

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 929 of 2016

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

Sri Sanatan Choudhury, aged about 51 years, S/o-Late Kunja Bihari Choudhury, Vill/PO-Tikilipada, PS-Hengiri, Dist-Baragarh, presently working as Postal Assistant Burla MDG, Dist-Sambalpur.

.....Applicants

VERSUS

1. Union of India represented through its Director General of Posts, Govt. of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
3. Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur-768001.
4. Director Postal Services, Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur-768001.
5. Superintendent of Post Offices, Sambalpur Division, At/PO/Dist-Sambalpur-768001.

.....Respondents.

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

For the respondents: Mr. D. K. Mallick, counsel

Heard & reserved on : 04.03.2020 Order on : 26.05.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for the following reliefs:-

8.1 That the charge sheet dated 09.03.2016(A/2), order dated 11.5.2016, order dated 20.09.2016(A/6), charge memo dated 15.11.2016 under (A/7) and order dated 9.12.2016(A/9) be quashed.

8.2 Further be pleased to pass any other order/orders as deemed fit and proper.

2. The applicant was issued a charge memo dated 9.3.2016 (Ann-A/2 of the OA) under the rule 16 of the CCS (CCA) Rules, 1965 for minor penalty and was imposed a punishment vide order dated 11.5.2016 (Ann-A/4) by the Disciplinary Authority (in short DA). The appeal filed by the applicant was allowed by the Appellate Authority (in short AA) vide order dated 20.9.2016 (Ann-A/6) by which denovo proceeding from the stage of issue of charge-sheet was ordered.

3. In compliance of the order of the AA, fresh charge memo dated 15.11.2016 (Ann-A/7) was issued by the DA. The applicant submitted his reply to the charge memo on 25.11.2016 (Ann-A/8), on which the DA passed the impugned order dated 9.12.2016 (Ann-A/9 of the OA) imposing the punishment of reduction of pay by one stage in level 6 of the pay matrix from Rs. 53,600/- to Rs. 52,000/- for a period of one year without cumulative effect.

4. The applicant has impugned the order dated 9.12.2016 of the DA in this OA on the following grounds:-

(i) *As per the order dated 23.7.2015 of the Tribunal passed in OA No. 452/15 filed by the applicant to challenge his transfer, no further action was to be taken by the respondents. The Tribunal in order dated 16.9.2015 in OA No. 314/15 has directed the respondents to maintain status quo in respect of the applicant. Hence, the charge memo dated 15.11.2016 (A/7) and the punishment order dated 9.12.2016 (A/9) are bad in law.*

(ii) *The impugned punishment order has been passed without proving the charges against the applicant.*

(iii) *The applicant has been issued false charges as he approached the Tribunal for his grievances.*

(iv) *The AA's order dated 20.9.2016 (A/6) is bad in law as he ordered *denovo* proceeding without setting aside the punishment order of the DA. The order of the AA is not as per the rule 22 of the CCS (CCA) Rules, 1965.*

5. Counter has been filed by the respondents, stating the following points:-

(i) *The applicant was directed on 3.2.2015 to proceed to MC Burla SO on deputation against leave vacancy and he expressed his disagreement to the order by shouting at the Postmaster, Burla MDG in presence of the staffs.*

(ii) *On 16.6.2015, the applicant refused to hand over the charge of the SPM, MC Burla SO to Smt. Sanjukta Panda who was posted. The respondents had not received the Tribunal's order dated 16.6.2015 at the time of taking decision to relieve the applicant and the said order was received by email from the applicant on 17.6.2015 at 5.15 pm (Annexure-R/4 of the Counter).*

(iii) *Disciplinary proceeding (in short DP) under rule 16 of the CCS (CCA) Rules, 1965 for minor penalty was initiated against the applicant vide the charge memo dated 15.11.2016 (A/7) for the above misconduct and after consideration of the reply of the applicant, the DA imposed the penalty in order dated 9.12.2016 (A/9) which is impugned in this OA.*

(iv) *After receipt of the Tribunal's order dated 23.7.2015 in OA No. 452/2015, the applicant was allowed to resume duty at MDG, Burla.*

6. No Rejoinder was filed by the applicant in spite of time allowed vide order dated 5.4.2017, 10.5.2017 and 20.4.201. We heard learned counsel for the

applicant and the respondents who reiterated their respective stand in the pleadings.

7. On perusal of the charge memo dated 15.11.2016 (A/7) which was issued after the order dated 20.9.2016 (A/6) was passed by the AA on the punishment order on the earlier charge memo dated 9.3.2016 (A/2) directing the issue of de-novo charge memo. The applicant has objected to the order dated 20.9.2016 of the AA on the ground that the punishment order of the DA dated 11.5.2016 (A/4), which was challenged in the appeal, was not set aside. The order dated 20.9.2016 was very clear to the effect that fresh DP was to be initiated which implied that the earlier charge memo and the order passed on it were nullified automatically. It is not the applicant's case that even after the order dated 20.9.2016 of the AA, the respondents have implemented the punishment order dated 11.5.2016 (A/4) of the DA.

