$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 225/2017 & CM Nos.1034-1035/2017**

Reserved on: 11th January, 2017

% **Date of Decision:** 1st May, 2017

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Vijay Kumar Joshi, Advocate

Versus

SATISH PAL SINGH .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

This writ petition impugns the order dated 28th October, 2014 passed in OA No. 3706/2011, which was filed by Satish Pal Singh, the respondent. The Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short) by the impugned order has allowed the said OA for non-compliance of Rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Rules, for short).

2. The petitioner has also challenged the order dated 18th January, 2016 passed in MA No. 4101/2014, by which, mistake in dates mentioned in the order dated 28th October, 2014 have been corrected.

3. The respondent while working as a Postal Assistant was chargesheeted vide memorandum dated 4th March, 2004 on account of fraudulent withdrawals of different amounts from old age pension accounts of seven persons. It was alleged that the respondent had failed to maintain absolute integrity, devotion to duty and had acted in a manner unbecoming of a government servant.

4. The respondent had contested and denied the charges. An Inquiry Officer was appointed. The Inquiry Officer vide his report dated 10th August, 2005 held that the charges were unproven, for the following reasons:-

> *"6. Findings and revelations during the course of inquiry:*
> *That the SB a/cs from which the fraudulent withdrawals were made on different dates were opened in the below noted dates:*

Sl. No.	*A/c No.*	*Name of A/c Holder*	*Date of opening of A/c*	*Amount withdrawal fraudulently*
1.	*10000882*	*Smt. Parbhi Bai*	*1.10.96*	*Rs.4,200/-*
2.	*10000895*	*Sh. Ram Swrup*	*1.10.96*	*Rs.4,200/-*

		Mishra		
3.	*10000858*	*Sh. Gainda Ram*	*1.10.96*	*Rs.3,000/-*
4.	*10000924*	*Sh. Daya Ram*	*1.10.96*	*Rs.4,200/-*
5.	*10000928*	*Sh. Ram Lal*	*3.10.96*	*Rs.4,000/-*
6.	*10000976*	*Sh. Krishan Lal*	*22.3.97*	*Rs.4,000/-*
7.	*100001076*	*Sh. Kesar Singh*	*19.7.97*	*Rs.2,400/-*

2. That all these S.B. a/cs were opened earlier before the C.O. had joined the H.N. Ashram PO as postal asstt.

3. That all these a/c holders were not handed over the relevant pass books by the then P.O. staff.

4. That due to non handling over the pass books to the a/c holders, these a/c holder had resorted to the opening of new a/cs and thus there were dual accounts for old age pension scheme in the names of these pensioners.

5. That these pensioner obtained their old age pension from their other pass books on regular basis and the lump sum amount was withdrawn from the accounts of the pensioner pass books either by the some a/c holders on the strength of forged thumb impression or by some other wrong doers who had these pass books in their custody since the opening of the these accounts.

6. Since, the charged official was not working in H.N. Ashram PO at the time of opening these accounts, there was no question of keeping these pass books by him. No evidence has been on record that these pass books were in the custody of the P.O.

7. That the family members of the deceased pensioner did not inform the post office regarding their death, there is possibility that they might have misused the pass book for fraudulently withdrawing the pension of the deceased on the strength of unintelligible thumb impression.

8. That none of the state witness has adduced his evidence alleging that the C.O. had the pass books and he might have withdrawn the amount fraudulently. Moreover, no documentary evidence could prove that the C.O. had himself withdrawn this amount.

9. No evidence has come on record that the C.O. prepared the withdrawal forms used for making fraudulent withdrawals himself. No evidence has also come that the C.O. managed these withdrawal forms. No evidence has also come that the C.O. took withdrawal himself.

10. No evidence has come on record that the C.O. withdraw Rs.2400/- from a/c no.10001026.

11. That the withdrawal vouchers of SB a/c no.10000895 for Rs.4200/- and a/c no.10000976 for Rs.4000 were not produced by PO in the enquiry & thus it could not be established who had submitted these vouchers for withdrawal and who had allowed the payment of pension and to whom it was paid.

12. The SPM is required to pass SB withdrawal illegible for Rs.500/- as laid down in Rule 33(2) (iii) & these payments were allowed by the SPM himself present on duty.

