

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00453/2018

Monday, this the 4th day of February, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Prasanna Joseph, aged 48 years, D/o. T.M. Joseph,
 GDSBPM, Chathallur (under suspension), Edavanna,
 Manjeri Division, 676 121, residing at Thadathimakkal House,
 Mampoyil, Hospital Road, Chingathara,
 Manjeri-679 334. **Applicant**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by Director General Posts/
 Secretary, Department of Posts, Sanchar Bhavan,
 New Delhi 110 001.
2. The Postmaster General, Northern Region,
 Kozhikode – 673 005.
3. The Superintendent of Post Offices, Manjeri Division,
 Manjeri – 676 121.
4. K.V. Anilkumar, Superintendent of Post Offices,
 Manjeri Division, Manjeri – 676 121. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

This application having been heard on 21.01.2019 the Tribunal on
 04.02.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(i) To call for the records relating to Annexure A-1 to A-11 and to quash
 A-1 being illegal and arbitrary;

- (ii) To direct the 2nd respondent to appoint an ad-hoc disciplinary authority as the 3rd respondent is biased and acting in violation of the rules with animosity;
- (iii) To direct the respondents to take further action on the basis of the enquiry report and permit the applicant to discharge her duties as GDSBPM Chathallur immediately;
- (iv) To declare that the applicant is entitled to be deemed to have been instated as GDSBPM Chathallur with effect from 5.4.2017 and to direct the respondents to re-instate the applicant as GDSBPM, Chathallur immediately with all consequential benefits including arrears of salary with effect from 5.4.2017 with 18% penal interest;
- (iii) Issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

- (iv) To grant the costs of this Original Application.”

2. The brief facts of the case are that the applicant was working as GDSBPM at Chathallur Post Office in account with Edavanna Sub Post Office under the Manjeri HO. While working so she was issued with a charge sheet with the following articles of charges:

“Article-I

Smt. Prasanna Joseph worked as GDSBPM Chathallur BO for the period from 27.10.1999 to 5.1.2017. During the said period, on 15.11.2016, Smt. Prasanna Joseph accepted an amount of Rs. 20,000/- (Rupees Twenty thousand only) from Shri Ahammedkutty, depositor of Chathallur BO SB Account No. 2842346650 and entered the deposit entry in the pass book duly authenticated by BO date stamp and her initials. But she credited only an amount of Rs. 2000/- in to Branch office accounts on 15.11.2016 non crediting an amount of Rs. 18000/-. By the above act of non crediting of Rs.18,000/- into Chathallur BO SB Account No. 2842346650 on 15.11.2016, it is imputed that Smt. Prasanna Joseph, BPM Chathallur (under put off duty) violated the provisions of Rule 133(2) of Book of Rules for Branch Offices, Seventh Edition (Reprint) and thereby failed to maintain absolute integrity and devotion to duty violating Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011.

Article – II

Smt. Prasanna Joseph worked as GDSBPM Chathallur BO for the period from 27.10.1999 to 5.1.2017. During the aid period, Smt. Prasanna Joseph accepted an amount of Rs. 25,000/- (Rupees Twenty Five thousand only) from Smt. Asmabi, Madappally, Chathallur PO, messenger of the

depositor of Chathallur BO SB account No. 2842301406, Smt. Rajeena on 24.11.2016 entered the deposit entry in the pass book duly authenticated by BO date stamp and her initials. But BPM has not credited the said amount into the said account on 24.11.2016 or thereafter. By the above act of non crediting of Rs. 25,000/- into Chathallur BO SB Account No. 2842301406 on 24.11.2016, it is imputed that Smt. Prasanna Joseph, BPM Chathallur (under put off duty) violated the provisions of Rule 133(2) of Book of Rules for Branch Offices, Seventh Edition (Reprint) and thereby failed to maintain absolute integrity and devotion to duty violating Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011.

Article-III

Smt. Prasanna Joseph worked as GDSBPM Chathallur BO for the period from 27.10.1999 to 5.1.2017. During the said period, Smt. Prasanna Joseph accepted an amount of Rs. 1,714/- (Rupees One thousand seven hundred and fourteen only) for depositing into SB account No. 2842346643 on 3.9.2015 from the depositor Smt. Suseela and this amount was correctly entered into SB pass book on 3.9.2015 duly authenticated by BO date stamp and her initials. But BPM has not credited the said amount into the said account on 3.9.2015 or thereafter. By the above act of non crediting of Rs. 1,714/- into Chathallur BO SB Account No. 2842346643 on 3.9.2015, it is imputed that Smt. Prasanna Joseph, BPM Chathallur (under put off duty) violated the provisions of Rule 133(2) of Book of Rules for Branch Offices, Seventh Edition (reprint) and thereby failed to maintain absolute integrity and devotion to duty violating Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011.”

