proposed to take action against him under Rule 16 of CCS (CCA) Rules, 1965. A statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken as mentioned above in enclosed.

1. Shri P.M.Gosai, the then ASP HQ) Vadodara EAST Division and now ASP (H/Q), Anand is hereby given opportunity to make such representation as he may wish to make against the proposal.

2. If Shri P.M.Gosai, the then ASP HQ) Vadodara EAST Division and now ASP (H/Q), Anand fails to submit his representation within 10 days of the receipt of this memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against him ex-parte.

3. The receipt of this memorandum should be acknowledged by Shri P.M. Gosai, ASP (H/Q) Anand Dn.”

-Sd.-

*B. L. Sonal
Director of Postal Services,
O/o Post Master General,
Vadodara Region, Vadodara.”*

4. Regarding alleged misappropriation of Government money, as per Annexure A-9 Circle level investigation was carried out by DPS, Vadodara Region and in investigation applicant was identified as ‘subsidiary offender’ in Jabugam SO embezzlement and in para 10 (D) 17 of CLIR it is observed:

“..... Sh. J.K. Rathwa was working as SPM Jabugam S.O. w.e.f. 12.10.2012 and his tenure was going to be completed on during 2016. As per Directorate, New Delhi O.M. No.141-141/2013 –SPB-II dated 31.1.2014, all SPM/ PA in a Single or Double Handed Post Office must be shifted on completion of their post tenure of four years positively. Accordingly, SSPOs Vadodara East Division, Vadodara has issued a rotational transfer /posting order vide Memo No.B2/23(b)/RT/2016-17

dated 01.6.2016, as per sr. No.33 of said memo Sh. J.K.Rathwa SPM Jabugam S.O. was transferred and posted as PA Pavijetpur SO. It is noticed that no efforts were done to ensure implementation of the order of rotational transfer till 27.2.2017 i.e. approximately up to 8 months. It is only on 28.2.2017 / 01.3.2017, SSPOs Vadodara East Division vide his letter No. B2/RT/2016/VDR/ East issued a letter to SPM Kawant / Jabugam / Pavijetpur / Sadhi to ensure implementation of the rotational transfer order as per directions given therein and finally Sh. Rathwa was relieved from Jabugam S.O on 28.3.2017 A/N. During his over retention period after completion of tenure, Sh. Rathwa continued commitment of misappropriation of government money. In pursuance of above stated orders, Sh. P.M.Gosai ASP (HQ) being immediate in-charge of Staff Branch in DO, was required to ensure implementation of said transfer /posting order. But he failed to do so and this negligence on his part has facilitated Sh. Rathwa to commit further misappropriation of government money.”

5. The prime contention of the applicant is that the person who has remained as Investigating Officer cannot be permitted to invoke the power as Disciplinary Authority and as noted above to buttress his submission Learned counsel has placed reliance on two decisions (*cited supra*) but *ratio decendi* of none of the decision is applicable to case in hand. In Deoraj's case, appellant was the sole candidate who filed nomination for election to the post of Chairman of cooperative society, his nomination was found correct but returning officer did not declare him elected for the post and withheld the result. The tenure of Chairman was one year. Appellant knocked at the door of Hon'ble High Court but he was not granted interim relief and therefore, the matter for interim relief was agitated before Hon'ble Supreme Court and Hon'ble Supreme Court taking note of entirety especially the tenure of post,

about half period of which had lapsed granted interim relief observing that in absence of interim relief, there was nothing which would survive for being given to the appellant. In other decision (*Cantonment Executive Officer's case, cited supra*) relied upon by the applicant the issue was legality of dismissal from service of the respondent of the case by resolution of Cantonment Board on account of participation of the three members of the enquiry committee

6. It is hardly an issue if disciplinary authority previously has carried out Circle level investigation in Jabugam SO embezzlement matter and have made report. There are so many instances when an person in administrative capacity took one decision and when he sits in capacity of judicial or quasi judicial authority adopts different view. As transpired from impugned order the applicant has only been directed to submit his representation within 10 days of the receipt of charge memorandum. Rather to submit his representation, illustrating his innocence applicant has preferred the OA, which otherwise also is premature. Taking note of entirety, I did find that OA deserve dismissal and accordingly is dismissed.

7. Before parting it is just and necessary to say that vide impugned memorandum applicant has been directed to submit his representation within 10 days of the receipt of the memorandum, Impugned order is of date

28.3.2019 and stipulate time of ten days would expire on tomorrow, so taking note of difficulty of the applicant further time of needs to be given to him and hence, liberty is granted to applicant that if he wish to submit his representation, he can submit his representation to the Authority concerned within ten days from the date of this order.

(M.C.Verma)
Member (J)

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