13. This is a case of no evidence as name of the prosecution witness has corroborated the version of the Disciplinary Authority in their depositions.

14. Moreover, the Presenting Officer was a confused man all the time. He did not come prepared & did not take pains in presenting the case of the Disciplinary Authority so as to bring the changes home to the C.O. I am afraid that the P.O. is fully conversant with the procedure of Rule 14 enquiry. The brief submitted by the PO is a testimony in the regard.

Finding: In the light of the above discussion & hold that the prosecution has not been able to bring the charges home to the C.O. and thus not proved."

5. The Disciplinary Authority vide disagreement note dated 8th November, 2005 disagreed with the findings of the Inquiry Officer and held that the charges were proved. As the wordings recorded in the disagreement note are of prime importance and significance, we would like to reproduce the concluding part of the disagreement note dated 8th November, 2005, which reads as under:-

"The standard of proof required in a departmental inquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court has held that the standard of proof required in a disciplinary case is that of preponderance of probability and not proof beyond reasonable doubt.

Keeping in view, the documentary evidence, deposition of state witnesses and all other facts of the case, the undersigned disagree with the findings of the inquiry officer under the provisions of Rule 15(2) of CCS(CCA) Rules, 1965 and hold the charges against the charged official as 'PROVED.'

6. The respondent submitted his representation, inter alia, submitting that the Disciplinary Authority had prematurely given his final opinion instead of giving tentative reasons for disagreeing with the findings of the Inquiry Officer, and it was futile for the respondent to attempt to refute the charges alleged against him.

7. The Disciplinary Authority vide order dated 18th May, 2006 imposed penalty of dismissal from service on the respondent. The Disciplinary Authority observed that the disagreement note was prepared as per deposition of witnesses in the enquiry proceedings. The order dated 18th May, 2006 recorded:-

"From the deposition of above state witnesses, it is seen that none of them has named Shri V.K. Jain of having dictated them their statements as alleged by the charged official. All the seven fraudulent withdrawals took place when the charge official was working as SB Counter PA/SPM. The plea of charged official that these position accounts were opened in the year 1996 when he was not working there, cannot absolve him of his misdeeds as all the

seven fraudulent withdrawals were made during the period of his deployment as SB counter PA/SPM at Hari Nagar Ashram Post Office. The charged official cannot put the blame on others as it was his duty to pay the amount of withdrawals on proper identification of the account holders. The charged official deliberately did not put his signatures on withdrawal vouchers in token of having verified the signatures of account holders from SS Book and also not obtained witnesses in case of illiterate account holders and thus violated the provisions of Rule 33(1) and 33(2) and Note 3 below Rule 33(1). The plea of charged official that fraudulent withdrawal were made by the official who have opened their accounts is far from the truth as all the fraudulent withdrawals were made during the period of his deployment as SB counter PA at Hari Nagar Ashram PO.

In view of the facts and circumstances explained above, the charges levelled against the official stand proved. The charged official has misappropriated the amount from old age pension accounts violating the prescribed procedure in Departmental Rules and, therefore, deserves the imposition of a major penalty. I, Vinod Kumar, Senior Supdt of Post Offices, New Delhi South Dn. New Delhi-110003 in exercise of powers conferred vide Rule 12 of CCS (CCA) Rules, 1965 hereby impose the penalty of ***DISMISSAL FROM SERVICE*** *on Shri Satish Pal Singh Postal Assistant Hari Nagar Ashram Post Office New Delhi-110014 (under suspension) with immediate effect which shall ordinarily be a disqualification for future employment under the Government."*

8. The statutory appeal, revision petition and the review petition filed by the respondent were dismissed vide orders dated 2nd January, 2008, 9th August/September, 2008 and 18th May, 2011, respectively.