As per the enquiry report the charges were not proved against the applicant.

The disciplinary authority disagreed with the findings given by the enquiry officer for the reasons as under:

“IA submitted her inquiry report dated 18.4.2018 which was received at this office on 23.4.2018 with all the three articles of charges levelled against you are not proved. One copy of the inquiry report dated 18.4.2018 is enclosed. However, undersigned disagree with the findings of the IA as detailed below.

First article of charge is about non crediting of Rs. 18,000/- into Chathallur BO SB Account No. 2842346650 standing in the name of Sri Ahamedkutty on 15.11.2016. However, IA maintained that during the inquiry she was convinced that CGDS was running every nook and corner to trace out the source of excess amount seeking the advice of SW14. IA also wondered why the SW14 did not advice the CGDS to credit the excess amount into UCR even after she came to know the fact that there are excess cash unaccounted with the CGDS. In the instant case, IA was appointed to find out whether the articles containing charge-I proved or not, not to investigate the circumstances under which the CGDS failed to credit the actual amount tendered by the depositor. Here I do agree with the findings of the PO in his written brief dated 13.3.2018 and maintain that article of charge-I stand proved.

Second article of charge is about non crediting of Rs. 25,000/- into Chathallur BO SB Account No. 2842301406 standing in the name of Smt. Rajeena on 24.11.2016. Here IA maintained that articles of charges i.e. entrustment of amount of Rs. 25000/- by the SW11 on behalf of SW9 on 24.11.2016 is maintainable. But as per the report of the IA articles of charge-II stands not proved without mentioning any reason for overcoming this aspect. It is strange to see that IA further added that regarding the admissibility of evidence and degree of proof, I consider that it is now fairly well settled that the requirements of natural justice must depend on the circumstances of the case and hold that the charges alleged in Article II as not proved. However, I disagree with the findings of the IA, whereas PO vide his brief dated 13.3.2018 categorically submitted that articles of charge II stand proved. Here also I disagree with the findings of IA and agree with the finding of the PO and maintain that article of charge II stand proved.

Third article of charge is about non crediting of Rs. 1,714/- into Chathallur BO SB Account No. 2842346643 standing in the name of Smt. Suseela on 3.9.2015. IA maintained that S31 is having a lot of corrections and making confusion etc. and IA was confined to that corrections only deviating from her primary duty of whether the article of charge III stand proved or not and because of this corrections contained in S31 and deposition of DW1 etc., IA assumed some mis posting etc in the ledger of SO/HO and maintained that I forced to believe that the charge alleged under Article III as cannot be considered in vaccum, is lacking substantial proof and would require some material to act on and accordingly hold as not proved. Here also I disagree with the findings of the IA but agree with the version of PO in his brief dated 13.3.2018 and maintain that article of charge III stand proved.

You are requested to submit your representation against findings of the Inquiring Authority within 15 days of receipt of this letter. If nothing is heard from you within the stipulated period, it will be presumed that you have nothing to represent against the Inquiry Report and orders of the Disciplinary authority will be issued without further notice.”

The applicant has submitted that as per Rule 15(2) of the CCS (CCA) Rules, 1965 when the disciplinary authority disagrees with the finding of the Inquiry Authority, the settled position by several judicial pronouncements is that the disciplinary authority before recording its own findings, must record its tentative reasons for such disagreement and also give the delinquent officer an opportunity to represent before the disciplinary authority against the findings. In the present case the powers exercised by the disciplinary authority is mala fide, arbitrary and on illegal considerations. The disciplinary authority was biased and prejudiced from the beginning of the

enquiry. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Mr. Thomas Mathew Nellimoottil, Sr. PCGC who filed a detailed reply statement contending that the presenting officer submitted his brief holding that the charges are proved and opportunity is given to the applicant to make representation within 15 days. In the nutshell the respondents have denied the allegation made by the applicant and supported the stand taken in the impugned order. In support of the same learned counsel for the respondents relied on the judgment of the apex court in Civil Appeal No. 8263 of 2012 dated 23.11.2012. Respondents pray for dismissing the OA.