8. Further, on receipt of the fresh charge memo dated 15.11.2016 (A/7), the applicant submitted the reply dated 25.11.2016 (Ann-A/8 of the OA), in which he did not raise any issue about the validity of the order dated 20.9.2016 of the AA and validity of the charge memo dated 15.11.2016 which was issued in compliance of the order dated 20.9.2016 (A/6). By submitting the reply to the fresh charges, the applicant has accepted the fresh charge memo dated 15.11.2016 without raising any objection. Hence, failure to set aside the punishment order dated 11.5.2016 on the earlier charge memo did not cause any prejudice to the applicant, who had acted in compliance of the order dated 20.9.2016 of the AA. We are, therefore, of the view that the applicant's challenge of the order dated 20.9.2016 of the AA has no force.

9. The charge memo dated 15.11.2016 consisted of two charges. The first charge is that on 3.2.2015, when the applicant was directed to proceed to MC Burla SO on deputation, he expressed his disagreement by shouting at the Postmaster (Offtg.), Burla MDG in presence of staffs using words like 'nonsense'. The reply of the applicant to this charge is that he requested the Postmaster for making alternative arrangement for the said deputation as he had to go on leave on 5.2.2015 for personal reasons as informed earlier. But he was directed to join MC Burla SO immediately after which he complied the order. It was stated that he did not shout at the Postmaster.

10. The second charge was about his refusal to hand over the charge of SPM. MC Burla to the person posted there. The applicant's reply is that he had filed the OA No. 314/2015 in which the order was passed on 16.6.2015 to maintain status quo and this was intimated to the SPOs, Sambalpur on 16.6.2015 and 17.6.2015. Hence, there is no basis for the allegation.

11. Perusal of the reply dated 25.11.2016 of the applicant, it is seen that he did not enclose any document in support of the contention that he had applied for leave on 5.2.2015, for which he initially did not agree to the deputation order and nothing was mentioned as to why he could not have proceeded on leave on 5.2.2015 from MC Burla SO. Further, there is no document produced by the applicant that he has informed about the interim order dated 16.6.2015 of the Tribunal to the respondents on 16.6.2015, although he has claimed so in his reply dated 25.11.2016. It is noticed that the contention of the respondents in the Counter that the respondents were informed about the interim order dated 16.6.2015 on 17.6.2015 by email and such contention of the respondents have not been contradicted by the applicant in spite of opportunities allowed to him to file Rejoinder to the Counter.

12. Regarding the ground that in view of the order 23.7.2015 (A/1) of the Tribunal in OA No. 452/2015 (Ann-A/1 of the OA), the respondents' action to issue the charge memo was illegal, it is seen that the said order dated 23.7.2015 was an interim order passed by the Tribunal in OA No. 452/2015 which was filed by the applicant challenging his transfer from Burla to Sason. The following directions were given to the respondents in order dated 23.7.2015 as under:-

“4..... In our considered view, a deputationist, should come back to his original post and then he may be transferred. In the instant case, applicant has not been allowed to join as P.A. in Burla MDG. We direct the Respondents to allow the applicant to join as P.A. in Burla MDG and no further action should be taken against the applicant without the leave of this Tribunal.”

13. It is clear from the preceding paragraph that the order dated 23.7.2015 did not bar initiation of any disciplinary action against the applicant as per the provisions of the rules for misconduct not related to the dispute in OA No. 452/2015. In case the applicant felt that initiation of the DP by issue of charge memo violated the order dated 23.7.2015, it was open to the applicant to initiate appropriate action against the Respondents as per the provisions of the Administrative Tribunals Act, 1985. There is nothing on record that the applicant has initiated any such action against the Respondent authorities for violation of the order dated 23.7.2015. Hence, such contentions of the applicant to object the charge memo dated 15.11.2016 cannot be accepted.

14. We take note of the law laid down by Hon'ble Apex Court in a number of cases that it is not open to the Tribunal to evaluate the evidence produced in a disciplinary proceeding, which can be interfered in a judicial review if the findings are not based on any evidence, or there is violation of the statutory rules in the DP, or the punishment imposed is shockingly disproportionate to

the misconduct. From the discussions in the preceding paragraphs, it cannot be said that the impugned order of punishment is not based on any evidence, or the authorities have violated the rules while passing the order, or the punishment is shockingly disproportionate.

15. In view of the above discussions, we do not find any ground to interfere in the matter. The OA is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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