

**Central Administrative Tribunal  
Principal Bench**

**OA No.3478/2014**

New Delhi, this the 12<sup>th</sup> day of December, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Kamal Pathak, Age 39 years,  
S/o Sh. AD Pathak,  
R/o H.No.12, Gali No.1,  
East Guru Angad Nagar,  
Delhi-110 092

- Applicant

(By Advocate : Sh. Sachin Chauhan)

Vs.

1. AIIMS through  
The President & Hon'ble Minister,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, New Delhi
2. The Director,  
AIIMS, Ansari Nagar,  
New Delhi-29
3. The Chief Vigilance Officer,  
AIIMS, Ansari Nagar,  
New Delhi-29

- Respondents

(By Advocate: Mr. Vikrant Narayan)

**: O R D E R (ORAL) :**

**Justice L. Narasimha Reddy:**

The applicant was employed as LDC in All India Institute of Medical Sciences), the 1<sup>st</sup> respondent Institute herein. A charge memo was issued to him on 23.04.2011,

alleging that he became instrumental in embezzlement of sum of Rs.95,502/-, which was otherwise to be paid to a widow, as family pension. It is stated that the said amount was deposited in the account of the applicant and he in turn, paid sum of Rs.70,000/- to Sh. Rajesh Rastogi, an another employee of the Institute. The applicant submitted an explanation, denying the charge. Not satisfied with that, the Disciplinary Authority (DA) appointed Inquiry Office (IO). Through a detailed report, the IO held the charge against the applicant as proved. Copy of the report was made available to the applicant and on the consideration of representation made by him, the DA imposed the punishment of removal from service. The appeal preferred by the applicant was also rejected.

2. This OA is filed, challenging the order of removal as well as the order passed by the AA.

3. The applicant contends that the person, who is instrumental in embezzlement of the amount, is one Mr. Rajesh Rastogi. He submits that except that the amount of Rs. 95,502/- covered by a cheque was credited to his account, there is no other role played by him. It is stated

that once he was informed by Mr. Rastogi that the amount was wrongly credited to his account, the same was refunded through two cheques. The applicant submits that the finding of the IO is not based on any evidence and the punishment imposed against him is totally disproportionate.

4. The respondents filed a counter affidavit, opposing the OA. It is stated that the actual embezzlement of the amount has taken place at the behest of the applicant and he is not able to explain as to how the amount of Rs.95,502/- came to be credited to his account. The respondents further submit that the role of the applicant in the entire episode was verified from the fact that he issued cheque on the very next date in favour of Mr. Rastogi, an employee, who was heading the Pension Section. The various contentions urged by the applicant are denied.

5. We heard Shri Sachin Chauhan, learned counsel for the applicant and Shri Vikrant Narayan, learned counsel for the respondents, in detail.

6. The charge framed against the applicant reads as under:-

“ARTICLE OF CHARGE:-

That the said Shri Kamal Pathak while working as LDC in the RPC of the Institute has acted as an instrument in embezzlement of an amount of Rs.95,502/- (Rupees ninety five thousand five hundred and two only) fraudulently in connivance with Shri Rajesh Rastogi, Ex-LDC of Pension Cell by manipulating the case of payment of pensionary benefits in respect of late Sh. Om Prakash-VI, Sanitary Atttd. Gd.II Hospital, received the payment of Rs.95,502/- vide Cheque No.720426 dated 11.12.2006 and deposited in his account A/C No.10874773970. This act of Shri Kamal Pathak is in violation of CCS(Conduct) Rules, 1964 and he is responsible for gross misconduct on his part.

Shri Kamal Pathak, LDC (under suspension) is, thus, responsible for gross misconduct, has failed to maintain absolute integrity, devotion to duty and has acted in a manner which is unbecoming of an employee of the Institute thereby contravening Rule 3(1)(i)(ii)&(iii) of the CCS (Conduct) Rules, 1964 which is applicable to the employees of the Institute.”

7. The gist of the charge was that a sum of Rs.95,502/- was payable to one Smt. Kamal, widow of a deceased employee of the 1<sup>st</sup> respondent Institute, and though a cheque was prepared without taking the further prescribed steps, such as entering the cheque no., taking the signature of the beneficiary etc., it was ultimately deposited in the account of the applicant by altering the name as “Kamal Pathak”. The further allegation is that the applicant issued cheques in favour of Mr. Rastogi. The applicant denied the allegation and the DA in turn appointed the IO. In the inquiry, oral and documentary evidence was adduced.

Detailed discussion running into 16 closely printed pages was undertaken by the IO. The charge was held proved and the DA imposed the punishment of removal after receiving the representation of the applicant on the inquiry report.

8. The contention of the applicant is two-fold. The first is that the finding of the IO is not based on evidence and the second is that the punishment imposed against him is disproportionate. The subsidiary contention is that the order passed by the DA as well as by the AA are bereft of reasons.

