

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00684/2015

Dated of order : 26th April, 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

Dilip Kumar Singh, S/o Sh. Ram Pukar Singh, R/o Near Devi Sthan, Shahpur,
Aurangabad, Bihar.

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By Advocate : Mr. J.K.Karn

Applicant.

Vs.

1. The Union of India through the D.G. Cum Secretary, Department of Posts, DAK Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffapur.
4. The Director of Postal Services, Northern Region, C/o the Post Master General, Northern Region, Muzaffapur.
5. The Superintendent of Post Offices, Dabhang Division, Darbhanga.

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Respondents.

By Advocate : Mr. H.P.Singh

O R D E R [oral]

Per Jayesh V. Bhairavia , Member [J] : In the instant OA, the applicant has sought for the following reliefs :-

- 8[A] Call for the records of Office memo no.F-Disk/02/D.K. Singh, dated DBN 17.07.2012 whereby the office memo has been submitted against the appellant.
- 8[B] Call for records and order dated 30.08.2013 vide memo no. F-Disc/02/D.K.Singh as well as order dated MUZ 17.07.2014 vide memo no. Staff/AP-01/DBG/2014 vide memo no.Staff/AP-01/DBG/2014 passed by Sri B. L.Sonal, Director Postal Services O/o Postmaster General, Northern Region, Muzaffarpur.
- 8[C] After perusal the entire records pleased to quash the order of the recovery from salary dated 30.08.2013 passed in memo no.F-Disc/02/D.K. Singh which was also confirmed in the appeal dated 18.07.2014 vide memo no.Staff/AP-01/DBG/2014.
- 8[D] For a direction upon the respondents to refund and release the recovered amount and to make payment of the same to him along with admissible interest thereupon.
2. The applicant submitted that he was posted as Sub Post Master at Haspura Post Office under Aurangabad Division from 1998 to October, 2004. In

October, 2003, 49 KVS have been fraudulently encashed at Malegaon Railway [H.Q.] Sub Post Office which had purportedly been issued from Haspura, Sub Post Office. The allegation upon the applicant was that he sent a wrong verification report and on the basis of the same, the said KVPs have been encashed from Malegaon Railway [H.Q.] Sub Post Office.

3. The applicant submitted that at the relevant point of time, several KVPs have been lost or stolen during transit and the same were encashed from various Post Offices throughout the country and a number of cases have been registered in respect to the said fraudulent encashment of KVPs and the present case is one of such cases. The applicant submitted that the respondents prepared a negative list and the same has been circulated to all the Head Post Offices throughout the country with respect to said stolen KVPs and directed to compare the KVPs which were presented for encashment from the said negative list.

4. The applicant contended that a requisition was allegedly sought by the Malegaon Railway [H.Q.] Sub Post Office from Haspura Sub Post Office with respect to said 49 KVPs vide letter dated 15.10.2003. The said letter has been received at Haspura Sub Post Office on 27.10.2003 and a verification report has been sent by the applicant verifying the issuance of the said KVPs. However, the said verification report has not been sent separately rather it has been written that "signature verified and attested".

5. The Department of Postal Services got information regarding the occurrence in the year 2003. However, the Department of Postal Services neither head attention to enquiry into the matter nor take any step. In the year 2012, the respondents issued a memo dated 17.07.2012 whereby the applicant was transferred from Aurangabad Division to Darbhanga Division under Rule 37 of P&T Manual Vol. IV [Annexure-A/3].

6. The applicant contended that proceeding under Rule 16 of CCS [CCA] Rules, has been initiated against the applicant. Accordingly, the applicant has been served with the memorandum of imputation of misconduct or misbehavior at his residential address at Aurangabad, Bihar. It is further contended that at the time when the said memo dated 17.07.2012 was delivered at the residential address, the applicant was in judicial custody in FIR No.91/2012 dated 07.09.2012 under P.S. Haspura which has been registered on the initiation of Mr. Amit Kumar, Postal Inspector, Daudnagar Subdivision, Daudnagar. He remained in judicial custody in the above said FIR from 11.06.2012 to 18.09.2012. The applicant was granted bail by the Hon'ble High Court and released from judicial custody on 18.09.2012.

