IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16848 of 2016

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1. The Union of India
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Director of Postal Services, Northern Region, Muzaffarpur.
5. The Sr. Superintendent of Post Offices, Muzaffarpur Division, Muzaffarpur.

... ... Petitioner/s

Versus

Birendra Prasad S/o Late Munshi Sah, Village and P.O. Turki Khararu, P.S.- Minapur, District- Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rakesh Kumar Sinha, CGC
For the Respondent/s : Mr. M.P. Dixit, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-09-2022

The present petitioners-Postal Department have assailed the order dated 20.01.2016 passed in O.A No. 494 of 2014 by the Central Administrative Tribunal, Patna Bench, Patna (for short "CAT").

02. Respondent was subjected to disciplinary proceedings while he was in service following four charges have been framed against him:-

"Statement of articles of charge framed against Shri Birendra Pd. GDSSPM, Turki Khararu (Now put off duty) under Muzaffarpur H.O.

Article-I

That the said Shri Birendar Pd. While functioning as EDSPM, Turki Khararu ESO during the period from 01.02.1992 to 06.06.1995 entered on 12.05.1995 Rly Road Gurgaon MO No. 4191 dtd. 09.05.1995 for Rs. 500/- P/T Smt. Sunarpati Devi village Turki Banua P.O. T.Khararu in the register of Mos received (MO-3 Register). But he did not make over the Mos to the EDDA of his office for payment to the payee rather he showed the M.O. Paid to the Payee himself on 19.05.1995 on obtaining LTI purported to be of the payee scribed by one Sri Pramod Kumar of Turki Kayastha toli without taking any witness. But the payee denied to have received payment of the M.O. The payment of the M.O. is thus alleged to be fake.
The said Shri Birendra Pd. is thereby alleged to have violated the provisions of Rule 26 of Postal Man Volume VI Part II and Rule 121(4) of P.O. Man Volume VI Part III (Sixth Edition) and the deptt. to the loss of Rs. Five hundred (Rs. 500/-) only.

He is also alleged to have failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of Deptt. of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001.

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<u>Article-II</u>

That during the aforesaid period and while functioning in the aforesaid office the said Shri Birendra Prasad entered on 05.05.1995 Umargaon Industrial Estate MO No. 4267 dtd. 29.04.1995 for Rs. 2000/- payable to Babita Kumari of Turki Bazar, P.O. Turki Khararu in the register of Mos received (MO-3 Register) and showed it paid himself on the same day to one Shri Jira Sah on obtaining signature purported to be of his. But the receipient of the M.O Sri Jira Sah grandfather of payee denied to have received payment of the M.O. The payment of the M.O. is thus alleged to be fake.

The said Shri Birendra Pd. Is thereby alleged to have violated the provisions of Rule-33 of Postal Manual Volume VI Part II (Sixth Edition) and put the deptt. To the loss of Rs. Two thousand (Rs. 2000/-) only.

He is also alleged to have failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of Deptt. Of Posts Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

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ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Birendra Prasad did not enter Millerganj (Ludhiana) MO NO. 395 dtd. 20.04.1995 for Rs. 1500/- payable to Shri Jagarnath Prasad, vill & P.O. Turki Khararu in the register of Mos received (MO-3 Register) and showed it paid to the payee without taking any witness. But the payee denied to have received payment of the M.O. The payment of the M.O. is thus alleged to be fake.

The said Shri Birendra Pd. is thereby alleged to have violated the provisions of Rule 24 of Postal Manual Volume VI Part II and Rule 121(4) of P.O. Manual Volume VI Part III(Sixth Edition) and put the deptt. To the loss of Rs. One thousand Five hundred (Rs. 1500/-) only.

He is also alleged to have failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of Department of Posts, Gramin Dav Sevak(Condut & Employment) Rules,2001.

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ARTICLE-IV

That during the aforesaid period and while functioning in the aforesaid the said Shri Birendra Prasad received from the depositor of Turki Khararu SB A/C No. 1130203 her Passbook detailed in annexure "A". The said Shri Birendra Pd. on each date made entry of deposit in the Passbook, authenticated the same with his office date stamp and initial and returned the pass book to the depositor but he did not account for the amount of deposit in S.O. Account on the concerned date.
The said Shri Birendra Pd. is thereby alleged to have violated the provisions of Rule 98(a) of Postal Manual Volume VI Part III (Sixth Edition).
He is also alleged to have failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

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03. On 14.08.2002 charge memo was issued in respect of alleged allegations relates back to 1994 to 1997 and it was not concluded even on 20.01.2016, the date on which O.A. No. 419 of 2014 was disposed off by the CAT.

