

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 551 of 2019

**Present: Hon'ble Mr.Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Anand Mathur, Member (A)**

Srinibas Bhoi, aged about 58 years, S/o Mandhata Bhoi, At/PO-Kabarapalli, Via-Gourpalli, Dist-Sambalpur, Group-'D'.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Govt. of India, Ministry of Communicat9ions, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi, Pin-110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist.-Khurda, Pin-751001.
3. Director Postal Services, Sambalpur Region, At/PO-Dist-Sambalpur-768001.
4. Senior Superintendent of Post Offices, Sundargarh Division, Sundargarh-770001.
5. Superintendent of Post Offices, Sambalpur division, At/PO/Dist-Sambalpur, 768001.
6. Post Master Sambalpur HO, 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 : 8.1.2021 Order on : 15.02.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “8.1 That the charge sheet dated 28.07.2016 (A/6), the order dated 19.08.2016 (A/7 series), disagreement notice dated 13.02.2018 (A/9) and the punishment order dated 06.12.2018 (A/11) be quashed.
- 8.2 That the respondents be directed to reinstate the applicant into service immediately with all consequential service benefits.
- 8.3 And further be pleased to pass any other order/orders as deemed fit and proper.”

2. The facts of the case in a nutshell are that the applicant was initially appointed as EDDS/MC at Kabarapalli BO in account with Gourapalli SO under respondent No.5 and he joined on 16.12.1980. On being successful in the departmental examination for postman cadre the applicant was promoted

to the postman cadre and joined as postman on 4.11.1995 at Sambalpur HO and continued till 14.12.2018. The applicant was placed under suspension under Rule 10 of CCS (CCA) Rules, 1965 by respondent No.6 vide memo dated 14.5.2016 (Annexure A/1) on contemplation of a departmental proceeding. The applicant was charge sheeted on 28.6.2016 (Annexure A/2) on the allegation that while functioning as postman Sambalpur HO on 14.5.2016 he kept 69 Adhar Cards in sorting cage as lying undelivered since long. The undelivered Adhar Cards were seized and some were delivered on the spot after ascertaining the address of the addressee from mobile number mentioned in the card. The applicant denied the charges vide representation dated 8.7.2016 (Annexure A/3). The order of suspension against the applicant was revoked by the respondent No.6 vide memo dated 16.7.2016 (Annexure A/4) on the basis of the decision of the Departmental Review Committee. Respondent No.6 vide memo dated 21.7.2016 (Annexure A/5) dropped the charge sheet dated 28.6.2016. The applicant was again charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 by respondent No.6 vide memo dated 28.7.2016 (Annexure A/6) on the self same allegation. IO and PO to enquiry were appointed vide memo dated 19.8.2016 (Annexure A/7). The applicant submitted a representation dated 28.6.2017 (Annexure A/8) denying the charges framed against him and submitted that on the self same allegation charge sheet was dropped by the respondent No.6 vide order dated 21.7.2016. The inquiry officer conducted the inquiry and submitted the report dated 18.12.2017 to respondent No.6, holding that the charge leveled against the applicant is not proved. Respondent No.6 sent the inquiry report to respondent No.5 for appropriate action. Respondent No.5 disagreed with the findings of the inquiry officer and vide memo dated 13.2.2018 (Annexure A/9) forwarded the inquiry report to the applicant along with disagreement note. The applicant submitted representation on 8.3.2018 (Annexure A/10) to respondent No.5 stating that he was not guilty and charge framed against him was not proved by the IO. Respondent No.4 who stated to have been appointed as ad hoc disciplinary authority by the Directorate vide memo dated 6.12.2018 (Annexure A/11)

imposed punishment of compulsory retirement to the applicant from service with immediate effect and further ordered that the period of suspension of the applicant from 15.3.2016 to 20.7.2016 be treated as non-duty for all purposes. The applicant received the order of punishment on 14.12.2018 and on the same day he was relieved from service. Being aggrieved by the order dated 6.12.2018 he preferred an appeal to the respondent No. 4 on 11.2.2019 (Annexure A/12). Since the appeal has not been disposed of within six months from the date of appeal, the applicant has approached this Tribunal in the present OA.

3. The grounds taken by the applicant are as follows :

- i) The charge sheet dated 28.7.2016 (A/6) was not issued by the competent authority and the IP and PO were not appointed by the competent authority and hence the charge sheet as well as appointment of IP and PO are liable to be quashed.
- ii) It is also stated that once charge sheet has been dropped, subsequent charge sheet on the self same allegation is not permissible in law and hence the charge sheet dated 28.7.2016 issued by respondent No.6 is not sustainable in the eyes of law and is liable to be quashed.
- iii) The disagreement notice has not been issued by the competent authority who has to pass the final order after going through the inquiry report. The disagreement note has been issued by respondent No.5 whereas the punishment order has been passed by respondent No.4. Hence both the orders are bad in law and are not sustainable in the eyes of law.
- iv) That the respondent No.4 was appointed as ad hoc disciplinary authority to finalize the disciplinary case of the applicant vide memo of the Directorate dated 30.7.2018 was not communicated to the applicant.
- v) The order of suspension was neither passed by the appointing authority nor has been approved by the appointing authority.

