

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 557 of 2019

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Hon'ble Mr. C. V. Sankar, Member (A)

1. Shri Jagabandhu Mohanta, aged about 59 years, son of Late Agnu Mohanta at present working as GPS BPM (under suspension/put off duty), Damahuda Branch Post Office, Via-Machhgarh Sub Office, Keonjhar Division, Pin – 758081, permaned resident of Village Damahuda, Via-Machhgarh Sub Office, Keonjhar Division, PIN - 758081.

.....Applicant.

VERSUS

1. Union of India, represented through its Director General of Post, New Delhi 110011.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Bhubaneswar GPO, CPMG SQUIRE, Bhubaneswar 751001.
3. The Director Postal Services, Office of the PMG, Sambalpur Region cum Appellate Authority Sambalpur Pin No. 768004.
4. Superintendent of Post Offices, Keonjhar Division, At/Post/Dist – Keonjhar Pin No. 758001.
5. Praveen Kumar, Inquiry Officer cum IPO, Keonjhar West Sub division, Keonjhar - 758001

.....Respondents.

For the applicant : Mr. T. Rath, Advocate.

For the respondents: Ms. A. K. Mohapatra, Advocate.

Heard & reserved on :28.01.2021 Order on :18.03.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

- (i) *To admit the present original application and upon hearing counsel for the parties be pleased to pass the order under Annexure A/ 12 and A/ 10.*
- (ii) *Direct the respondents to change the present Respondent Number 5 as Inquiry Officer and appoint any other nutritional officer to conduct the inquiry. Further, direct the respondents to allow the applicant to recall and cross examine the witness afresh.*
- (iii) *And pass any order/orders, direction/directions as deemed fit and proper in the interest of justice and fair play.*

1. The case of the applicants as averred in brief in the OA is that the applicant was initially appointed as Extra Departmental Delivery Agent of Damahuda Branch Post Office w.e.f. 27.11.1989 and then was ordered to work as GPS BPM in addition to his original duty on 11.12.2013.

That while continuing as such the applicant was put off duty vide order dated 02.03.2017 (Annexure a/1) on contemplation of initiation of department proceeding. Respondent No. 4 vide order dated 29.01.2018 issued charge sheet under Rule 10 of the Department of Post, Gramin Dak Sevak (Conduct and Engagement) Rules 2011 to the applicant and asked him to submit written statement of defence within 10 days. The applicant submitted his written statement of defence denying the charges thereafter. The applicant submitted that the Disciplinary Authority appointed Respondent No. 5 as inquiry officer vide memo dated 28.02.2018 and appointed one Sri Samira Sahoo as presenting officer. Thereafter Respondent No. 5 sent notice dated 15.03.2018 calling upon the applicant to attend the preliminary hearing on 27.03.2018 with his defence assistant. The applicant vide his representation dated 26.03.2018 nominated one Sri Ashok Kumar Das as his AGS.

2. The applicant submitted that the IO did not communicate the acceptance of the AGS nominate by him therefore the applicant appeared in person in the inquiry on 27.03.2018 and denied the charges against him by submitting in writing as well as oral and desired to be heard in person. The applicant submitted that on 2nd sitting on 20.04.20185 he went along with his AGS but

proceeding was closed without any transaction. The applicant submitted that 3rd sitting was fixed on 23.05.2018 but since the AGS nominated by the applicant expressed his unwillingness to attend further proceeding as AGS the applicant nominated on Sri Bhagirathi Das to act as AGS vide representation dated 14.05.2018 which was accepted by the IO. In the sitting on 23.05.2018 the IO adjourned the sitting and fixed 4th sitting on 28.06.2018 for examination of 2 witnesses. The applicant submitted that IO vide letter dated 19.06.2018 (Annexure A/3) intimated that 3 new witnesses in addition to the already enlisted witnesses has been added to the chargesheet. The inquiry on 28.06.2018 was adjourned since no witness turned up and the IO vide order sheet dated 28.06.2018 (Annexure A/4) directed the PO to ensure presence of the witnesses in future dates. Thereafter the applicant received notices dated 07.08.2018 regarding postponing of the date of inquiry from 28.06.2018 to 17.09.2018 and 20.09.2018 as the PO had to attend the training and then vide notice dated 26.09.2018 (Annexure A/5) the IO intimated the applicant that date has been fixed on 11.10.2018 and 12.10.2018 with the programme to examine 7 witnesses at a go. The applicant submitted that on 11/10/2018 due to heavy rain the AGS of the applicant could not attend and intimated the same over phone to the IO to

