

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA/050/00451/2016

Date of CAV : 02nd Aug., 2019

Date of orders : 30th Aug., 2019

CORAM

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

Ohm Shankar, son of Late Ram Nagina Ram, resident of Village and Post – Nahauna [Via Dalmianagar], PS – Sasaram, District – Rohtas.
.....applicant

By Advocate : Mr.O.P.Singh .

Versus

1. The Union of India through Secretary-cum-Director General, Department of Posts, Government of India, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna – 800001.
3. The Director Postal Services, Central Region, Bihar Circle, Patna – 800001.
4. The Superintendent of Post Offices, Bhojpur Dn. Arrah.

..... Respondents.

By Advocates: Mr. Ravindra Rai.

ORDE R

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

“8[1] Your Lordships may graciously be pleased to quash and set aside the order of Superintendent of Posts, Bhojpur Postal Division, Arrah issued on dated 09.06.2015 vide SPOs, Arrah memo No.F4-02/Murar/2012-13/R-14/OmShankar/2013 dated 09.06.2015 imposed upon applicant.

8[2] The respondents may be directed to allow the joining of service immediately with all consequential benefits to the applicant.

8[3] The respondents may be directed to pay the arrear of salary for the period of suspension and till joining of duty by applicant.

8[4] Any other relief/reliefs as your Lordships may please deem fit and proper in the interest of justice.

8[5] Cost of the case may please be awarded to the applicant for unnecessary expenditure incurred in litigation, mental agony financial harassment, sorrow, suffering and pain.

8[6] Your Lordships may graciously be pleased to quash and set aside the O/o CPMG, Patna memo no. Staff/RR-10/Appeal/O.Shankar/2016 dated 26.12.2017 issued by Director, Postal Services [HQ], O/o CPMG, Bihar Patna 800001 and Appellate Authority.”

2. The applicant's case in brief is that while he was on deputation to Murar, an FIR NO.59/2012 was lodged by one Shri Manoj Kuamr, the then Inspector [Posts] Dumaraon Sub –Division, Dumaraon in Murar Police Station against him on 11.10.2012 [Annexure-A/1] under Section 402, 209 and 406 of IPC. The applicant remained in judicial custody from 07.01.2013 to 24.04.2013, and vide order dated 05.04.2013 [Annexure-A/2], bail was granted by the Hon'ble Patna High Court in Criminal Miscellaneous No.9597/2013.

3. The applicant was placed under suspension issued by Superintendent of Post Offices, Bhojpur Division Arrah w.e.f. 07.01.2013, vide order dated 29.04.2013 [Annexure-A/3] in terms of Sub Rule [2] of Rule 10 of CCS [CCA] Rules, 1965. The aforesaid suspension was reviewed by the Suspension Review Committee on 18.07.2013 and has recommended extension of suspension for 180 days from 27.07.2013 [Annexure-A/4]. The applicant submitted that order of extension of suspension was expired on 22.01.2014.

4. Vide Memorandum dated 20.05.2013 [Annexure-A/5] whereby the Superintendent of Post Offices, Bhojpur Dn. Ara, proposed to hold an inquiry against the applicant under Rule 14 of the Central Civil Services [CCA] Rules, 1065. The charges levelled against him was, while the applicant working as SPM, Murar SO on 27.07.2011, accepted

the amount of Rs. 41,000/- and Rs. 41,000/- from Sri Jg Narain Singh for depositing one year TD A/cs. The applicant issued pass book for both the amount in the name of Shri Jag Narain Singh but he failed to credit the said amount in Government account. Further charge is that the applicant also accepted huge amount [Rs.9,68,000/- so far detected] from the different depositors for opening of accounts of MI, TD etc. in different dates but failed to credit the said amount in Govt. account.

The applicant, Om Shankar, the then SPM, Murar is therefore, alleged to have misappropriate a sum of Rs. 9,678,000/- while working as SPM, Murari SO, and accordingly alleged to have violated the provision of Rule3[1][i][ii][iii] of CCS [Conduct] Rules, 1964 and Rule 10 of Post Office Savings Bank Manual Vol.I [second edition corrected up to 31.12.2006] as also Rule 4 of Financial Hand Book Vol.I.

