

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01348/2018

DATED THIS THE 14TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

M. Nagaraju,
Age: 58 years,
S/o Late Sri M.T. Thimmegowda,
GDS BPM/DP Settihalli BO
A/w Channapatna: 562 160
(under orders of dismissal)
Residing at Mattikere Village,
Settihalli Post,
Channapatna: 562 160 Applicant
(By Advocate Shri P.A. Kulkarni)

Vs.

1. Chief Post master General,
Karnataka circle,
Palace Road,
Bengaluru: 560 001

2. Post Master General,
S.K. Region,
Palace Road,
Bengaluru: 560 001

3. Director of Postal Services,

And Appellate Authority,
Office of Post Master General,
S.K. Region,
Palace Road,
Bengaluru: 560 001

4. Superintendent of Post Offices
And Disciplinary Authority,
Channapatna Division,
Channapatna 562 160

....Respondents

(By Shri Vishnu Bhat, Counsel for Respondent No. 1 to 4)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter in issue is very very small. In fact, while hearing the matter earlier, we had felt that apparently proper opportunity was not given as the applicant had not received the benefit of subsistence allowance during the interregnum period. Therefore, we had quashed that enquiry as it is and directed a fresh enquiry in OA No. 325/2011 vide order dated 12.09.2012 which we quote:

“ORDER (ORAL)

HON'BLE DR. K.B. SURESH

..... MEMBER(J)

Heard. The applicant raises challenge against an order which has prejudiced him on the ground that due to non-payment of subsistence allowance and enhanced subsistence allowance which were supposed to be given to him and therefore he was not given viable defence opportunity is his lament. Following our order dated 10.9.2012 the learned counsel for respondents Shri S. Prakash Shetty produced before us the details of subsistence allowance paid to him. From 6.7.2004 to 28.2.2005 in one lump they have paid an amount of Rs. 5,579/- after deduction of EDGIS at the rate of Rs. 10/- per month. Thereafter from March 2005 onwards he has been paid an amount of Rs. 712 up to February 2006. Thereafter he has been paid an amount of Rs. 1072/- per month till September 2006 and on 1.10.2006 to 25.10.2006 he has been paid Rs. 862/. Needless to say that a human being cannot exist on this amount. The level of exploitation lurking in this methodology is beyond belief. After 3 months of putting

off duty the rules stipulates that putting off duty must be reviewed and exgratia payment enhanced by 50% of such compensation admissible during the period of first 90 days and thereafter the same is to be granted. If the enquiry could not be conducted, then it has to be proven that the applicant has been the prime mover in it and that cannot be contended as such going by the pleadings. The very fact of denial of life and subsistence amounts to denial of opportunity of defence to him he pleads.

2. *The learned counsel for applicant produces the judgment of five Judges Bench of Hon'ble Apex Court in Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh reported in AIR 1973 SC 1183. The learned counsel for respondents would submit that this is a case wherein the enquiry was to be held at a place 500 kms away and the elements of prejudice attached to that are not equally applicable to this case. But the situation from 1973 to the situation in 2006 is highlighted by the fact that during the period of enquiry he was not even paid the meagre amount of subsistence allowance of Rs. 712/- with which an human being cannot exist even if going by Planning Commission revelation of poverty. Therefore it is found that no proper opportunity of defence is given to the applicant to defend the case against him and therefore proceeding against him are illegal, unethical and arbitrary and are quashed. Consequences are to follow in 2 months' time. OA is allowed. No order as to costs."*

2. Apparently it was taken up before the Hon'ble High Court in Writ Petition No. 5355/2013 wherein the Hon'ble High Court held that a fresh enquiry may now be needed. We quote from the judgment of the Hon'ble High Court:

"ORDER"

This writ petition is filed challenging the order passed by the Central Administrative Tribunal setting aside the order of dismissal of the respondent.

