

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01724/2018

DATED THIS THE 16th DAY OF JULY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

K.R.Umesha
S/o Late K.S.Ramaiah
Aged 35 years
Ex-Postman
Balehonnur SO-577 112.
Residing at Kolale Village
Megaramakki Post
Narasimharajapura Taluk
Chikmagalur District-577 112.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Posts
Dak Bhavan
New Delhi-110 001
2. The Director of Postal Services(HQ)
Karnataka Circle
Bengaluru-560 001.
3. The Superintendent of Post Offices
Chikmagalur Division
Chikmagalur-577 101.

....Respondents

(By Advocate Sri M.Vasudeva Rao)

O R D E R

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

The case of the applicant is that he was appointed as GDS BPM, Addagadde, a/w Koppa in Chikmagalur Division w.e.f. 6.3.2006 by order dtd.26.7.2006(Annexure-

A1). On being declared successful in the Limited Departmental Competitive Examination(LDCE) held on 10.1.2016 for recruitment as Postman, he was posted as a regular Postman and posted to Balehonnur SO vide order dtd.9.2.2016(Annexure-A3).

2. Applicant submits that 3rd respondent vide memo dtd.25.5.2017(Annexure-A4), initiated disciplinary proceedings against him under Rule 14 of CCS(CCA) Rules, 1965 framing 5 articles of charge and proposing to hold an inquiry into the same. The gist of the charges against the applicant is that during the period from 7.3.2006 to 13.2.2016 prior to his appointment as Postman (a) he has failed to credit Rs.11,000/- on 1.12.2015 being the amount deposited by Sri A.S.Chandrashekhar in his daughter's Sukanya Samridhi Account(SSA) (b) he has failed to credit Rs.1,000/- each on 16.7.2015 and 17.8.2015 and Rs.1,500/- on 8.12.2015 being the amounts deposited by Smr.B.C.Smitha in her daughter's SSA account (c) he has failed to credit Rs.2000/- on 26.8.2015 being the amount deposited by Sri K.B.Shivashankara into his SB account. (d) he has failed to credit Rs.1,400/- on 16.7.2015 being the amount deposited by Smt.H.C.Vedavathi into her SB account and (e) he has failed to credit Rs.2,500/- on 11.1.2016 being the amount deposited by Sri B.Harish in his RD account. It is submitted that amount not accounted is Rs.20,400 whereas he has been asked to remit Rs.42,000/- which he has remitted on 2.11.2016 in Balehonnur SO voluntarily. An inquiry was held into the articles of charge and Inquiry Officer(IO) submitted his report on 22.2.2018(Annexure-A6) holding that all the articles of charge were proved against the applicant as the applicant has admitted the charges before the IO. The applicant was given inquiry report with a direction to submit his representation to the findings within 15 days vide letter dtd.22.2.2018(Annexure-A5). Thereafter, relying on the findings of the

inquiry, the 3rd respondent passed an order dtd.28.2.2018(Annexure-A7) imposing the penalty of reduction of pay of the applicant to Rs.22400/- of Level 3 Pay Matrix for a period of 5 years with immediate effect, with a direction that the applicant will not earn increments of pay during the period of reduction and on expiry of the period, the reduction will have the effect of postponing his future increments. The applicant did not submit an appeal against the order of penalty and as such accepted the penalty imposed on him. However, 2nd respondent by order dtd.14.5.2018(Annexure-A8) initiated suo motu revision proceedings under Rule 29 of the CCS(CCA) Rules 1965, stating to enhance the penalty to that of dismissal of the applicant from service on the ground that the penalty imposed by the 3rd respondent is not commensurate with the gravity of the offence committed by the applicant. The applicant has been given 15 days time to submit his representation against the said proposal and he has submitted his representation on 7.6.2018(Annexure-A9) admitting the mistake committed by him and requested to take a lenient view in the matter. However, the 2nd respondent by order dtd.10.10.2018(Annexure-A10) imposed the penalty of dismissal from service in place of the disciplinary authority's order.

3. The applicant further submits that the 2nd respondent is not the appellate authority and the appropriate appellate authority is the Director of Postal Services, S.K.Region. The 2nd respondent stated that the Circle Officer vide memo dtd.20.6.2017 has authorized him to discharge the statutory functions of the post of Director Postal Services, SK Region and hence he has exercised the power under Rule 29 of the CCS(CCA) Rules, 1965 to revise the order passed by the disciplinary authority. The applicant submits that the authority to delegate the power is vested with the Government only. In this case, the Government has not delegated the

