

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00443/2014

Date of Reserve: 03.01.2020
Date of Order: 09.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Pradeep Kumar Lenka, S/o. Late Bholanath Lenka, Vill-Bajana, Post-Phalasada, PS-Soro, Dist-Balasore – at present working as Postal Assistant in the Office of the Superintendent of Post Offices, Balasore Division.

...Applicant

By the Advocate(s)-M/s.H.B.Sutar
R.Ku.Sutar

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Posts, Dak Bhawan, New Delhi-110 001.
2. The Chief Post Master General, Odisha Circle, P.M.G. Square, Bhubaneswar-751 001, Dist-Khurda.
3. Director of Postal Services, Head Quarters Region, Bhubaneswar-751 001.
4. Superintendent of Post Offices, Balasore Division, Balasore-756 001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Postal Assistant under the Department of Posts.

He has approached this Tribunal in this O.A. seeking for the following reliefs.

- i) Direction/directions may be issued quashing the existing order of punishment Annexure-7 and Annexure-9 including Annexure-5.
- ii) Direction/directions may be issued as deemed fit and proper so as to give complete relief to the applicant.

2. Brief background of the facts leading to filing of this O.A. are that the applicant while working as Sub-Post Master, Issanagar S.O. under Balasore Postal Division was issued with a Memo dated 23.11.2010 (A/3) in contemplation of initiation of disciplinary

proceedings against him under Rule-16 of CCS(CCA) Rules, 1965, containing the following Articles of Charge.

Article-I

Sri Pradeep Kumar Lenka is working as SPM, Issanagar Post Office since 12.04.2010. While working as such, on dated 12.06.2010, Sri Lenka opened a Joint SB A/C.No.1402843 with initial deposit of Rs.50/- in the name of Satyabrata Satpathy & Anju Satpathy, Nayabazar, Balasore.

During course of inquiry, it is revealed that Sri Lenka has opened the aforesaid SB account without obtaining introducer on SB-3 Card on dated 12.06.2010. More so, Sri Lenka has failed to collect 03 recent photographs of the depositors, identify proof & Address Proof as required under SB Order No.8/2010 circulated vide Directorate Letter No.109/04/2007-SB dated 23.04.2010 while opening of aforesaid SB account and thereby shown carelessness and gross negligence of duty and violated the instructions contained in Dte. Letter No.35-38/90-SB dated 22.11.90 & SB Order No.8/2010 circulated vide Dte. Letter No.109/04/2007-SB dated 22.04.2010 communicated vide this office letter No.SB/Rlgd/10/Ch-VII)Sub) dated 03.05.2010.

As such, Sri Pradeep Kumar Lenka in his capacity as SPM Issanagar S.O. Balasore has failed to maintain due devotion to duty and acted in manner which is unbecoming on the part of a Govt. Servant as enjoined in Rule-3(1)(ii) & 2(1)(iii) of CCS Conduct Rules, 1964.

Article-II

Sri Pradeep Kumar Lenka while working as SPM Issanagar has accepted deposit in shape of Puri HO-Cheque No.AB 0442895 dated 31.08.2010 for Rs.300000/- (Three lakhs) only on dated 01.09.2010 at Issanagar SO for deposit in Joint SB A/C.No.140283 standing in the name of Sri Satyabrata Satpathy & Anju Satpathy at Issanagar SO resulting the balance in the said joint SB A/C. Exceeded the maximum limit of balance of Rs.200000/- in violation of Ministry of Finance (DEA) Gazette Notification GRS No.165(E) dated 28.02.2000 circulated vide CPMG (O), Bhubaneswar letter No.SB/1-1/Rlg./Ch.VIII dated 15.03.2000.

By the above act Sri Lenka exhibited lack of devotion to duty contravening the provision of Rule-3(1)(ii) of CCS(Conduct) Rules, 1964".

3. The applicant submitted his defence representation dated 4.11.2011 (A/4) to the Superintendent of Post Offices, Balasore Division, who, in consideration of the same, vide Memo dated 28.01.2011 (A/5) imposed punishment on the applicant, which reads as follows:

"Instead of admitting his fault, the official has cited so many irrelevant facts which are no way related to charges and the plea taken are not tenable. In view of such, taking into account the past service rendered by the official, I Sri Golak Ch.Mohanty, SPOs Balasore Division, Balasore award the punishment of 'reduction to lower stage in the time scale of pay by one stage for a period not exceeding six months without cumulative effect and not adversely effecting his pension" with immediate effect with a hope that the official will not repeat such occurrence in future".

4. Aggrieved with this, the applicant preferred an appeal dated 5.3.2011(A/6) to the Director of Postal Services, (HQ), Bhubaneswar and the said Appellate Authority, vide order dated 22.07.2011 (A/7) modified the punishment as follows:

"In view of the above, I, Shri Suvendu Swain, DPS(HQ), O/o. The Chief PMG, Orissa Circle find that there is no lapse on the part of the appellant with regard to Article-I, Article-II a procedural irregularity. However, keep in view the long future of the appellant in the department, I order that the punishment of reduction to lower stage in the Time Scale for a period not exceeding six months without cumulative effect is hereby reduced to withholding of one increment for one month with immediate effect, which will meet the ends of justice".

