



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/1233/2014

Date of order: 26/05/2020

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Anup Kumar Ghosh, son of Late Dasurathi Ghosh, retired Sorting Assistant (SA), Bandel RMS under Senior Superintendent, RMS, West Bengal Division, Howrah, residing at 29/1/1, Panchanan Chatterjee lane, P.S and District – Howrah, 711101.

--Applicant.

- Versus -

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, Kolkata – 700012.
3. The Director of Postal Services (M&SP), West Bengal Circle, Yogayog Bhawan, Kolkata – 700012.
4. Shri Rajeev Umrao, Director of Postal Services, Kolkata Region, Office of the Chief Postmaster General, West Bengal Circle, Kolkata – 700012, – Ad-hoc Appellate Authority.
5. Ms. Shashi Shalini Kujur, Director of Postal Services (HQ), Ofice of the Chief Postmaster General, Kolkata – 700012.
6. The Senior Superintendent of Post Offices, RMS 'WB' Dn. Howrah – 711001.
7. The Sub Record Officer, Bandel RMS Bandel, Hooghly – Pin – 712123.
8. Shri . A. K. Biswas, Enquiring Officer, Retired SSP North Presidency Division, residing at Sanghati Apartment, CC 57/1, Najrul Park (E), P.O. Aswani Nagar, Kolkata – 159.



--Respondents.

For the Applicant : Mr. M.S. Banerjee, Counsel
Mr. T.K. Biswas, counsel

For the Respondents : Ms. M. Bhattacharya, Counsel

ORDER

Per Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

- "a) For an order quashing and/or setting aside the entire disciplinary proceeding including the Memorandum of Charge-sheet dated 30.08.2007, Report of the Enquiring Officer dated 23rd February, 2009, Punishment Order dated 30.09.2009, Order dated 15th May, 2014 appointing ad hoc disciplinary authority and the Appellate Order dated 3.07.2014 made Annexures "A-3" coll., "A-9" coll., "A-11", "A-18" and "A-19" collectively, respectively to this application and further directing the respondents to pay the applicant all his arrears dues with interest which he would have got had the disciplinary proceeding been not initiated against him on the basis of the Memorandum of Charge-sheet dated 30.08.2007;
- b) For any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper;
- c) For costs of and incidentals to this application."

2. The grievance of the applicant in a nutshell is as under:

The applicant was initially appointed to the post of Sorting Assistant under the control and supervision of Senior Superintendent of RMS WB Howrah. While serving as Office Assistant under AHRO, Howrah from 16th November, 2005, he was served with a Memorandum of Charge under rule 14 of the CCS(CCA) Rules, 1965 on August 30th, 2007. He replied by denying the charges and asked for copies of documents.

The Superintendent advised the applicant to demand documents from Enquiry Officer. The proceedings finally culminated into a penalty inflicted by the disciplinary authority by reducing pay by four stages from Rs.14,680/- to Rs.13,030/- for a period of one year without cumulative



effect and that the applicant will not earn any increment of pay during the period of the aforesaid reduction.

Aggrieved with the said punishment the applicant filed an O.A.No.1635 of 2009 which was disposed of by order dated 26.11.2009 giving liberty to the applicant to prefer appeal within a time frame of one week from the date of the said order. Such appeal was disposed of by Director of Postal Services(M&SP), the Appellate Authority, reducing the pay of the applicant by 4 stages from Rs.14,680/- to Rs.13,030/- in the Pay Band Rs.5200-20,200/- with Grade Pay of Rs.2,800/- for the period from 1.10.2009 to 31.1.2010.

Aggrieved the applicant preferred O.A.No.1853 of 2010 inter alia challenging the charge sheet, punishment orders and Appellate order. After contested hearing of O.A.No.1853 of 2010, this Tribunal by order dated 02.09.2013 remanded the case back to the Appellate Authority to decide the Appeal afresh in view of the observation made in the said order. The Appellate Authority was directed to consider the following :-

"a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders—

(i) confirming, enhancing or setting aside the penalty;

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.



The Appellate Authority shall pass his order within 3 months from the date of communication of this order."

Thereafter 2 miscellaneous applications being M.A.No.1117 of 2014 and M.A.No.1118 of 2014 were filed by the respondents in O.A. No.1853 of 2010 praying for condonation of delay for complying with the order and for grant of additional 6 months time for implementation of the Order. After a contested hearing of the M.As this Tribunal by its order dated 05.05.2014, dismissed both the M.As. However, since there was an error in the order passed in O.A.1853/2010, Hon'ble Tribunal suo-moto modified the said order by incorporating Rule 27 of C.C.S.(CCA) Rules in place of Rule 22 of R.S.(D&A) Rules mentioned in paragraph 16 of order dated 2.9.2013 passed in O.A.No.1853 of 2020.

