

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/01161/2018
&
M.A.No.267/2019 in O.A. No.020/01161/2018

Date of Order :18.04.2019.

Between :

M.H.S.Mahankali Rao, s/o late Suryanarayana Murthy,
Aged about 48 yrs, Occ:Postal Assistant, Narsapur Sub
Post Office, West Godavari District-75. ...Applicant

And

1. Union of India, rep., by its Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-1.
2. The Chief Postmaster General,
Andhra Pradesh Circle, Vijayawada.
3. The Postmaster General, Vijayawada Region,
Vijayawada-3.
4. The Director of Postal Services,
O/o the Postmaster General, Vijayawada Region,
Vijayawada-3.
5. The Senior Superintendent of Post Offices,
Bhimavaram Division, Bhimavaram-534 201. ... Respondents

Counsel for the Applicant ... Mr.Dr.A.Raghu Kumar

Counsel for the Respondents ... Mr.B.Siva Sankar, Addl.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE L.NARASIMHA REDDY, CHAIRMAN
THE HON'BLE MR.B.V.SUDHAKAR, MEMBER (ADMN.)**

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ORAL ORDER

(As per Hon'ble Mr. Justice L. Narasimha Reddy, Chairman)

The applicant is working as Postal Assistant in Jinnuru Sub-Post Office of West Godavari District. He was issued with a charge memo dated 21.11.2016 alleging that on account of negligence exhibited by him, the Sub Postmaster (SPM) by name Sri K.Apparao has misappropriated huge funds. Instances were mentioned in Articles I to IV of the charge memo. The applicant submitted his explanation denying the charges. It is stated that he found discrepancies in migration work of Finacle software (computer system), and had he brought to the notice of the higher authorities the acts of misappropriation of funds and omissions on the part of SPM, the department would not have suffered loss.

2. The applicant submitted his explanation denying the charges. Not satisfied with the explanation, the Disciplinary Authority appointed an Inquiry Officer. The charges were held proved by the Inquiry Officer and a copy of the inquiry report was furnished to the applicant. On consideration of the explanation offered by the applicant, the Disciplinary Authority passed the impugned order dated 31.10.2018 directing recovery of a sum of Rs.5,00,000/- from the pay of the applicant in 50 instalments @ Rs.10,000/- per month. In addition to that, the punishment of withholding of next increment for a period of 3 years without cumulative effect is also imposed. Same is challenged in this OA.

3. The applicant contends that when nothing is alleged against him about any misappropriation , directing recovery of such a huge sum and imposition of punishment cannot be sustainable in law. It is also stated that the applicant raised an objection in the appointment of an Inquiry Officer on the ground of bias, but in vain.

4. The applicant further contends that even while the disciplinary proceedings were in progress, the respondents prejudged the issue by issuing a memo dated 11.07.2018 requiring him to deposit a sum of Rs.10,00,000/-. Other grounds also pleaded.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant was the officer from whom necessary approval or verification has to take place and on account of the negligence on his part, the SPM has misappropriated huge amounts. It is also stated that the prescribed procedure is followed in the disciplinary proceedings and that no exception can be taken in the impugned order.

6. We heard Mr.B.Pavan Kumar, proxy counsel representing Dr.A.Raghu Kumar, learned counsel for the Applicant and Mr.B.Siva Sankar, learned standing counsel appearing for the Respondents.

7. 5 articles of charge were mentioned in the charge memo and they were elaborated in the statement of imputations. The common feature of all the articles of charge is that the applicant was not vigilant and the negligence on his part helped the SPM to misappropriate huge amounts.

The articles of charge read as under:

“Article-I

That the said Sri M.H.S.Mahankali Rao, while working as Postal Assistant, Jinnuru SO during the period from 25.09.2013 to 31.08.2016, on 16.05.2016, had accepted an amount of Rs.1,000/- from Smt.Boddada Lakshmi Rama, resident of Jinnuru being deposit in SSY account no.2823675021. With this amount, the balance available in the pass book is Rs.13,000/-. While entering the amount to the Finacle, Sri M.H.S.Mahankali Rao observed a difference of Rs.5,000/- in the balance. On examination of the entries, it was found that the deposit of Rs.5,000/- dated 10.02.2016 was not credited to the Post Office accounts. Thus, the balance in Finacle is Rs.5,000/- less with that of the pass book. Thus, the said Sri M.H.S.Mahankali Rao did not follow the procedure laid down in Rule No.31 (3) (i) read with Rule No.31 (2) (i) of PO SB Man. Vol.1 (Second Edition, Corrected up to December 2010) and also did not bring the matter of difference in balance to the immediate supervisor or to the higher authorities. The non-disclosure of difference in balance in the said SSY account by Sri M.H.S.Mahankali Rao on 16.05.2016 itself facilitated Sri K.Apparao, the then SPM, Jinnuru to commit further misappropriations to the tune of Rs.6,13,800/-.

