

Naubat Singh Vs Union Of India And Ors

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Aug. 6, 2018

Acts Referred: Administrative Tribunals Act, 1985 " Section 19

Central Civil Services (Conduct) Rules, 1964 " Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 3(2)(i)

Central Civil Services (Pension) Rules, 1972 " Rule 9

Central Civil Services (Classification, Control And Appeal) Rules, 1965 " Rule 14(18)

Hon'ble Judges: K.N. Shrivastava, Member (A); S.N. Terdal, J

Bench: Division Bench

Advocate: R.K. Shukla, B.K. Berera

Final Decision: Dismissed

Judgement

S.N. Terdal, J

1. Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following

reliefs:-

“(a) To quash and set aside the impugned order dated 07.02.2014 directing the respondents to fix the monthly pension and to pay the retiral benefits

to the applicant to that extent, as if he would have not been charge sheeted;

(b) To declare the action of the respondents in initiating departmental proceedings without waiting the decision of the criminal trial court, bad in law as

the same was not on the basis of Post & Telegraph Rules; and

(c) Any other relief which this Hon'ble Tribunal deem fit and proper may also be passed in the facts and circumstances of the case in favour of the

applicant.”

2. The factual matrix, as noticed from the records, is as under:-

2.1 The applicant was working as a Postal Assistant at the relevant point of time when Annexure A-7 memorandum of charges dated 03.12.2002

came to be issued to him. The charge reads as under:-

“CHARGE

That the said Shri Naubat Singh while working as Postal Assistant of Nowgaon Sub-Post Office from 10.7.98 to 23.6.99 and as Sub-Postmaster of

Nowgaon from 24.6.99 to September 2000, facilitated misappropriation of Government money amounting to Rs.6,85,450/- by forged withdrawals from

Savings Bank Account No.1006989, 1006993, 1006995, 1007314, 1007317, 1007545, 1007546 and 1008290 of Sub-Post Office. He did not comply

with the provisions given under Rule 33 (2) & (5) of Post Office Savings Bank Manual, Vol. I and also failed to ensure compliance of these rules by

his subordinates. He did not maintain devotion and integrity towards his duty and thus acted in a manner unbecoming on the part of a Government

servant. Moreover, he failed to make his subordinates maintain integrity and devotion. By doing so, he also violated Rule 3(1) (i), (ii), (iii) & Rule 3 (2)

(i) of Central Civil Services (Conduct) Rules, 1964.

2.2 The applicant retired from service on 31.12.2002 on attaining the age of superannuation. The disciplinary proceedings initiated through Annexure

A-7 memorandum of charges were continued under Rule 9 of CCS (Pension) Rules, 1972.

2.3 The applicant replied to the memorandum of charges vide his Annexure A-8 07.03.2005. Not satisfied with the reply of the applicant, the

disciplinary authority (DA) decided to proceed ahead with the disciplinary proceedings and appointed enquiry officer (EO) for conducting the enquiry.

The applicant participated in the enquiry and was provided sufficient opportunity by the EO to defend himself.

2.4 After a fairly long span of one and half years, the enquiry was completed. The EO submitted his report on 26.05.2005. The report was based on

several oral and documentary evidences. The EO concluded, in his report, that the charge leveled against the applicant is proved. A copy of the

enquiry report was served on the applicant and he was called upon to represent against it, if he so wished. The applicant submitted his representation

against the enquiry report. The DA, however, was not satisfied with his explanation and came to a tentative conclusion that the applicant indeed has

committed misconduct, which is grave enough to justify action under Rule 9 of CCS (Pension) Rules, 1972. Accordingly, the DA submitted a proposal

to respondent No.1 for obtaining the order of President of India in the matter. The respondent No.1 sought and obtained the advice of Union Public

Service Commission (UPSC) in the matter. Finally, the President of India, vide the impugned Annexure A-1 order dated 07.02.2014, imposed the

penalty of "withholding of 100% (hundred percent) of the monthly pension otherwise admissible to Shri Naubat Singh (the CO) on permanent basis

and further forfeiture of his full gratuity" on the applicant.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, to which the applicant filed a rejoinder.

4. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 31.07.2018. Arguments of Mr. R

K Shukla, learned counsel for applicant and that of Mr. B K Berera, learned counsel for respondents were heard.

5. Mr. R K Shukla, learned counsel for applicant submitted that no credible evidence could be adduced against the applicant during enquiry, and as

such, it is a case of "no evidence". Relying on the judgment of Hon'ble Apex Court in Roop Singh Negi v. Punjab National Bank & others, 2009 (1)

SCALE 284, the learned counsel argued that the punishment awarded to the applicant vide Annexure A-1 order is unjustified, as no credible evidence

could be adduced against the applicant during the enquiry.

6. Mr. Shukla further argued that the EO has failed to comply with the provisions of Rule 14 (18) of CCS (CCA) Rules, 1965, as the applicant has not

been personally examined by the EO. In this regard, relying on the judgment of Hon'ble Apex Court in the case of Ministry of Finance & another

v. S.B. Ramesh, (1998) 3 SCC 227, he stated that the disciplinary proceedings stand vitiated on this ground itself.

7. Mr. B K Berera, learned counsel for respondents, on the other hand, argued that the applicant has been subjected to disciplinary proceedings on

account of fraud committed at the Naugaon Post Office where he was posted from 10.07.1998 to 23.06.1999. Misappropriation of over six lacs of

government money had taken place in that Post Office during his tenure. Arguing further, Mr. Berera submitted that CBI enquiry is going on with

regard to the fraud committed at the said Post Office.

8. Regarding alleged non-compliance of the provisions of Rule 14 (18) of CCS (CCA) Rules, 1965, Mr. Berera submitted that the applicant has

submitted a written statement during the enquiry proceedings on 09.03.2005, which is duly acknowledged in the enquiry report. As such, the

requirement of Rule 14 (18) stands complied with. In this regard, he drew our attention to the averments made in the reply filed on behalf of the

respondents in response to paragraph 4.2 of the O.A.

9. We have considered the arguments of learned counsel for the parties and have also perused the pleadings as well as the documents placed on

record, including the EO's report.

10. We do not agree with the contention of learned counsel for applicant that there was "no evidence" against the applicant regarding the

charge levelled against him. It is noticed that the EO has, in fact, discussed the oral evidence of 10 witnesses and has also discussed various exhibited

documents before coming to the conclusion that the charge is proved. Hence, we repel the contention of the applicant that the EO's report is not

based on any evidence.

11. As regards the second contention of learned counsel for applicant that the requirement of Rule 14 (18) had not been complied with by the EO, it is

on record that the applicant has submitted a written statement in the enquiry proceedings, in which he has given the complete picture of the case from

his perspective. In view of it, we are of the opinion that the requirement of Rule 14 (18) stands complied with.

12. Regarding relief 8 (b) of O.A., claimed by the applicant, it is well settled law that the disciplinary proceedings and criminal proceedings against a

government official can run concurrently, as has been held by the Hon'ble Apex Court in State of Rajasthan v. B K Meena & others (1996) 6

SCC 417, which has been reiterated by the Department of Personnel & Training (DoPT) vide its O.M. F.No.1101216/2007-Estt. (A-III) dated

21.07.2016.

13. In the conspectus, we do not find any flaw in the impugned Annexure A-1 penalty order. Accordingly, we dismiss the O.A. as it is bereft of any

merit. No costs.