

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/1286/2012

Dated: 06/06/2019

Between

Y. Viswanath, S/o. Naganna,
Aged about 36 years, GDS BPM (removed),
Bollavaram Branch Office
In account with Ulindakonda Sub Office,
Kurnool Postal Division
(Resident of Bollavaram Village)

... Applicant

AND

1. The Superintendent of Post Offices,
Kurnool Division,
Kurnool.
2. The Director of Postal Services,
Office of the Post Master General,
Kurnool Region,
Kurnool.
3. The Post Master General,
Kurnool Region,
Kurnool.
4. The Chief Post Master General,
A.P. Circle,
Hyderabad.
5. Union of India rep. by
the Director General,
Department of Posts,
New Delhi.

... Respondents

Counsel for the Applicant : Mr. K. Venkateswara Rao
Counsel for the Respondents : Mr. M. Venkata Swamy, Addl. CGSC

CORAM :

***Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mrs. Naini Jayaseelan, Admn. Member***

ORAL ORDER

(Per Hon~~ble~~ Mr. Justice L. Narasimha Reddy, Chairman)

The applicant was working as a Branch Post Master at Bollavaram in Kurnool district. Disciplinary proceedings were initiated against him by issuing charge memo dated 25.11.2008. It was alleged that the applicant has misappropriated the amount collected from the depositors. The applicant submitted his explanation and not satisfied with that, the Disciplinary Authority appointed an Inquiry Officer. After conducting a detailed inquiry, a report was submitted by the Inquiry Officer, holding that the charge is proved. The applicant was furnished with a copy of the report of the Inquiry Officer and his comments were taken into account. The Disciplinary Authority passed an order dated 28.2.2011, directing removal of the applicant, from service. The departmental appeal preferred by him was rejected through order dated 29.9.2011.

2. This O.A. is filed challenging the order of removal, as affirmed by the appellate authority. The applicant contends that the very initiation of disciplinary proceedings against him is untenable in as much as the concerned officer, who took that step, was appointed on ad hoc basis. Placing reliance upon Rule 12(2) of the CCS (CCA) Rules, he contends that once initiation of disciplinary proceedings becomes untenable, the order of punishment cannot be sustained. The applicant further contends that the finding of the Inquiry Officer on the charges is not based on any evidence and that the impugned order is liable to be set aside.

3. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that the applicant has resorted to misappropriation of the public funds and the charges are held proved. As regards the plea that the Disciplinary Authority was not competent, it is stated that the officer, who initiated disciplinary proceedings was appointed on regular basis and the one, who passed the order of punishment was working on ad hoc basis, and either way, no illegality has crept in the proceedings. It is stated that it is only an officer, who works on ðlooks after the charge basisö, that is not competent but not the one who works on ad hoc basis. Other contentions urged by the applicant are denied.

4. Heard Sri K. Venkateswara Rao, learned counsel for the applicant and Sri K. Laxman representing Smt. K. Rajitha, learned Senior Standing Counsel.

5. As the Branch Post Master, the applicant was under obligation to receive the instalments, from various customers and remit them to the account. In the course of audit of the accounts of the Branch Post Office, it was noticed that the applicant has received several instalments from two depositors by name P. Muniswami & P.Roshamma, but did not remit the same. A charge memo was issued wherein the following article was framed:

Article-I

That the said Shri Y.Viswanath ,GDS,BPM while working as BPM, Bollavaram BO a/w Unlidakonan SO during 01.07.2002 to 12.07.2007 has failed to a/c for the following subsequent instalments of RD Deposits made by the depositors amounting to Rs.25000/- in the following two RD accounts and thereby failed to follow the provisions of rule 131 of book of rules for BO (7th edition).

Sl. No	A/c No	Denomination	Name of the depositor	No of instalments not a/c for	Amount not A/c for
1	103792	Rs.100/-	P. Muniswami , F/o P.Shekhar	37	Rs.18500/-
Instalments not a/c for 26.05.2004,30.06.04,29.07.04,28.08.04,27.09.04,26.10.04, 29.11.04,27.12.04,27.01.05,28.02.05,31.03.05,24.05.05,15.06.05, 29.07.05,27.08.05,01.10.05,27.10.05,27.10.05,30.11.05,31.12.05,30.01.06,27.02.06,08.04.06,09.05.06,25.05.06,16.06.06,22.07.06,21.08.06,19.09.06,09.11.06,26.12.16,27.01.07,02.03.07,09.04.07,23.04.07,23.04.07,04.06.07,18.06.07					
2	103791		P. Roshamma		Rs.6500/-
Instalments not a/c for 16.6.06,22.07.06,21.08.06,19.09.06, 09.11.06,26.12.06,27.01.07,02.307, 09.04.07, 23.04.07, 04.06.07,18.06.07					

6. It was not a casual omission to remit one or two instalments. The particulars mentioned in the charge disclose that it was almost as a matter of course, that the applicant went on collecting the instalments and keeping them with him. The charge was held proved. The applicant, in fact, did not have any valid defence for the charge.

7. The emphasis of the applicant is about the legality of the proceedings. According to him, the disciplinary proceedings were initiated by an officer, who was not holding the regular charge and the order of punishment was also passed by an officer, acting in such a manner. Dealing with this contention, the respondents stated in their counter affidavit as under:

ö....disciplinary proceedings initiated by the then Supdt. of Post Offices, Kurnool Division appointed on regular basis by name Sri M.B. Chandrasekhar and not by Sri B. Bhaskar as contended by the applicant.ö

It is further stated,

¶There are provisions as per the Government of India, Ministry of Home Affairs O.M. No.F.7/14/61-Estt.(A) dated 24.1.1963 that officers performing current duties of a post cannot exercise statutory powers under the rules. In the present case the powers exercised by Sri B.Bhaskar is not an officer performing current duties and he is appointed as Supdt. of Post Offices on ad hoc basis and hence it cannot be said that this officer is not competent to perform statutory duties. As such as per the rules specified by the applicant Rule 12(2) of CCS (CCA) Rules 1965 the appointing authority Sri B. Bhaskar exercised the powers in issuing disciplinary proceedings to the applicant awarding the penalty of removal from service is in order.¶

8. In all fairness, the respondents stated that if an incumbent, was holding the office of Superintendent of Post Offices on ~~current duty charge~~ basis, he is not competent to exercise the powers of a Disciplinary Authority, in view of the O.M. dated 24.1.1963. In categorical terms, it is stated that the disciplinary proceedings were initiated by an officer who is on regular posting and the order of punishment was passed by an officer, who was functioning on ad hoc basis. The O.M. does not bring about any distinction between these two categories of officers in the context of exercise of powers. It is a different matter, whether the officer appointed on ad hoc basis is conferred power to initiate proceedings. There is no such issue in the instant case.

9. Rule 12(2) of the CCS (CCA) Rules is only to the effect that it is only an authority, who is conferred with the power of Disciplinary Authority under the relevant Service Rules, that can impose the punishment. That provision does not maintain a distinction between an officer functioning on regular basis and the one, on ad hoc basis.

10. The charge held proved against the applicant, is a very serious one and naturally it warranted a punishment, as imposed against the applicant. We do not find any merit in the O.A. and it is dismissed. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

pv