It is, therefore, alleged that the said Sri M.H.S.Mahankali, PA (under suspension), Jinnuru SO had contravened the provisions contained in Rule No.31 (3) (i) read with Rule No.31 (2) (i) of PO SB Man. Vol.I (Section Edition, Corrected up to December 2010) and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Sri M.H.S.Mahankali Rao, while working as Postal Assistant, Jinnuru SO during the

period from 25.09.2013 to 31.08.2016, on 16.05.2016, had accepted an amount of Rs.1,000/- from Smt.Boddada Lakshmi Rama, resident of Jinnuru being deposit in SSY account no.2823675038. With this amount, the balance available in the pass book is Rs.13,000/-. While entering the amount to the Finacle, Sri M.H.S.Mahankali Rao observed a difference of Rs.5,000/- in the balance. On examination of the entries, it was found that the deposit of Rs.5,000/- dated 10.02.2016 was not credited to the Post Office accounts. Thus, the balance in Finacle is Rs.5,000/- less with that of the pass book. Thus, the said Sri M.H.S.Mahankali Rao did not follow the procedure laid down in Rule No.31 (3) (i) read with Rule No.31 (2) (i) of PO SB Man. Vol.1 (Second Edition, Corrected up to December 2010) and also did not bring the matter of difference in balance to the immediate supervisor or to the higher authorities. The non-disclosure of difference in balance in the said SSY account by Sri M.H.S.Mahankali Rao on 16.05.2016 itself facilitated Sri K.Apparao, the then SPM, Jinnuru to commit further misappropriations to the tune of Rs.6,13,800/-.

It is, therefore, alleged that the said Sri M.H.S.Mahankali, PA (under suspension), Jinnuru SO had contravened the provisions contained in Rule No.31 (3) (i) read with Rule No.31 (2) (i) of PO SB Man. Vol.I (Second Edition, Corrected up to December 2010) and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.

Article-III

That the said Sri M.H.S.Mahankali Rao, while working as Postal Assistant, Jinnuru SO during the period from 25.09.2013 to 31.08.2016, on 12.01.2016, 06.02.2016, 13.02.2016 and on 06.06.2016 did not lock the cash chest of Jinnur So as Joint Custodian as required in Rule No.84-A of Postal Man. Vol.VI Part III (Sixth Edition, corrected up to 30th June 1986) and Iso did not initial the daily account of Jinnuru SO as required in 84-B of Postal Man. Vol.VI Part III (Six Education, corrected up to 30th June 1986) facilitating Sri K.Apparao, the then SPM, Jinnuru SO to commit huge amounts of frauds at Jinnuru.

It is, therefore, alleged that the said Sri M.H.S.Mahankali, PA (under suspension), Jinnuru SO had contravened the provisions contained in Rule 84-A and Rule 84-B of Postal Man. Vol.VI Part III (Sixth Edition, corrected up to 30th June 1986) and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.

Article-IV

That the said Sri M.H.S.Mahankali Rao, while working as Postal Assistant, Jinnuru SO during the period from 25.09.2013 to 31.08.2016, did not maintain hand to hand receipt book for transfer of cash, accountable articles and other valuables as required in Rule No.26 (2) of P & T Man.Vol.VI Part I (5th Edition, corrected up to 31st March, 1982).

It is, therefore, alleged that the said Sri M.H.S.Mahankali, PA (under suspension), Jinnuru SO had contravened the provisions contained in Rule No.26 (2) of P & T Man.Vol.VI Part I (5th Edition, corrected up to 31st March, 1982) and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.

Article-V

That the said Sri M.H.S.Mahankali Rao, while working as Postal Assistant, Jinnuru SO during the period from 25.09.2013 to 31.08.2016, on 27.04.2016 did not keep the date stamp of Jinnuru SO in his safe custody during the working hours as required in Rule No.21 (2) of P & T Man. Vol.VI Part I (Fifth Edition, corrected upto 31, March 1982), which facilitated Sri K.Apparao, the then SPM, Jinnuru SO to commit a fraud of Rs.76,300/- by issuing a TD Pass Book to Smt.Sarella Saraswathi assigning account no.110024, which is not in consonance with the auto generated account no. In Finacle.

It is, therefore, alleged that the said Sri M.H.S.Mahankali, PA (under suspension), Jinnuru SO had contravened the provisions contained in Rule No.21 (2) of P & T Man. Vol.VI Part I (Fifth Edition, corrected upto 31, March 1982), and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.”

