

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 71 of 2017**

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

Kailash Chandra Sahoo, aged about 59 years, S/o-Late Banamali Sahoo, At/PO-Kaniha, PS-Angul, Dist-Angul.

.....Applicant.

VERSUS

1. Union of India, represented through its Director General of Posts, Govt. Of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda-751001.
3. Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur.
4. Director Postal Services, Office of PMG Sambalpur Region, At/PO/Dist-Sambalpur.
5. Superintendent of Post Offices, Dhenkanal Division, At/PO/Dist-Dhenkanal-755001..

.....Respondents.

For the applicant : Mr. D. P. Dhalsamant, counsel

For the respondents: Mr. B. Swain, counsel

Heard & reserved on : 04.03.20020

Order on : 26.05.2017

**O R D E R**

**Per Mr.Gokul Chandra Pati, Member (A)**

The applicant has filed this Original Application (in short OA), filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

*“ 8.1 That the order dated 11.11.2014(A/1), the order of removal dated 28.04.2015(A/3) and order dated 24.07.2015 (A/4) be quashed.*

*8.2 That the order of punishment dated 07.09.2015(A/7), rejection order passed by the respondent no.2 dated 18.11.2016(A/12) be quashed.*

*8.3 That the respondents be directed to reinstate the applicant in to service with all consequential service benefits.*

*8.4 And further be pleased to pass any order/order(s) as deem fit and proper to give complete relief to the applicant.”*

2. The applicant, while working as PA in Nalco Nagar MDG was issued a charge memo dated 11.11.2014 (Annexure-A/1) under the rule 14 of the CCS (CCA) Rules, 1965 (referred in short as Rules, 1965) on allegations of withdrawal of money from some accounts without the knowledge of the

concerned depositors. It is stated in the OA that he was advised by the respondent no. 5 to admit the charges by which the proceeding can be finalized with minor penalty and that on his assurance, he submitted his representation admitting the charges. The Inquiry Officer (in short IO) was appointed to conduct the inquiry into the charges. As stated in the OA, the applicant attended the inquiry on 5.1.2015 and admitted the charges before the IO in view of the assurance given by the respondent no. 5. Copy of the inquiry report was sent to the applicant, who submitted his representation requesting to take a lenient view. It is averred in the OA that although the respondent no. 5 was not the Disciplinary Authority (in short DA) for the applicant who is an BCR employee, he passed the punishment order imposing the punishment of removal from service vide order dated 28.4.2015 (Annexure-A/3). The appeal was filed before the respondent no. 4, who instead of disposing the appeal, reviewed/revised the punishment order under the rule 29 (v) of the Rules, 1965 vide his order dated 24.7.2015 (Annexure-A/4), since the respondent no. 5 was not the competent DA in this case and the matter was remitted to the DA for de-novo proceeding. Vide order dated 7.9.2015 (Annexure-A/7), the respondent no. 4, acting as the DA, imposed the punishment of dismissal from service.

3. The applicant filed an appeal dated 9.11.2015 (Annexure-A/8) before the respondent no. 3 as the Appellate Authority (in short AA), who advised the applicant to file revision petition to the Respondent no. 2 vide letter dated 6.1.2016 (Annexure-A/9). The applicant submitted the revision petition/representation dated 11.1.2016 (Annexure-A/10) before the respondent no.2. He also filed the OA No. 555/2016 before the Tribunal which was disposed of vide order dated 17.8.2016 (Annexure-A/11) directing the respondent no. 2 to dispose of the representation dated 11.1.2016 (A/10). It is stated in the OA that the respondent no. 2 rejected the appeal dated 9.11.2015 (A/8) filed before respondent no. 2, without complying the Tribunal's order dated 17.8.2016 (A/11).

4. The applicant has challenged the orders passed by the authorities in this OA on the ground that the orders passed by the DA and higher authorities are bad in law since the respondent no. 4 acted like both the AA and DA. As AA, he remitted the matter to the DA i.e. himself to dispose of the matter. The respondent no. 4 as the DA imposed the punishment of dismissal from service vide order dated 7.9.2016 (A/7) without establishing the charges against the applicant on the ground that the charges were admitted and the same was passed without proper application of mind and there is no whisper about the order dated 28.4.2015 (A/3) passed by respondent no. 5.

