

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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Original Application No. 290/00271/2017

RESERVED ON : 26.08.2019

PRONOUNCED ON: 04.09.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Gulab Chand Sansi, S/o Shri Nathu Ram Sansi, aged about 58 years, b/c-Sansi (SC), R/o- Vill+ Po-Chhapar, District Churu (working as Sub Postmaster at Rajalsdesar Post Office under SPO Churu Division, Churu, Postal Department).

...Applicant

(By Advocate: Shri S.P.Singh)

Versus

1. Union of India through the Secretary, Government of India, M/o Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. Post Master General Rajasthan Western Region, Jodhpur.
4. The Director of Postal Services, Western Region, Jodhpur.
5. Superintendent of Post Offices, Churu Division, Churu.

...Respondents

(By Advocate: Shri B.L.Tiwari)

ORDER**Per Mrs. Hina P.Shah**

By way of this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the appellate order dated 28.4.2017 (Ann.A/1), penalty order dated 30.12.2016 (Ann.A/2) and the chargesheet dated 7.12.2016 (Ann.A/3) with a prayer that these may be quashed and set aside.

2. The case of the applicant is that he was appointed as Postal Assistant on 23.11.1981 and thereafter promoted to the post of Sub Post Master. While working at Rajaldesar Post Office, a charge sheet was issued alleging that he has not accepted the amount due to non entry of new Account Numbers and the same was not taken into record by depositing in RD Account, Sukanya Account, SB Account, VVMO and RPLI from the Branch Office. It was also alleged that it was the duty of the applicant to enter old Account Number in Finacle software. He should have obtained new Account Number and the amount was to be accepted and posting was required to be done. After migrating Rajaldesar Sub Post Office in CBS on 21.12.2015, not a single Saving Account was opened and regularized RD Account and closed RPLI policies. He also did not enter into

error register and did not inform in respect of non-functional Server. The applicant denied the charges and requested the Disciplinary Authority to conduct inquiry in accordance with law. The said inquiry was not conducted. The Disciplinary Authority in its order dated 30.12.2015 revealed that inquiry was conducted and punishment was awarded on the basis of the inquiry report. No inquiry report is given to the applicant and the punishment is awarded without confronting any adverse material against the applicant, which is in violation of the principles of natural justice. The applicant further submitted that there is no loss and no misappropriation is committed by him. No amount has been mentioned in the charge sheet to show that the amount has been misappropriated by the applicant. The competent authority has not considered the inevitable circumstances, that due to rustic area, there was no proper electricity supply and non-functioning of server caused non-entry or non-posting but that has not been taken into consideration. The applicant has rendered more than 35 years' service without any complaint, but at the verge of retirement, he has been implicated in false and fabricated case. The applicant has made representation against the charge sheet and thereafter the Disciplinary Authority vide

order dated 30.12.2016 (Ann.A/2) imposed a punishment of reduction of pay by one stage for a period of three years w.e.f. 1.1.2017 without cumulative effect on the applicant. The applicant further states that the punishment under Rule-16 is minor punishment, but the punishment is affecting his pension after his retirement. Rule 16 of CCS (CCA) Rules, 1965 at para 1-A reads as "Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rule (3) to (23) of Rule 14, before making any order imposing on the Government Servant any such penalty." The respondents passed promotion order dated 3.4.2017 (Ann.A/8) but due to the penalty, the order will have its effect even after the expiry of punishment order dated 30.12.2016. The respondents did not take into

account the fact that actual promotion will not be granted to the applicant due to his punishment.

The applicant filed an appeal against the punishment order dated 30.12.2016 in which he has appraised the fact that he is going to retire on 30.9.2019. He has also stated in his appeal to go through his service record, but the Appellate Authority vide an order dated 28.4.2017 (Ann.A/1) affirmed the punishment awarded by the Disciplinary Authority.

