

A.F.R.

Neutral Citation No. - 2024:AHC:145955-DB

Judgement Reserved:-30.8.2024

Judgement Delivered:- 9.9.2024

Chief Justice's Court**Case :-** WRIT - A No. - 19109 of 2023**Petitioner :-** Union Of India And 4 Others**Respondent :-** Namu Narain Prasad**Counsel for Petitioner :-** Krishna Agarawal**Hon'ble Arun Bhansali,Chief Justice****Hon'ble Vikas Budhwar,J.****(Per: Vikas Budhwar,J.)**

1. Impugned in the present proceedings at the instance of Union of India through Director General Post, Department of Posts, New Delhi (In short 'Postal Department') is an order dated 1.8.2023 of the Central Administrative Tribunal Lucknow Bench, Lucknow (In short Tribunal) passed in O.A. No.541 of 2022, (Namu Narain Prasad vs. Union of India & others) whereby the original application preferred by Namu Narain Prasad (In short 'original applicant') came to be disposed of while setting aside the order dated 30.9.2022 of the Revisional Authority and upholding the order dated 25.3.2018 of the Appellate Authority confirming the punishment imposed by the Disciplinary Authority on 31.10.2017 reverting the original applicant for the post of Senior Postmaster to Dak Assistant for a period of five years while fixing the pay at the minimum of the scale of Dak Assistant for a period of five years with cumulative effect on future increments for the reversion period, recovery of an amount of Rs.3,88,060/- and the said period shall not be treated as dies non but only be for computation of retiral benefits.

2. A joint statement has been made by the learned counsel for the rival parties that they do not propose to file any further affidavits and the writ petition be decided at the admission stage on the basis of the documents available on record. With the consent of the parties, the writ petition is being decided at the admission stage.

Facts

3. The case of the original applicant before the Tribunal was that while he was discharging the duties on the post of Sub Post Master, Sikanderpur, Bus Stand from 7.8.2012 to 26.6.2012 alleging irregularities, was placed under suspension vide order dated 26.6.2014. A major penalty charge memorandum was issued on 15.9.2014 containing as many as two articles of charges. An Inquiry Officer came to be appointed to conduct inquiry against the original applicant. The Inquiry Officer tendered its inquiry report dated 31.8.2017 holding the two article of charges stood proved against the original applicant. A show cause notice is also stated to have been issued to which the original applicant submitted his reply and thereafter on 31.10.2017, the Superintendent Post Office, Ballia Division, Ballia proceeded to pass an order imposing as many as four punishments: (a) reversion from the post of Sub Post Master to Dak Assistant from the pay scale of Rs.37,500/- to Rs.25,500/- w.e.f. 1.11.2017 for a period of five years (b) fixation of the pay at the minimum of scale of Dak Assistant for a period of five years with cumulative effect on future increment (c) no increment was made admissible for the period of reversion (d) an amount of Rs.3,88,060/- to be deposited by the original applicant to be adjusted.

4. Being aggrieved against the punishment order dated 31.10.2017 of the Disciplinary Authority, the original applicant preferred an appeal on 12.12.2017 under Rule 23 of the CCS CCA Rules,1965 (In short Rules, 1965) before the Director Postal Services, Office of P.M.G., Varanasi, writ petitioner no.4. The said appeal came to be rejected on 13.4.2018 confirming the punishment imposed by the Disciplinary Authority.

5. Against the appellate order dated 13.4.2018 confirming the punishment order dated 31.10.2017 of the Disciplinary Authority, the original applicant claims to have preferred revision before the writ petitioner no.3, Chief Postmaster General, U.P. Circle, Lucknow on 23.5.2018.

6. According to the original applicant, the revision preferred by him remained pending and during the interregnum period the punishment order dated 31.10.2017 came to be implemented. As per the original applicant the Revisional Authority, Chief Postmaster General U.P. Circle Lucknow proceeded to issue a notice dated 30.6.2022 while exercising powers under Rule 29(1)(vi) of the Rules, 1965 intending to revise/enhance the punishment inflicted vide order dated 31.10.2017 of the Disciplinary Authority.

7. The original applicant on the receipt of the same tendered its objection/reply on 20.7.2022 and thereafter on 30.9.2022 the Chief Postmaster General, U.P. Circle Lucknow exercising its revisional jurisdiction proceeded to pass an order for compulsory retirement.

8. Assailing the order dated 30.9.2022 of the Revisional Authority, order dated 13.4.2018 of the Appellate Authority and order dated 31.10.2017 of the Disciplinary Authority, the original applicant preferred O.A. No.332/00541 of 2022 seeking following reliefs:

“(i) Issue order or direction to respondents to quash the Revision order dated 30.9.2022, appellant order dated 13.4.2018, and punishment order dated 31.10.2017 contained in Annexure No.1,2 and 3 respectively to the Original Application in the interest of justice.

(ii) Issue order or direction to declare that Rule 29(1)(vi) of the CCS(CCA)1965 cannot be invoked to issue show cause notice and thereafter enhance punishment order after six months of the date of punishment order sought to be enhanced.

(iii) Issue order or direction to respondents to reinstate the applicant on the post of Sub Post Master (SPM) and to take work by withdrawing Respondent letter dated 6.10.2022 and pay salary month to month, treating the punishment order contained in Annexure No 1,2 and 3 to the Original Application as nonest in the eyes of law and consequently grant all consequential benefits of arrears of salary, seniority and other service benefits with 12% interest.