5. It is stated in the OA that the respondent no. 4 enhanced the punishment from removal to dismissal without any notice to the applicant and hence, it is violation of the Rules, 1965 and that the order dated 24.7.2015 of the respondent no. 4 was not as per the rules. Further, the order dated 24.7.2015 (A/4) was passed under the rule 29(A) which is the power of review which is vested with Hon'ble President. It is further stated in the OA that the order dated 18.11.2016 (A/12) passed by respondent no. 2 without application of mind and the applicant could not file the appeal against the order passed by the respondent no. 4 as the DA. It is also stated by the applicant that for the same allegation, criminal case was instituted against the applicant, but the police filed the final report vide a copy of the report at Annexure-A/13.

6. The Counter filed by the respondents has described the action of the applicant leading to loss to the department on account of fraudulent activities as alleged in the charge memo. It is averred that the applicant in his statement dated 5.1.2015 before the IO admitted all the charges unconditionally. The IO submitted his report and after following the procedure under the rules, the respondent no. 5 imposed the punishment of removal from service vide order dated 28.4.2015 (A/3). The applicant filed the appeal before the respondent no. 4 who reviewed the punishment and ordered de-novo proceeding from the stage of finalization of the proceeding. He functioned as the DA since the applicant was BCR employee and he imposed the punishment of dismissal from service. Applicant filed a petition before respondent no. 3 who was not the revisionary authority for the case. He was advised to address his revision to the respondent no. 2 who passed the order dated 18.11.2016 rejecting the revision petition of the applicant dated 9.11.2015.

7. It is further averred in the Counter that there was no assurance from the respondent no. 5 to the applicant to impose minor penalty. It is also stated that the respondent no. 4 (Director Postal Services, Sambalpur) is the competent authority to exercise the power under the rule 29(v) of the CCS (CCA) Rules, 1965 to review the punishment and after review, he remitted the matter to the DA to pass an appropriate order. It is stated that the applicant has not filed any appeal to the competent authority as observed in the order dated 18.11.2016 of the respondent no. 2. The judgment of Hon'ble Apex Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Store Limited) etc. vs. The Secretary, Sahakari Nourakara Sangh etc. AIR 2000 SC 3129 and Lucknow K. Gramin Bank (Now Allahabad U.P. Gramin Bank) & Anr. vs. Rajendra Singh in C.A. No. 6142/2013 have been relied on by the respondents to aver that this Tribunal has no jurisdiction to interfere in the punishment imposed by the authorities.

8. Heard learned counsel for the applicant, who after reiterating the stand in the OA, emphasized the following arguments:-

i. When the appeal is pending before the Appellate Authority (in short AA), then AA cannot exercise the power of revision under the rule 29 of the Rules, 1965 since no revision is permissible when the appeal is pending. The averments in para 5.8 of the OA was replied in para 29 of the Counter in which it is stated that the applicant's appeal was pending.

ii. The respondent no. 2 disposed of the representation at Annexure-A/8 and not Annexure-A/10 as directed by the Tribunal.

iii. The respondent no. 4 could not have acted as the DA after functioning as AA/Revisionary Authority and after passing order dated 24.7.2015 (A/4).

9. Learned counsel for the respondents was heard. He reiterated the stand taken in the Counter and also cited the judgments stated in the Counter to submit that the OA is liable to be dismissed.

10. Before proceeding further, it is necessary to examine the objection of the respondents in the Counter that the Tribunal has no jurisdiction to adjudicate this OA by relying on the judgment in the case of Janatha Bazar (supra). In that case, the concerned employees were charged with the breach of trust and misappropriation of the value of the goods based on shortage of detected during stock verification. The punishment of dismissal from service was imposed. On the basis of the evidence on record, it was observed that the charges of breach of trust and misappropriation were established. In such factual background, the decision to reinstate the concerned employees was set aside by Hon'ble Apex Court. In the present OA before us, perusal of the charge memo dated 11.11.2014 (Annexure-A/1) reveals that the charges related to violation of the provisions of Rule 33(5) (ii), Rule 31(3)(iv) of POSB Manual Volume-I, Sixth Edition corrected upto July, 2012 and failure to maintain absolute integrity and devotion to duty and acting in a manner which is unbecoming on the part of the Govt. servant and thus violation of conduct rules. There is no mention about misappropriation or breach of trust in the charge memo. Hence, the cited case is factually distinguishable.

