

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19880 of 2018

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Gopal Kumar Pandey Son of Late Krishna Deo Pandey, Resident of Village
P.O.P.S.-Khusrupur, District-Patna, EX-Postal Assistant, Bankipur, H.O.-
Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Chief Post Master General, Bihar Circle,
Patna.
2. Director of Postal Services H.Q., Office of C.P.M.G., Bihar Circle, Patna.
3. Senior Superintendent of Post Offices, Patna Division, Patna.
4. Director of Postal Accounts, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pushkar Narain Shahi, Sr. Advocate Mr. Shivam, Advocate Ms. Deeksha Singh, Advocate
For the Respondent/s	:	Mr. Sujeet Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 11-04-2023

Mr. Shambhu Singh, Superintendent of Patna Sahib Post

Office is present in Court.

02. In the instant petition, petitioner has assailed the
order dated 14.09.2016 passed in O.A. No. 776 of 2005 by the
Central Administrative Tribunal, Patna Bench, Patna (for short
"CAT").

03. The petitioner was appointed as an Extra
Departmental Staff on 31.08.1979. He was promoted to the post of
Postman on 13.12.1990. Further, he was promoted to the post of



Postal Assistant in the month of December, 1997. When he was working at Khusrupur Post Office theft of money had taken place. In this connection, he was arrested on 12.04.1999 and a case was registered in Khusrupur Police Station bearing Khusrupur P.S. Case No. 34 of 1999. Secondly, he was placed under suspension on 13.04.1999. He was subjected to disciplinary proceedings on 16.12.1999. To that effect charge memo was issued under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "Rules, 1965"). During pendency of the disciplinary proceedings he was acquitted in the criminal case on 20th December, 2000. The suspension was revoked on 05.03.2001 and he was reinstated as Postal Assistant at Patna City, Patna. The disciplinary authority proceeded to appoint Inquiring Officer, namely, Sri B.N. Singh, retired SSPO on 18.10.2001. Charge memo dated 16.12.1999 was cancelled on 18.12.2001 without assigning any reason and without reserving liberty to the disciplinary authority to initiate fresh inquiry. When things stood thus on 21.12.2001, fresh charge memo was issued consisting of four articles of charges. Gist of the charge memo is that while he was working as Sub-Post Master, Khusrupur, Post Office he had permitted Sub-Post Master, Sri Sudarshan Ram to remain absent from duty during the intervening period from 08.04.1999 to



10.04.1999, failure to keep cash balance in proper manner and theft of cash balance.

04. On 16.05.2002, Mr. B.N. Singh, retired SSPO was once again appointed as an Inquiring Officer. Pursuant to the issuance of fresh charge memo dated 21.12.2001, the Inquiring Officer submitted his report. The disciplinary authority disagreed with the Inquiring Officer's finding and proceeded to issue show cause notice, thereafter, disciplinary authority proceeded to impose penalty of removal of service on 02.08.2003.

05. Feeling aggrieved and dissatisfied with the order of removal from service, petitioner preferred appeal before the Appellate Authority and it was set aside on 26.04.2004 and remanded the matter back to the disciplinary authority. A communication was made on 10.06.2004 to the extent that the disciplinary authority disagreeing with the Inquiring Officer's finding. Further, show cause notice was issued on 12.07.2004 thereafter, his services were terminated on 10/17.11.2004. Feeling aggrieved by the termination order petitioner preferred appeal before the Appellate Authority and it was rejected on 29.09.2006. In the meanwhile, the petitioner preferred OA No. 776 of 2005. The OA is stated to have been filed during pendency of the appeal before the Appellate Authority so far as challenging the order of



termination dated 10/17.11.2004. O.A. No. 776 of 2005 was allowed in part. However, respondent-Union of India preferred C.W.J.C. No. 3133 of 2010 and the matter was remanded to the CAT. Thus, CAT decided OA No. 776 of 2005 on 14.09.2006 hence the present writ petition.