Issue order or direction to respondents to consider and pass order regularising the suspension period from 25.6.2014 to 19.10.2014 and to pay salary for the aforesaid period.

Grant any other relief which this Hon'ble Tribunal deems fit in facts and circumstances of the case. Cost of this Original Application may please be awarded.”

9. On being noticed, a reply was filed by the writ petitioners herein to which a rejoinder affidavit was also filed.

10. The original application came up for consideration before the Tribunal on 1.8.2023 wherein the original application preferred by the original applicant came to be disposed of in following terms:-

“In view of above, OA is disposed of in the following terms: (a) Impugned order dated 30.09.2022 passed by the Revising Authority whereby applicant has been compulsorily retired is quashed.

(b) The punishment order dated 31.10.2017 passed by Disciplinary Authority is confirmed and Respondents/ competent authority are directed to execute the same.

(c) Consequently, the applicant is entitled to reinstatement in service. The respondents are directed to issue appropriate office order in this regard immediately but not later than 06 (six) weeks from the date of receipt of a certified copy of this order.

(d) We, however, direct that the applicant will not be entitled to back wages on the principle of "no work no pay" although a period of his absence from the date of passing the order by Revising Authority shall not be treated as dies non, and the same will be counted for retiral benefits.

(e) There shall be no order as to costs.”

11. Questioning the said order, Postal department/writ petitioners have filed the present writ petition.

12. This Court on 16.11.2023 entertained the writ petition while issuing notice to the original applicant and passed an interim order providing that the reinstatement of the original applicant shall subject to the final outcome of the writ petition.

Arguments of the counsel for the Writ Petitioners/Postal Department

13. Sri Krishna Agarwal, learned counsel for the Postal department/writ petitioners has sought to argue that the judgement and the order of the Tribunal impugned in the present writ petition cannot be sustained for the single moment inasmuch as the Tribunal has misconstrued the entire controversy and adopted an incorrect approach. Elaborating the said submission, it has been submitted that the original applicant while posted as Sub Post Master, Sikanderpur, Bus Stand for the period from 7.8.2012

to 26.6.2014 has committed serious irregularities resulting to the fact that on 26.6.2014, he was placed under suspension and thereafter on 15.9.2014 a major penalty charge memorandum containing two articles of charges was served upon him. In the light of the provisions of the Rules, 1965, the inquiry proceedings stood initiated while appointing an Inquiry Officer, who conducted the inquiry in accordance with law after giving full opportunity to the delinquent employee/original applicant, and the charges stood proved against him. A show cause notice was also issued to the original applicant accompanied with the inquiry report to which the original applicant submitted his reply and after considering the same on 31.10.2017 the punishment order was passed against which an appeal was preferred which came to be rejected on 13.4.2018 confirming the order of the Disciplinary Authority. Against the order of the Disciplinary Authority and the Appellate Authority, the original applicant preferred revision under Rule 29 of the Rules, 1965 before the Revisional Authority, the writ petitioner no.3, who in terms of the provisions contained under Rule 29 (1)(vi) of the Rules, 1965 proceeded to issue notice dated 30.6.2022 intending to revise/enhance the punishment imposed by the Disciplinary Authority as confirmed by the Appellate Authority. The original applicant submitted his reply on 20.7.2022 and after considering the same, the order dated 30.9.2022 has been passed enhancing the punishment to compulsory retirement.

14. Submission is that once the charges which were obviously grave and serious in nature stood proved against the original applicant in the inquiry proceedings and the same stood accepted by the Disciplinary Authority and remained intact throughout till the appellate stage then while exercising of the powers conferred under Rule 29 (1)(vi) of the Rules, 1965, it is always open for the Revisional Authority to enhance the punishment in that regard.

15. It is the submission of the writ petitioners that there has been no procedural infirmity in the entire decision making process as at all stages and levels, the original applicant was given full opportunity of hearing.

16. While assailing the findings returned in the order impugned of the Tribunal, it is contended that a totally perverse and incorrect finding has been recorded to the extent that the charge of submission of forged vouchers was not the part and the parcel of the charge memorandum inasmuch as during the course of the inquiry proceedings, when the original applicant submitted its reply to the charge memorandum then certain vouchers were submitted which on enquiry were found to be forged thus, there was no question of the said allegation to be the part of the articles of the charge/charge memorandum.

17. To put it otherwise the contention is that the allegation of submission of forged vouchers is in furtherance of the articles of charges which have been mentioned in the charge sheet and the same are interwoven and intermingled with it and is an offshoot itself. It is also argued that inquiry officer is under legal obligation to deal with all the contentions raised by the respective parties during the inquiry proceedings in order to determine as to whether the delinquent is guilty or not and the in the present case based upon the submission of the vouchers by the delinquent when inquiry was held then it revealed that the same was forged thus, by no stretch of imagination it can be said that inquiry was conducted with respect to a charge which was not mentioned in the charge sheet.

18. Additionally, it has been argued that once the finding of submission of forged vouchers remains intact and unquestionable then the natural consequences will follow as the Courts of law would not interfere with the ultimate decision but would invoke writ jurisdiction in case there is any procedural infirmity in decision making process.

