

LIBRARY

O.A. 878/2014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, KOLKATA

PARTICULARS OF THE APPLICANT:

Jayanta Kumar Mondal, Son of Dayal Ch. Mondal, aged about 43 years, a present dismissal from the Post of Assistant in Satyajit Roy Film and Television Institute, residing at Sonarpur Park (Opposite Sonarpur Power House), P.O. & P.s. Sonarpur, District 24-Parganas(South); APPLICANT

V E R S U S -

- i) The Secretary, Ministry of Information and Board Casting Government of India, New Delhi; 110001
- ii) The Director, Satyajit Ray Film and Television Institute, E.M. Bye pass Road, P.O. Panchasayar, Kolkata - 700094;
- iii) The Chairman, Governing Council, Satyajit Ray Film and Television Institute, E.M. Bye pass Road, P.O. Panchasayar, Kolkata - 700094;
- iv) The Senior Account Officer, S.R.F.T. Institute, E.M. Bye pass Road P.O. Panchasayar, Kolkata - 700094;
- v) The Administrative Officer, S.R.F.T. Institute, E.M. Bye pass Road P.O. Panchasayar, Kolkata - 700094; RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/878/2014

4.12.19

Date of order : 11.09.2019

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

JAYANTA KUMAR MONDAL
VS.
UNION OF INDIA & OTHERS
(S.R.F.T.I.)

For the applicant : Mr. S.K. Datta, counsel
Mr. A. Chakraborty, counsel

For the respondents : Ms. M. Bhattacharya, counsel

ORDER

Bidisha Banerjee, Judicial Member

In this O.A. the applicant has sought for the following reliefs:-

- (i) Charge Sheet dated 05.09.2008 issued by the Director, Satyajit Ray Film and Television Institute cannot be tenable in the eye of law and as such the same may be quashed;
- (ii) Order dated 08.12.2009 issued by the Disciplinary Authority imposing punishment of dismissal from service cannot be tenable in the eye of law and therefore the same may be quashed;
- (iii) Order passed by the Appellate Authority dated 04.03.2009 cannot be tenable in the eye of law and therefore the same may be quashed;
- (iv) An order do issue directing the respondents to reinstate the applicant in service and to grant all consequential benefits."

2. It is evident from the records that the applicant had preferred O.A.No.416/2009 which was dismissed by this Tribunal due to lack of jurisdiction, by its order dated 13.02.2012. A writ petition being No.8289(W) of 2012 was preferred before Hon'ble High Court which was disposed of on 13.03.2014 by the Hon'ble High Court giving liberty

to the applicant to approach this Tribunal, since the jurisdiction lay with this Tribunal. The Hon'ble High Court observed that "*it will be open to the petitioner to seek exclusion of the period spent in court when the petitioner files afresh before the Central Administrative Tribunal.*" Emboldened thereby the present O.A. has been preferred to seek the aforesaid reliefs.

3. Further, it transpires from the records that the applicant was served with a charge sheet with the following articles of charges:-

Administrative

ARTICLE - I: That the said Shri Jayanta Kumar Mondal while functioning as Upper Division Clerk from 28-10-2002 to 26-11-2007 and Assistant from 27-11-2007 to 20-06-2008 with the assignment of the duties of Cashier till 01-03-2008 in SRFTI, Kolkata fraudulently prepared and/or caused to have prepared as many as 28 (twenty eight) imprest cash vouchers during the period from 06-10-2007 to 04-02-2008. The said Shri Jayanta Kumar Mondal subsequently forged and/or caused to have forged the signatures of Director, Sr. Accounts Officer and Jr. Accounts Officer of SRFTI on the aforesaid imprest cash vouchers and received payment amounting to Rs.7319/- against the forged vouchers for his pecuniary gains and thus had misappropriated the cash amount of Rs.7319/-.