7. Thereafter, the applicant submitted a detailed representation dated 01.10.2012 and requested the inquiry authority to provide the copy of the statement allegedly given by the appellant before CBI, ACB Guwahati in case No.RL-14[A] 2005 on 03.03.2006 as mentioned in the said memo dated 17.07.2012. On receipt of the representation, the Superintendent of Post Offices, Darbhanga Division, Darbhanga has issued a letter dated 10.10.2012 wherein the applicant was ordered to attend the Divisional Office, Darbhanga for inspection of required documents. The applicant submitted that in fact he was not requested to inspect the said documents rather he requested to provide the said documents. In this connection, the applicant submitted that as per Principle of Natural Justice and also as per the CCS [CCA] Rules, any charged official has a right to engage a counsel/advocate to represent his case and for that purpose, the said documents are required. As per direction, the applicant submitted another representation dated 16.10.2012 to inspect the records, which has been replied to by the Superintendent of Post Offices, vide letter dated 18.10.2012 whereby the Superintendent of Post Offices,

Darbhanga Division again referred the representation of the applicant dated 01.10.2012 and mentioned that "you are again asked to inspect your written statement dated 03.03.2006 as desired, vide your application dated 01.01.2012 within three days from the date of receipt and submit your representation immediately." The applicant contended that in spite of his best effort, he has not been provided the required documents. The applicant further contended that in absence of the records, he could not file his written statement to the memorandum of imputation of misconduct or misbehavior and as a result, the impugned ex-parte order dated 30.08.2013 has been passed against the applicant.

8. The respondents filed their written statement and contested the case. According to them, the applicant was posted as SPM Haspura SO under Aurangabad Division between 21.09.2002 to 01.04.2004 and during the aforesaid period, some KVPs were lost or stolen and for that a CBI case was lodged and a negative list of those stolen/lost were circulated to all Head Quarters and Post Offices. The CBI, Guwahati established a fraudulent encashment of lost/stolen KVPs bearing no.46CC890501 to 890549 [49] KVPs each Rs. 10,000/- denomination [Total maturity value of Rs. 9.80 lakhs] at Maligaon Railway Hq.] Sub Post Office, Guwahati on 20.11.2003 and 21.11.2003 purported to have been issued from Haspura SO under Aurangabad Division [Bihar].

9. The CBI investigation report reveals that Sri Badan Chandra Deka, Dy. Sub Postmaster, Maligaon Railway headquarter Sub Post Office, Guwahati received an application dated 15.10.2003 from one Anup Gupta @ Basab Bijay Dutta seeking transfer of his 49 numbers of 5 ½ KVPs of Rs. 10,000/- the Postmaster, Maligaon Railway Hq Post Office, Guwahati. The said application was for encashment of 49 number of KVPs of 46 CC series bearing Sl.

No.890501 to 890549 in the domination of Rs. 10,000/- each with a maturity value of Rs. 9,80,000/-. The transfer application dated 15.10.2003 was sent from Maligaon Railway HQ Sub Office, Guwahati, was received by Rajendra Prasad, the then Postal Assistant of Haspura SO on 27.10.2003 and subsequently the same was given to Dilip Kumar Singh, the then Sub Post Master, Haspura SO. Thereafter, Dilip Kumar Singh prepared the registered list of letters including the RL No. 5330 dated 11.11.2003 and sent the same to Guwahati. The transfer application reached Maligaon Railway HQ SO on 18.11.2003 after the purported verification from the Postmaster, Haspura, which he had done without verification of records whether that was issued from that office or not and issued certificate that signature verified. Accordingly, the KVPs were discharged/encashed on 20.11.2003 and 21.11.2003 instead of making payment by cheque as per the Postal Rule. As such, the department sustained a loss of Rs. 9.8 lakhs. Then respondents pleaded that this was done due to laches on the part of the applicant.

10. The respondents contended that the applicant is responsible for the loss occurred and therefore he was alleged to have violated the provisions of following departmental rules, vide this office memorandum dated 17.07.2012 :

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- [i] Rule 3[1][i][ii] and [iii] of CCS [Conduct] Rules, 1964.
- [ii] Rule 3[2][i] of CCS [Conduct] Rules, 1964.
- [iii] Rule 16 of P&T Manual Vol.IV &
- [iv] Rule 145 of P&T Manual Vol.V.