19. Lastly, it has been argued that once the Rule 29(1)(vi) of the Rules, 1965 provides for enhancement of punishment and the same has been

enhanced after according satisfaction then merely because sufficient time had lapsed from the date of the imposition of the punishment by Disciplinary Authority term whereof was five years would not be a relevant factor as even before the lapsing of the period of punishment imposed by the Disciplinary Authority on 31.10.2022, prior to it on 30.6.2022 a notice came to be issued for enhancement of the punishment and ultimate order came to be passed on 30.9.2022. It is is thus, prayed that the order of the Tribunal be set aside and the writ petition be allowed in toto.

Arguments of the counsel for the original applicant

20. Countering the submission of the learned counsel for the writ petitioners, Sri Tanuj Shahi, who appears for the original applicant has submitted that the order of the Tribunal needs no interference in the present proceedings. It is submitted that the exercise of power under Rule 29(1)(vi) of the Rules, 1965 was thoroughly impermissible particularly in view of the fact that the order of the Disciplinary Authority dated 31.10.2017 was implemented and the currency of the punishment was from 1.11.2017 to 30.10.2022 however, on 30.6.2022 a notice has been issued under Rule 29(1)(vi) of the Rules, 1965 and thereafter on 30.9.2022 now an order enhancing the punishment to compulsory retirement has been passed. According to him the exercise of the powers under Rule 29(1)(vi) of the Rules, 1965 is to be within the reasonable period and not after a period of approximately five years from the date of the passing of the order of the Disciplinary Authority, 31.10.2017 that too on a revision preferred by the original applicant against the order of the Disciplinary Authority and Appellate Authority with a prayer for setting aside the same. He seeks to rely upon the judgement in the case of **Union of India v. Vikrambhai Maganbhai Chaudhari (2011) 7 SCC 321, M.M. Srivastava v. Union of India 1985 LAB. I.C. 1757 and Union of India & others v. K. Raghavan, 2012 SCC Kerala 31795.**

21. It is also the submission of the learned counsel for the original applicant that might be the issue relating to forged vouchers came to be noticed in the inquiry report but the same would not suffice and would not be in conformity with the Rules inasmuch under the statutory Rules a specific charge is to be reproduced in the memorandum of charges supported by documentary evidence and witnesses in order to bring home the charges and in case according to the writ petitioners/Postal department the same was to be inquired into then a supplementary charge sheet containing the said charge ought to have been issued. He further submits that the entire procedure adopted by the postal department/writ petitioners is foreign to the service jurisprudence and thus the writ petition is liable to be dismissed.

22. Before embarking the inquiry upon the tenability of the argument of the rival parties, it would be apposite to reproduce the statutory rules, government orders/circulars and the documents which have material therein in the controversy in question.

STATUTORY RULES, NOTIFICATIONS & DOCUMENTS

CCS (CCA) Rules 1965 :-

29. *[Revision]*

(1) Notwithstanding anything contained in these rules—

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

2[(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and [Adviser (Human Resources Development), Department of Telecommunications] in the case of a Government servant serving in or under the Telecommunications Board]; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the Appellate Authority, within six months of the date of the order proposed to be [revised]; or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

at any time, either on his or its own motion or otherwise call for the records of any inquiry and 2 revise] any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but which no appeal has been preferred or from which no

appeal is allowed, consultation with the Commission where such consultation is necessary, and may—may from after

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order; or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

3[Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary [and the Government servant has been given an opportunity of representing against the advice of the Commission]:

Provided further that no power of 2[revision] shall be exercised by the Comptroller and Auditor-General, 3[Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications] or the Head of Department, as the case may be, unless—

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for 2[revision] shall be commenced until after- (i) the expiry of the period of limitation for an appeal, or (ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for 2[revision] shall be dealt with in the same manner as if it were an appeal under these rules.

23. Notification dated 29.5.2001:-

**"MINISTRY OF COMMUNICATIONS
(DEPARTMENT OF POSTS)**

New Delhi, 29-5-2001

NOTIFICATION

No. S.O... In exercise of the powers conferred by Clause (vi) of sub-rule (1) of Rule 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, the President hereby specifies that in the case of a government servant serving in the Department of Posts, for whom the appellate authority is subordinate to the authority designated as the Principal Chief Postmaster General or the Chief Postmaster General (other than the Chief Postmaster General of Senior Administrative Grade) of a Circle, the said Principal Chief Postmaster General or the said Chief Postmaster General, as the case may be, shall be the revising authority for the purpose of exercising the powers under the said Rule 29.

(No. C-11011/1/2001-VP)

sd/-
(B.P. Sharma)
Director (VP)"

24. **Charge memorandum/Article to charges dated 15.9.2014 :-**

अनुच्छेद-1

यह कि उक्त श्री नगोनाराण प्रसाद उपडाकपाल सिकन्दरपुर बस स्टैण्ड ने दिनांक 07.08.2012 से 26.06.2014 तक उक्त पद पर कार्य करते हुए इस कार्यालय के स्वीकृति/आदेश के बिना विभिन्न मदों में कथित रूप से खर्च रूपया 388060/- (रु० तीन लाख अठासी हजार साठ) पार्ट आफ कैश दिखाया है इस प्रकार उनके द्वारा मात्र रूपया 388060/- (रु० तीन लाख अठासी हजार साठ) का दुर्विनियोजन किया गया है।

अतः एतद् द्वारा आरोपित है कि उक्त श्री नमोनारायण प्रसाद ने अपने उक्त कृत्य से P & T FHB Volume-I के नियम 103 एवं 334 का उल्लंघन किया तथा वांछित कर्तव्य निष्ठा एवं सत्यनिष्ठा बनाये रखने में असफल रहकर केन्द्रीय सिविल सेवा (आचरण) नियमावली 1964 के नियम 3(1)(i) एवं (ii) का भी उल्लंघन किया।