2. *The respondent was appointed as a Branch Postmaster at Settihalli Branch Post Office under Channapatna Head Office with effect from 19.11.1993. On 31.03.2004, a complaint was received from Smt.Kalyanamma, depositor of SB Account No.135042 of Settihalli Branch Office, through Postmaster, Channapatna Head Office regarding difference in the balance in her pass-book. On enquiry, it was found that the respondent had defrauded an amount of Rs.2,530/- by non-crediting the amount deposited by the depositor into Post Office Savings Bank Accounts on the respective dates of deposit except the first deposit of Rs.20/. An opportunity was given to*

the respondent for crediting the said amount, which he failed to do so. Therefore, he was kept off duty with effect from 06.07.2004, which was subsequently ratified by the 3rd respondent vide order dated 14.07.2004. The ex-gratia payment equal to 25% of pay and allowance with admissible DA was sanctioned to the respondent on 22.03.2005 with effect from 06.07.2004. The Put off Duty of the respondent was reviewed on 01.03.2005 and it was continued without taking any decision on enhancement of POD allowance due to non-receipt of the final investigation report from investigating authority. The Final Investigation report was received on 21.03.2005. In the meanwhile, the respondent filed O.A. No.377/2005 before the CAT complaining non consideration of enhancement of POD allowance. Accordingly ex-gratia allowance of the respondent was enhanced by 50% of the ex-gratia already sanctioned together with admissible dearness allowance with effect from 22.02.2006 and the same was paid till the date of dismissal i.e., 26.10.2006. After receipt of the report, a charge-sheet came to be issued against him. The respondent denied all the charges. An oral enquiry was ordered by appointing Inquiry Officer vide order dated 03.03.2006. The respondent failed to attend the oral enquiry and stayed away from the oral inquiry throughout. Therefore, the Enquiry Officer submitted his report holding that the respondent is guilty of the charges leveled against him. The Disciplinary Authority passed an order dismissing him from service. On appeal, the same came to be rejected. A Review petition filed by the respondent was also rejected.

3. *The said orders were challenged before the CAT. The Tribunal held that a human being cannot exist on the amount, which was paid to the respondent. The level of exploitation lurking in this methodology is beyond belief. If the enquiry could not be conducted within three months, the respondent is entitled to enhanced ex gratia payment. The very fact of denial of life and subsistence amounts to denial of opportunity of defence to him and therefore, the Tribunal was of the view that the order of dismissal is bad for not affording proper opportunity of defence. Therefore, it set-aside the order. Aggrieved by the said order, the present writ petition is filed.*

4. *The learned counsel appearing for the petitioners assailing the impugned order contends that in compliance with the order passed by the Central Administrative Tribunal in O.S. No.377/2005, the ex- gratia allowance was enhanced to the respondent by 50% with all other amounts, to which he was entitled, till he was dismissed from service. This aspect has not been looked into or taken note of by the Tribunal and therefore, the order passed by the Tribunal is erroneous and requires to be set-aside.*

5. *The learned counsel appearing for the respondent supports the impugned order.*

6. *From the aforesaid material on record, the only ground on*

which the order of dismissal came to be set- aside was non-payment of enhanced ex-gratia allowance. When enhanced ex-gratia allowance was not paid, the respondent moved the Tribunal, which passed an order and in compliance thereof, it has been enhanced. The petitioners are bound to pay the amount which, the respondent is legally entitled to. The amount has been paid as per the calculation of the petitioners. If the calculation is not correct and if the respondent is entitled to the ex-gratia from an earlier point of time, certainly, he could claim the amount. That could not be a ground for setting-aside the order of dismissal. At the same time, we are conscious of the fact that it is an ex parte order. The respondent also has not participated in the proceedings. In our view, the proper course would be to set-aside the order passed by the Tribunal as well as the order of dismissal and remand the matter back to the authorities for fresh enquiry by giving an opportunity to the respondent. In spite of that opportunity being given, if the respondent refuses to co- operate in the enquiry, they are at liberty to proceed further in accordance with law and pass orders.

Petition is allowed.

The enhanced ex gratia payment is paid up to the date of dismissal only. The emoluments due to the respondent from the date of dismissal order till the fresh order to be passed by the authority is dependent on the result of the final order.

Ordered accordingly.”