11. The respondents contended that the applicant did not submit his representation even after reminders dated 10.10.2012, 18.10.2012 and 23.11.2012. In such circumstances, the proceeding was decided ex parte vide memo even no. dated 30.08.2013 and punishment was awarded for recovery

of Rs. 2,50,000/- @ Rs.4,000/- per month. The applicant preferred an appeal dated 10.01.2014 to DPS [N], Muzaffarpur which stands finalized vide DPS [N], Muzaffarpur memo dated 18.07.2014 and issued an order to uphold the punishment awarded by the Disciplinary Authority. Accordingly, the respondents submitted that there is no any illegality or irregularity committed and as such the OA has no merit and is fit to be dismissed.

12. Heard the learned counsel for the parties and gone through the available materials on record.

13. On perusal of records, it reveals that in response to charge memorandum dated 17.07.2012, issued to the applicant under Rule 16 of CCS [CCA] Rules, 1965, the applicant-CO, vide his applications dated 01.10.2012 which was received by the office of Inquiry Officer on 08.10.2012, wherein the applicant had requested the authority to allow him to inspect his statement which was recorded by the CBI on 03.03.2006 and other documents for submission of representation/defence statement. The request of the applicant was allowed by the Inquiry Office vide letter dated 10.10.2012 and reminder dated 18.10.2012 intimating him to inspect the documents/statements as demanded by him and further directed to submit his representation. However, the applicant did not attend the office of Inquiry Officer to inspect the documents as demanded by him. Further, the applicant vide his application dated 20.10.2012 requested the IO to allow him to inspect the records with his counselor.

14. Again the IO allowed the applicant to inspect the documents but he did not turn up. The said fact has not been rebutted by the applicant-CO. Under the circumstances, it cannot be said that the applicant-CO was not provided due opportunity to inspect the required documents for the purpose of filing his representation/defence statement to the charge memorandum. Therefore,

the submission of the applicant that the disciplinary authority has not provided due opportunity to defend his case is not tenable. It is further noticed that during the investigation carried out by the CBI, the applicant-CO's statement was recorded in connection with CBI, ECB, Guwahati case no. RC-14[A] 2005-GWH on 03.03.2006. In the said statement, the applicant had narrated the entire conspiracy and admitted to have a hand in the whole fraudulent encashment of the Kisan Vikash Patra [KVP] and he was benefited from the whole fraudulent act. It is further admitted that he was involved and got commission from one Govind Singh [outsider] in five installments amounting to Rs. 8.50 lakhs.

15. Considering the said report of CBI, the disciplinary proceeding was initiated against him and as per the imputation leveled against him, the applicant had prepared the registered letter including the RL No.5330 dated 11.11.2003 and sent the same to Guwahati and based on the same, the KVPs was allowed to discharged/encashed on 20.11.2003 and 21.11.2003 instead of making payment by cheque as per the Postal Rules. Had the applicant performed the duty of Sub Post Master, Hapura SO as per departmental rules and regulations and brought matter in the notice of higher authorities, such a huge loss of 9.8 lakhs to the Department could have avoided. On the basis of the records in the case, the disciplinary authority has found the applicant guilty as he had accepted his involvement in encashment of lost/bogus KVPs, vide his statement dated 03.03.2006 before the CBI, Guwahati. Accordingly, awarded punishment of recovery of Rs. 2.50 lakhs only from his pay @ Rs. 4,000/- per month, vide impugned order dated 30.08.2013. The appeal preferred against the said punishment order was also considered by the appellate authority, and the same was rejected, vide order dated 18.07.2014. We do not find any infirmity in the order passed by the Disciplinary Authority

as well as Appellate Authority. There is no materials placed on record by the applicant which can establish his plea that he was not involved in the aforesaid episode. The applicant relied upon the order passed by this Tribunal in OA 247/2018 dated 12.10.2018, and submitted that pecuniary loss caused to the Government is not due to the laches of the applicant. And, therefore, punishment of recovery of Rs. 2.50 lakhs is bad in law. The said submission of the applicant is not acceptable in the present case, since it is noticed that the findings recorded by the disciplinary authority established the fact that the pecuniary loss caused to the Government was only due to the negligence and fraudulent act of the applicant. Therefore, we do not find any irregularity or error in the impugned orders. Hence the OA is devoid of merit.

16. Accordingly, the OA is dismissed. No costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]

mps.