अनुच्छेद-II

यह कि उक्त श्री नमोनारायण प्रसाद उपडाकपाल सिकन्दरपुर बस स्टैण्ड ने दिनांक 07.08.2012 से 26.06.2014 तक उक्त पद पर कार्य करते हुए डाकघर से संबंधित तथा कथित विभिन्न मदों में किए गए खर्च का विवरण एवं बाऊचर से संबंधित कोई भी रजिस्टर या अभिलेख संधारित नहीं किये। इससे रूपया 388060/- (रु० तीन लाख अठासी हजार साठ) का विवरण स्पष्ट नहीं हो सका।

अत एतद् द्वारा आरोपित है कि उक्त श्री नमोनारायण प्रसाद के उक्त कृत्य से P&T FHB Volume-I के नियम 354 एवं 357 का उल्लंघन किया तथा वांछित कर्तव्य निष्ठा एवं सत्यनिष्ठा बनाये रखने में असफल रहकर केन्द्रीय सिविल सेवा(आचरण) नियमावली 1964 के नियम 3(1)(i) एवं (ii) का भी उल्लंघन किया।

25. **Order of the disciplinary authority dated 31.10.2017"-**

अधोहस्ताक्षरी द्वारा समस्त दस्तावेजों बयानों प्रदर्शों का गहराई से अध्ययन किया और पाया कि आरोपित कर्मचारी द्वारा शिकायत से पूर्व दिनांक 22.07.2013 तक के डीजल/पेट्रोल वाउचर मंडलीय कार्यालय प्रस्तुत किए। पेट्रोल से संबंधित नित्य प्रति किए जाने वाले खर्चों को नियम अनुसार हिसाब में नहीं लिया और ना ही उसे स्वीकृत करने के लिए नियम अनुसार सक्षम अधिकारी को प्रेषित किया। खर्चों से एवं जनरेटर प्रयोग से संबंधित रजिस्टर भी नित्य प्रति उप डाकघर में आरोपित कर्मचारी द्वारा संधारित नहीं किया गया जिसे आरोपित कर्मचारी द्वारा मनमानी तरीके से निलंबन अवधि में जांच कार्यवाही प्रस्तावित होने के उपरान्त तैयार किया जो कि पूरी तरीके से काल्पनिक व आधारहीन है। आरोपित कर्मचारी द्वारा स्वयं स्वीकार किया गया है कि वह कार्य के अधिकता के कारण खर्च से संबंधित अभिलेख नित्य प्रति नहीं बनाता था तथा खर्चा के बाउचर्स भी समय से स्वीकृति हेतु सक्षम अधिकारी को नहीं भेज सका। खर्चों से संबंधित 15 बण्डल बाउचर द्वारा कुल खर्च रु० 396952(तीन लाख छियात्रवे हजार नौ सो बावन मात्र) के

आरोपित कर्मचारी द्वारा अपने पत्र दिनांक 22.08.2014 के द्वारा निलंबन अवधि में मण्डलीय कार्यालय बलिया को भेजना दर्शाया गया है जो यह सिद्ध करता है कि खर्चों से संबंधित बाउचर्स समय से स्वीकृत हेतु मंडलीय कार्यालय नहीं भेजे जाते थे और ना ही दस्तावेज विधिवत समय से बनाया जा रहा था. अतः आरोपित कर्मचारी पर लगाया गया आरोप कि वह खर्चों से संबंधित अभिलेख नियमानुसार नहीं बना रहे हैं सिद्ध होते हैं।