As per order passed by this Tribunal in O.A.No.1853 of 2010, which was corrected by order dated 5.5.2014, Chief Postmaster General, West Bengal Circle, Kolkata-700 012 appointed one Sri Rajib Umrao, Director of Postal Services, Kolkata Region as the ad hoc Appellate Authority in the Appeal case of the applicant. The appeal was considered and disposed of by Order dated 3rd July, 2014 passed by Ms. Sashi Shalini Kujur, Director of Postal Services(Hq.), Office of the Chief Postmaster General, Kolkata- 700 012 confirming the penalty awarded by the previous Appellate Authority.

Aggrieved the applicant has come with a fresh O.A. to challenge the entire disciplinary proceeding including the Memorandum of Charge sheet dated 30.08.2007, report of the Enquiring Officer dated 23rd February, 2009, Punishment Order dated 30.09.2009, order dated 15th May, 2014

appointing ad hoc Appellate Authority dated 03.07.2014 as also Appellate Order dated 3rd July, 2014 made Annexures-“A-3” collectively, “A-9” collectively, “A-11”, “A-18” and “A-19” collectively, and for a direction upon the respondents to pay the applicant all his arrear dues with interest which he would have got had the disciplinary proceeding been not initiated against him on the basis of the Memorandum of Charge sheet dated 30.08.2007.

3. The legal lacunae in the proceedings as alleged, can be summarized as under:-

- a) The Enquiry Officer on 7th July, 2008 after examination of witnesses on behalf of the Disciplinary Authority examined the applicant and closed the enquiry directing submissions of written argument, without giving the applicant opportunity to make out his defence as contemplated in Sub Rule 16,17 and 18 of Rule 14 of C.C.S.(C.C.A) Rules, 1965;
- b) Order of the Chief Post Master General, West Bengal Circle, Calcutta, appointing Rajeev Umrao, Director of Postal Services, Kolkata Region as Ad hoc Appellate Authority is neither bonafide nor lawful. Chief Postmaster General, West Bengal Circle, Calcutta has no authority and/or power to appoint Ad hoc Appellate Authority;
- c) Appellate Order dated 03.07.2014, passed by Ms. Sashi Shalini Kujur, Director of Postal Services(HQ) has no authority or power to act as Appellate Authority in the applicant's case;
- d) Director of Postal Services (M&SP), West Bengal Circle, Calcutta is the Appellate Authority of the applicant and as per order of the Hon'ble



Tribunal dated 02.09.2013, passed in O.A.No.1853 of 2010, appeal should have been decided by the Director of Postal Services (M&SP), West Bengal Circle, Calcutta the Appellate Authority;

e) Hon'ble Tribunal by order dated 16.12.2014 directed Respondents to file short reply in regard to the orders under challenge and the reason of appointment of ad hoc Appellate Authority to dispose of the appeal. Short reply was directed to be filed within 4 weeks from the date of the Order. No such short reply has been filed and in reply to the Original Application verified by Sri Ashok Pal, Senior Superintendent R.M.S., West Bengal, Division-Howrah did not disclose any Rule by which Chief Post Master General has been authorized to appoint ad hoc Appellate Authority.

4. To refute the allegations, the respondents would contend as under:-

I) That examination of listed witness was done by the I.O during oral inquiry in which the applicant was the charged official. He had enough opportunity to defend his case as he appeared before the Board of Enquiry as defence assistant on his behalf and availed the opportunity throughout enquiry. The respondent No. 6 has agreed to the findings of the I.O which was deduced on the records/evidence of the case. Therefore detailed analysis of the enquiry proceedings is uncalled for at this stage. This is however to state further that there was no deviation in the procedural methodology adopted by the I.O.

(II) That in Rejoinder, Para 13 has not been denied and/or objected regarding the appointment of Ad-hoc Appellate Authority.

(III) That the "Disciplinary Authority after going through the Inquiry Report issued a show cause to the applicant to submit his written representation within 15 days as required under the Rule enclosing a copy of the I.O's report for the information of the applicant. The Disciplinary Authority agreed with the findings of the I.O and conveyed the same to the applicant. No violations of any Rule have been done by doing so by the Disciplinary Authority. If the applicant did not agree with the findings of the I.O he should have mentioned the same in his defence representation dated 31.08.09.

(IV) That there was no necessity for the respondent no. 6 to call for the defence representation for the second time and as such the penalty dated 30.09.09 was issued in consideration of the charges, findings in the inquiry and defence representation of the applicant.

V) The applicant has already preferred appeal to the higher authority i.e The Director of Postal Services (MSP) and his appeal has been decided by the appellate authority under order No. Vig/Z-55/01/2010 Appeal dated 24.05.2010. The Tribunal in its order dated 02.09.2013 remanded the matter back to the appellate authority to decide the appeal afresh. Finally the appeal of the applicant was disposed of by the Appellate Authority i.e by the Director of Postal Service (HQ), O/o of the Chief Postmaster General, West Bengal Circle, Kolkata-12 under C.O Memo No. No. Vig/Z-55/01/2010 Appeal dated 03.07.2014 confirming the penalty awarded by the previous appellate authority.