11. In the case of Rajendra Singh (supra) relied on by the respondents in the Counter, six employees were charged with identical charges. For three employees, the charges were established in the inquiry and punishment of dismissal was imposed on them. The rest three employees admitted the charges with apology and undertaking and they were imposed the punishment of reduction of basic pay by one stage. In the writ petition filed by three

persons who were dismissed from service, the matter was remitted to the appellate authority with direction to impose specific punishment. While examining the law relating to the judicial review of the disciplinary proceedings, it was held by Hon'ble Apex Court as under:-

“The principles discussed above can be summed up and summarized as follows:

- (a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;
- (b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;
- (c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;
- (d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.
- (e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable.”

Thus, as per the law laid down, the judicial review is permissible if the punishment awarded is found to be shocking to the conscience of the Court and otherwise there is no scope for the Tribunal to interfere in the punishment imposed in a disciplinary proceeding.

12. We take note of the judgment of Hon'ble Apex Court in the case of B.C. Chaturvedi vs Union Of India And Ors. reported in 1996 AIR 484, in which the scope of judicial review by the Tribunal has been laid down 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.”

As per the ratio of the above cited judgment, the Tribunal can interfere in a disciplinary proceeding if the authorities have not acted as per the rules of natural justice, or violated the statutory rules, or the findings are based on no evidence.

13. From the discussions in proceeding paragraphs on the scope of judicial review by this Tribunal, there is justification for the Tribunal to interfere in the disciplinary proceedings if there is violation of the statutory rules, or if the findings on the authorities are based on no evidence, or if the punishment is such that it shocks the conscience of the Tribunal. Therefore, the contentions of the respondents that the Tribunal has no jurisdiction to interfere in this case are not in accordance with the settled position of law and cannot be accepted.

14. The case of the respondents is that the applicant had admitted all the charges. The report of the IO dated 19.1.2015(Annexure-A/2) observed as under:-

“ All the charges/imputations were admitted by the CO during the preliminary hearing of the inquiry and hence he has violated the departmental rules cited there in and also failed to maintain absolute integrity and due devotion to duty as enjoined in Rule 3(1)(i), Rule 3(1)(ii) and Rule 2(1)(iii) of CCS(Conduct Rules, 1964.

**(E) Findings:-**

On the basis of documentary evidences and admittance of the charges by the CO unconditionally in the case before me and in view of the reasons given above, I hold that all the three charges (Article 1 to III) against Sri Kailash Chandra Sahoo, former SPM, Vikrampur SO, Now PA, Nalconagar MDG are proved beyond any doubt.”

The applicant's case is that he had admitted the charges as per the advice of the respondent no.5. This allegation has been rejected by the respondent no.2 in his order dated 18.11.2016(A/12) with observation that there is no evidence in respect of the applicant's claim that respondent no.5 had advised him to admit the charges. There were specific allegations as stated in para 3 sub para(ii) and (iii) of the order dated 18.11.2016. There is no mention in the said order if any fact finding inquiry was undertaken by the higher authorities to see if there is any basis for such allegations of the applicant.

15. Further, the respondent no.5 imposed the penalty of removal from service although he was not competent to pass such order. Whether it was done wrongly or deliberately by respondent no.5, against whom the applicant has raised allegation of harassment [vide para 3(v) and 3(vi) of the order dated 18.11.2016], has not been examined in order dated 18.11.2016 or explained in the counter. It is mentioned by the respondents that respondent no.5 is not competent to act as DA for applicant who is in BCR grade. If he was not the competent as DA, then why he passed the order dated 28.4.2015 (A/3) and how the respondent no.4 exercised power to review/revise the said punishment order passed by respondent no.5, have not been explained in the counter.