5. Thereafter, the applicant submitted a petition dated 24.01.2012 (A/8) to the Reviewing Authority, i.e., CPMG, Odisha Circle, Bhubaneswar. The Reviewing Authority, vide order dated 11.02.2013 (A/9), rejected the petition, the relevant part of which reads as follows:

"Now coming to the charge No.1 and the point of non-elaboration of procedural mistakes, it is observed that as per Note-3 of the POSB Manual Volume-1, the introduction of the depositor is mandatory at the time of opening of SB Accounts and this rule was in force w.e.f. 01.01.90. The petitioner being the counter Asst. Was quite aware of this rule. But the petitioner while opening the SB Account No.1402843, had accepted the amount without having any signature with the name & address of the introducer in the SB-3 application form. From the Xerox copy of the SB-3 application form submitted, it evident that the space meant for the introducer in the SB-3 application form is blank. The argument of the petitioner that he has signed in SB-3 in place of introducer name & address is not correct.

The argument of the petitioner that one of the depositors Sri S.Satpathy is the Ex.SPOs and he has produced PAN Card/Driving licence at the time of opening of SB A/c. Is not acceptable as the petitioner has not adopted the procedure of identification by suitably making entry & submitting Xerox copy of the same with SB-3.

Secondly, that the depositor has opened earlier one MIS A/c.No.85985 on 12.05.10, i.e., prior to opening of SB A/c. Observing the KYC norm may be true but that has also not been noted in manuscript in SB-3 in order to prove the identification.

As per Rule-20(1) of the POSB Manual, Volume-1, the maximum limit balance that can be granted in a single and joint account is Rs.,1,00,000/- & Rs.2,00,000/- respectively. When the maximum balance is reached in the account, no further deposits should be accepted. The petitioner while accepting the cheque for Rs.3,00,000/- was aware of the fact that the total amount in the SB Account, would be beyond the prescribed limit on clearance of the cheque & credit in the A/c, which is beyond the permissible limit in a joint account. But the petitioner accepted such cheque which was objected by the postmaster in error extract No.6 dated 03.09.10. Thus the procedural lapses in the charge No.II is clearly proved.

The arguments of the petitioner that the appellate authority has absolved the petitioner from both the charges is not at all correct. The appellate authority has observed some procedural mistakes as mentioned above and has issued the appellate order after due consideration of the submissions made in the appeal. Reduction of penalty by the appellate authority does not mean he was absolved of the charges against him.

Thus, I find that, for the lapses mentioned above, there is no defence in the petition. The lapses are obvious & evident in black & white. Hence, I have no reason to hold the petitioner free from the charges levelled against him in the disciplinary proceedings. The punishment given by the disciplinary authority is already modified by the appellate authority and quite mild. I therefore, have no reason to further modify it.

I, Sri S.K.Chakrabarti, CPMG, Odisha Circle, Bhubaneswar, therefore, reject the petition and order accordingly".

6. Hence, this application seeking for reliefs as aforementioned.
7. Respondents have filed a detailed counter opposing the prayer of the applicant to which, the applicant has also filed rejoinder.
8. We have heard the learned counsels for both the sides and perused the records. Since, the Appellate Authority has held that the there is no lapse on the part of the applicant in so far as Charge No.1 is concerned, we are not inclined to deal with this particular aspect of the matter. However, as regards Charge No.2, the Appellate Authority having held that there has been procedural irregularity in accepting the deposits beyond the prescribed limit for Joint Account, reduced the punishment as imposed by the Disciplinary Authority and

this modified punishment has also been affirmed by the reviewing authority. In Paragraph-5 (D) of the O.A., the applicant has taken the grounds as under:

"For that the entire both the allegations do not bear cause of action as the first one was permissible by Rules of the Department and the 2nd one was that the cheque in question was not encashed and the amount was not deposited in the S.B. account to be considered excess to the prescribed limit as alleged".

9. In Paragraphs-4 of the counter-reply, the respondents have mentioned as under:

"...The Appellate Authority considered the appeal of the applicant and observed that as per S.B. Order No.10/2010 dated 02.06.2010, action of the applicant in not insisting the depositor to furnish introducer is quite consistent with the rules in vogue in respect of Charge No.1. In respect of Charge No.II, the DPS(HQ), Bhubaneswar has observed that "nowhere it is also mentioned if a single cheque which exceeds the maximum limit in a Savings Account would not be accepted for deposit and that if the Account holder agrees to withdraw the excess amount on the day of the clearance of the cheque. There is no bar for the acceptance of a single cheque which exceeds the maximum limit. The DPS(Hq), Bhubaneswar has also opined that accepting cheque beyond limit of an Account is not irregular".

10. As quoted above, it is the specific case of the applicant in Paragraph-5(D) of the O.A. that the amount which has been alleged to be excess of the prescribed limit was neither deposited in the SB Account nor encashed. In reply to this, the respondents have admitted this fact in their counter. Viewed from this angle, the Charge No.II levelled against the applicant being vague and unspecific, does not stand to judicial scrutiny. Apart from this, as already mentioned above, the DPC (Hq), being an Appellate Authority has also held in his order dated 22.07.2011(A/7) that there is no bar for the acceptance of a single cheque which exceeds the maximum limit. Having held so, his further finding that Charge No.II is a procedural irregularity, amounts to approbation and reprobation of facts, which is not permissible under the law and therefore, Charge No.II made against the applicant was unjustified.

11. For the reasons aforesaid, we are of the view that this matter needs to be reconsidered by the Reviewing Authority. In view of this, we quash the order dated 11.02.2013 (A/9) passed by the Reviewing Authority and remit the matter back to him for

reconsideration of the same in the light of what has been discussed above and pass an appropriate orders within a period of sixty days from the date of receipt of this order.

12. In the result, the O.A. is thus disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
(MEMBER(A))

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