

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA/050/00390/2015

Date of CAV : 16th July, 2019

Date of orders : 26th July, 2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]
HON'BLE MR. DINESH SHARMA, MEMBER [A]

Sheo Shankar Sharma, aged about 62 years, S/o Late Balendra Prasad Sharma, resident of Mohall – Laheri, PO – Biharsharif, District – Naland, Pin Code – 803101.

.....applicant

By Advocate : Shri N.N.Singh .

Versus

1. The Union of India through Secretary, Deptt. Of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Postmaster General, Bihar, Patna – 110001.
3. The Director of Postal Services [HQ], O/o Chief Postmaster General, Bihar, Patna.
4. The Supdt. Posts, Nalanda Division, Biharsharif.

..... Respondents.

By Advocates: Mrs. P.R.Laxmi

ORDER

Per Jayesh V. Bharavia [J]:- The instant OA has been filed by the applicant for the following reliefs : -

8[a] That your lordship may graciously be pleased to quash and set aside the impugned order of the appellate authority dated 19.03.2015 [Annexure-A/1] and disciplinary authority dated 23.08.2013 [Annexure-A/6].

8[b] That the respondent further be directed to refund the amount already deducted from the pay of the applicant with 18% interest.

8[c] Any order or orders including cost of the proceeding be allowed in favour of the applicant.”

2. The applicant's case in brief is that the applicant while posted as Assistant Postmaster [Sub Account] in Biharsharif HO, one Anup

Kumar, Sub Postmaster, Chandi SO, who was in habit of receiving excess cash from Biharsharif HO, in collusion with the then Treasurer as well as Head Postmaster HO, also used to receive cash from Head P.O. without knowledge of the applicant.

3. After a lapse of nearly five and a half years, the applicant was served with a charge-sheet under Rule 16 of CCS [CCA] Rules, 1965 for minor penalty on 03.07.2013 [Annexure-A/2] for his gross negligence in supervisory duty, which facilitated Shri Anup Kumar, the then SPM Chandi SO to succeed in obtaining irregular remittance from Biharsharif HO on regular intervals and also to commit fraud/misappropriation of Govt. money to the tune of Rs. 47,49,993/-.

4. The applicant requested the Respondent No.4, Superintendent of Post Office, Nalanda Division to grant permission to inspect S.O. slips for the period under reference vide his application dated 11.07.2013 but the same were not shown to him and accordingly, the Disciplinary Authority violated Rule 77 of P&T Manual Vol. III as well as D.G. Post orders contained in rule 16 of CCS [CCA] Rules, 1965.

5. The applicant submitted that in the first page of the charge memo, the respondents have admitted that the treasurer of Biharsharif HO was found to make remittance for heavy amount without orders either from APM [Sub Account] or the Postmaster and in the same para the respondents admitted that Sri Anup Kumar did not even reflect the details of cash and stamp balance in SO daily account submitted to Biharsharif HO, therefore, the allegation in the charge memo is self-contradictory and vague. In view of the aforesaid facts, it is evident that there was collusion among the treasurer, Sub Post Master Chando S.O. as well as Head Postmaster, Biharsharif HO.

6. The applicant also submitted that the Disciplinary Authority did not issue charge memo under Rule 14 of CCS [CCA] Rules, 1965 to avoid detail enquiry to find out the real culprit and issued charge-sheet under Rule 16 of CCS [CCA] Rules, 1965 and imposed penalty disproportionately, arbitrarily without application of mind and following due process established by law under Rule 106, 107 and 108 of P&T Manual Vol. III. The applicant further submitted that the D.A. has also alleged violation of Rule 8, 10[1], 10[5] and 59[1][a] of Postal Manual Vol. VI [Part III] [Sixth Edition, corrected upto 30th June, 1985]. The applicant submitted that the aforesaid rules specifically related with the duty of Head Postmaster of Head PO who is the incharge of Head PO, specifically, treasury of the PO [Annexure-A/3 series].

7. The applicant alleged that the charge-sheet is itself vague since the Disciplinary Authority has shown the amount of Rs. 1,14,49,800/- was remitted to the Chandi S.O. during the period 07.07.2007 to 01.08.2007 and 18.09.2007 to 04.03.2008 but the authority has not shown anywhere that how much cash was paid to the saving bank depositors and payees of the money orders etc. to the customers. Therefore, the action of the respondents are just to malign the applicant and to prove him guilty. The applicant further submitted that in the first page of statement of imputation of charge, it has been alleged that the SPM Chandi kept S.O. balance short to the tune of Rs. 22,94,262/- on 29.07.2008, by the then Suptd of Post Offices, Nalanda Division but it is pertinent to note that during the aforesaid period the applicant was not the APM [Sub Account] in Head PO. In fact the applicant was posted as APM Sub A/C was from 18.09.2007 to 04.03.2008. The applicant also submitted that the then Inspector of Post Offices, made inspection of