adjourn the sitting of the inquiry. It is submitted by the applicant that although the IO acceded to the request but recorded in order sheet dated 11.10.2018 (Annexure A/6) that the proceeding has been adjourned three times for the fault of the applicant and warned the applicant to be present in the next sitting otherwise hearing will be ex parte. The applicant again received notice dated 26.10.2018 (Annexure A/7) fixing the inquiry on 01.11.2018 and 02.11.2018. The applicant submitted that on 01.11.2018, three witnesses attended the inquiry but despite the objection of the AGS as well as the applicant, the IO allowed all the witnesses to sit and watch each other while the deposition of the witnesses was recorded and the PO was allowed to supply and supplement the witnesses during their examination as well as cross examination and the IO did not pay heed to the objection of the AGS. The same was repeated on 02.11.2018 and instead of recording the statement of the witnesses the IO modified the same according to his sweet will. The applicant submitted that he filed application alleging bias against the IO in the proceeding on 02.11.2018 and requested the IO to refrain from examination of the witnesses but the IO did not pay heed to any objection and recorded disinclination of the applicant to cross examine the witnesses. The copy of the deposition of state witnesses number 4 & 5 and order

sheet dated 02.11.2018 are as Annexure A/8, A/9 and A/10 respectively. The applicant thereafter submitted appeal dated 02.11.2018 (Annexure A/11) to Respondent No. 3 for change of IO which was rejected vide Respondent No. 3 letter dated 22/26.04.2019 (Annexure A/12). The applicant submitted that after the above said order, the IO vide notice dated 18.08.2019 (Annexure A/13) called upon the applicant to attend the inquiry to be held on 27.08.2019 and 28.08.2019 for examination of 6 more witnesses. The applicant submitted that both the IO as well as the PO are working under the territorial jurisdiction of Respondent No. 4. Hence the OA.

3. The respondents in their counter inter alia averred that while the applicant was working as GDS BPM w.e.f. 17.12.2013 to 02.03.2017 suspicious activity was reported vide letter dated 22.02.2017 of Sub Postmaster, Machhagarh S.O. and the case was enquired into by IP Ghatgaon Sub Division and wherein it was intimated regarding non credit of SB deposits into post office account and mis-appropriation of public money. The applicant had defrauded the public money from 2 SB accounts by means of suppressing the deposit which was reported by the SPM Machhagarh S.O. on 13.02.2017 (Annexure R/2) Thereafter the applicant was placed under put off duty vide letter dated 02.03.2017 for conducting the enquiry smoothly. The respondents

submitted that the IO conducted nine sittings but on 02.11.2018 on the day of 9th inquiry the AGS submitted one allegation against the IO which was forwarded to Director Postal Services, Sambalpur along with para wise comments of the IO on 13.11.2018 (Annexure R/1), Thereafter the appellate authority disposed of the bias petition vide order dated 22/26.04.2019 which was communicated to the applicant. The respondents submitted that the 2nd sitting of the inquiry was held on 24.04.2018 (Annexure R/3) but the applicant as well as his AGS did not attend the said inquiry. The respondents submitted that the request of the applicant to change his AGS was acceded to by the IO and the applicant along with his AGS attended the inquiry on 23.05.2018 and perused all the documents listed and his prayer for supply of Xerox copies of all the listed documents as well as prayer for time to furnish list of additional documents and witnesses was also acceded to. The respondents submitted that as per the prayer of the applicant during the 3rd sitting three additional witnesses in addition to seven enlisted witness were allowed. The respondents submitted that the postponing of the inquiry due to training programme of the PO was communicated well in advance to all vide letter dated 24.08.2018 (Annexure R/5). The respondents further submitted that on the 5th sitting of inquiry i.e. on 01.11.2018 all the three