By the above acts the said Shri Jayanta Kumar Mondal has committed gross misconduct - lack of integrity, failure to maintain devotion to duty and conduct unbecoming of a govt. servant thereby violating Rule 3(1)(i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE - II: That the said Shri Jayanta Kumar Mondal while functioning as Upper Division Clerk from 28-10-2002 to 26-11-2007 with the assignment of the duties of Cashier, SRFTI, Kolkata has forged and/or caused to have forged the signature of the actual payee, Shri Malay Bhattacharjee and purportedly by showing the payment to have been made to the actual payee, Shri Malay Bhattacharjee against the Voucher No.37 (Bill No.SRFTI-48/07-08 dated 21-04-2007) by making fraudulent entries in the Institute's Cash Book at page 16 on 24-4-2007 the said Shri Jayanta Kr. Mondal has drawn the sum of Rs.9000/- by encashing the Cheque No.172065 dated 24-4-2007 by himself under his own signature on 28-6-2007 and did not make payment to the actual payee as required under Rule 56 ibid of Receipt and Payment Rules,1983. Thus the said Shri Jayanta Kr. Mondal has misappropriated the whole sum of Rs.9,000/- drawn in Cheque No.172065 dated 24-4-2007 against the Voucher No.37 (Bill No.SRFTI-48/07-08 dated 21-04-2007) on a/c of payment of Honorarium.

By the above acts the said Shri Jayanta Kumar Mondal has failed to maintain absolute integrity at all times and has acted in a manner unbecoming of a Government Servant and contravened the provisions of rule 3(1)(i)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964 read with rule 56 ibid of Receipt & Payment Rules, 1983.

ARTICLE - III: That the said Shri Jayanta Kumar Mondal while functioning as Assistant from 27-11-2007 to 20-06-2008 with the assignment of the duties of Cashier in SRFTI, Kolkata till 01-03-2008 has failed to discharge his assigned duties and responsibilities by making fictitious entries in the Cash Book at page 246 without making disbursement of the amount of Rs.4,064/- to the actual payees, Shri Arindam Bhattacharjee and Ms. Tinni Mitra, Students of the Institute which was drawn in cash from the Bank on 07-12-2007 against Voucher No.770 (Bill No.SRFTI-894/07-08 dated 07-12-2007) towards Traveling Allowance claim of the above named two students. The said Shri Jayanta Kr. Mondal has forged and/or caused to have forged the signatures of 2 (two) actual payees, Shri Arindam Bhattacharjee and Ms. Tinni Mitra, Students of the Institute purportedly to show that the payment has been made to the actual payees against Voucher No.770 (Bill No.SRFTI-894/07-08 dated 07-12-2007) and misappropriated the amount of Rs.4,064/- without making payment to the actual payees.

By the above acts the said Shri Jayanta Kumar Mondal has failed to maintain absolute integrity at all times and has acted in a manner unbecoming of a Government Servant and contravened the provisions of rule 3(1)(i)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE - IV: That the said Shri Jayanta Kumar Mondal while functioning as Assistant from 27-11-2007 to 20-06-2008 with the assignment of the duties of Cashier in SRFTI, Kolkata till 01-03-2008 has deliberately, willfully and with full knowledge grossly violated all accepted norms of accounting procedures by not accounting for of the cash receipt amounting to Rs.250/- of the Institute received by him on 28-02-2008 against Money Receipt No.R/5600 dated 28-02-2008 from Shri Sanjoy Kr. Das, Peon of the Institute in the cash book of the Institute and suppressed the material fact from the knowledge of the Drawing and Disbursing Officer and thereby misappropriated the sum of Rs. 250/- till 18-03-2008.

The said Shri Jayanta Kumar Mondal was supposed to account for the receipt in the Cash Book as required under Rule 77 of Central Treasury Rules, Vol-I and was required to deposit the amount into the Bank under Receipt & Payment Rules, 1983.

By the above acts the said Shri Jayanta Kumar Mondal has committed gross misconduct, lack of integrity, failure to maintain devotion to duty and conduct unbecoming of a govt. servant thereby violating Rule 3(1)(i), (ii), and (iii) of Central Civil Services (Conduct) Rules, 1964.

