



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2646/2014

New Delhi, this the 16th day of December, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Bhudev Prasad,
SPM, Chharra,
Aligarh.

...Applicant

(By Advocate: Mr. Shoeb Shakeel)

Versus

1. Union of India,
Through Secretary, Ministry of Communication,
Department of Posts, Dak Bhawan, New Delhi.
2. The Director Postal Services,
O/o the Postmaster General,
Agra Region, Agra.
3. The Supdt. Post Offices,
Aligarh.

...Respondents

(By Advocate:Mr. Rajinder Nischal)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman:-

The applicant was working as Postal Assistant in the year, 2006. He was issued a minor penalty charge memorandum dated 27.07.2009. It was alleged that he was instrumental in commission of fraud, of drawing a sum of Rs. 85,000/-, from an



account, which did not have any balance at all. The applicant submitted his explanation and not satisfied with that, the Disciplinary Authority (DA) passed an order dated 07.01.2010, imposing minor penalty of recovery of Rs. 25,000/- @ 1000/month.

2. Aggrieved by that the applicant filed an appeal before the Appellate Authority (AA). Through his order dated 08.04.2011, the AA took the view that the penalty imposed against the applicant is meagre, having regard to his involvement in fraudulent activities and, accordingly, remanded the matter for issuance of charge memorandum for major penalty. Accordingly, a charge memorandum was issued on 02.04.2012. The applicant submitted his explanation and not satisfied with that, the DA appointed Inquiry Officer (IO). Through his report, the IO held the charges as partially proved. A copy of the same was made available to the applicant and on a consideration of his representation; the DA passed an order dated 25.06.2013 directing recovery of Rs. 40,000/- from the applicant. The appeal preferred by the applicant was also rejected. Hence, this OA.



3. The applicant contends that it is only a person who has knowledge of password that can operate the computer and that charge memorandum was issued to him though it was not even alleged that he had access to the password. He submits that the AA ought not to have remanded the matter contrary to law and instead should have examined the legality of punishment imposed in the year, 2010. Other grounds are also urged.

4. Respondents filed a counter affidavit opposing the OA. It is stated that the applicant played a key-role in first getting a sum of Rs. 85,000/- put in an account and, thereafter, withdrawing the sum of Rs. 85,000/-. It is also stated that the IO recorded the findings on the basis of evidence before him and the punishment, proportionate to the proved acts of misconduct was imposed.

5. We heard Mr. Shoeb Shakeel, learned counsel for the applicant and Mr. Rajinder Nischal, learned counsel for the respondents.



6. The OA presents several extraordinary features and deviations from settled principles of law. In the process, the actual misconduct on the part of the applicant was not decided properly and several complications were permitted to develop. Initially, the applicant was issued a minor penalty charge memorandum. It was alleged that in connivance with Assistant Post Master, he became instrumental in committing fraud, in a sum of Rs. 85,000/-. For the reasons best known to him, the applicant did not place before us the charge memorandum or for that matter, the explanation submitted by him. The DA passed an order directing recovery of Rs. 25,000/-.

7. In the appeal, the AA passed an order taking the view that the misconduct on the part of the applicant is serious in nature and a punishment of higher degree, deserved to be imposed.

“ The points raised by the petitioner in his petition were considered along with the relevant records of the case. I find that the petitioner in connivance of his APM changed the data base of saving account in subject and raised its balance while the account in subject was already reported to be transferred from Aligarh HO to Sarai Laberia Aligarh on 11.11.86 with balance Rs. 398.00. The withdrawal in subject was found bogus later



on. Thus the integrity of the petitioner is doubtful and in the charge sheet violation of Rule-3(1) (i) of CCS (Conduct) Rules 964 has also been levelled against the petitioner. Punishment of recovery awarded to him by Disciplinary Authority can not be said to meet the justice in this case. The petitioner deserves severe punishment as his integrity is doubtful. Therefore, on overall assessment of the case I remit back the case to the Disciplinary Authority for "Denevo Proceedings" from the stage of issue of fresh charge sheet for major penalty proceeding (under Rule-14 of CCS (CCA) Rules- 1965).

In exercise of the powers conferred upon me under Rule-29 (1) (vi) of CCS (CCA) Rules 1965, I hereby Order accordingly."

8. It is on the basis of the directions issued by the AA, that the applicant was issued a major penalty charge memorandum dated 02.04.2012. In view of the denial of the charge by the applicant, an enquiry was conducted and the IO, recorded his finding as under:-

" On the perusal of documents produced during inquiry, Prosecution witnesses and pleas given by defence side and on the basis of above analysis it is clear charge levelled against Shri Bhudev Prasad, Sub Postmaster, the then Postal Assistant, Aligarh HO, vide memo of Supdt. Of Posts no. F 1V/2/07-08/D-8 dated 02.04.2012 is proved partially."

9. Through an order dated 25.06.2013, the penalty of recovery of Rs. 40000 was imposed on the basis of the said finding.



10. The entire exercise is in complete deviation of prescribed procedure of law. After the punishment of recovery of Rs. 25,000/- was imposed, the applicant filed an appeal.

11. The AA did not even mention that he is conferred with the power to enhance the punishment. Even where such a power is conferred, it is fundamental that a show cause notice is issued to the employee indicating, as to why, enhanced punishment shall not be imposed. Neither such a notice was issued nor an opportunity was given to the applicant. Straightaway the matter was remanded for issuance of a fresh charge memorandum for the sole purpose of imposing a higher penalty. The whole exercise is untenable and contrary to law. Therefore, the subsequent charge memorandum dated 02.04.2012 and the order of punishment dated 25.06.2013 do not have any legs to stand.

12. The matter stands where the AA can be taken to have refused to interfere with the punishment. The applicant also did not challenge the order passed by the AA. We, therefore, retain



the punishment imposed through order dated 07.01.2010. It is brought to our notice that the said amount has already been recovered.

13. We, therefore, partly allow the OA by setting aside order dated 25.06.2013 including the charge memorandum dated 02.04.2012. The order of punishment dated 07.01.2010 is retained. Except that the amount of Rs.25,000/- is recovered, it shall not have any impact on the service of the applicant. There shall be no order as to costs.

(Aradhana Johri) (Justice L. Narasimha Reddy)
Member (A) Chairman

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