4. Applicant has filed MA No. 180/671/2018 praying to amend the OA and include prayer 1(a) in the Original Application. The said MA was allowed by this Tribunal vide order dated 3.8.2018. However, the applicant has not carried out the amendment in the OA.

5. Heard Shri Shafik M.A., learned counsel appearing for the applicant and Mr. Thomas Mathew Nellimoottil, Sr. PCGC, learned counsel appearing for the respondents. Perused the records and the argument notes produced by the respondents.

6. The short question raised in this Original Application is that what course of action should have taken by the disciplinary authority when it disagreed with the enquiry report submitted by the enquiry officer? In this

regard we find that the Hon'ble apex court in *Punjab National Bank & Ors. v. Kunj Behari Mishra* – (1998) 7 SCC 84 held that “Whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.” Further the apex court in *B.C. Chaturvedi v. Union of India & Ors.* - (1995) 6 SCC 749 held that “The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry.....”

7. In the present case we find that though show cause notice was given to the applicant by the disciplinary authority but it did not contain the specific grounds on which the disciplinary authority was disagreeing with the findings of the enquiry officer's report. The disciplinary authority is required to assign the reasons for such disagreement with the enquiry report that too on the basis of the record. The disciplinary authority cannot rely upon anything which is out of record nor can he examine any witness who are not examined by the enquiry officer. In the nutshell the law laid down by the apex court in the above referred judgments make it clear that the reasoning for disagreement is the essence of the order for taking a different view which seems to us is lacking in the present case. The disciplinary authority simply disagreed with the enquiry report in the present case without assigning any reason. The disciplinary authority being a quasi

judicial authority ought to have given its reasons for disagreeing with the enquiry report on the basis of the materials available on record.

8. In view of the above we are of the opinion that the present impugned order at Annexure A-1 is liable to be set aside. We order accordingly. Consequently, the impugned order at Annexure A1(a) also is set aside. The matter is remitted back to the disciplinary authority from the stage of recording its finding for disagreement with enquiry officer's report.

9. The OA is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00453/2018

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the memo No. F1/2/2016-17 dated 1.5.2018 issued by the 3rd respondent.
- Annexure A1(a)** - True copy of the memo No. F1/2/2016-17 dated 25.5.2018 issued by the 3rd respondent.
- Annexure A2** - True copy of Memo No. NO/POD/2017/Manjeri dated 6.1.2017 issued by the ASP, Manjeri Sub Division, Manjeri.
- Annexure A3** - True copy of the Memo No. F1/2/2016-17 dated 11.1.2017 issued by the 3rd respondent.
- Annexure A4** - True copy of the OM F. No. 11012/17/2013.Esst. (A) dated 3.7.2015 issued by the Department of Personal and Training.
- Annexure A5** - True copy of the OM No. F. No. 11012/04/2016-Estt(A) dated 23.8.2016 issued by the Department of Personal and Training.
- Annexure A6** - True copy of the representation dated 23.5.2017 submitted before the 2nd respondent.
- Annexure A7** - True copy of the order of this Hon'ble Tribunal dated 21.6.2017 in OA 180/488/2017.
- Annexure A8** - True copy of the memo of charges No. F1/2/2016-17 dated 12.7.2017 issued by the 3rd respondent.
- Annexure A9** - True copy of the written brief dated 13.3.2018 of the presenting officer.
- Annexure A10** - True copy of the written submissions dated 31.3.2018 of the applicant.
- Annexure A11** - True copy of the enquiry report No. IA/ASP-PMNA/1/2017 dated 18.4.2018.
- Annexure A12** - True copy of the representation dated 15.5.2018 submitted to the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** - BO SB Journal dated 10.11, 11.11 & 15.11.2016.
- Annexure R2** - GL/1/SB-Fraud/Chathallur BO dated at Manjeri 6.1.2017.
- Annexure R3** - No. F1/2/2016-17 dated at Manjeri the 12.1.2017.
- Annexure R4** - No./1/Chathallur /BPMPOD/dated at Manjeri the 12.6.2017.
- Annexure R5** - Memo No. F1/2/2016-17 dated 25.5.2018.
- Annexure R6** - Memo No. 21-8/2010/GDS dated 18.4.2011.
- Annexure R7** - Copy of acquittance of receiving SP memo No. F1/2/16-17 dated 25.5.2018 on 29.5.2018.
- Annexure R8** - Email from 2nd respondent dated 29.5.2018 at 3.14 PM to the 3rd respondent.

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