06. Learned counsel for the petitioner submitted that in appointing retired official as Inquiring Officer is contrary to sub-rule (2) of Rule 14 of Rules, 1965. It is further submitted that Inquiring Officer has held that charge in respect of theft is concerned was not proved. However, only on presumption disciplinary authority proceeded to disagree with the Inquiring Officer's report. It is also submitted that Appellate Authority has not considered the petitioner's memorandum of appeal. In one line the Appellate Authority has stated that memorandum of appeal is sketchy. The CAT has not appreciated the legal issue that retired Officer has been appointed as an Inquiring Officer and it is contrary to sub-rule (2) of Rule 14 of Rules, 1965. Therefore, order of the CAT is liable to be set aside and, thereafter, orders of the disciplinary authority and Appellate Authority are liable to be set aside and the petitioner is entitled to consequential monetary benefits from the date of termination till the attainment of age of superannuation.



07. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that retired official can be appointed as Inquiring Officer in the light of Rules, 1965, Explanation to sub-rule (2) of Rule 14 of Rules, 1965, therefore, there is no infirmity. It is further submitted that having regard to the charge there is no infirmity in the inquiring proceedings. It is submitted that earlier also this Court has remanded the matter to the CAT. Respondents have supported the order of the CAT.

08. Heard learned counsel for the respective parties.

09. Factual aspects are not disputed. One of the legal contentions raised by the petitioner is that appointment of retired official as an Inquiring Officer is contrary to sub-rule (2) of Rule 14. It is further submitted that disagreeing with the Inquiring Officer's report insofar as alleged theft of money from the office of the Sub-Post Office, it is a serious charge which is required to be proved in the manner known to the law. Merely disagreeing with the Inquiring Officer's report and proceeding to issue show cause notice that does not suffice to prove such serious charge. The aforesaid contentions were required to be examined in the light of unamended Rule 14(2) and not amended Rule 14 (2) of Rules, 1965, prior to 5th December, 2011. Explanation 1 and 2 to sub-rule



(2) of Rule 14 of Rules, 1965 was not existing so as to give effect to Explanation. It is necessary to reproduce extract of unamended Rule 14 (1) (2) which reads as under:-

“14. Procedure for imposing major penalties.-*(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.*

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government Servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

1[Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for Inquiring into such complainants, shall be deemed to the Inquiring Authority appointed by the Disciplinary Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules].

Explanation-Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.”

(underline supplied)

It is also necessary to reproduce extract of amended Rule 14 (1) & (2) which reads as under:-



“14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under the Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof:

¹[*“Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”*]

²*Explanation 1.-Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the Disciplinary Authority.*

Explanation 2.-Where the Disciplinary Authority appoints a retired Government servant as inquiring authority, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) shall include such authority;”



1. Inserted vide G.I., Dept. of Per. & Trg., Notification No. 11012/5/2001-Estt. (A), dated the 1st July, 2004 published as GSR 225 in the Gazette of India, dated the 10th July, 2004.
2. Substituted vide G.I., Dept. of Per. & Trg., Notification No. 11012/2/2005-Estt. (A), dated the 5th December, 2011."

10. Perusal of the Explanation-2 of sub-rule (2) of Rule 14 of Rules, 1965, it is crystal clear that it was for the first time incorporated in the Rules on 05.12.2011 whereas the order of appointment of Inquiring Officer in the present case is 18.10.2001. Therefore, amended rule cannot be given effect so as to apprise the fact that retired official could be appointed as an Inquiring Officer. On this legal issue, the petitioner has made out a case. Further, it is noticed from the records that charge memo was initially issued on 16.12.1999. It was abruptly cancelled on 18.12.2001 without reserving right of liberty to initiate fresh inquiry by the disciplinary authority. In such an event, perusal of the various provision of Rules 1965, disciplinary authority is not empowered to initiate fresh inquiry in the absence of judicial order or reserving right for himself or herself for issuance of fresh charge even on this count the petitioner has made out a case. These legal lacunas have not been apprised by the CAT while passing order on 14.09.2016 in O.A. No.776 of 2005.

11. In view of these facts and circumstances, the petitioner has made out a *prima facie* case so as to interfere with



the order of termination dated 10/17.11.2004, Appellate Authority order dated 29.09.2006 and order of CAT dated 14.09.2016 passed in O.A. No.776 of 2005 and they are set aside. Accordingly, the present writ petition stands allowed.

12. The concerned respondent is hereby directed to settle the petitioner's monetary benefits from the date of termination till date of his retirement. Such calculation shall be made and disbursed in favour of the petitioner within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

kamlesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.04.2023
Transmission Date	N/A