Since it is well settled in law that the order passed by an authority having no jurisdiction is a nullity in the eyes of law, the period of suspension be treated as on duty.

4. The respondents have filed their Counter stating therein that the action taken against the applicant is just and proper because delivery of public mails was his prime duty and non-delivery of such is against the interest of public service. It is submitted that the Postmaster, Sambalpur HO being the Unit Head and appointment authority and disciplinary authority in respect of minor penalty has issued the charge sheet and appointed IO and PO as per rules. It is also stated that the Presidential Order of appointment of ad hoc disciplinary authority vide Directorate's memo dated 30.7.2018 was supplied to the applicant on 25.8.2018. It further stated that the applicant received the punishment order dated 6.12.2018 on 14.1.2019 and not on 14.12.2018. Hence the applicant is not entitled to any relief and the OA is liable to be dismissed being devoid of merit.

5. In view of the above, it is seen that earlier enquiry was dropped on 21.7.2016 as seen from Annexure A/5. Second charge memo dated 28.7.2016 vide Annexure A/6 was issued on the self same allegation of non-delivery of Aadhar Cards in his capacity as Postman. Punishment of compulsory retirement dated 6.12.2018 was imposed on the applicant as seen from Annexure A/11. It was submitted by learned counsel for the applicant that the appeal was filed by the applicant on 11.2.2019 and since the said appeal was not disposed of within 6 months therefore he has approached this Tribunal in the present OA. During pendency of OA and after filing of Counter, the said appeal was disposed of by the Appellate Authority as per order dated 20.4.2020 vide Annexure A/15 and as per the Appellate Authority's order matter has been remanded back to the stage of submission of enquiry report. It is submitted by learned counsel for the applicant that since appeal was not disposed of within 6 months and no leave of this Tribunal was taken for disposal of the appeal in question as required under Section 19 (4) of the A.T.Act, 1985, therefore the appeal is abated and as a necessary corollary any order passed in the appeal is

not in accordance with law. In this regard he has relied upon the decision of Hon'ble High Court in OJC 13587/2020 dated 25.7.2005.

6. There is no legal bar in issuing second charge memo if for some sufficient and reasonable ground first charge memo is dropped. In this regard learned counsel for the respondents has drawn our attention to Annexure R/1. Learned counsel for the applicant has drawn our attention to Annexure A/2.

7. It was further submitted by learned counsel for the applicant that the matter was detected through surprise check by the Dy. Postmaster who was accompanied by the Postmaster. Therefore the Postmaster being one of the witnesses could not have issued the charge sheet and ought to have been examined as witness from the side of the department. It is not obligatory on the part of the department to make somebody witness as per the selection and choice of the delinquent. If the applicant wants to examine any witness he is at liberty to make such prayer before the Inquiry Officer for examining. But the same has not been done in this case. It was submitted by the learned counsel for the applicant that the Aadhar Cards in question have already been seized after being recovered but that cannot lessen the responsibility of the applicant in distribution of the Aadhar Cards in question.

8. Learned counsel for the applicant has drawn our attention to the deposition of one witness as seen from Annexure A/13 but this Tribunal can neither act as Enquiry Officer or as Appellate Authority and therefore scope of going through the entire evidence of particular witness in the absence of any claim that the said statement has not been properly recorded or it has got any legal implication in this matter, we are not going to reassess the evidence, as the same is neither permissible nor desirable at this stage.

9. It was submitted by learned counsel for the applicant that the disagreement note sent to the applicant vide Annexure A/9 was issued by the superintendent of Post Offices, Sambalpur but the Superintendent of Post Offices, Sundergarh was the competent authority in his capacity as ad hoc disciplinary authority, since the appointment of the applicant was made by one Class I officer and the superintendent of Sambalpur is not Class I officer. In

order to buttress the said submission of learned counsel for the applicant has further submitted that the issue of disagreement note by some other person other than the competent person i.e. in this case ad hoc disciplinary authority clearly reveals that the ad hoc disciplinary authority has not applied his mind to the enquiry report submitted by the enquiry officer and to other materials on record to arrive at a particular conclusion (Annexure A/35). In this regard he has also submitted that the sole allegation/charge leveled against the delinquent applicant has not been proved. This being the position it was obligatory on the part of the disciplinary authority to apply his own mind to materials on record and thereafter issue the disagreement note if so necessary. But in the peculiar circumstances of this case the other person i.e. Superintendent of Post Offices, Sambalpur could not have legally performed the duty of ad hoc disciplinary authority, because it was necessary for the ad hoc disciplinary authority to apply his own mind to the materials on record for issuing the disagreement note in question. Therefore this Tribunal finds that the decision making process in the disciplinary proceeding at the stage of issuing the disagreement note in question, has been vitiated due to non-compliance of the fundamental principles of law.

10. Once this Tribunal finds that the disagreement note of the Superintendent of Post Offices, Sambalpur is not in accordance with law, then the same would not have been relied upon by the ad hoc disciplinary authority for the purpose of passing the order in question.

11. In view of the findings and discussions, as made above, the punishment order vide Annexure A/11 is quashed. The matter is remanded back so that the respondents can take steps in accordance with law. The OA is accordingly disposed of with the above direction. There will be no order as to costs.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)