



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/01616/2016.

Date of order : This the 9th Day of January, 2020.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative Member



Shri Ashoke Kumar Bose,
Son of Late Narendra Nath Bose,
Aged about 59 years, residing at
C/o Ms. Prof. Shree Gangopadhyay,
20C, Nalin Sarkar Street, Post Office Shyambazar,
Kolkata – 700004 and working as
State Delivery Department in the General Post Office,
Kolkata (Kolkata GPO).

.....Applicant

By Advocate : Mr B. Bhusan

- Versus -

1. Union of India service through the
Secretary, Ministry of Posts, Dak Bhawan,
Sansad Marg, New Delhi – 110001.
2. The Chief Post Master General,
Jagajog Bhawan, West Bengal Circle,
Kolkata – 700012.
3. The Director General of Postal Services,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.
4. The Director, Kolkata G.P.O.
B.B.D. Bagh, Kolkata – 700001.
5. The deputy Director PO-I (Administration),
Kolkata G.P.O.
B.B.D. Bagh, Kolkata – 700001.

.....Respondents

By Advocate : Mr B.B. Chatterjee.

ORDER (ORAL)**MS BIDISHA BANERJEE, MEMBER(J)**

The applicant in this O.A has assailed the disciplinary proceeding initiated vide a Charge Memo dated 09.05.2007 issued by Deputy Director PO (Administration) that culminated to an order of dismissal from service vide order dated 27.09.2016. The reliefs sought for in this present O.A are as under :



- "(a) To quash and/or set aside the impugned office order of Charge-Sheet being Memo No. G-15-143/D/2007-2008 dated 09.05.2007 issued by the Deputy Director PO-I (Administration), Kolkata GPO, Kolkata against the applicant on the ground of unauthorized absent along with Article of Charges being Annexure-A-1 to this original application.
- (b) To quash and/or set aside the impugned ex parte Enquiry Report dated 19.08.2009 submitted by the Enquiry Officer being Annexure A-3 of this original application which was forwarded by to the disciplinary authority vide letter dated 10.12.2009.
- (c) To declare the entire disciplinary proceeding against the applicant is liable to be quashed and/or set aside on the ground of prolong delay to conclude the same and to set aside the un communicated order of dismissal from service vide Memo No.G-15-143/D/2007-2008 dated 23.01.2015.
- (d) To declare that the respondent by violation of the time limit as prescribed in CCS (CCA) Rules, 1965 regarding final order, the date of enquiry report is otherwise bad in law and illegal and any order passed in the later stage is liable to be quashed and/or set aside. On the ground of prolonged delay in respect of conclusion of a proceeding is otherwise bad in law and liable to be quashed and/or set aside in view of the settled law proposition as decided by the Hon'ble Supreme Court in the case of Bani Singh & Ors. vs. Union of India & Ors.
- (e) To declare that the entire disciplinary proceeding on the ground of unauthorised absent framed against the applicant is otherwise bad in law and illegal which may be quashed and/or set aside along with consequential benefits.
- (f) The respondents be directed to reinstate the applicant in service with effect from the date of

charge-sheet i.e. with effect from 09.05.2007 and from period from 09.05.2007 to reinstatement be treated as on duty along with all consequential benefits in favour of the applicant.

(g) To pass an appropriate order directing upon the respondent authority to produce all the relevant records in respect of such proceeding before this Hon'ble Tribunal so that on perusal of the same the concessionable justice may be administered.

(h) Costs.

(i) Any relief/reliefs and/or order/orders and/or direction/directions as Your Lordships may deem fit and proper."



2. The lacuna in the conduct of the proceeding, as highlighted by the applicant, and grounds of challenge are as under :

(i) The Charge sheet was issued straight away alleging unauthorised absence with effect from 24.08.2005 to 30.06.2006.

(ii) After issuing the charge sheet, although there was no suspension order, yet the applicant was not allowed to join the duty of Postman in the office.

(iii) Without allowing the applicant to resume his duty in the office, a notice was published in the daily News Paper Ananda Bazar Patrika on 04.07.2007.

