

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00967/2015

Jabalpur, this Tuesday, the 3rd day of December, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Tarun Kumar Athya S/o Shri Anandi Lal, DOB 31.07.1971,
Working as P.A., R/o Junior LIG, 23 Kishore Nagar,
Khandwa 450001 (MP) -Applicant

(By Advocate –**Shri J.B.Singh**)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Communication & IT,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi-110001

2. Chief Post Master General,
Madhya Pradesh Circle, Hoshangabad Road,
Bhopal 462012 (M.P.)

3. Director, Postal Services, Indore Region,
Indore 452001 (M.P.)

4. Superintendent of Post Offices,
Khandwa Division, Khandwa 450001 (M.P.) -Respondents

(By Advocate –**Shri D.S.Baghel**)

(Date of reserving the order:-13.02.2019)

R D E R

By Ramesh Singh Thakur, JM:-

The applicant is calling in question the legality, validity and
propriety of the order dated 25.03.2014 (Annexure A-1) whereby

he has placed under suspension. The applicant is also aggrieved with the action of the respondents in not revising the subsistence allowance of the applicant as per FR 53.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:-

- 8.1 Summon the entire relevant record from the possession of respondents for its kind perusal.
- 8.2 Quash and set aside the order dated 25.3.2013 (Annexure A/1) with all consequential benefits.
- 8.3 Direct the respondents to review/revise the subsistence allowance of the applicant as per FR 53 immediately after three months from the date of suspension with arrears of subsistence allowance and interest thereon.
- 8.4 Direct the respondents to stay the disciplinary proceedings till conclusion of the criminal case.
- 8.5 Any other order/orders, direction/directions may also be passed.
- 8.6 Award cost of the litigation to the applicant.”

3. The brief facts of the case are that the applicant was initially appointed on 18.10.1993 as Postal Assistant and posted at Sahapura Bhitoni sub post office, Jabalpur. On his own request he was transferred from Jabalpur Division to Khandwa Division in the year 2000. The applicant on 25.03.2014 was placed under suspension by exercising power under Rule 10(1) of CCS (CCA) Rules, 1965. However, no reason has been assigned in the suspension order. A copy of the order dated 25.03.2014 is annexed as Annexure A-1. After receiving the suspension order the

applicant preferred representation on 21.06.2014 (Annexure A-2) whereby he requested to revoke the suspension order and reinstate him on duty. However, no heed has been paid by the respondents. The applicant has further preferred representation on 12.08.2014 (Annexure A-3). But the respondents did not consider it.

4. The applicant further submitted that a charge-sheet dated 28.08.2014 (Annexure A-4) under Rule 14 of the CCS(CCA) Rules, 1965 has been issued whereby incorrect and baseless allegations have been levelled against the applicant. The applicant preferred a representation dated 16.01.2014 (Annexure A-5) whereby he requested to increase his subsistence allowance as there was no progress in the departmental enquiry. However, on the contrary the subsistence allowance of the applicant was stopped from the Month of October 2014 without assigning any reason. The applicant has preferred an appeal to the appellate authority on 15.02.2015 wherein he has prayed for increasing his subsistence allowance. Copy of the appeal dated 15.02.2015 is annexed as Annexure A-6. The applicant has further preferred an appeal to the appellate authority dated 07.06.2015 (Annexure A-7) to revoke his suspension. The applicant feeling aggrieved with not paying subsistence allowance and not revoking his suspension, preferred a revision petition dated 19.08.2015 (Annexure A-8) to the Chief

Post Master General, M.P. for revoking his suspension and increasing the subsistence allowance.

5. The main grounds for challenge in this Original Application is that the suspension order against the applicant have been issued without assigning any reason though the respondents are duty bound to assign reason. The respondents should have revised the subsistence allowance of the applicant. However, the same has not been revised in spite of the fact that the applicant has attended the proceedings of the departmental enquiry.

6. The respondents have filed their reply. In the reply in preliminary submissions the respondents submitted that the applicant while working as Officiating sub post master Barwani from 15.10.2013 made forged withdrawal in Barwani on 27.02.2014 worth Rs. 30000/- and on 11.03.2014 worth Rs. 350,000/-. Similarly the applicant while working at Barwani has made forged withdrawal on 08.11.2013 worth Rs. 105000/- without passbook by making forged signature of the account holder. The case was inquired and departmental investigation of the case is under way. The criminal case against the applicant and one Gaurav Malviya registered at Police Thana Barwani dated 05.12.2014. A copy of F.I.R. dated 05.12.2014 is annexed herewith as Annexure

R-3. The police investigation of the case has been completed and the case is under trial before the court of law.

7. In para-wise reply the respondents have submitted that the applicant was transferred and posted as Postal Assistant Barwani MDG vide SPOs. Khandwa Memo No. B3-47/2013 dated 05.04.2013 is annexed as Annexure R-5 and worked as officiating SPM Barwani MDG from 15.10.2013. Further it has been mentioned that the applicant has stated that he has preferred representation dated 12.08.2014 for revocation of suspension. It is submitted herewith that the suspension of the applicant extended for a period of 90 days w.e.f. 23.06.2014 which was not over and the suspension of the applicant further reviewed by the suspension review committee on 10.09.2014 and the same was conveyed to the applicant vide order dated 15.09.2014. Copy of the memo dated 15.09.2014 is annexed as Annexure R-9 and R-10. A charge sheet was issued to the applicant dated 28.08.2014 annexed b the applicant as Annexure A-4 based on evidence and witnesses in support of charges framed against the applicant and the same was mentioned in the charge sheet as Annexure-III and Annexure-IV appended with the said memo. It is mentioned herewith that the first review of subsistence allowance carried out by the disciplinary authority on 10.06.2014 and disciplinary authority ordered "no