जांच कार्रवाई के दौरान साक्षी श्री उज्जवल अग्रवाल सहायक श्री जहीर अहमद अंसारी कार्यालय सहायक श्री अभय शंकर वर्मा उप डाकपाल सिकन्दरपुर बस स्टैंड के बयानों से इस आरोप की पुष्टि होती है कि वाउचर समय से स्वीकृत हेतु सक्षम अधिकारी को नहीं भेजे गए सबसे अहम व गंभीर विषय कि जो बाउचर्स खर्चों के रूप में दर्शाए गए वह सभी आरोपित कर्मचारी द्वारा तैयार किए गए हैं इस बात की पुष्टि जांच अधिकारी द्वारा जांच में की गई इस संबंध में प्रबंधक किसान सेवा केन्द्र शंकरपुर बलिया श्री संदीप कुमार उपाध्याय का बयान व जांच में उसकी पुष्टि यह स्पष्ट करती है कि आरोपित कर्मचारी द्वारा खर्चों से संबंधित सभी बाउचर्स फर्जी तरीके से तैयार किए गए। आरोपित कर्मचारी का यह कहना है कि श्री संदीप कुमार उपाध्याय किसान सेवा केन्द्र शंकरपुर बलिया के प्रबंधक नहीं है गलत है अगर वह कहते हैं कि श्री संदीप कुमार उपाध्याय किसान सेवा केन्द्र के प्रबंधक नहीं हैं तो उन्हें जांच करवाई में असली प्रबंधक किसान सेवा केन्द्र शंकरपुर बलिया के बयान व जांच करवाई में पुष्टि से स्वतः सिद्ध होता है कि श्री नमो नारायण प्रसाद द्वारा प्रस्तुत समस्त पेट्रोल खर्च बाउचर्स फर्जी हैं। पेट्रोल खर्च वाउचर्स के फर्जी होने की पुष्टि श्री चन्द्रिका राम मेल ओवरसीयर व श्री बलबीर सिंह तत्कालीन निरीक्षक डाकघर केन्द्रीय बलिया द्वारा भी की गयी। इसके अतिरिक्त ए०सी०जी० 17 पर खर्च की पुष्टि/ गवाही स्वरूप भी जीउत राम जी०डी०एस० पैकर सिकन्दरपुर बलिया के जो हस्ताक्षर किए गए वह भी फर्जी पाए गए जिन्हे भी श्री नमो नारायण प्रसाद द्वारा पेट्रोल खरीदने के लिए प्रतिदिन लगभग 80 कि०मी० की दूरी तय की जबकि सिकन्दरपुर में डाकघर से कुछ ही दूरी पर पेट्रोल पंप है वहां से पेट्रोल नहीं खरीदा गया बल्कि 80 किलोमीटर दूर से खरीदा गया। जो सिद्ध करता है कि पेट्रोल रसीद फर्जी तैयार की गई है। श्री नमो नारायण प्रसाद अपने वाउचरों की पुष्टि के लिए श्री संजय प्रसाद बचाव गवाह प्रस्तुत किया वह पूरी तरह से प्रायोजित है क्योंकि आरोपित कर्मचारी उसकी वैधानिकता की पुष्टि नहीं कर सके। श्री नमो नारायण प्रसाद आरोपित कर्मचारी द्वारा अन्य खर्चों के रूप में डाकघर के बाहर रबिश डलवाने आदि पर किया गया खर्च भी जांच में फर्जी पाया गया क्योंकि डाकघर में कार्यरत सहकर्मी द्वारा जांच में बताया गया कि रबिश आदि आरोपित कर्मचारी द्वारा नहीं डलवाई गई।

जांच करवाई के दौरान आरोपित कर्मचारी कोई ऐसा साक्ष्य/दस्तावेज प्रस्तुत नहीं कर सके जो उन पर लगे आरोपों से उन्हें मुक्ति प्रदान करता हो। आरोपित कर्मचारी द्वारा स्वयं भी फर्जी वाउचर प्रस्तुत करने की नैतिक जिम्मेदारी मानकर ही कुल गबनित राशि रु० 388060/- डाकघर के अवर्गीकृत मद में जमा की।

जांच कार्रवाही के उपरांत प्रस्तुत जांच सार व उसके साथ प्रस्तुत सम्यक दस्तावेजों राज्य साक्षियों द्वारा दिए गए बयान व अन्य परिस्थित जन साक्ष्य के आधार पर इस निष्कर्ष पर पहुंचा हूँ कि आरोपित कर्मचारी पर लगे आरोप पूर्णतया सही हैं तथा वह कठोर दंड का पात्र है।

अतः मैं डॉ० अरुण यादव अधीक्षक डाकघर बलिया श्री नमो नारायण प्रसाद आरोपित कर्मचारी के वर्तमान मूल वेतन रु० 37500/- डाक सहायक संवर्ग के न्यूनतम वेतन रु० 25500 पर दिनांक 01.11.2017 से कम करने का आदेश

पारित करता हूँ साथ ही यह दण्ड अगले पांच वर्ष (दिनांक 31.10.2022) तक संचाई प्रभाव के साथ लागू रहेगा। श्री नमो नारायण प्रसाद दंड अवधि के दौरान कोई भी इंक्रीमेंट अर्जित नहीं करेंगे तथा भविष्य में मिलने वाले इन्कीमेंट्स को भी संचाई प्रभाव से प्रभावित करेगा। इसके अलावा नमोनारायण प्रसाद आरोपित कर्मचारी द्वारा यू०सी०आर० में जमा धनराशि रू० 388060/- को गारणित धनराशि के सापेक्ष समायोजित किया जाता है।

Notice dated 30.6.2022:-

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL, U.P. CIRCLE,
LUCKNOW-01

Memo No. Vig/P-38/2018/5

Dated at Lucknow the 30-06-2022

NOTICE

Whereas Shri Namo, Narayan Prasad, PA, Ballia was proceeded against under Rule-14 CCS (CCA) Rules 1965 by SPOs Ballia vide memo no. F/Genral/DP/Namo Narayan Prasad/14-15 dated 15.09.2014 and penalty of "Reduction of his pay from Rs. 37,500/- to Rs. 25,500/- w.e.f. 01.11.2017 for a period of five years. It is further ordered that during the period of reduction of the pay, the charged official will not earn increments of pay and this will have the effect of future increments of his pay with cumulative effect was awarded vide SPOs Ballia memo no. F/Genral/DP/Namo Narayan Prasad/14-15 dated 31.10.2017. Against the aforesaid punishment order, he preferred an appeal dated 12.12.2017 to DPS Varanasi, which was decided as "Rejected" by DPS Varanasi vide memo RPV/Vig/Appeal/5-2/2018 dated 13.04.2018. Now, instant petition dated 23.05.2018 has been preferred by the petitioner against the said punishment order. .