9. This is a rare case in which the inquiry was conducted in a systematic manner and the discussion was undertaken threadbare. The manner in which the amount came to the account of the applicant was succinctly described by the IO, in Para 14 of his report and it reads as under:-

“14. Ex.S-1 is Office Note for PPO No.2235/2006-07; where in (p.4) it was decided that family pension would be paid to Smt. Kamal, wife of Sri Om Prakash, Sanitary Attendant, AIIMS, who expired on 30.09.2004, Pension Cell's Note at p.5 states that family pension payment w.e.f. 01.10.2004 to 30.11.2006 amounting Rs.95,502/- has been prepared vide PB No.172/06-07 in favour of Smt. KAMAL. This note has been signed by Shri Rajesh Rastogi as Dealing Assistant, and Shri D.P. Gangal, AO and Shri K.G. Sharma, AO(Pension). Pension Bill for Rs.95,502/- page page 8 of Ex. S-1 has been prepared by Shri Rastogi, verified by Shri Gangal and signed by Shri K.G. Sharma, AO(Pension) for final approval, in the name of “Smt. KAMAL” w/o Shri Om Prakash, Ex. Sanitary Attendant against PPO No.

2235/2006-07. Signature of the Pensioner on certificate, printed at bottom, has not been obtained, as it is mandatory to obtain signature of the pensioner before presenting the bill at the counter. Neither revenue stamp has been affixed on the prescribed box nor signature of the pensioner has been obtained. Cheque number and date has also not been written on the body of the PB in token of receipt of the cheque and handing over to the right claimant. Family pension has been calculated at p.2 of PPO at Ex.S-1. Approval of FA Shri R.G. Garg has been obtained at p.4 of Ex.S-1; wherein it has been mentioned that "family pension will be payable to Smt. Kamal as detailed in the page 2-N." and Bill has been prepared with reference to note at next page (p.5) signed by Shri Rastogi, Shri Gangal and Shri Sharma."

10. In the next paragraph, the finding recorded by a five member committee was also extracted and it reads as under:-

"In another case, a bill no.172/2006-07 dated 11.12.06 for Rs.95,502/- was prepared and passed for arrear of pension in r/o Smt. Kamal, w/o (late S. Om Prakash, Ex. Sanitary Attdt. (PPO No.2235) and a cheque no. 720426 dated 11.12.06 was issued in favour of Kamal and same was credited in the account of Sh. Kamal Pathak, A/c holder no. 10874773970 with SBI, Ansari Nagar, New Delhi. Sh. Kamal Pathak is an employee of Institute. At present, he is working in the Dr. R.P. Centre, AIIMS, New Delhi.

11. The IO further observed that the amount covered by cheque in the name of Kamal was deposited in the account of the applicant, i.e., Kamla Pathak on 13.12.2006 and on the next date itself, he issued cheques for Rs.40,000/- and 30,000/- in the name of Mr. Rastogi.

12. The applicant is not an innocent or illiterate person. If a sum of Rs.95,502/- has been deposited in his account without his knowledge, the first thing expected from him was to verify from the bank as to who deposited the amount. The cheque contained the name of the applicant, through manipulation. In case the applicant was of the view that the amount ought not to have been deposited to his account, he should have issued necessary instructions to the banker. The very fact that he owned up that amount and issued two cheques of Rs.40,000/- and Rs. 30,000/- in favour of Mr. Rastogi, shows his involvement. These aspects would clinch the allegation contained in the Article of Charge that the applicant acted in connivance with Mr. Rohtagi. The IO has taken into account various other aspects before recording the finding that the charge against the applicant is proved.

13. We do not find any omission of facts or violation of provisions of law in the entire report. Therefore, the contention of the applicant in this behalf cannot be accepted.

14. The next aspect of the form of the order passed by the DA needs to be discussed. We have closely perused the order passed by the DA. It is not a case in which the DA has mechanically referred to the various events and just imposed the punishment. He has taken into account, the report of the IO and apart from that, he has applied his mind to the charge as well as gravity thereof. A perusal of the following paragraph makes it clear:-

“AND WHEREAS a copy of the inquiry report was sent to Shri Kamal Pathak, LDC vide office memorandum dated 5.6.2012 and he was given an opportunity of making such submissions on the report of the inquiry as he desired. His submission on that report of the inquiry was received vide his letter dated 4.2.2013. Shri Kamal Pathak again denied the charge and represented against the finding of the Inquiry Officer. On careful consideration of the report of the Inquiry Officer and other relevant facts of the case in the light of submission made by Shri Kamal Pathak, the Disciplinary Authority has come to the conclusion that the charge against Shri Kamal Pathak, LDC in respect of fraudulent withdrawal funds meant for pensionary benefits of ex-employees of the Institute, by depositing the cheques in his accounts unauthorizedly, were duly proved in the enquiry. The representation dated 4.2.2013, submitted subsequently by Shri Kamal Pathak has no weightage to rebut the charges. The inquiry was found to be held properly in accordance with the prescribed rules and therefore, the competent authority decided to accept the findings of the inquiry officer.

One cannot expect a better and more detailed discussion than this, by the DA.

15. The AA has also examined the various contentions raised by the applicant and rejected the appeal.

16. Coming to the proportionality of punishment, we are of the view that the embezzlement of sum of Rs.95,502/- is, by no means a minor omission. It needs a detailed scheme and a criminal mentality in committing fraud on the very institution in which the applicant is working. Further dimension to the issue is that the name of the unfortunate pensioner was used. Such things cannot be permitted to take place. It is a matter of common knowledge that once an employee is inclined to commit such acts, what comes to the notice of the organization is only a part of it.

17. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

**(Mohd. Jamshed)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

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