powers to the 2nd respondent to function as appellate authority and even if the 2nd respondent has the delegated powers to function as the appellate authority, the act of revising the order of the disciplinary authority is not in accordance with law. 2nd respondent has passed the order in revision on 10.10.2018 which is beyond the prescribed period of 6 months from the date of the order i.e., 28.2.2018. As such the order dtd.10.10.2018 is in contravention of the Rule 29(1)(v) of the CCS(CCA) Rules, 1965. As per the law laid down by the CAT, Delhi in *Sri Pal Jain vs. UOI*(OA.No.685/2011), the period of 6 months stipulated in Rule 29(1)(v) of CCS(CCA) Rules, 1965 is the period within which not only the records are to be called for but the order on review should also be passed. The order dtd.14.5.2018 proposing to enhance the penalty to that of dismissal does not state any reasons except a cryptic sentence that the penalty imposed is not commensurate with the gravity of the offence committed by the official. In the case of *D.Ramachandra vs. UOI* (OA.No.448/2010), this Tribunal held that the authority revising the order is required to give its detailed reasons under what circumstances and for what reasons he has differed with the findings of the lower authority. Only then the delinquent officer is able to put forth his representation in a proper manner duly addressing the disagreement note of the higher authority. The applicant further states that he has remitted Rs.42,000/- to Post Office on 2.11.2016 which is almost double the amount alleged to have not been accounted for by him. He has admitted the charges owning his mistake. His past record has been without any blemish. All these aspects have weighed in the mind of the disciplinary authority while imposing the penalty of reduction of pay. The same is not liable to be interfered with in revision. Therefore, he prays for quashing of the memo dtd.10.10.2018 issued by the 2nd respondent with direction to the respondents to extend all consequential

benefits treating the interregnum period from 10.10.2018 till his reinstatement as on duty.

4. Per contra, the respondents in their reply statement have submitted that the applicant while working as GDS BPM at Addagadde BPO from 7.3.2006 to 12.2.2016 was declared successful in the LDCE held on 10.1.2016 for recruitment as Postman and he was posted at Balehonnur PO w.e.f. 13.2.2016. The applicant was found involved in misappropriation of deposits accepted in eight Savings Bank(SB) accounts, two Recurring Deposit(RD) accounts, five Sukanya Samridhi Accounts(SSA) of different depositors and premium accepted in four Rural Postal Life Insurance policies amounting to Rs.52746/- in addition to temporarily misappropriating deposits accepted in two SB accounts, six RD accounts and one SSA for a sum of Rs.24200/- while working as Branch Postmaster, Addagadde Branch Post Office during the period from 24.4.2014 to 23.1.2016. Out of nineteen cases of non-accounting of deposits, only five cases have been taken for proceeding against the applicant under Rule 14 of CCS(CCA) Rules 1965 vide Supdt. of Post Offices, Chikkamagaluru memo dtd.25.5.2017. His contention that he was asked to remit Rs.42000 by the postal authorities against Rs.20400 which was not accounted for by him is not correct. In fact he had remitted Rs.61192 being the non accounted deposits/premium in 15 accounts plus 4 RPLI policies and interest on belated accounting of deposits in 9 accounts. The applicant denied the charges, on which oral inquiry was ordered wherein the applicant admitted the charges by giving a letter to that effect(Annexure-R1). The Inquiry Officer submitted inquiry report dtd.22.2.2018 holding all the five articles of charge as proved on the basis of clear admission of the charges by the applicant. A copy of the inquiry report was furnished to the applicant allowing him 15 days time to submit his representation.

The applicant submitted his representation dtd.23.2.2018 reiterating the admission of charges by him. After that the Disciplinary Authority vide his memo dtd.28.2.2018 ordered that the pay of the applicant be reduced to the pay Rs.22400 of level-3 of pay matrix for a period of five years with immediate effect and he will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing the future increments of his pay. The penalty imposed has not been appealed against by the applicant.

5. The respondents submit that the extract of punishment register of Chikkamagaluru Division was reviewed by the Reviewing Authority and the disciplinary case file was called for review. On review it was found that the penalty imposed on the applicant was not commensurate with the gravity of the misconduct and hence it was proposed to enhance the penalty. Therefore, in exercise of the powers conferred by Rule 29 of CCS(CCA) Rules 1965, it was proposed to enhance the penalty to that of 'dismissal from service'. A show-cause notice was issued vide memo dtd.14.5.2018 intimating him of the proposal to modify the penalty imposed on him by the disciplinary authority to that of dismissal from service. He was given opportunity to submit his written representation against the same. The applicant submitted his representation dtd.7.6.2018 without any valid reasons against imposition of the proposed penalty. The applicant has misused his position as Branch Postmaster through his lack of integrity and breached faith of the public. Non accounting of the deposits has lowered the image of the department in the eyes of public. He has exhibited that he is not trustworthy. The misconduct stands proved on the basis of clear admission and it renders him unfit and unsuitable for continuance in service. Considering his age and plight of his family and to restore him a chance to seek employment elsewhere, proposed penalty of dismissal from