04. The petitioner questioned the validity of enquiry in the aforesaid O.A. No. 494 of 2014 and also seeking for reinstatement and consequential benefits. The Tribunal in para 11 of its order dated 20.01.2016 recorded the following events:-

"11. In the present case, the clear facts against the applicant are that the charges are of a very serious nature of financial misappropriation and the charges

> *have been proved in the inquiry. In such circumstances, removal from service would be one of the plausible punishments. As against this, there are following facts which warrant sympathetic consideration in favour of the applicant:*
>
> *(i) The cause of action was fifteen years old when the applicant approached the Tribunal.*
>
> *(ii) It took the authorities more than two and half years to serve the charge sheet after put off duty.*
>
> *(iii) It took a further six years to complete the inquiry.*
>
> *(iv) Even after more than six years after the inquiry report was submitted and the applicant submitted his representation, no final order has yet been passed.*
>
> *(v) The plea that the disciplinary authority could not pass orders because of pendency of criminal case is not convincing. If the criminal case did not come in the way of initiating simultaneous department action, the authorities would have been very well aware that they could have passed the final order as well.*
>
> *(vi) The applicant has been paid only 25% of his basic allowance together with admissible DA during the put off duty. Thus, he was suffered financial loss for more than fifteen years now."*

05. CAT proceeded to allow the respondents O.A. only on the score that there is a delay in initiation and non-conclusion of disciplinary proceedings.

06. On the other hand, learned counsel for the petitioner vehemently contended that having regard to the alleged charge relating of misappropriation of Postal Department's money delay

would not be a hurdle. Therefore, CAT has erred in allowing the respondent's application. It is further submitted that delay is due to pendency of criminal case, hence, the order of the CAT is to be set aside.

07. Heard learned counsel for the respective parties.

08. The respondent was subjected to disciplinary proceedings in the year 2002. In respect of alleged allegations relates back to the year 1994-1997. He was placed under suspension in the year 1999 and he was not reinstated till he attained age of superannuation and retired from service in the year 2018. It is to be noted that there is no hurdle in initiation and completion of the enquiry in respect of alleged misappropriation of Postal Department money and there is no point in awaiting for outcome of the criminal case, for the reasons that there was no prohibition order of any forum to not to proceed with the departmental enquiry. At this stage, it is necessary to be noted that parallel proceedings would be initiated independently for the reasons that the departmental enquiry is required to be initiated and completed with reference to alleged misconduct. Insofar as the criminal proceeding is concerned, it is for the offences under IPC or in any special law. Therefore, the petitioner-department cannot take shelter that there was a criminal case pending, therefore, there

is delay. If the departmental version is accepted that they were awaiting for criminal proceeding to be completed in that event there was no point for them to initiate enquiry in the year 2002, once they have initiated enquiry in the absence of any hurdle it should have been completed. Further, it is to be noticed that the respondent has questioned the validity of inititiation of the enquiry and it was pending consideration for more than two years from the year 2014 to 2016, even during the aforesaid intervening period petitioner-department have not concluded the departmental enquiry in passing final order.

09. Having regard to the contention of the petitioner that they have taken more than one and half decade in initiation of enquiry and in not passing final order in a departmental enquiry. Proceedings are vitiated no doubt in respect of alleged charge of misappropriation of money delay would not be a hurdle. At the same time, one cannot ignore the conduct of the respondent in respect of holding a departmental enquiry with reference to the alleged allegations relates back to year 1994-1997 and it was initiated in the year 2002 and till 20.01.2016, the date on which O.A. No. 494 of 2014 was allowed. The petitioner-department have not passed final order in a departmental enquiry.

10. In the light of these facts and circumstances, petitioners-department have not made out case so as to interfere with the order of the CAT dated 20.01.2016 passed in O.A. No. 494 of 2014. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A