9. The respondent had thereupon filed OA No. 3706/2011 which, as noticed above, has been allowed by the impugned order recording as under:-

> *11. We have heard the learned counsel for the Applicant Shri S.K. Gupta and the learned counsel for the Respondents Ms. Ruby Sharma. As rightly submitted by the learned counsel for the Applicant that under Rule 15(2) of CCS (CCA) Rules, 1965, if the Disciplinary Authority disagrees with the findings of the Inquiry Officer, the Disagreement Note to be issued to the delinquent Government servant, shall be a tentative one. It is for said reasons that the Government employee shall give an opportunity to make a representation against the said Disagreement Note. In terms of the aforesaid provisions of the CCS (CCA) Rules, 1965, the Disciplinary Authority is expected to consider the representation and pass appropriate orders. However, if the Disciplinary Authority is already determined to hold that the charges have been proved as against the findings of the Inquiry Officer, making a representation against the same becomes a futile exercise. The Apex Court in K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. AIR 1988 SC 686 held as under:-*

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

Once the Disciplinary Authority has made up his mind to impose a penalty, he will not change the same on the basis of the representation made by the Government servant. It is also seen that the Appellate Authority, Revisional Authority and the Review Authority have rejected the appeal/petitions of the Applicant in a mechanical manner. When the procedure for issuing a Disagreement Note has been provided in Rule 15(2) of the CCS (CCA) Rules, 1965, the Appellate Authority has not even bothered to see whether the order of the Disciplinary Authority was in accordance with the provisions contained in the said rules. Similar is the case with regard to the order of the Revisional Authority as well as the Reviewing Authority.

12. We, in the above facts and circumstances of the case, quash and set aside the impugned Disagreement Note dated 18.05.2006, Appellate Authority's order dated 02.01.2008, Revisional Authority's order dated 09-08/09-2008 and order in review dated 18.05.2011.However, we remit the enquiry proceedings to the Disciplinary Authority and give liberty to it to give a fresh Disagreement Note in accordance with Rule 15(2) of the CCS(CCA) Rules, 1965 to the Applicant, if so advised. If the said liberty is intended to be availed of, the Disciplinary Authority shall pass order reinstating the Applicant in service from the date *of his dismissal, i.e., w.e.f. 18.05.2006 and may also, if so advised, keep the Applicant under deemed suspension till the Disciplinary Authority pass a fresh order in the matter. The Applicant shall also be given another opportunity to make a representation against the fresh Disagreement Note, if served upon him. If the decision of the Disciplinary Authority is not in favour of the Applicant again, he will have opportunity to avail himself of further remedial measures as provided under Rule 15 of the CCS (CCA) Rules, 1965. The aforesaid direction shall be complied with, within a period of 2 months from the date of receipt of a copy of this order.*

10. We are in agreement with the findings recorded by the Tribunal as the disagreement note had foreclosed all discussion and was conclusive and final. As per Rule 15(2) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 (1965 Rules, for short) the disagreement note should only contain tentative reasons for disagreement with the findings of the Inquiry Officer and not the final conclusion. Rule 15(2) reads:-

"(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to

the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

11. The Supreme Court in ***Punjab National Bank versus Kunj Behari Misra***, (1998) 7 SCC 84 observed that whenever the Disciplinary Authority disagrees with the Inquiry Officer on any article of charge, then before the Authority records its own finding on such charge, tentative reasons for disagreement should be given to the delinquent officer, who is to be given an opportunity to make a representation before final findings are recorded. This legal position and the ratio was reiterated in ***Yoginath D. Bagde versus State of Maharashtra and Another***, (1999) 7 SCC 739. It was emphasised that the disagreement note must be communicated to the delinquent officer with tentative reasons for disagreeing with the finding(s) of the Inquiry Officer. We have reproduced the disagreement note which, it is quite apparent, records the final and conclusive opinion and holds that the charges against the respondent were proved. It is apparent that the Disciplinary Authority did not record its tentative or *prima facie* opinion, but decisively recorded the authoritative decision. This would be in

violation of the ratio of the aforementioned decisions of the Supreme Court as well as Rule 15(2) of the Rules.

12. The petitioners in the reply before the Tribunal had stated that the disagreement note was a complete speaking note in itself and was based upon deposition of witnesses and the documents produced. This would not take the argument further. The expression "complete speaking note" itself indicates that the disagreement note had incorporated and recorded the final and conclusive findings, whereas the said note should only record tentative opinion to enable the delinquent officer to respond and answer. The next stage is when the Disciplinary Authority examines the reply, evidence and material, to arrive at and conclude its findings.

13. Given the aforesaid facts, we are not inclined to interfere with the impugned order. The writ petition has no merit and is dismissed with no order as to costs. CM Nos. 1034-1035/2017 are also dismissed.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

May 01, 2017
tp/VKR