2- And whereas the undersigned in exercise of powers conferred vide Rule-29 (1) (vi) CCS (CCA) Rules 1965, intends to revise the said punishment order F/Genral/DP/Namo Narayan Prasad/14-15 dated 31.10.2017 due to following reasons:-

a) Allegations leveled against the petitioner were related to misappropriation government money which was established during the course of oral inquiry. Petitioner has misappropriated Rs. 3,88,050/- as cash was found short in his office was responsible.

b) Petitioner on the one hand has misappropriated Rs. 3,88,060/- and on hand created bogus vouchers for justifying the liability in the office, whereas testimony of SW-8, Shri Sandeep Kumar Upadhyay clearly established that vouchers forwarded by the petitioner were bogus and fake.

c) Petitioner has forwarded fake and bogus vouchers of a petrol pump situated 80 Km. away from Sikandarpur, which is not justified on any ground.

All the above irregularities are very serious and grave in nature and committed by the petitioner.

3- Now, therefore, the undersigned while deciding the petition of the petitioner, perused the relevant records of the case and found that the penalty of "Reduction of his pay from Rs. 37,500/- to Rs. 25,500/- w.e.f. 01.11.2017 for a period of five years. It is further ordered that during the period of reduction of the pay, the charged official will not earn increments of pay and this will have the effect of future increments of his pay with cumulative effect" imposed vide SPOs Ballia memo no. F/

Genral/DP/Namo Narayan Prasad/14-15 dated 31.10.2017 is not commensurate with the gravity of offence committed by him. As the petitioner misappropriated Rs. 3,88,060/- and to justify his claim presented fake and bogus vouchers. These are very serious and grave irregularities and such an official is undesirable in government service.

4- Therefore, the undersigned proposes to enhances the penalty upheld by appellate authority vide memo no. RPV/Vig/Appeal/5-2/2018 dated 13.04.2018 and imposed by disciplinary authority vide memo no. F/Genral/DP/Namo Narayan Prasad/14-15 dated 31.10.2017 "Reduction of his pay from Rs. 37,500/- to Rs. 25,500/- w.e.f. 01.11.2017 for a period of five years. It is further ordered that during the period of reduction of the pay, the charged official will not earn increments of pay and this will have the effect of future increments of his pay with cumulative effect" to "Dismissal from Service.", if any,

5- Narayan Shri Namo Narayan Prasad, PA, Ballia is called upon to submit his representation against the proposed revised penalty within 10 (Ten) days of receipt of this memo, failing which it shall be presumed that he has nothing to say and revised penalty will be imposed.

*(Kaushlendra Kumar Sinha)
Chief Postmaster General,
U.P. Circle, Lucknow-226001*

*Shri Namo Narayan Prasad,
Postal Assistant,
Ballia.
(Through PMG Varanasi Region, Varanasi)*

ANALYSIS

26. We have given thoughtful consideration to the arguments advanced by the rival parties and perused the record.

27. The facts are not in issue. It is not in dispute that the original applicant while posted as Sub Postmaster, Sikandarpur, Bus Stand from 7.8.2012 to 26.6.2014 owing to certain irregularities was placed under suspension on 26.6.2014. On 15.9.2014 a major penalty charge sheet containing two articles of charges was served upon the original applicant with the allegation, (a) the applicant without there being any approval/order of the competent authority made expenditures of an amount of Rs.3,88,060/- and misappropriated the same; (b) despite being asked to submits the vouchers, registers and the documents showing the the expenditure of an amount of Rs.3,88,060/- the same was not furnished.

28. One Sri P.S.P. Srivastava was appointed as an Inquiry Officer, who conducted the inquiry proceedings and tendered inquiry report on 31.8.2017 before the Disciplinary Authority, a show cause notice was issued to the original applicant and thereafter on 31.10.2017, the punishment order came to be passed whereby (a) reversion from the post of Senior Postmaster to Dak Assistant for a period of five years in the pay scale of Rs.37,500/- (b) fixation of the pay at the minimum of the scale of Dak Assistant of five years with cumulative effect on future increment (c) non admissibility of the increments during the reversion period and (d) deposit of amount of Rs.3,88,060/- to be adjusted. Against the same an appeal came to be filed by the original applicant which came to be rejected on 13.4.2018 confirming the order of the Disciplinary Authority and thereafter the original applicant preferred a revision on 23.5.2018 which came to be rejected on 30.9.2022.

29. The bone of contention between the rival parties is whether it was permissible for the revisable authority to have invoked the provisions contained under Rule 29 (1)(vi) of the Rules, 1965 or not for enhancing the punishment.

30. To begin with, we are required to have a quick survey of the Rule 29 of the Rules, 1965 which deals with revision. Rule 29(1) of the Rules, 1965 postulates six categories of Revisional Authority. So far as the present controversy is concerned the same is relatable to the exercise of the powers by the Revisional Authority under Rule 29(1)(vi) of the Rules, 1965. Perusal of the said Rule would go to show that there is no period provided in Sub-Clauses (i) to (iv) & (vi), Sub-Clause (v) refers to a period of six months from the date of the order proposed to be revised by the appellate authority.