Chandi S.O. on 16.08.2007, i.e. during the incumbency of the applicant and he has made remarks in his inspection report inter-alia that he had found cash and stamp correct in Chandi S.O. The applicant submitted that this fact itself proves that during the period of the applicant, there was no shortage of amount. The Respondent No.4 has also alleged in this regard that even if there was slight suspicion that the applicant should have reported the matter to the Postmaster or Supdt. of Posts for detail enquiry, if he would have performed his foremost duty, the fraud might have been detected earlier. In this regard, the Id. Counsel for the applicant placed reliance on a decision rendered by CAT, Ernakulum Bench in case of A. Sukumaran vs. S.D.O. & Ors., reported in [1996] 32 ATC 1.

8. The applicant submitted that the Respondent No.4 has alleged violation of Rule 214 of Postal Manual Vol.V – which relates to fraud facilitated by lack of supervision. He submitted that this Rule does not apply to him since the treasurer who remitted cash was not under the supervision of APM [Sub Account], in fact the treasury of the PO functions under the supervision of Postmaster. Further the imputation of charge of misconduct, the disciplinary authority has alleged that the applicant even failed to take necessary steps to the collection of excess cash lying beyond the authorised balance of Chandi SO. The applicant should personally verify the reason for retention of excess cash. The Respondent No.4, the Disciplinary Authority has malafidely ignored the instruction of the Chief Postmaster General Bihar, the Head of the Circle, issued on 08.07.2008 since during his visit to Naland Division marked in para 20.6 that – “The Postmaster, Biharsharif HO must be vigilance over superfluous remittance to SOs. It should be scrutinized

properly and report may be sent by the Postmaster to the Supdt. Of Post Offices, Naland Division for taking necessary action [Annexure-A/4]. The applicant further submitted that he has been alleged for violation of provision of CCS [Conduct] Rules, 1964, but this provision is not applicable in case of applicant because as per G.I. DP&AA.R. OM No.11013/18/76 Estt.[A] dt. 07.02.1977, para 2.2, this rule is applicable in that circumstances where no specific departmental rules are available in the Department. However, the applicant has not committed any misbehaviour or misconduct in performing his duty.

9. The applicant submitted that he filed his para-wise in brief before the Respondent No.4, but he did not make any enquiry or investigation to know the real fact of the case and imposed penalty for recovery of Rs. 1,02,000/- at the fag end of his retirement from the pay @ Rs. 34,000/- per month commencing from the month of August, 2013, vide Annexure-A/6. The applicant submitted that this order was issued on 23.08.2013 without following due process of law. The applicant retired on 31.10.2013 on superannuation.

10. The applicant submitted that the respondents imposed penalty for recovery from the then Postmaster, Naresh Prasad Singh Rs. 1,00,000/-, Madho Singh Rs. 90,000/-, Shiv Ram Prasad Rs. 90,000/- and Shri Shiv Kumar Prasad Singh-II Rs. 21,150/- but no penalty has been imposed on Amitabh Singh, the then Treasurer. The applicant also submitted that the Respondent No.4 has not mentioned anywhere for reaching to the conclusion of imposing penalty of recovery of Rs. 1,02,000/- and a recovery of Rs. 34,000/- per month at the fag end of his retirement on superannuation. He submitted that he was a very low paid employee in the Postal Department and since he has no involvement in the

misappropriation of government money, the instant OA needs to be allowed and his entire recovered amount should be refunded henceforth.

11. The respondents have filed their written statement and contended that Shri Anup Kumar while working as SPM, Chandi SO credited a sum of Rs. 10,41,666/- under head unclassified receipt on 16.07.2008 at Bakhtiyarpur S.O. suo motu. On receipt of information from the SPM, Bakhtiyarpur SO, he SPO's Nalanda visited Chandi S.O. on 29.07.2008 and found a sum of Rs.22,94,262.01 short in office cash balance on physical verification of cash and stamp balance of the office. Therefore a thorough enquiry was carried out which resulted misappropriation of Government money to the tune of Rs. 47,49,993.01 at Chandi SO among the other offenders, Shri Sheo Shankar Sharma the applicant herein was also found one of the subsidiary offender. Shri Sharma was then proceeded under Rule 16 of CCS [CCA] Rules, 1965 against the lapses.