5. We would note that while disposing of OA 1853 of 2010 on 02.09.2013 this Tribunal had passed the following orders:-

"13. The words "influence" and "interference" have clear and distinct meanings. Black's Law Dictionary defines "Influence" as

"Power exerted over others. To affect, modify or act upon by physical, mental or moral power, especially in some gentle, subtle and gradual way, State V. Robertson, 241 La. 249, 128 So. 2d 646, 648, See also undue influence."

Similarly "Interference" means to

"To check; hamper; hinder; infringe; encroach ; trespass; disturb; intervene; intermeddle; interpose. To enter into, or to take part in the concerns of others.

In patent law, this term designates a collision between rights claimed or granted."

14. We feel the enquiry report lacks on a finding to the effect that the acts or actions of the applicant as alleged is in the nature of an "influence or interference". It appears that the statements/dispositions does not clarify an element of "exerting personal influence" or "interfered with performance". The conclusion of disciplinary authority that the "allegations stands established".... "without any shade of ambiguity" is thus not reasonably supported by evidence.

15. In view of the discussions made hereinabove, we hold that the finding by Disciplinary Authority is too mechanical and not supported by reasons. .

16. We also note that the penalty of reduction in pay for one year prior to retirement will have the effect of reducing his pension and pensionary benefits which had to be taken note of before imposition/modification of penalty by the authorities. As the penalty order has finally merged into the appellate order, whereby the penalty is reduced, we remand the matter back to the Appellate Authority to decide the appeal afresh, in view of our observations made herein and Rule 22 of RS (D&A) Rules which emphasizes that the Appellate Authority has to consider the following:-

a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and

c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing or setting aside the penalty;

Or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

The Appellate Authority shall pass his order within 3 months from the date of communication of this order."

By an order dated 05.05.2014, the order dated 02.09.2013 was modified.

6. The Appellate Authority was directed to dispose of the appeal in terms of Rule 27 of CCS (CCA) Rules.

7. The Director of Postal Services, who issued the order dated 03.07.2014, impugned in the present O.A., has extracted the entire order of O.A. No. 1853 of 2010, the earlier order of the Appellate Authority and has concluded as under:-

"In obedience to the order of the Lnd. CAT Kolkata Bench dated 24-03-2010 in M.A 129 and 130 of 2010 (OA 1635 of 2009) and also giving due consideration to the facts that Sri Ghosh has already retired from service, enhancement of penalty will create hardship on the family members and therefore; taking lenient view imposed penalty of reduction to pay of Shri Anup Kr Ghosh by four (4) stages from Rs. 14680/- to Rs. 13030/- (Pay Band+Grade Pay) in the pay band of Rs. 5200/- to Rs. 20,200/- with grade pay of Rs. 2800/- of the period from 01-10-2009 to 31-01-2010 and accordingly dispose of the appeal.

Now myself being the present Appellate Authority in pursuance of the order of the Hon'ble CAT Bench Kolkata dated 02-09-2013 has been ordered to decide the Appeal afresh.

I have gone through the Appellate's order and order of Disciplinary Authority. The case was reexamined in the light of the Hon'ble CAT Bench Kolkata order dated 02-09-2013 and on the points raised therein.

I observed that:-

(a) *As per record there is no violation of the procedures laid down in the rules and enquiry was conducted as per the laid down procedure. There is no violation of justice as the appellant was given reasonable opportunity to defend and put his arguments before the Board of Inquiry. He was supplied with relevant documents during the course of inquiry. As such there was no denial of natural justice.*

(b) *The findings of the Disciplinary Authority was as per the evidence on record.*

(c) *The penalty imposed by the Disciplinary Authority was commensurate to the offence but since the official was retiring the penalty was reduced by the Appellate Authority. Hence there is no question of enhancement of penalty.*

As such keeping in view of the gravity of offence I pass the following order:-

ORDER

I, Smt. Shashi Shalini Kujur, Director of Postal Services, (HQ), Yogayog Bhawan Kolkata – 700012 in exercise of powers of the Appellate Authority conferred upon me under Rule 24 and Rule 27 of CCS (CCA) Rules 1965, "Confirm the Penalty" awarded by the previous Appellate Authority. The Appeal is thus disposed off."

8. The said Authority has miserably failed to consider the following as directed in the previous round:-

- (i) The conclusion of disciplinary authority that the "allegations stands established"..... "without any shade of ambiguity" is thus not reasonably supported by evidence;
- (ii) Whether the penalty of reduction in pay for one year prior to retirement will have the effect of reducing his pension and pensionary benefits which had to be taken note of before imposition/modification of penalty by the authorities;
- (iii) Whether the findings of the disciplinary authority are warranted by the evidence on the record and whether the penalty is adequate, inadequate or severe;
- (iv) The reason why ad hoc Appellate Authority was appointed by the CPMG is also not clarified.

9. The appellate order is therefore quashed and matter is therefore remanded back to the appropriate appellate authority to strictly act in terms of the direction in OA 1853 of 2016 and issue order within 3 months. No costs.

W
 (Dr. Nandita Chatterjee)
 Administrative Member

(Bidisha Banerjee)
 Judicial Member