

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 548 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Baram Kumar Sahoo, aged about 34 years, S/o Sri Purandar Sahoo, permanent resident of Vill/Post-Jogimunda, Dist.-Balangir, Orissa, Pin -767027 now working as GDSBPM, Gambhari BO in a/c/w Jogimunda S.O.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Post Master General, Sambalpur Region, At/PO./dist-Sambalpur-768001.
3. Superintendent of Post Offices, Balangir Division, At/PO/Dist-Balangir – 767001.
4. Sri S.K.Moharana, I.O-cum-SDI(P) Sonapur Sub Division, At/PO-Sonapur, Balangir.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 13.02.2020

Order on : 27.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :

“In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure A/9, A/13, A/14 & A/16 and direct the respondent No.3 to post the applicant as Postman w.e.f. the date the other candidates have been posted as Postman.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain ever pray.”

2. The applicant was selected for the post of the Gramin Dak Sevak Branch Post Master, Gambhari Branch Post Office (in short GDSBPM) on 22.7.2002 (Annexure-A/1) and then after due verification of all certificates submitted by the applicant, he was allowed to join as GDSBPM on 19.8.2002 (Annexure-A/2). He received a show cause notice dated 10.5.2011 (Annexure-A/5) to show cause about his income certificate which was alleged to be false. Applicant

replied on 4.6.2011 (Annexure-A/6) stating that he did not mislead the authorities and he was selected on merit after verification of all certificates. He also submitted a representation on 7.7.2011 (Annexure-A/8). Then after two years, he was issued a charge-sheet dated 6.2.2013 (Annexure-A/9), which has been impugned in this OA mainly on the ground of delay. It is further stated in the OA that he is not promoted though he qualified in the selection to the post of postman with the number 3 in the merit list, as he was charge-sheeted.

3. The Inquiry Officer (in short IO) was appointed on 8.3.2013 and the applicant gave a detailed written statement dated 8.6.2013 with prayer to drop the charges and when no action was taken, he filed OA No. 378/13 which was disposed of with a direction to consider the written statement dated 8.6.2013 of the applicant. The written statement was rejected by the disciplinary authority (respondent no.3) vide order dated 15.7.2013 (Annexure-A/13). Thereafter, the IO proceeded with the inquiry and he submitted a report stating that the charges are not proved. It is alleged in the OA that the respondent no.3 has sent a disagreement note dated 17.11.2014 (Annexure-A/14) holding that the charges are proved.

4. The applicant filed the MA No. 969/14 in this OA on 24.11.2014 and this Tribunal passed the order dated 11.12.2014 directing the respondents that:-

“It is further directed that Respondents shall not act upon letter dated 17.11.2014 (A/14) of O.A. until further orders.”

It is alleged in the OA that in spite of the above order of the Tribunal, the respondent no. 3 passed the order dated 31.12.2014 (Annexure-A/16) removing the applicant from service. Thereafter, the applicant was forced by the authorities to hand over his house which was locked by the authorities.

5. Counter to the consolidated OA has been filed by the respondents on 31.8.2019, taking the plea that the respondent no. 3 did not receive the order dated 9.12.2014 and it was received from the applicant only on 16.1.2015 (Annexure-R/12) and by that time he was already removed from service. It was averred that the applicant had submitted fake income certificate which was confirmed by the letter of Tahsildar, Patnagarh dated 24.3.2011 (Annexure-R/6). It is further stated in the Counter that “The I.O. of the inquiry did not proved the charges levelled against the applicant, but the Respondent no. 03 being the disciplinary authority of the applicant after going through the inquiry report of the I.O did not agree with the finding of the I.O as the issuing authority of the income certificate i.e Tahsildar, Patnagarh clearly submitted that, the income certificate of the applicant has not been issued from the office of the Tahsildar, Patnagarh.”

6. It was further averred in the Counter that the applicant was selected as GDSBPM on the basis of his income certificate and more meritorious candidate i.e. Debakanta Meher was available with higher percentage of marks than the applicant.

7. Heard learned counsel for the applicant, who besides reiterating the contentions of the applicant in the pleadings, also submitted that the signature of Tahsildar, Patnagarh in the letter at Annexure R/5 and R/6 appear to be different. No one testified about the genuineness of the letters in the inquiry on behalf of the Tahsildar, Patnagarh as stated in the report of the IO.

8. Learned counsel for the respondents was heard. He filed copy of the judgment in the case of Chairman LIC of India vs. A. Masilamani 2013 6 SCC 530 and Union of India vs. Upendra Singh 1994 3 SCC 357 and submitted that as per the judgments cited, the Tribunal has no jurisdiction to interfere at interlocutory stage to go into correctness of the charges.

9. Before considering merit of the case, the point raised by learned counsel for the respondents regarding jurisdiction of this Tribunal to intervene at this stage of the departmental proceeding. In the case of A. Masilamani (supra), the punishment in a disciplinary proceeding was set aside by High Court in view of a number of defects. On appeal, Hon'ble Apex Court held as under:-

“8. In view of the issues raised by the learned counsel for the parties, the following questions arise for our consideration:

- i) When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds, i.e., non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings, from the point that they stood vitiated and;
- ii) If the answer to question no.1 is, that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

9.....

10..... The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion.”