4. By way of his written statement of defence and letter dated 22.09.2008 the applicant admitted all the articles of charge and tendered unqualified apology for committing such grave misconduct or misbehavior while functioning as Upper Division Clerk and Assistant in the Institute during the period from 28.10.2002 to 20.06.2008 coupled with the assignment of duties of Cashier from 10.06.2004 till 01.03.2008.

5. In view of such admission the Disciplinary Authority, the Director of the Institute held the charges as proved and vide its order dated 08.12.2008 a penalty of dismissal from service was imposed upon the

applicant. The applicant approached the Chairman Satyajit Ray Film and Television Institute vide his prayer dated 20.12.2008 followed by prayer on 26.12.2008 to allow him to continue in service. The governing council as Appellate Authority considered the representations and found as follows :-

"(i) the misconduct committed by Shri Jayanta Kumar Mandal is of serious nature. The Disciplinary authority has imposed the penalty of dismissal after due consideration of all facts and circumstances and gravity of the misconduct;

(ii) the contention of Shri Jayanta Kumar Mandal that he has sent a pay order of Rs.11,383/- which was misappropriated by him, vide his letter dt.26-12-2008 and requested for continuing him in service was considered and not accepted."

Thus, in exercise of the powers under Bye Law 44 of SRFI Service Bye Laws, the punishment was upheld and the appeal was rejected whereafter the applicant approached this Tribunal in O.A.416/2009 which was dismissed on 13.02.2012 for want of jurisdiction.

6. We note that impugned orders have been assailed on the following grounds :-

I. For that the respondents/Disciplinary authority has adopted unfair means, arbitrary attitude in whimsical manner imposed extreme penalty without following the mandatory provision of Satyajit Ray Film and Television Institute Bye Law giving good bye to the rule of law and acted in a monarchical attitude which cannot be allowed in democratic set up and as such entire proceedings is bad in law;

II. For that the appeal filed by the petitioner was not dealt with as per Rules and as such the order passed by the Authority may be quashed;

III. For that the respondents No.2/Director, did not bother to appoint any Presenting Officer and Enquiry Officer and suo muto held the enquiry according to their whims without following the basic principles of Domestic Enquiry Rules and without examining the witnesses and passed an office order dated 08.12.2008 that the applicant is guilty and concluded the enquiry and imposed penalty of dismissal for serving of the applicant and held period of suspension shall not be treated as on duty."

Nothing has been brought on record to show that the applicant in course of the departmental proceedings had agitated on violation of the procedural law in the conduct of the proceedings.

7. The respondents in their reply have categorically submitted that the Disciplinary Authority having considered the admission of the applicant made on 22.09.2008 ordered as such and the governing council being the appropriate appellate authority in due consideration of the fact that the Disciplinary Authority imposed the penalty after due consideration of all facts and gravity of misconduct, upheld the penalty and, therefore, the action of the respondents was justified.

8. In the rejoinder the applicant reiterated that the enquiry was concluded and penalty was imposed without following basic principles of domestic enquiry rules, without appointing presenting officer and enquiry officer and without examining the witnesses.

9. At hearing Id. counsel for the applicant would submit that the applicant be given liberty to approach the Revisional Authority .

10. We note the Conduct Rules, Procedure for imposing penalties, Provision for Appeal and Review as applicable to SRFTI and as evident from the rules cited by the respondent authorities are as under:-

"CHAPTER XI-CONDUCT RULES

37. *The Central Civil Services (Conduct) Rules, 1964 would be applicable to the employees of the Institute.*

38. *General*

38.1 *Every employee shall at all times maintain absolute integrity and devotion to duty.*

38.2 Every employee shall abide by and comply with the rules and Bye-Laws of the Institute and all orders and directions of his superior authorities."

In terms of the provisions of Rule 37 and 38, the applicant has been rightly charged under CCS(Conduct) Rules, of gross misconduct, lack of integrity, failure to maintain devotion to duty and conduct unbecoming of a government servant, violating Rule 3(1)(i)(ii) and (iii) of Central Civil Services(Conduct) Rules, 1964.