31. On 29.5.2021 the Ministry of Communication (Department of Post) in exercise of the powers conferred by Clause (vi) of Sub Rule (1) of Rule 29 of the Rules, 1965 issued a notification specifying the authorities who were to exercise revisional powers against the order of the Appellate

Authority. In the case in hand, the matter relates to Postal department of Ministry of Communication. Interestingly, in the notification dated 29.5.2001 there is no time line provided for exercising the powers of the Revisional Authority under Clause (vi) of Sub Rule (1) of Rule 29 of the Rules, 1965. The said notification came up for consideration before the Hon. Supreme Court in the case of **Vikrambhai Maganbhai Chaudhary (Supra)** wherein the following was observed”-

10. As rightly observed by the Tribunal, the above sub-rule (1) of Rule 29 indicates 6 categories of revisional authorities. If we go further it shows that while no period is mentioned in sub-clauses (i) to (iv), sub-clause (v) refers to a period of six months from the date of the order proposed to be revised. Since the order was passed by exercising power under sub-clause (vi), we have to see whether in the notification specifying an authority a time-limit has been mentioned or even in the absence of the same, the outer limit can be availed by exercising power under sub-clause (v). According to the learned ASG, there is no need to specify the period in the notification authorising the authority concerned to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.

11. It is to be noted that in cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months from the date of the order proposed to be revised. This is clear from sub-clause (v) of sub-rule (1) of Rule 29. On the other hand, Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order and the said authority has to commence the proceedings within the time prescribed therein. Even though Rule 29(1) (vi) provides that such order shall also specify the time within which the power should be exercised, the fact remains that no time-limit has been prescribed in the notification.

12. We have already pointed out that no period has been mentioned in the notification. The argument that even in the absence of a specific period in the notification in view of Clause (v), the other authority can also exercise such power, cannot be accepted. To put it clear, sub-clause (v) applies to the appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under sub-clause (vi). There must be a specified period and the power can be exercised only within the period so prescribed.

13. Inasmuch as the Notification dated 29-5-2001 has not specified any time-limit within which the power under Rule 29(1)(vi) is exercisable by the authority specified, we are of the view that such notification is not in terms with Rule 29 and the Tribunal is fully justified in quashing the same. The High Court has also rightly confirmed the said conclusion by dismissing the special application of the appellants and quashing the notification on the ground that it did not specify the time-limit. Consequently, the appeal fails and the same is dismissed. No order as to costs.

32. The Swamy's Compilation of Central Civil Services, Classification Control and (Incorporating Orders received up to February 2015) of Muthuswamy and Brinda baring the notification dated 29.5.2001 on the said subject does not contain any other notification. The pleadings either before the Tribunal or before us also does not indicate that there is any other notification on the said subject.

33. Though against the order of the Disciplinary Authority dated 31.10.2017 and the Appellate Authority dated 13.4.2018 a revision came to be preferred by the original applicant on 23.5.2018 before the Revisable Authority but the same remained pending however, on 30.6.2022 a notice came to be issued while exercising powers under Rule 29(1)(vi) of the Rules, 1965 for revising/enhancing the punishment. The source of power invoking the proceedings for enhancement of the punishment by the revisable authority is under Rule 29(1)(vi) of the Rules, 1965.

34. The judgment in the case of **Vikrambhai Maganbhai Chaudhary (Supra)** holds that notification dated 29.5.2001 is unsustainable in the eyes of law as there is no period stipulated for exercising the revisable powers under Rule 29(1)(vi) of the Rules, 1965.

35. Applying the said judgement in the facts of the case, it is evident that the notice dated 30.6.2022 issued by the Revisable Authority, Chief Postmaster General, U.P. Circle Lucknow is in exercise of the powers under Rule 29(1)(vi) of the Rules, 1965 after a period of approximately five years from the date of the order of the Disciplinary Authority dated 31.10.2017 and approximately after four years from the date of the order of the Appellate Authority dated 12.4.2018 on a revision preferred by the original applicant on 23.5.2018.

36. The revision preferred by the original applicant was for the limited purpose for setting aside the order passed against him by the Disciplinary Authority affirmed by the Appellate Authority, however, in the revisional

proceedings, the Revisional Authority had intended to enhance the punishment. The Sub-Rule (1) of Rule 29 of the Rules, 1965 though provides that the Authorities enumerated in Clause (i) to (vi) may at any time either on his or in its own motion or otherwise call for the records of the inquiry and pass an order to confirm, modify or set aside the punishment order however, as mandated by the Hon. Supreme Court in the case of **Vikrambhai Maganbhai Chaudhary (Supra)** the said exercise is to be undertaken within a reasonable period. Moreover, the said aspect assumes significance particularly in view of the fact that party seeking revision would not obviously intend that the punishment be enhanced thus, by all eventualities the exercise of the power by the Revisional Authority is to be within the reasonable period.

37. Further a Division Bench of this Court in the case of **M.M. Srivastava (Supra)** had the occasion to consider the provision of Clause (v) Sub-Rule (1) of Rule 29 of the Rules, 1965 and went on to hold that the orders are to be passed within the statutory period that too within the reasonable time. In so far as the judgment in the case of **K. Raghvan (Supra)** is concerned, the same also speaks about exercising of the proceedings within the reasonable period.

38. Consequently, we are unable to subscribe to the view taken by the Tribunal in para-14 of the judgement of the Tribunal under challenge that there is no time line prescribed in Rule 29(1)(vi) of the Rules 1965 for invoking revisable jurisdiction as the said issue is now more res integra in view of the judgement of the Hon'ble Apex Court in the case of **Vikrambhai Maganbhai Chaudhary (Supra)**.