(iv) The applicant was not absent from duty unauthorisedly. He furnished a letter dated 19.02.2009 intimating his present address and Voter Identity Card.

(v) An ex-parte enquiry was conducted and the report was submitted on 19.08.2009, but even after a lapse of 6 years no punishment order was issued.

(vi) Despite his representation dated 20.02.2015 regarding intimating his present address the Deputy Director PO-I vide letter dated 02.03.2015 requested the applicant to submit his proof of residence.

(vii) The Ld. Advocate's letter dated 15.06.2015 was ignored.

(viii) The time limit of 3 months prescribed in Rule 15 of CCS (CCA) Rules was not adhered to.

(ix) In terms of the decision of Hon'ble High Court of Calcutta in Maitrayee Ghosh vs Kolkata Port Trust & Ors on 18.09.2007 in F.M.A No.348 of 2008 reported in 2008(2) Calcutta High Court Notes, (Page 85), for unauthorised absence punishment of removal from service was a harsh one. The same view has been reiterated by Hon'ble High Court at Calcutta in Sukumar Dey vs Union of India & Ors. in W.P.C.T No.31 of 2012 rendered on 21.02.2012.

From the grounds extracted supra, we failed to decipher any ground about non communication of the penalty order.

3. At hearing learned counsel for the applicant would draw our attention to a daily order dated 17.11.2016 which records the following :

"Both the parties are present. The only question of consideration in this case whether the order of punishment ever communicated to the applicant or not. Respondents are directed to bring on record the communication. Let the matter be placed before the Registrar of this Court who after completing the pleadings place the matter on Board."

Id. counsel for the applicant would vociferously agitate that the respondents had made no attempt to deliver the penalty order to the applicant although the applicant had intimated his address in 2015.

4. We perused the records. When the facts were cross checked with records we noted that the applicant had received a copy of the charge sheet when a notice was published in Ananda Bazar Patrika on 04.07.2007 following the verdict of Union of India & Ors. vs Dinanath Shataram Karekar & Ors., through his representative, he received the notice of enquiry in response to which he requested the Inquiry Officer, vide his letter dated 26.05.2008, to defer the enquiry by one month, and further on

13.08.2008 about his serious illness therefore requesting the Inquiry Officer to defer the next date of hearing fixed on 25.09.2008. But, thereafter, he never attended the hearing. The applicant vide his letter dated 29.12.2009 denied all the charges framed against him. Prior to that he had submitted an EL application on 03.06.2009. The final punishment order dated 23.01.2015 was sent to his address but was returned back to the office with the remark 'left'. The authorities upon local enquiry found out that he had left his last known address 4/5 years back. Vide a letter dated 20.02.2015 the applicant communicated about his present address which fell under the delivery jurisdiction of Hatiara Post office. Even after several attempts, having failed to deliver the penalty order, the matter was brought to the notice of the Chief Postmaster General, West Bengal Circle. Thereafter, it was published in two leading Daily News Papers i.e. Ananda Bazar Patrika and The Telegraph on 28.06.2016.

5. The respondents have alleged that the applicant had deliberately provided fictitious address and wasted their valuable time, his conduct was illusive from the very beginning. However, the fact remains that as on this date he has accepted the copy of the removal order which learned counsel for the applicant admitted at the Bar.

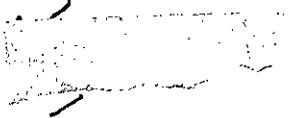
5. The applicant has not preferred any statutory appeal before the appropriate authority. Therefore, without entering into the merits of the proceeding, we dispose of the O.A with a liberty to the applicant to prefer a comprehensive statutory appeal, detailing all the grounds he wishes to agitate in regard to the conduct of the proceeding, within a period of 4 weeks from the date of receipt of a copy of this order.

6. In the event, such appeal is preferred let the same be disposed of by a reasoned and speaking order to be issued in accordance with law within a period of 3 months thereafter.

O.A is accordingly disposed of. There will be no order as to costs.



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(DR NANDITA CHATTERJEE)
MEMBER (A)


(BIDISHA BANERJEE)
MEMBER (J)