3. By filing reply, the respondents have stated that it was the duty of the applicant to follow the guidelines of the Department and to accept the deposits in RD Accounts, SSA Account, SB Account, VPMO and RPLI received from branch post offices and to search new account numbers by putting old account number in Finacle software and write new account numbers on deposit slips and take the amount in office account after posting in Finacle software. The applicant did not make any entry in error book in respect of non-functioning of server. He was not devoted to duty as he opened fewer accounts and was also responsible for discontinuance of RD account and voidance/lapsation of RPLI policies of Rajaldesar Sub Post Office. A departmental

inquiry was conducted and it was found that the applicant did not accept the amount due to non entry of new account numbers and the same was not taken into record the deposits in RD account, SSA Account, SB Account, VPMO and RPLI from the branch post offices. Many RD accounts were forced to discontinue and RPLI policies became void/lapsed. This conduct of the applicant caused financial loss to Department as well as post office account/policy holders and portrayed a bad image of the department. After CBS implementation of Rajaldesar Sub Post Office, it was duty of the applicant to send list of CBS new account numbers to branch post offices under his jurisdiction. If any Branch Post Office was writing/mentioning old account number on deposit slip then the applicant should have checked in Finacle system and should rewrite new account number over old account number and should have taken deposit amount. The applicant was given opportunity and enough time to submit his representation against the proceedings. He was served a chargesheet after proper verification of amount deposited in respect of RD/SB/SSA/RPLI and BPMO received from branch post offices through departmental inquiry. The departmental inquiry was conducted by the Inspector of Post, Ratangarh.

Because the minor punishment awarded to the applicant is contemplated under Rule (iii)(a) of Rule 11 which does not warrant any full fledged enquiry provided for minor penalties and as such, supply of copy of the fact finding inquiry has not caused any prejudice to the applicant. Therefore, the Disciplinary Authority and Appellate Authority proceeded with the matter in accordance with law.

4. In rejoinder, the applicant has reiterated the submissions made in the OA.

5. Considered the rival contentions of both the parties.

6. In the present case, the charge sheet was issued under Rule 16 of the CCS (CCA) Rules, 1965 and a minor penalty of stoppage of one increment for three years from 1.1.2017 has been imposed upon the applicant. After filing appeal by the applicant, the said punishment has been affirmed by the Appellate Authority. The penalty imposed on the applicant started from 1.1.2017, which will have effect upto 31.12.2019. The applicant would be retiring on superannuation on 30.9.2019. In this situation, it is obvious that the said penalty will adversely affect the pension of the

applicant. Rule 16 of CCS (CCA) Rules deal with the procedure for imposing minor penalties.

The proviso under Rule 16 provides that –

“Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increment of pay and such withholding of increments is likely to affect adversely the pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty. ”

According to the above proviso of Rule 16, in a case where it is proposed after considering the representation to withhold increment of pay and such withholding of increments is likely to affect adversely the pension payable to the Government servant, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty. The respondents have conducted minor penalty proceedings under Rule 16 without complying

with the proviso to this Rule and no such inquiry laid down in sub-rules (3) to 23 of Rule 14 of CCS (CCA) Rules has been held before imposing penalty on the applicant. Therefore, the outcome of the said disciplinary proceedings cannot be legally sustainable.

7. A Coordinate Bench of this Tribunal at Lucknow has decided a similar matter in the case of **Shiv Kumar vs. Union of India and Ors.**, in OA no. 424/2009 vide order dated 24.2.2011 wherein in para 6 it has observed that:-

“6. Concededly, on account of stoppage of three increments during the currency of penalty period, the amount of pension and other pensionary benefits of the applicant would be affected. Therefore, an enquiry ought to have been held in the manner laid down in sub Rule (6) to (25) of Rule 9 i.e. the procedure laid down for major penalty. But the disciplinary/appellate authority did not take note of the said provision and simply imposed penalty by means of impugned order for stoppage of three increments of the applicant temporarily. The appellate authority also wrongfully rejected the appeal preferred by the applicant and confirmed the penalty.”

8. In view of above, the OA is partly allowed. The chargesheet dated 7.12.2016 (Ann.A/3), impugned punishment order dated 30.12.2016 (Ann.A/2) and appellate order dated 28.4.2017 (Ann.A/1) are quashed. The respondents are at liberty to hold inquiry afresh, if they so desire, in accordance with the relevant rules.

9. The OA stands disposed of in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/