39. Notably the Disciplinary Authority imposed punishment on 31.10.2017 currency whereof was for a period of five years from 1.11.2017 to 31.10.2022 however, we find that prior to one month of lapsing of the currency of the punishment on 30.9.2022, the order enhancing the punishment to compulsory retirement has been passed which in the background of the intervening facts as discussed above,

while exercising the powers under Rule 29(1)(vi) of the Rules, 1965 was thoroughly uncalled for and not justified in the eyes of law.

40. As regards the issue of violation of principles of natural justice on account of the fact that the allegation of forged vouchers was not part and parcel of the charge memorandum is concerned, though we are not required to go in to the said issue in the wake of the fact that the proceedings under Rule 29(1)(vi) of the Rules, 1965 exercised by the Revisional Authority was unjustified but since argument has been raised by the parties so we proceed to examine the same.

41. As noticed, there were two charges levelled against the original applicant in the charge memorandum dated 15.9.2014, (a) misappropriation of the government money while showing it towards the expenditure to the tune of Rs.3,88,060/- without any approval orders of the competent authority under various heads; and (b) non submission of vouchers record and documents to substantiate the expenditures. The inquiry report as well as the order of the Disciplinary Authority recites that the delinquent/original applicant did not submit the documents at the appropriate/relevant time however, it was submitted subsequently after his suspension and during the inquiry proceedings and when it came to be enquired it was found that the vouchers were forged.

42. A counter reply has been filed by the writ petitioners before the Tribunal by the Superintendent Post Office, Ballia in which in paragraph no. 3, it was asserted as under:-

“3. That it may be stated here that the applicant Namu Narayan Prasad (compulsorily retired) had worked as Sub Postmaster (Postal Assistant cadre, not norm based LSG) of Sikanderpur Bas Stand Office from 7.8.2012 to 26.4.2014. He made expenditures of Rs. 3,88,060/- in various heads without the order/sanction of the competent authority (Supdt. of Post Offices, Ballia Division) during the above mentioned period and he was showing these amounts in the 'Part of Cash' head. It is submitted that Deputy Post Master, Ballia, HQ vide his letter dated 11.3.2014, a copy of which is being annexed herewith and marked as Annexure no. CR-1, informed SPOs, Ballia about this irregularity. The whole matter was got inquired into by the Inspector of Posts, Central Sub Division (SDI, Central) Ballia. The report, a copy of which is being annexed herewith and marked as Annexure no. CR-2 alongwith a

statement of applicant, a copy of which is being annexed herewith and marked as Annexure no. CR-3 was submitted by the SDI, Central letter dated 25.6.2014. As per the report, it was clear that the Government money was being misappropriated by the applicant. After this, applicant was suspended vide SPOs Ballia Memo dated 25.6.2014, a copy of which is being annexed herewith and marked as Annexure no. CR-4. After a detailed inquiry into the matter, it was found that the applicant had misappropriated the Government money amounting to Rs. 288060/- in different heads. The 15 bundle vouchers sent by the applicant through Ballia HO Speed Post No. EQ2723156621N dated 21.8.2014 during the suspension period against this amount were found bogus and fake during the inquiry, a copy of which is being annexed herewith and marked as Annexure no. CR-5. After that, in this regard the applicant submitted an application to SDI Central on 13.9.2014 and deposited Rs. 3,00,000/- on 13.9.2014 under UCR (Unclassified receipts) no. D-2 in Ballia HO and Rs. 88060/- on 16.9.2014 under UCR (Unclassified receipts) no. B-1174 in Ballia HO, a copy of which are being annexed herewith and marked as Annexure nos. CR-6 & 7 respectively. An FIR no. 0574 of 2016 was lodged in this matter against the applicant in Sikanderpur P.S. on 27.10.2016, a copy of which is being annexed herewith and marked as Annexure no. CR-8.

43. Perusal of the counter affidavit filed by the writ petitioners before the Tribunal would reveal that 15 bundle vouchers came to be submitted by the original applicant through Ballia, H.O. Post Office No.EQ2723156621N on 21.8.2014 during the suspension period against the said amount which was found bogus and fake during the inquiry. The said assertion in the counter reply of the writ petitioners explicitly reveals that the vouchers came to be submitted by the original applicant on 21.8.2014 which is before the the date of issuance of the charge sheet, as the same came to be issued on 15.9.2014. Thus, once the said vouchers were in possession of the Disciplinary Authority then it was required of that the said allegations were to be made the part and the parcel of the charge sheet if to be inquired into. Moreover, the original applicant was aware about the said allegation as the same stood noticed in the inquiry report as well as in the order of the Disciplinary Authority confirmed upto appellate authority. The said findings have not been questioned by the original applicant.

44. As regards the submission of the learned counsel for the writ petitioners that this Court in exercise of jurisdiction under Article 226 of the Constitution of India may not interfere with the quantum of the

punishment sought to be imposed upon the delinquent as what is to be seen is the decision making process and not the ultimate decision until and unless the same is disproportionate to the gravity of the charge and shocks the conscience, is concerned, there is no quarrel to the said proposition since the facts and circumstances of the present case, are on different footing and in the opinion of the Court the Revisional Authority could not have exercised powers under Rule 29(1)(vi) of the Rules, 1965.

45. Accordingly, we are of the firm opinion that the writ petitioners have miserably failed to show any illegality committed by the Tribunal in passing the order impugned so as to warrant interference in the present proceedings.

46. Resultantly, the writ petition is **dismissed**.

47. Interim order if any stands vacated.

Order Date :- 9.9.2024

piyush

(Vikas Budhwar, J) (Arun Bhansali, CJ)