3. Thereafter the matter was examined once again and an order was passed.
4. Shri P.A. Kulkarni, learned counsel for the applicant, would submit that he would like to raise two valid points. One is that the punishment order is based on no evidence at all. Therefore, with the help of the learned counsels, we had gone through the assessment of evidence of the Inquiry Officer. It appears that the payees of the money order had deposed that they have not received the money but apparently there was a witness for payment of money one Shri M.T. Ramakrishna. It came out that Shri M.T. Ramakrishna's house is one kilometre away from the residence of the payee and he says that he used to accompany the Branch Post Master for making

payment. There is no need for the Branch Post Master to tag along with another person while making payments of Rs. 125 and Rs. 200 etc. We feel that rightly this element of the contention was rejected by the Inquiry Officer and all the concerned officials. We also accept it in the light of the clear-cut statement made by the payees that they have never received the amount. Therefore, we hold that the punishment imposed on this element is correct. The next ground is that the Appellate Authority has not considered these grounds. But then factual surmises, issues and analysis have been considered by the Inquiry Officer giving reasons and the Disciplinary Authority also considered it and the Appellate Authority has only acknowledged the decision of the Disciplinary Authority. When he wholeheartedly acknowledged the decision of the Disciplinary Authority, he need not give reasons for each and every element in situation. Only if he disagrees with an element that he has to give reasons. Therefore, we hold that applicant had been given all opportunity of defence following our judgment and the Hon'ble High Court judgment as quoted earlier and thereafter after having obtained all opportunity of defence the evidence ranged against him has been analyzed by all these authorities correctly and justifiably and we uphold their decision.

5. At this point of time, Shri P.A. Kulkarni, learned counsel for the applicant, raises a question of law. Shri M.T. Ramakrishna, the witness, had been arrayed as a witness on the side of the prosecution. Assuming a witness had turned hostile what should be the ground to be taken by the adjudicator is the question raised by Shri P.A. Kulkarni. Even if a witness has

turned hostile, when his hostility comes to the surface, even then his evidence and deposition can be analyzed on the elements of contention raised through that hostility. Here, in this case Shri M.T. Ramakrishna would say that he is in the habit of accompanying the Branch Post Master every time he makes a payment. It cannot be for a moment believed that this man is going to be a full time assistant to the Branch Post Master. Had it been so, there is no need for a Branch Post Master. He can send the money through this Ramakrishna itself. It is, without any doubt, clear that Shri M.T. Ramakrishna was only a bought witness. That also raises another point. It raises a point that applicant had been doing all these things with prior motivation because if a witness had put his signature on all these papers it would have happened contemporaneous with the alleged payment which did not apparently happen. Therefore, motive is present in this juncture. That increases the gravity of the infraction of the applicant not subtracting from it. Anyway as appropriate punishment has been issued against him, we are not saying anything more about the quantum of punishment.

5. At this point of time, Shri P.A. Kulkarni, learned counsel for the applicant, submits that it has not come upon record that Shri M.T. Ramakrishna has turned hostile. When he deposes against the payee and says that he had witnessed the payment being made and also accompanies by saying that that every time when the Branch Post Master delivers the money he will also accompany him, the correct surmise has been drawn by the Inquiry Officer and other people. Therefore, this contention that he has not been formally declared hostile is of no value as only natural justice need

to be explicit and implicit in a disciplinary enquiry. We do not follow Evidence Act to its n^{th} nadir in a departmental enquiry. It is not needed also in the circumstances of the case.

6. At this point of time Shri P.A. Kulkarni makes one more interesting allegation that probably Shri M.T. Ramakrishna might have been set up by the prosecution. But then apparently since he had not taken this view in the defence statement and any of his other concerned papers, we need not deal with this new raised vision.

7. Having found that the OA lacks merit, the OA is dismissed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

Annexures referred to by the applicant in OA No. 170/01348/2018

Annexure-A1: Copy of the charge memo dated 07.12.2005

Annexure-A2: Copy of the Central Administrative Tribunal, Bangalore Bench order dated 12.09.2012 in OA No. 325/2011

Annexure-A3: Copy of the Hon'ble High Court order dated 06.03.2013 in WP No. 5355/2013

Annexure-A4: Copy of the presenting officer's brief before the IO

Annexure-A5: Copy of the applicant's written brief before the IO

Annexure-A6: Copy of the IO's report dated 21.07.2017

Annexure-A7: Copy of the representation dated 11.08.2017

Annexure-A8: Copy of the punishment order dated 08.11.2017 passed by the DA

Annexure-A9: Copy of the memorandum of appeal dated 04.12.2017

Annexure-A10: Copy of the Appellate Authority order dated 25.06.2018

Annexures referred in reply statement

Annexure-R1: Copy of the opinion No. CH-395/2005 dated 14.11.2005 of the Government Examiner of Questioned Documents.

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