

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

O.A. No.286/ 2013

Date of CAV:10.10.2018.

Date of Order : 07.02.2019.

Between :

S.Nagarjuna Rao, s/o Nagaiah,
Aged about 58 yrs, Working as Sub-Postmaster,
Railway Junction, PO, Vijayawada Division,
Krishna District. ...Applicant

And

1. The Union of India, rep., by the
Secretary, M/o Communications & IT,
Dept. Of Posts, Dak Bhavan, Sansad Marg,
New Delhi-110 001.
2. The Chief Postmaster General, A.P.Circle,
Dak Sadan, Abids, Hyderabad-500 001.
3. The Director of Postal Services,
O/o the Postmaster General, Vijayawada Region,
Vijayawada-520 003.
4. The Senior Superintendent of Post Offices,
Vijayawada Division, Vijayawada-520 001. ... Respondents

Counsel for the Applicant ... Mr.M.Venkanna
Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER
(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

Brief facts of the case:

The applicant was appointed in the Department of Posts as Postal Assistant on 11.05.1981 and subsequently got Time Bound One Promotion (TBOP) after completion of 16 years followed by Biennial Cadre Review (BCR) financial upgradation on completion of 26 years. While working as Postal Assistant at Gandhinagaram SO during the period from 30.05.2008 to 12.08.2010, the applicant was proceeded against under Rule 16 of CCS (CCA) Rules, 1965, vide memo dated 03.05.2012 on the charges of misappropriation. The applicant denied the charges by submitting his defence statement dated 14.05.2012. The Disciplinary Authority and the 4th respondent, after going through the relevant records, awarded punishment of recovery of Rs.1,02,150/- from the pay and allowances of the applicant, vide memo dated 18.05.2012. Against the orders of the Disciplinary Authority, the applicant submitted an appeal Dated 23.06.2012 to the Appellate Authority. The Appellate Authority, vide order dated 17.09.2012, rejected the appeal. The applicant submitted a Revision Petition dated 13.12.2012 to the Revising Authority i.e., Chief Post Master General, Andhra Circle, Hyderabad. The Revising Authority, vide order dated 31.01.2013, also rejected the Revision Petition and upheld the Disciplinary Authority's orders and Appellate Authority's orders imposing the penalty of recovery of Rs.1,02,150/- for failure on the part of the

applicant in discharging his duties as Savings Bank Clerk at Gandhinagaram Post Office and as a result of which a wrong payment of the like sum of the penalty amount was made to a person other than the genuine depositors.

2. It is the contention of the applicant that he had closed MIS Account No.91489 of Smt.A.Jhansirani on 8.1.2010 and the proceeds of the closed account were credited into the SB Account of Smt.K.Krishnakumari, a Joint-B Account along with K.Krishnarao. Sri K.Krishnarao transacted the above closure on behalf of Smt.A.Jhansirani as a messenger and the proceeds were transferred to the Messengers SB Account and subsequently the amount was paid to him by way of SB withdrawal and the transaction was authorized because the depositors' signature as well as messengers' signature were verified. The SB-7 forms were sent to the Government Examiner for Questioned Documents after taking sample signatures on the forms to verify the genuiness of the signatures. The applicant, however, stated that Account No.656223 was found to be of Sri K.Srinivasarao, and therefore, there is nothing wrong in allowing the transaction and effecting payment to Sri K.Srinivasarao, the messenger. The applicant contends that the rules permit payment of proceeds to the messenger account as well as transfer to the messenger's account and there was no prohibition that the amount cannot be transferred to the

messenger's account. Challenging the orders of the Disciplinary, Appellate and Revising Authorities, the applicant has filed the present OA on the following grounds:

- i) The 4th respondent having relied upon the opinion expressed by the Government Examiner of Questioned Documents (GEQD), Hyderabad, with regard to the veracity of the signature available on the withdrawal voucher, recorded his findings that the applicant had failed to observe the genuineness of the signature. However, it is incumbent to supply a copy of the said opinion to the applicant to defend himself and prove his innocence in the disciplinary proceedings.
- ii) In the first transaction, the signature of the messenger is said to be genuine and the question of prohibiting the transfer of the matured proceeds in the name of the messenger was required to be answered with the support of the rules when there is no bar for such transfer, the applicant cannot be made liable for the transaction, which is in order as per rules.
- iii) It was the game play of the agent who obtained the signatures of the depositors on the closure form of SB-7 and utilized the same for fraudulent withdrawal through a messenger who was physically present and took the proceeds on behalf of the original depositor for which the applicant cannot be blamed.

3. The applicant has, therefore, prayed to quash and set aside the orders of the 3rd and 4th respondent, vide memo dated 17.09.2012 and 18.05.2012 respectively, whereby penalty of recovery of Rs.1,02,150/- was imposed to be recovered in 31 instalments.

4. The applicant has raised the same grounds that he raised in his appeal before the Appellate Authority, wherein he has submitted that –

(i) He has verified the signature of Smt.A.Jhansi Rani, depositor of MIS A/c No.91489 on SB-7 voucher and after satisfying himself, he had submitted the voucher to the supervisor for passing the same and after the voucher was passed by the supervisor, the closure amount of Rs.39,600/- to SB A/c No.656223 was transferred and no cash payment was made.

(ii) The said SB Account belongs to K.Krishna Kumari and K.Srinivasa Rao, and as Smt.K.Krishna Kumari came as messenger for the closure of the account , the same was transferred as there is no bar to the transfer of the amount to the messenger's account and the sanchaya package also accepted the same when fed in the system. He allowed the transaction of closure on SB-7 instead of SB-7(A), because SB-7(A) forms were not available at that time and several closures were allowed on SB-7 only at several offices in view of avoiding inconvenience to the public.

(iii) Regarding the closures of MIS Accounts No.90154 and 90947 of Smt.G.Annapurna, he also failed to verify the specimen signature and the balance in the pass book and interest calculation with regard to SB-3 and SS available in the system and the maturity value was transferred by the PA to SB A/c No.656254 standing in the name of the depositor. It is only the Government Examiner of Questioned Documents, Hyderabad, who stated that the signatures did not tally, as per the applicant's contention, an ordinary untrained man, cannot find the minute difference in tallying the signatures and in fact a cheating case against Sri Ch.Satyasai, who was the agent, has been registered in Satyanarayananapuram Police Station and the agent was arrested.

5. The Appellate Authority has, however, stated in his order dated 17.09.2012 that the applicant had failed to ensure the premature closure amount paid to the depositor and also failed to properly verify the signature of the depositor while authorizing premature closure of the accounts and while authorizing withdrawal in SB A/c No.656254 on 26.10.2009 for Rs.64,350/-. He also failed to bring to notice of the higher authorities regarding non-availability of SB-7(A) form for closure of the said MIS accounts. This failure resulted in fraudulent closure of the said two MIS accounts of Rs.64,350/- by a person other than the depositor.

6. The Appellate Authority had clearly stated that the version of the applicant that there is no bar for transfer of the maturity amount to the messenger's account is not acceptable as in SB order 16/2008, it has been clearly mentioned that maturity value is to be credited to the depositor's existing or new savings account to be opened in the same Post Office and in such cases payment is to be made only to the depositor from the said SB account. The applicant has never brought the fact of non-availability of Sb-7(A) forms to the notice of his supervisor/SPM.

7. Regarding MIS A/c Nos.90154 and 90947, which were fraudulently closed at Gandhinagaram Sub Office by other than depositor, if the applicant had properly verified the signature of the depositors, the said fraudulent closures could have been averted. Again it is reiterated that before crediting the maturity value into savings account, it should be ensured that payment should be made only to the depositor, but not to the messenger and his submission that the depositors had given more number of withdrawal forms to the agent and a cheating case has been registered against the agents was duly taken into account by the Appellate Authority. The Appellate Authority found that the applicant had committed serious irregularities and the order of penalty imposed by the Disciplinary Authority was not found to be disproportionate.