The procedure for enforcing discipline as in the Bye Laws of SRFTI are extracted hereunder:

CHAPTER XII-DISCIPLINE

40. *Penalties:*

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee

- i) Censure;
- ii) Withholding of increments or promotion;
- iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Institute by negligence or breach of the rules or Bye-Laws of the Institute or orders or directions of superior authorities;
- iv) Reduction to a lower grade or post or to a lower stage in a time scale;
- v) Compulsory retirement; and
- vi) Dismissal from service.

41. *Authority competent to impose a penalty:*

The Appointing Authority or any other authority referred to in Bye-Law 6 which may be superior to the Appointing Authority may impose on an employee any of the penalties specified in Bye-Law 40.

42. *Procedure for imposing Penalties:*

No order imposing any penalty on an employee shall be passed except after :

- (a) the employee is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and is given an opportunity to make any representation he may wish to make; and
- (b) such representation, if any, is taken into consideration by the Authority, imposing the penalty.

"CHAPTER XII-APPEAL AND REVIEW

44. *Appellate Authorities*

An appeal shall lie from any original order made:

- (i) *By the Registrar to the Director;*
- (ii) *By the Director to the Governing Council;*

45. Period of limitation for appeal :

No appeal shall be entertained unless it is submitted within a period of three months from the date on which the order appealed against is communicated to the person concerned.

Provided that the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant had sufficient reason for not submitting the appeal in time.

46. Form, Contents and submission of appeal:

- 1) *Every person submitting an appeal shall do so separately and in his own name;*
- 2) *The appeal shall be addressed to the appellate authority shall contain all material statements and arguments on which the appellant lies shall not contain any disrespectful or improper language and shall be complete in itself.*
- 3) *Every appeal shall be submitted to the Director, who shall, unless he/she is himself/herself the appellate authority, transmit it to the appellate authority.*

47. Consideration of Appeals:

The appellate authority shall consider every appeal in such manner as it deems fit and pass such orders as it deems proper in such circumstances of the case.

48. Review:

The Governing Council may, on its own motion or otherwise, review any order made by any authority and pass such orders as it deems fit in the circumstances of the case;

Provided that no order imposing an enhanced penalty shall be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty.

Having noted the provisions of imposition of penalty and consideration of appeal, we failed to decipher from the records any infirmity in the conduct of proceedings or any violation of substantive provisions.

11. We would note that an enquiry is held only on the charges not admitted by the delinquent. In view of the fact that the applicant has

admitted all the allegations levelled against him and there seems to be no violation of the procedure for imposition of penalty or disposal of appeal, as laid down in the provisions of the Bye Laws, enumerated supra, and in absence of any extenuating circumstance that would entitle the applicant the relief he has sought for, we hardly find any scope to interfere with the penalty order or the order on appeal. We are fortified in our views by the decision in **Himachal Pradesh Road Transport Corporation and Another Vs. Hukam Chand [(2009)11 Supreme Court Cases-222]** wherein the Hon'ble Apex Court held :-

"Compliance with the principles of natural justice, either by holding an enquiry or by giving the employee an opportunity of hearing or showing cause, is necessary, where an employer proposes to punish an employee on a charge of misconduct which is denied, or when any term or condition of employment is proposed to be altered to the employee's disadvantage without his consent. On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and conditions of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or to show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or opportunity to show cause, does not violate the principles of natural justice."



Therefore, the O.A. fails and is dismissed.

12. However, the applicant has prayed for a liberty to approach the Reviewing Authority, which liberty was always available to him at the material time but not exercised by the applicant. The Appellate order was issued in 2009, therefore, in 2019 we cannot grant liberty to the applicant to seek a review or direct the Reviewing authority to dispose it of. The applicant on his own wisdom may prefer one which may be considered by the appropriate authority in accordance with law.

O.A. is, therefore, dismissed. No cost.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member