

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00539/2016
With
OA/050/00540/2016
[MA/050/00266/18 & MA/050/00425/2016]

Reserved on: 07.02.2020
Pronounced on : 11.02.2020

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



I. OA/050/00539/2016

Shri Dilip Kumar Singh, S/o Shri Ram Pukar Singh, R.O Near Devi Sthan, Shahpur, Aurangabad, Bihar.

.... Applicant

By Advocate: - Mr. J.K. Karn

-Versus-

1. Union of India through the D.G. Cum Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Director of Postal Services, Northern Region, C/o The Postmaster General, Northern Region, Muzaffarpur.
5. The Superintendent of Post Offices, Darbhanga Division, Darbhanga.

.... Respondents.

By Advocate: - Mrs. P.R. Laxmi, ASC

II. OA/050/00540/2016

Shri Dilip Kumar Singh, S/o Shri Ram Pukar Singh, R.O Near Devi Sthan, Shahpur, Aurangabad, Bihar.

.... Applicant

By Advocate: - Mr. J.K. Karn

-Versus-

1. Union of India through the D.G. Cum Secretary, Department of Posts, Dak Bhawan, New Delhi.

2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Director of Postal Services, Northern Region, C/o The Postmaster General, Northern Region, Muzaffarpur.
5. The Superintendent of Post Offices, Darbhanga Division, Darbhanga.

.... Respondents.

By Advocate: - Mr. H.P. Singh, Sr. SC

ORDER



Per Dinesh Sharma, A.M.:- There are common facts and reliefs sought by the same applicant in both the OAs. The OA/050/00540/2016 has been filed against continuation of an action, which was under challenge in OA/050/00539/2014. Hence, both these OAs are being disposed of by the following common order:-

2. The facts, in brief, are as follows: -

The respondents, by their order dated 30.08.2013 (Annexure A/2), initiated departmental proceeding against the applicant for certain dereliction and imposed (a minor) punishment of recovery of Rs. 2,50,000/- @ Rs. 4000/- per month with immediate effect. The applicant earlier approached this Tribunal by filing OA/050/00813/2015. Following a direction given by this Tribunal's order, dated 02.12.2015, the appeal of the applicant, against the punishment order, was disposed of by Postmaster General, Northern Region, Muzaffarpur, by order dated 05.02.2016. By this order, the Appellate Authority rejected the appeal of the applicant, and, finding that the punishment awarded by the Disciplinary Authority was not commensurate with the gravity of charges

levelled against him, further proposed to initiate proceedings under Rule-14 of CCS(CCA) Rules, 1965. The first OA (OA/050/00539/2016) is filed by the applicant for quashing the orders passed by the Disciplinary Authority and the Appellate Authority. The second OA (OA/050/00540/2016) has been filed for quashing the chargesheet which was issued against the applicant by Memo dated 26.07.2016 (Annexure A/1 of OA 540/2016) following the decision of the Appellate Authority which is under challenge in the first OA.



3. The main grounds for seeking these reliefs are: That there has been a blatant violation of principles of natural justice. The applicant was not given proper opportunity to defend himself as he was in judicial custody at the time when the chargesheet was served. The Department has left out the real culprits who were involved in the fraudulent encashment of Kisan Vikas Patras and he is being made a scapegoat. The order of punishment has been issued ex-parte ignoring the materials available on record and all his requests for getting the records, since 01.10.2012, have not been accepted by the concerned authority. The findings against him are based on the basis of photocopies of documents and none of the officials of the Appellate Authority could get a chance to have a glance at the original documents. The punishment of the applicant is on the basis of an alleged statement of the applicant before the CBI in another case of fraudulent encashment of KVPs at Guwahati. The said statement has never been proved and the same is

not a part of the present proceeding at any point of time. The Appellate Authority has disposed of the appeal of the applicant in a “ministerial manner”. The appeal was disposed of only after the specific direction of this Tribunal in OA 830/2015, in a hasty manner. In the second OA, the applicant has prayed for quashing the charge memo issued against him dated 27.06.2016 since the applicant has already been punished under Rule-16 of CCS(CCA) Rules. The said punishment was upheld by the Appellate Authority. The applicant has already questioned the decision of the Appellate Authority to further move under Rule-14 of CCS(CCA) Rules before this Tribunal, in the first OA.



4. During the pendency of these two OAs before the Tribunal, a communication was issued by the Superintendent of Post Offices, Darbhanga Division for expediting the inquiry and completing it within stipulated time stating that “mere filing of OA is not a valid ground to stop proceeding in absence of stay order.” On an MA (No.050/00266/2018) filed by the applicant, the Tribunal restrained the implementation of this decision vide order dated 02.07.2018, till the next date of hearing. Though there is no order by this Tribunal to extend this interim order, at the next date or at any further date of hearing, it appears that the Department has not taken any further action to conduct the disciplinary proceeding.