10. In the case of Upendra Singh (supra), the Tribunal had passed an interim order restraining the authorities from taking any action on the charge-sheet, and the said interim order was challenged and Hon'ble Apex Court, while vacating the interim order, directed the Tribunal to deal with the original application in the light of the judgment in the case of Union of India vs. A.N. Saxena. Thereafter, the Tribunal examined the correctness of the charges and quashed the charges. It was held by Hon'ble Apex Court that in spite of the ratio of A.N. Saxena judgment, Tribunal chose to interfere "on the basis of material which was yet to be produced at the inquiry." It was held as under:-

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into.....

11. It is noticed that this Tribunal had passed an order on 25.3.2014 in the present OA directing the respondents not to act upon the charge-sheet dated 6.2.2013 without leave of the Tribunal. In spite of this order, the respondent no.3 (disciplinary authority) went ahead to pass the disagreement note dated 17.11.2014 (A/14) disagreeing with the findings of the IO and there is nothing on record to show that the respondents have moved for leave of the Tribunal as per the order dated 25.3.2014. This was considered by the Tribunal on 9.12.2014 and taking note of the fact that the authorities have gone ahead to pass the order holding the applicant guilty of charges, the respondents were directed not to take any action on the basis of the said disagreement note (A/14) dated 17.11.2014 till 11.12.2014. On 11.12.2014 after hearing both the parties, the Tribunal directed the respondents not to take any action on the Annexure-A/14 of the OA until further orders. In spite of the direction of the Tribunal, the respondent no. 3 went ahead to pass the order dated 31.12.2014 imposing the punishment of removal from service on the applicant. It has been explained in the Counter that the copy of the orders dated 25.3.2014 and dated 9.12.2014 of the Tribunal were not received by the respondent no.3 and these orders were received on 16.1.2015 and that on 9.12.2014 the respondents' counsel was not present.

12. It is noticed that on 11.12.2014, when the interim order was passed by this Tribunal directing the respondents not to take any action on Annexure-A/14, respondents' counsel was present and was heard. Nothing has been mentioned in the Counter as to how the order dated 31.12.2014 was passed by the respondent no.3 in spite of the interim order dated 11.12.2014 of the Tribunal passed in presence of the respondents' counsel and copy of this order

was handed over to the counsels for both the sides. Similarly, the order dated 25.3.2014 was passed after hearing the respondents' counsel and copy of the order was also given to the counsels for both the parties. Hence, the contention of the respondents in the Counter that the respondent no.3 did not receive the copy of these orders till 16.5.2015 cannot be accepted. Further, it is noticed that no action was taken by the respondents to challenge or to modify/vacate the aforesaid interim orders of the Tribunal as per the provisions of law.

13. From the above, it is clear that the action of the respondent no. 3 violated the interim orders of the Tribunal repeatedly by first issuing the order dated 17.11.2014 (Annexure-A/14) and then the order dated 31.12.2014 imposing the punishment of removal from service on the applicant. Hence, we are of the considered view that the facts and circumstances of the present OA as discussed above are different from the facts of the cases cited by learned counsel for the respondents and discussed in paragraph 9 and 10 of this order.

14. It is further seen from the order dated 17.11.2014 (Annexure-A/14) that the respondent no.3 had communicated the reasons for disagreement with the report of the IO and has also drawn conclusion by observing as under:-

“Therefore it is construed that C.O. had submitted forged income certificate at the time of selection to the post of GDS BPM Gambhari B.O. & got appointment of GDS BPM Gambhari B.O. Thus he is guilty of charges levelled against him in Article no.1.”

As per the rule 15 of the CCS (CCA) Rules, 1965, the disciplinary authority is to communicate the grounds for disagreement with the IO's report and allow the charged officer to represent and then proceed further after considering the representation of the charged officer. In this regard the sub rules 2 and 2A of the rule 15 of the CCS (CCA) Rules, 1965 state as under:-

“(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.

(2A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).”

In this case the disciplinary authority (respondent No.3) had drawn the conclusion about the charges before communicating his disagreement with the IO's report and before considering the applicant's representation. Contentions of the applicant in para 4.12 of the OA that the respondent no.3 has concluded

that the charges are proved without giving any opportunity of being heard, have not been specifically contradicted in the Counter. Hence, the impugned order dated 17.11.2014 is also a violation of the rule 15 of the CCS (CCA) Rules, 1965.

15. We are conscious of the settled law on the scope of judicial review of the disciplinary proceedings by the Tribunal. Hon'ble Apex Court in **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484** considered the scope of judicial review in disciplinary proceeding and held as under:-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

16. Similarly in the case of **Union of India Vs. P. Gunasekaran 2015 (2) SCC page 610**, Hon'ble Supreme Court has held as under:-

“.....In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.”

17. In view of the discussions above, it is held that the impugned order dated 17.11.2014 (Annexure-A/14) and the order dated 31.12.2014 (Annexure-A/16) are not sustainable under law as these were passed in violation of the interim order of the Tribunal and these orders also violated the rule 15 of the CCS (CCA) Rules, 1965 as discussed earlier. Accordingly, these impugned orders at Annexure A/14 and A/16 are quashed and the matter is remitted to the disciplinary authority (respondent No.3) to consider the IO's report afresh and pass as appropriate order under the rule 15 of the CCS (CCA) Rules, 1965 within one month and to pass his final order in the disciplinary proceeding against the applicant and communicate the same to the applicant within 3 (three) months from the date of receipt of a copy of this order.

18. The OA is allowed in part as above. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)