5. The Inquiry Officer submitted the enquiry report vide Annexure-A/8 dated 16.03.2015, which stipulates that in view of the facts and circumstances discussed above, and the evidence adduced in course of enquiry as narrated above, the allegation of violation of Rule 3[1][i][ii][iii] of CCS [Conduct] Rules, 1964, Rule 10 of Post Office Savings Bank Manual Vol.I [Second Edition corrected up to 31.12.2006 and Rule 4 of Financial Hand Book Vol.I stand proved. Thereafter, vide order dated 09.06.2015 [Annexure-A/9], punishment of dismissal from service was imposed by the Disciplinary Authority, which is impugned herein. Thereafter, vide order dated 29.03.2016 [Annexure-A/10], the Superintendent of Post Offices, Bhojpur Dn. Ara issued an order of subsistence allowance at an amount equal to the leave salary which the Govt. Servant would have drawn, if he had been on leave on half average pay or on half pay and in addition dearness allowance, if

admissible on the basis of such leave salary may be paid to the applicant, Om Shankar from 07.01.2013 to 08.06.2015 under the statutory provision of FR-53.

6. The applicant preferred an appeal against the order dated 09.06.2015 wherein he has raised various grounds and stated that due to non-payment of subsistence allowance, he could not attend enquiry and was also not been able to file appeal within time, vide Annexure-A/11 and A/13, and accordingly, violated Rule 53[1] of F.R. in its true spirit.

7. The applicant has relied upon the decisions rendered by Hon'ble Supreme Court in the case of Jagdamba Prasad Shukla vs. State of U.P. & Ors., [2000] 7 Supreme Court Cases 90, State of Punjab and Ors. vs. K. K. Sharma, (2002) 9 Supreme Court Cases 474, and State of Bihar & Ors. vs. Arbind [Special Leave to Appeal (Civil) No.(s) 35698/2011] and submitted that payment of subsistence allowance, in accordance with rules, to an employee under suspension, is not a bounty, it is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension, i.e. from the suspension till the removal. The applicant has already given a ground for not appearing in inquiry as intimated to the authorities. The applicant submitted that the matter is required to be considered by the authorities, therefore, this matter may be remanded back to the respondent authorities for re-consideration giving due opportunity to represent in view of the aforesaid judgements.

8. The respondents have filed their written statement and contended that the applicant while working as SPM, Murar SO on 27.07.2011 accepted Rs. 41,000/- and Rs. 41,000/- from Sri Jag Narain Singh for

depositing in 01 year TD Accounts. The applicant issued to pass book account no. 220048 and 220049 for Rs. 41,000/- each in the name of Jag Narain Singh and handed over the same to Shri Singh after impressing date stamp and initials. The above transactions were noted in 01 year SO TD ledge but the transactions were not entered in the long book and SO daily account on 27.07.2011. In such manner, the applicant had also accepted a huge amount [Rs. 11,94131/-] from different depositors for opening of accounts of MIS TD etc. in difference dates and failed to credit the amounts in government account. The applicant was charge-sheeted and awarded punishment of dismissal from service vide office memo dated 09.06.2015.

9. Heard the learned counsel for the parties and perused the materials on record.

10. The Tribunal noticed that the applicant was served with memorandum for violation of Rule 3[1][i][ii][iii] of CCS [Conduct] Rules, 1964, Rule 10 of Post Office Savings Bank Manual Vol. I [Second Edition corrected up to 31.12.2006 and Rule 4 of Financial Hand Book Vol. I. After conclusion of the enquiry, the charges levelled against the applicant was found proved by the Inquiry Officer and the inquiry report submitted by the IO was accepted by the Disciplinary Authority. Thereafter, vide order dated 09.06.2015 [Annexure-A/9], punishment of dismissal from service was imposed by the Disciplinary Authority, which is impugned herein. It is noticed that since no subsistence allowance was granted to the applicant delinquent, he could not participate in the inquiry. It is also noticed that vide order dated 29.03.2016 [Annexure-A/10], the Superintendent of Post Offices, Bhojpur Dn. Ara issued an order of subsistence allowance at an amount

equal to the leave salary which the Govt. Servant would have drawn, if he had been on leave on half average pay or on half pay and in addition dearness allowance, if admissible on the basis of such leave salary may be paid to the applicant, Om Shankar from 07.01.2013 to 08.06.2015 under the statutory provision of FR-53. It is also noticed that the applicant was not paid subsistence allowance during the period of his suspension.