service was reconsidered and the applicant was ordered to be removed from service vide 2nd respondent's memo dtd.10.10.2018 and the applicant is removed from service w.e.f. 12.10.2018. Hence the contention of the applicant that he has been dismissed from service is incorrect as he has been removed from service vide Annexure-A10. And the contention of the applicant that respondent No.2 has exercised the powers of revision without authority is also not correct as he is the appellate authority for the cadre of Postmen and therefore empowered to exercise the powers of revision under the provisions of Rule 29(1)(v) CCS (CCA) Rules 1965(Annexure-R2). The respondent No.2 is holding additional charge of the Director Postal Services, South Karnataka Region by the order of the CPMG. There is no question of delegation of any powers as claimed by the applicant. The contention of the applicant that 2nd respondent passed orders on 10.10.2018 which is beyond the prescribed period of 6 months from the date of order and as such the revision is in contravention of the Rule 29(1)(v) of CCS(CCA) Rules 1965 is also not correct as the Appellate Authority i.e 2nd respondent has expressed its intention of revising the penalty to the applicant through show-cause notice dtd.14.5.2018. How to reckon the period of revision of six months is detailed in DG P&T letter dtd.27.7.1972(Annexure-R3). Therefore, the arguments of the applicant are not tenable. The applicant contention that no reasons are stated in the proposal to enhance the penalty is not correct. In the show-cause notice issued to the applicant on 14.5.2018, 2nd respondent has clearly stated that 'he considers the penalty imposed by the DA is not commensurate with the gravity of the offence committed by the official'. Thus the reasons for the proposed penalty is inbuilt in the word 'not commensurate with the gravity of the misconduct'. The DA has expressed that the offence is very serious which renders the charged official unsuitable for continuance

in service but has taken the decision contrary to the opinion. This clearly establishes that the penalty imposed by the DA is not commensurate with the gravity of the offence committed by the applicant. The Tribunal in OA.No.880/2013 and in OA.416/2016 held that 'the role of judicial review in departmental inquiry proceedings is limited. The courts should neither interfere with the administrative decision unless it illogically suffers from procedural impropriety, nor go into the correctness of the points made by the administrator'. Hence, the action of the 2nd respondent is justified and as per the rules. The OA is therefore liable to be dismissed.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass regarding whether the appellate authority was competent to issue the notice vide Annexure-A8 and pass the final orders vide Annexure-A10 and whether he had done so within a period of six months from the date of issue of the original orders of the Disciplinary Authority. In this case, for the proven charges which were also repeatedly admitted by the applicant, a punishment was imposed by the disciplinary authority vide the order dtd.28.2.2018 at Annexure-A7. Vide Annexure-A8, the appellate authority who was holding the charge of the post of appellate authority in respect of the statutory functions of that post, had taken up the case of the applicant for suo-motu revision stating very clearly in his memo dtd.14.5.2018 that the penalty imposed by the disciplinary authority is not commensurate with the gravity of the offence committed by the applicant. Vide para-4 of the said memo, the appellate authority has very clearly mentioned about his proposal for modifying the penalty to that of dismissal from service and as per the rules, the applicant was given an opportunity to make a representation which he has done vide Annexure-

A9. This memo was within a period of three months from the date of issue of orders by the DA and is well within the period prescribed for such revision as stated by the respondents vide Annexure-R2. Having considered all the facts of the case including the claim of the applicant that the money was misappropriated by him for the medical treatment of his father, the appellate authority has passed the impugned order holding that the contention of the official with regard to the medical treatment of his father was an afterthought having no linear connection with the dates of non credits. As held by this Tribunal in any number of cases including OA.No.880/2013 vide order dtd.26.8.2014 and O.A.No.416/2016 vide order dtd.13.3.2017, it is very clear that the infractions committed by the applicant which he himself has admitted, would militate against the reputation of the department and would also affect the faith reposed by the ordinary customers of the respondents in the institution of the respondents. The appellate authority has clearly held that the applicant was found unfit and unsuitable for continuance in service as he has lowered the image of the department in the eyes of general public and has also exhibited that he was not trustworthy and not fit to hold a post dealing with money. The money deposited by the customers is also hard earned and the applicant cannot claim leniency merely citing certain personal reasons. We find nothing wrong in the process adopted by the respondents. Therefore, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01724/2018

Annexure-A1: Copy of the order dtd.26.7.2006
Annexure-A2: Copy of the order dtd.29.1.2016
Annexure-A3: Copy of the order dtd.9.2.2016
Annexure-A4: Copy of the memo dtd.25.5.2017
Annexure-A5: Copy of the order dtd.22.2.2018
Annexure-A6: Copy of the Inquiry Report dtd.22.2.2018
Annexure-A7: Copy of the order dtd.28.2.2018
Annexure-A8: Copy of the order dtd.14.5.2018
Annexure-A9: Copy of applicant's representation dtd.7.6.2018
Annexure-A10: Copy of the order dtd.10.10.2018

Annexures with reply statement:

Annexure-R1: Letter of the applicant dtd.8.2.2018
Annexure-R2: The Extract of Rule 29 of CCS(CCA) Rules 1965
Annexure-R3: DG P&T orders No.4 under Rule 29 of CCS(CCA) Rules 1965
Annexure-R4: Copy of the order dtd.26.8.2014 passed in OA.No.880/2013
Annexure-R5: Copy of the order dtd.13.3.2017 passed in OA.No.416/2016