5. Written statements have been filed, in both the OAs, denying the claim of the applicant. It is stated that the applicant, PA



Laheriasarai HO, while working as SPM, Haspura SO under Aurangabad Division, during the period 21.09.2002 to 01.04.2004, was found to have be involved [by the CBI (ACB), Dispur, Assam] in fraudulent encashment of lost/stolen KVPs. The Department sustained a loss of Rs. 10 lakhs in this case and therefore disciplinary action was initiated against him. The applicant did not submit any representation/written statement in response to the memo issued against him, despite many reminders, and, therefore, the matter was decided ex-parte by SPOs, Darbhanga Division, dated 30.08.2013 awarding a punishment of recovery of Rs. 2,50,000 @ Rs. 4000/- per month. The appeal against this punishment has been disposed of by a reasoned and speaking order dated 05.02.2016. Following this, a charge memo was issued under Rule-14 by SPO, Darbhanga, memo dated 27.06.2016. The applicant has been requesting for time to submit his written statement of defence but has failed to submit the same. Therefore, Inquiry Officer and PO were appointed vide SPO, Darbhanga's memo dated 02.08.2016. The Appellate Authority has concluded that the punishment awarded by the Disciplinary Authority is not commensurate with the gravity of the charges and has further ordered to initiate proceedings under Rule-14 under which the inquiry is going on. Therefore, both the OAs deserve to be dismissed.

6. A rejoinder has been filed by the applicant in OA/050/00540/2016 (the second O.A.) stating that the issuance of memo under Rule-14 on 27.06.2016, on the basis of the same cause of

action and evidence, without cancelling the earlier order, is not correct.

It is also stated that the relevant documents, list of witnesses is not supplied to the applicant and the allegations levelled against the applicant are totally baseless.

7. A reply to the rejoinder has been filed in which the respondents have reiterated their allegation, about serious charges of dereliction, against the applicant. It is also stated that if the applicant is not found guilty in an inquiry, which is now being started under Rule-14, the decision will be automatically in favour of the applicant. The applicant is not co-operating with this inquiry.



8. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. During the course of arguments, the learned counsel for the applicant brought to our attention Rule-27 of the CCS(CCA) Rules, 1965. According to him, under these rules, if the appellate authority proposes to impose any of the penalties specified in clauses (iv) to (ix) of Rule 11, it should have been specifically mentioned by the appellate authority, which of these penalties specified, were proposed to be imposed. The learned counsel for the respondents argued that such specific mention is not intended under the above quoted rule and if it was done this would have been considered as an evidence of pre-judgment by the Appellate Authority. Since the decision in both the OAs mainly hangs on the determination about the legality of the order passed by the Appellate Authority dated

05.02.2016, we reproduce the Rule-27 of the CCS(CCA) Rules in its complete form:-

“27. CONSIDERATION OF APPEAL:

- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
- (2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-
 - (a) whether the procedure laid down in these rules have 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, reducing, 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 direction as it may deem fit in the circumstances of the case:

provided that-

- (i) The Commission shall be consulted in all cases where such consultation is necessary *[and the government servant has been given an opportunity of representing against the advice of the Commission];

*[Added vide the Central Civil Services (Classification, Control and Appeal) (Second Amendment) Rules, 2014 - Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification dated the 31st October, 2014 issued from 11012/8/2011-Estt.(A)]

- (ii) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and in inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

- (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an enquiry under rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

- (ii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.



(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

9. After carefully going through this rule, it is clear in our mind that Rule 27(2)(ii) read with proviso (ii) to Rule 27 (2), clearly empowers the Appellate Authority to issue orders remitting the case to the authority which imposed the punishment or any other authority with such direction, as it may deem fit. The proviso (ii) limits the power of the Appellate Authority by making it obligatory to hold an enquiry under provisions of Rule-14 if the enhanced penalty proposed to be imposed by the Appellate Authority is one of the major penalties specified in clause (iv) to (ix) of Rule-11, in cases where such inquiry has not already been held. There is nothing in these rules which makes it obligatory for the Appellate Authority to mention any specific penalty which is proposed to be imposed. Therefore, the decision of the Appellate Authority to order conduct of an inquiry under provisions of Rule 14, when he is satisfied that the punishment imposed by the Disciplinary Authority is not commensurate with the seriousness of the charge, is clearly enabled by these provisions.



10. Since, at this stage, the Department, by their impugned order dated 27.06.2016, have only proposed to conduct a detailed departmental inquiry under Rule-14 of the CCS(CCA) Rules, 1965, it will be wrong to pre-judge any outcome and, therefore, stopping these proceedings at this stage will be clearly not in the interest of justice. The learned counsel for the applicant argued that the applicant has already

retired and he may be willing to have the balance amount recovered as the remaining part of the punishment awarded by the original order of the Disciplinary Authority. It was specifically queried by the Tribunal, to the learned Sr. Standing Counsel for the respondents, whether this would be sufficient to meet the ends of justice since the matter has already been dragged for a long time. The learned counsel for the respondents, however, did not agree with the suggestion and stated that due to the serious nature of the alleged offence which has an all India implication of fraud wilfully perpetrated by a set of dishonest employees, it is necessary to conduct an inquiry to find out the extent of involvement and punish accordingly. He also stated that a detailed inquiry in this case will give sufficient opportunity to the applicant to prove his lack of guilt.



11. Under the aforesaid circumstances, since we do not find any illegality in the order of the Appellate Authority and since a conduct of disciplinary enquiry will give full opportunity to the applicant to defend his case (which he alleges he has not been able to do so far) we do not see any merit in the prayer of the applicant. The OAs are, therefore, dismissed. Since the applicant has already retired, it is expected that the inquiry will be conducted expeditiously and final conclusion reached within a period no longer than six months from the date of receipt of this order. MAs are disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[J.V. Bhairavia]
Judicia Member