16. The applicant in para 5.8 and 5.9 of the OA has raised the question of the authority of respondent no.4 to revise or review the punishment order under rule 29(2) of the CCS(CCA) Rules, 1965, particularly when an appeal is pending. No specific reply to this question has been furnished in the counter except plain and bald denial of the averments in OA. Perusal of the order dated 24.07.2015(A/4) it is seen that the said review was done by respondent no.4 under the rule 29(v) of the CCS(CCA) Rules, 1965 as stated in that order. The rule 29 (v) states that the appellate authority may revise any order passed under these rules within six months of the date of order such passed to be revised. The sub-rule (2) of the aforesaid rule 29 also states as under:-

**“(2) No proceeding for revision shall be commenced under after**

- (i) The expiry of the period of limitation for an appeal,\**
- (ii) The disposal of appeal, where any such appeal has been preferred.”**

In the instant OA, the appeal dated 6.6.2015 was filed by the applicant before respondent no.4 as admitted in the counter. When the appeal was pending for disposal, the appellate authority i.e. the respondent no. 4 exercised his power of revision under the rule 29(v) of the CCS (CCA) Rules, 1965 which is not permissible in view of the provisions under the rule 29(2) of the aforesaid rules. Further, the respondent no.4 is not the competent appellate authority for applicant, who is a BCR employee for whom he was the DA and he could not have exercised power of revision under the rule 29. Hence, the order dated 24.7.2015 of respondent no.4 passed suo motu as appellate authority to remit the matter to himself as the DA, is a gross violation the provisions the rule 29 of the CCS(CCA) Rules, 1965. We are, therefore, inclined to agree with the applicant's contention that the aforesaid order dated 24.7.2015 (A/4) is illegal.

17. The applicant had raised the above issue before the respondent no.2 as stated in para 3(ix) and 3(x) of the order dated 18.11.2016(A/12), which were not considered in the order dated 18.11.2016 (A/12) in spite of the clear

provisions of the rule 29(2) excluding the authority exercise power under rule 29(v) when the appeal is pending.

18. The respondent no. 4 passed the fresh punishment order dated 7.9.2015 (Annexure-A/6) as DA, after first exercising power of revision as appellate authority. The order dated 7.9.2015 does not specify the fact that the applicant has the right to appeal against the said order before the competent appellate authority, i.e. the respondent no. 3 under the provisions of the CCS (CCA) Rules, 1965. Though the applicant filed a petition dated 9.11.2015 (A/8) before respondent no.3, it was not treated as an appeal, since the applicant mentioned it as 'revision petition'. The applicant was advised by the respondents to address the said petition to respondent no. 2 as revisionary authority instead of advising him to file the appeal. In other words, the applicant's right to appeal under the provision of CCS (CCA) Rules, 1965 was not exercised and the authorities did not correctly advise the applicant in this regard to treat his Revision Petition dated 9.11.2015 as appeal against the order dated 7.9.2015 (A/6) for consideration of the respondent no. 3.

19. Under the rule 23 of the CCS(CCA) Rules, 1965, the applicant is entitled for the appeal against the order dated 7.9.2015 (Annexure-A/7) and though he had filed a petition before the competent appellate authority, it was treated as Revision Petition and the authorities did not advise the applicant to avail of the benefit of the appellate forum. The net result of all these is that the applicant could not avail the benefit of the appeal which was available. We do not agree with the respondents' contention that the applicant did not opt to exercise his right of appeal in absence of correct advice to the applicant by the authorities.

20. In the circumstances, we are of the considered opinion that the respondents have violated the provisions of the CCS(CCA) Rules, 1965 in passing the impugned orders dated 28.4.2015 (A/3), 24.07.2015 (A/4), 7.9.2015 (A/7) and 18.11.2016 (A/12) and the applicant was not extended a reasonable opportunity as per law to defend the charges. Hence, these orders are not sustainable in the eyes of law. Accordingly, the above impugned orders are set aside and the matter is remitted to the disciplinary authority i.e. respondent no. 4 to reconsider the matter from the stage of the receipt of the inquiry report and pass a fresh order in the matter in accordance with the provisions of law under intimation to the applicant within three months from the date of receipt of a copy of this order. The OA is accordingly allowed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)  
pms

(GOKUL CHANDRA PATI)  
MEMBER (A)