12. The charge memo was issued to him vide memo dated 03.07.2013. Shri Sharma inspected the requisitioned documents on 05.08.2013 and submitted his defence statement dated 19.08.2013, which was received on 20.08.2013 in the office Superintendent of Post Offices, Nalanda Division. The applicant's negligence was found to be proved. His case was decided, vide memo dated 23.08.2013 which was received by him on 30.08.2013 and he was awarded with the penalty of Rs., 1,02,000/- which has been reportedly recovered from his pay @ Rs. 34,000/- only per month commencing from the month of August, 2013. Thereafter, appeal under Rule 23 of CCS [CCA] Rules, 1965 was made by Shri Sharma on 07.10.2013 to DPS [Hq.], Appellate Authority, O/o Chief P.M.G. Bihar Circle, Patna against punishment awarded by Suptd. Of Post Offices, Nalanda Division, Biharsharif. The Appellate Authority

confirmed the penalty vide memo dated 19.03.2015.

13. The respondents further submitted that the Government sustained total loss of Rs. 47,49,934/- and the applicant has been awarded punishment of recovery of Rs. 1,02,000/- only since the applicant was identified as one of the subsidiary offenders. The Disciplinary Authority and Appellate Authority has examined the full facts of the case and justified the punishment order. The appellate authority has also disposed of the appeal under Sub Rule 27[2] of CCS [CCA] Rules, 1965.

14. The applicant by way of rejoinder submitted that the Disciplinary Authority has himself noted that the punishment order dated 19.04.2016 awarded to Shri Mithilesh Kumar has failed to bring the excess retention of cash of Chandi SO into the notice of the APM Sub Account and the Postmaster Biharsharif HO or the Superintendent of PO, Nalanda Division, Biharsharif, despite of that, he kept the remittance on the Chandi SO at his own account being the treasurer of Biharsharif HO. Further, Shri Mithilesh Kumar has stated that while working as Treasurer, he independently was terminating the previous arrangement w.e.f. 16.04.2015. The work was not found satisfactory vide Annexure-1. It is evident that the remittance of cash on the date were made regularly without written order of the Postmaster or APM Sub Account [under vested power] given on the daily account of the respective date, hence findings of disciplinary authority is perverse and contrary to evidence on record.

15. The applicant relied upon a decision rendered by the Hon'ble Supreme Court in case of Rajendra Yadav vs. State of MP and others, 2013 [2] SLJ 120 wherein the Hon'ble Supreme Court held that – “The doctrine of equity applies to all who are equally placed, even among

person who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment, when imposing punishment when all of them are involved in the same incident. Parity among co-delinquent has also been to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquent who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate, i.e. lesser punishment for serious offences and stringent punishment for lesser offences.”

16. Heard the learned counsel for the parties and gone through the records.

17. The ld. counsel for the applicant relied upon a decision rendered by this Bench of the Tribunal in OA/050/00605/2014, Md. Safi Azhar Shahin vs. Union of India & Ors. wherein the Tribunal held as follows :

“10. We are satisfied from the documents on record that there have been lapses on the part of the applicant and, therefore, respondents are within their right to make some recovery. However, they cannot throw up any number randomly. We have noticed in several cases of Postal Department that they resort to shortcut in case of defalcation and misappropriation of huge money. They issue a minor penalty charge memo on those employees against whom there is only a charge of negligence, and as a part of punishment order, they randomly mention some amount for recovery shoes basis is neither mentioned in the charge memo nor in the penalty order. Had they intimated as part of the charge memo that ‘x’ percentage of the loss is attributable to the charge employee’s degree of responsibility, that would make some sense.

11. Such shortcuts, even though sell intentioned give handle the guilty employees to challenge the punishment on account of vagueness and arbitrariness.

12. In conclusion, the OA is allowed and the impugned orders dated 10.01.2014 and 15.07.2014 are quashed and set aside. The respondents are at liberty to pass a fresh order in accordance

with our above observations.”

Rule 10[1] Regulation of Funds for sub-offices of Postal Manual stipulates that one of the most important duties of a head postmaster is to make satisfactory arrangements to provide his sub-offices with funds and relieve them collections in excess of their authorised maximum balance.

18. In view of the aforesaid discussions, we have noticed that the respondents have adopted a shortcut method to impose punishment of recovery upon the applicant. The respondents have issued the penalty charge memo upon the applicant against whom there is only a charge of negligence and as a part of punishment order, they randomly mentioned some amount of recovery whose basis is neither mentioned in the charge memo nor in the punishment order. Admittedly the punishment imposed upon the applicant is vague, since the respondents have nowhere mentioned that how and under what proportion they have distributed the amount of recovery.

19. Under the circumstances, the OA is allowed. The impugned orders dated 19.03.2015 [Annexure-A/1] and the order passed by the Disciplinary Authority dated 23.08.2013 [Annexure-A/6] are quashed and set aside. No costs. However, the respondents are at liberty to pass a fresh order in accordance with the observations made hereinabove and rules.

[Dinesh Sharma]
Member [Admn.]

[Jayesh V. Bhairavia]
Member [Judicial]

mps/-