Thereafter, the applicant preferred a statutory appeal against the punishment order dated 09.06.2015. In the appeal, the applicant stated that he was placed under suspension, vide memo dated 29th April, 2013 w.e.f. 07.01.2013. However, order of payment of subsistence allowance was not issued despite his verbal request. The Disciplinary Authority had issued one memo against the applicant on 20.05.2013. However, the applicant could not respond to it due to his bad financial condition. He remained in judicial custody from 07.01.2013 to 24.04.2013. He appeared before the Inquiry Officer on 10.10.2013 and prayed for grant of subsistence allowance but in vain. It is also noticed that the Disciplinary Authority had not followed the instructions contained in Rule 64 of Postal Manual Vol. III with regard to grant of subsistence allowance to the applicant and deprived him for taking part in the enquiry. The applicant contended in his appeal that all the memos were being sent to his village whereas he was residing at other place, i.e. at Murar, as he was compelled to change his residence for want of money. The said fact was also brought to the knowledge of the Inquiry Officer and Disciplinary Authority. However, the Inquiry Officer and Disciplinary Authority determined to complete the enquiry ex parte and accordingly, the Inquiry Officer completed the enquiry ex parte. That

apart, the applicant had also raised some other grounds to justify his innocence. The applicant had stated the reason for delay in filing the appeal dated 27.05.2016 which was received by the office on 30th June, 2016. The said appeal of the applicant was considered by the Appellate Authority and, vide order dated 26.12.2017, the appeal was rejected mainly on the ground of delay in filing same, since the punishment of dismissal from service awarded against the applicant is dated 09.06.2015 and the appeal preferred on 27.05.2016 after expiry of 45 days, no within the period as required under Rule 25 of CCS [CCA] Rules, 1965. The reason for condonation of delay was not found satisfactory by the appellate authority, hence the same was rejected, vide order dated 26.12.2017 [Annexure-A/15].

11. It is noticed that the main grievance of the applicant for not granting the subsistence allowance during the period of suspension, has deprived the applicant to take part in the departmental inquiry. It is settled law that an employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental enquiry, the delinquent is at best guilty of a misconduct but that is no ground to deny access to pension [wherever applicable] or subsistence allowance [whichever applicable] [Uco Bank & Ors. vs. Rajendra Shankar Shukla, [2018] 14 SCC 92 = [2018] 2 SCC [L&S] 625 relied], as also in the light of judgement passed in the case of State of Punjab and Ors. vs. K.K.Sharma, [2002] 9 Supreme Court

Cases 474 [supra] wherein the Hon'ble Apex Court held that non-payment of subsistence allowance would tantamount to denial of a reasonable opportunity to the delinquent. Accordingly, the decision making process of the respondents in the present case cannot be said to be fair and just and also not in consonance with rules for grant of subsistence allowance to the delinquent. The impugned order is contrary to the law laid down by the Hon'ble Apex Court.

12. Under the circumstances, we quash and set aside the impugned orders dated 09.06.2015 [Annexure-A/9] and order dated 26.12.2017 [Annexure-A/15] and remit the matter back to the disciplinary authority to initiate de novo departmental proceeding against the applicant and conclude the same as early as possible not preferably within a period of four months from the date of receipt of a copy of this order. The disciplinary authority is also directed to provide due opportunity to the applicant during the course of de novo enquiry.

13. Accordingly, the OA stands disposed of. No costs.

Sd/-
[**Dinesh Sharma**]
Member [Admn.]

Sd/-
[**Jayesh V. Bhairavia**]
Member [Judicial]

mps/-