8. During revision proceedings, the Revisional Authority also held that the petitioner having more than 30 years of service, should have been more cautious while discharging his duties and had the petitioner followed the rules on the subject, the frauds committed at Gandhinagaram SO, could have been averted. Therefore, there are no legitimate grounds to reconsider the penalty imposed.

9. The Counsel for the Applicant has relied on the judgment of the Hon'ble Supreme Court in *Food Corporation of India & Others v. Sarat Chandra Goswami* in Civil Appeal Nos.7201-7202/2008, wherein it was held that "*there has to be a formation of opinion and such an opinion is assailable in a legal forum. We are of the view that the said opinion has to be founded on certain objective criteria and it must reflect some reason*".

10. In the above mentioned case before Hon'ble Supreme Court , the Disciplinary Authority i.e., the Chairman and Managing Director (FCI) had not formed any opinion under Regulation 60 (1) (b) either to hold the regular inquiry or for imposing major penalty. Accordingly, the order of punishment as well as the show cause notice was quashed. The Hon'ble Supreme Court upheld the orders of the High Court.

11. However, it is pertinent to point out that the facts and circumstances of the above case are entirely different as in the above mentioned case the issue as to whether Regulation 60 (1) (b) mandates the disciplinary authority to form its opinion to hold an inquiry is not the subject matter in this case.

12. Also, in the present case, the competent authority had duly formed its opinion to proceed with the inquiry after the applicant had denied the charges, which was submitted in his defence statement dated 14.05.2012. Therefore, the above mentioned judgment is not applicable in the present case.

13. The Counsel for the Respondents has cited the judgment of the Hon'ble Supreme Court in *The Administrator, Union Territory of Dadra & Nagar Haveli v. Gulabhai M.Lad* in Civil appeal No.3933/2010 (Arising out of SLP(C) No.14428/2009), wherein it was observed that the Disciplinary Authority ordered removal of the respondent therein and the departmental appeal against the order was dismissed by the Appellate Authority, whether Central Adminstrative Tribunal was justified, on the facts found, interfering with the order of punishment on the ground that the co-delinquents were awarded lesser punishment in departmental appeals and directing the appellant to reconsider the whole matter and give the respondent the same treatment which has been meted out to the co-delinquents. In the above case, the Apex Court while allowing the appeal held that "*on the facts found and conclusions recorded in the enquiry report, the punishment of removal cannot be said to be not commensurate with the misconduct proved against the respondent and the High Court ought to have interfered with the order of the Tribunal*".

The facts and circumstances of the above case are entirely different than the present case.

14. The Counsel for the respondents also cited the order of this Tribunal in O.A.No.1527/2014, dated 15.12.2016, wherein, in a similar case of a Postal Assistant in Nellore Head Post Office, it was held that the jurisdiction of the Tribunal in disciplinary matters cannot be held as appellate jurisdiction and therefore the OA was dismissed. It is well settled by law that imposition of punishment is a matter, which is exclusively within the jurisdiction of the competent authority. In fact, the facts and circumstances of the above mentioned case are similar to the present case.

15. In view of the above facts and circumstances, it is clear that the version of the charged officer has been taken into account at every stage i.e., before the Disciplinary Authority, Appellate Authority and the Revisional Authority, vide representations dated 14.05.2012, 23.06.2012 and 13.12.2012 respectively. The grounds for filing OA are also the same as has been stated before the Disciplinary, Appellate and Revisional Authorities.

16. In view of the above, we find no reason to quash and set aside the impugned orders passed by the Appellate Authority and the Disciplinary Authority.

17. Therefore, OA being devoid of merits, is dismissed. No order as to costs.

Sd/-
(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-
(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 7th day of February 2019