increase/decrease" of the subsistence allowance due to non co-operation of the applicant in departmental investigation as per last para of investigation officer inquiry report dated 04.04.2014 annexed as Annexure R-18. The post master Khargone and Barwani also directed to pay subsistence allowance to the applicant and copy of the said letter was sent to the applicant to get payment of subsistence allowance from Barwani MDG vide SPOs Khandwa dated 08.07.2015 annexed as Annexure R-24. The applicant himself got subsistence allowance from Barwani. As per report of postmaster Khargone HO the subsistence allowance of the applicant drawn regularly and subsistence allowance upto October 2015 have been paid to the applicant. A copy of details of subsistence allowance given to the applicant upto October 2015 is annexed as Annexure R-25.

8. It is submitted by the respondents that the action taken by the respondents are in accordance with law revision of suspension allowance has been considered by the competent authority and has been rejected by assigning reasons and applicant is entitle to receive the suspension allowance from the headquarter respondents did not withhold the subsistence allowance which has been fixed as per fundamental rules i.e. sub rule (2) of F.R. 53.

9. The applicant has filed the rejoinder wherein he has reiterated its earlier stand taken in the original application. The applicant submitted that the applicant was not informed within 90 days that his suspension order has been reviewed. Since the applicant was not provided subsistence allowance in time therefore, he started living at Khandwa. The disciplinary authority was well aware about the address of the applicant and he was not given information at his address. The applicant has always cooperated during the departmental investigation. The respondent department has delayed the process of the departmental enquiry.

10. The respondents have filed the additional reply wherein it has been stated that the suspension of the applicant was reviewed by the competent suspension review committee extended the period of suspension and the same was informed to the applicant by the competent authority on the head quarter Barwani fixed by the competent authority during the period of suspension through Registered post. The applicant was informed to get subsistence allowance from Barwani vide order dated 08.07.2015 and he got the payment of subsistence allowance upto November 18. Review of subsistence allowance of the applicant were carried out by the disciplinary authority on 10.06.2014, 09.09.2014, 08.12.2014 & disciplinary authority ordered no increase/decrease of subsistence

allowance due to non co-operation of the applicant in departmental investigation as per report of investigating officer dated 04.04.2014 annexed as Annexure R/18. Criminal case against applicant No. 667/14 is under trial before court of law on the forged withdrawal by making forged signature of account holder and disciplinary action initiated against the applicant based on forged withdrawal. Criminal case and disciplinary case are different therefore question of staying disciplinary proceeding does not arise.

11. Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

12. From the pleadings it is admitted fact that the applicant was initially appointed as postal assistant on 18.10.1993. The applicant was placed under suspension on 25.03.2014 by exercising powers under Rule 10(1) of CCS (CCA) Rules, 1965. It is also admitted fact that fresh order of suspension of service of the applicant was done and subsequently on 28.08.2014 (Annexure A-4) a charge sheet was served upon the applicant under Rule 14 of the CCS (CCA) Rules, 1965. An F.I.R. was registered against the applicant and one Gaurav Malviya in the police station on 05.12.2014 (Annexure R-3). The trial is pending before the competent court of law. As per case of the applicant the applicant was transferred and posted as Postal Assistant Barwani vide order dated 05.04.2013

and worked as officiating SPM Barwani. The earlier order of suspension was extended for a period of 90 days with effect from 23.06.2014 which was not over and the suspension of the applicant was further reviewed by the suspension review committee on 10.09.2014 and the same was conveyed to the applicant vide order dated 15.09.2014. Copy of the memo dated 15.09.2014 is annexed as Annexure R-9 and R-10. It has come in the reply of the replying respondents that first review of subsistence allowance carried out by the disciplinary authority on 10.06.2014 and disciplinary authority ordered “no increase/decrease” of the subsistence allowance due to non co-operation of the applicant in departmental investigation as per last para of investigation officer inquiry report dated 04.04.2014 annexed as Annexure R-18.

13. As per report of postmaster Khargone HO the subsistence allowance of the applicant drawn regularly and subsistence allowance upto October 2015 have been paid to the applicant. A copy of details of subsistence allowance given to the applicant upto October 2015 is annexed as Annexure R-25. So far subsistence allowance is concerned the applicant was given subsistence allowance regularly upto October 2015. The detail of which is annexed as Annexure R-25.

14. From the additional reply it is also further clarified by the replying respondents that the applicant was informed to get subsistence allowance from Barwani vide order dated 08.07.2015 and he got the payment of subsistence allowance upto November 2018. Review of subsistence allowance of the applicant were carried out by the disciplinary authority on 10.06.2014, 09.09.2014, 08.12.2014 & disciplinary authority ordered no increase/decrease of subsistence allowance due to non co-operation of the applicant in departmental investigation.

15. Moreover, criminal case against applicant No. 667/14 is under trial before court of law on the forged withdrawal by making forged signature of account holder and disciplinary action initiated against the applicant based on forged withdrawal. Criminal case and disciplinary case are different therefore question of staying disciplinary proceeding does not arise. In view of the above, we do not find any illegality in the action taken by the respondent department.

16. Resultantly, this Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member