8. While in Articles I & II, it is alleged that Sri K.Apparao, the then SPM, Jinnuru has misappropriated Rs.6,13,800/-, in other charges, such quantification is not found. It appears that in the course of inquiry, the

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details were furnished. A perusal of the various documents filed by the respondents along with reply discloses the SPM has misappropriated a huge sum of Rs.97,82,226/-. This was also indicated in the letter dated 11.07.2018 issued by the respondents.

9. It is not uncommon that whenever public funds are misappropriated by a Government employee either exclusively or in collusion with others, directions for recovery thereof are issued. Depending upon the roles played by the concerned employees, the quantification is also undertaken. In the charge memo issued to the applicant, uniformly it is stated that the applicant was not vigilant in the processing of accounts and that in turn helped the then SPM Sri K.Apparao to misappropriate the amounts. Therefore, the blame or the allegation as to misappropriation is exclusively against Sri K.Apparao. Obviously, for that reason, he was dismissed from service, vide order dated 30.07.2018.

10. The very fact that the Disciplinary Authority issued an order dated 11.07.2018 requiring the applicant to deposit a sum of Rs.10 lakhs even while the disciplinary proceedings were pending against officers indicates an assumption of pre-determination. The order reads as under:

“While working as SPM, Jinnuru S.O. during the period from 24.12.2012 to 28.07.2016, Sri K.Apparao has committed SB/RD/TD/MIS/SSY/COD frauds to the tune of Rs.97,82,226/- (i) by not crediting the deposits into the respective accounts of depositors and (ii) by issuing passbooks with fake account numbers to the

investors. The said embezzlement happened during your period of tenure at Jinnuru S.O. as P.A., Jinnuru S.O. The negligence on your part has facilitated the said Sri K.Apparao, the then SPM, Jinnuru to continue the misappropriation of Government money, till its detection. The irregularities committed by you have already been informed to you.

Now you are hereby given an opportunity to credit an amount of Rs.10,00,000/- voluntarily towards part of recovery of the fraud amount occurred due to your contributory negligence.

Sd/-
Sr.Supdt. of Post Offices,
Bhimavaram Divn 534 201."

11. Nowhere, the basis for quantification made against the applicant was mentioned. The statement that Sri K.Apparao has misappropriated Rs.97,82,226/- virtually does not leave the hope for any further quantification. The punishment for negligence is required to be in a different form. Further, in the departmental inquiry also, no effort was made to quantify the liability of the applicant.

12. We have carefully gone through the impugned order of punishment dated: 31.10.2018. The Disciplinary Authority has undertaken discussion with reference to the charges and the report submitted by the Inquiry Officer. The concluding portion reads as under:

"Therefore, I concur with the findings of the I.O. Basing on the IO's report and other records of the case, the C.O. by virtue of his position as PA, Jinnuru has utterly failed to discharge his duties and thus paved way

to Sri K.Apparao in committing a huge fraud to the tune of Rs.97,82,226/- and in turn damaged the image of the department in the eyes of public.

Thus, keeping in view of huge amount misappropriated at Jinnuru SO and non-recovery of defrauded amount in the case, I order as follows:

ORDER

I, D.Ramanaiah, Senior Superintendent of Post Offices, Bhimavaram Division, Bhimavaram and disciplinary authority hereby order that

(i) an amount of Rs.5,00,000/- should be recovered from the pay of the official in 50 (Fifty) instalments @ Rs.10,000/- per month commencing from the pay for the month of November 2018.

(ii) further order that the next increment of the official be withheld for a period of three years without cumulative effect.”

13. Here again, except that the Disciplinary Authority has observed that the entire amount of Rs.97,82,226/- was misappropriated by Sri K.Apparao, he did not give any indication as to the quantification of that amount vis-a-vis the applicant. Added to that, the direction for recovery on one hand and imposition of punishment of stoppage of increment on the other hand cannot go together. In the normal course, the matter should go back to the Disciplinary Authority for fresh consideration. However, we are of the view that the entire issue can be given a quietus by permitting the recovery of sum of Rs.1 lakh from the pay of the applicant. This will also offset any minor punishment, which the disciplinary authority may intend to impose. Our effort is only to give a quietus to the entire issue.

14. We, therefore, partly allow the OA, upholding the finding recorded by the Inquiry Officer and the conclusion of the Disciplinary Authority as regards the negligence on the part of the applicant, but modifying the punishment to the one of recovery of Rs.1 lakh, in instalments @ Rs.5000/- per month from the applicant. The punishment as to withholding of increment shall also stand set side.

15. As the main OA is disposed of, the M.A.No.267/2019 filed by the respondents seeking vacation of interim orders dated 27.11.2018 also stands disposed of.

16. There shall be no order as to costs.

Sd/-

**(B.V.SUDHAKAR)
MEMBER (ADMN.)**

Sd/-

**(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN**

Dated: this the 18th day of April, 2019
Dictated in the Open Court

Dsn.