witnesses were present and witnessed the inquiry but on the 2nd day of inquiry i.e. on 02.11.2018 when the inquiry was on verge of completion the AGS vide his letter dated 02.11.2018 alleged that the IO was biased in Rule 10 inquiry and submitted one representation and requested to adjourn the inquiry of the case hence the sitting for the day was closed. The said representation dated 02.11.2018 was forwarded to the appellate authority with comments of the IO (Annexure R/6) on 13.11.2018 (Annexure R/7) and the appellate authority after going through it did not find any bias on the part of the IO and therefore ordered the IO will continue to function as inquiry authority. The respondents submitted that the allegation of the applicant that all witnesses were allowed to sit in the inquiry room is not at all a fact. During the inquiry one of the witness namely Smt. Bansanti Hasda had her baby with her and during inquiry session she wanted to shift her baby to other and another witness namely Sohla Manrdi took her baby but the applicant and AGS are coloring the same as allowing witness in the inquiry room is baseless and after thought. The respondents submitted that all witnesses were outside the gate and were coming one by one to give their disposition.

4. In the rejoinder the applicant submitted that the applicant was recruited as Gramin Dak Sevak Mail

Deliverer (GDS MD) (Annexure A/14) and is continuing as such however consequent to death of the regular Gramin Dak Sevak Branch Post Master (GDSBPM) the applicant was given additional duties on temporary basis. The respondent No. 4 having poor knowledge on Rules 9 & 10 of GDS (C&E) Rules 2011(Annexure A15 & 16) framed the applicant in false and baseless charges. The applicant submitted that despite of several objection by the applicant and his AGS not to allow the state witness to sit in one room during disposition of their statement the IO did not consider the objections but illegally recorded the disposition on 6th sitting of inquiry. The applicant submitted that IO allowing additional witnesses on 19.06.2018 with reference to post dated letter of the PO dated 25.06.2018 proves that the IO is completely biased. The applicant submitted that the so called humanitarian approach of the IO by allowing witness inside the inquiry chamber while disposition of witnesses has taken away the vital and whole essence of the concept of open hearing, where one witness is supposed to know nothing about the deposition of another witness.

5. Learned counsel for the applicant relied on some citations including the following citations:

a) Tilak Chand vs. Kamala Prasad Shukla (1995)

6. We have heard learned counsels for both the sides and carefully gone through their pleadings, written note of

submission as well as citation relied by them. Learned counsel for the applicant alleged bias on the inquiry officer on the grounds of allowing additional witnesses vide his letter dated 19.06.2018 in reference to the PO letter dated 25.06.2018 which the applicant claims as intentional since the IO had allowed additional witness before even the PO had made request. Learned counsel for the respondents submitted that it is a typographical mistake.

7. It was further alleged by the applicant that bias of the IO was clearly visible on the way how the deposition of witnesses were carried during the course of inquiry and he submitted that allowing witness inside the inquiry chamber while disposition of witnesses has taken away the vital and whole essence of the concept of open hearing, where one witness is supposed to know nothing about the deposition of another witness. The applicant also alleged that during examination of SW-1, she was prompted by SW 2 which was allowed by the IO inspite of protest from the CO and that PO put answer on her mouth which were also allowed by the IO. It was further alleged by the applicant that during cross examination of SW-2 the written statement of her was written as dictated by Postal Officer but the IO has written in the deposition that “the postal official who had been gone to my house stated – I was written in EXT-S-2”.

8. The applicant was placed under put off duty pending disciplinary action for mis-appropriation of funds to the tune of R. 49,500/-. Due opportunity was given to the applicant to defend himself in the inquiry. It is ascertained from the records that IO had allowed the applicant along with his first AGS to peruse all documents listed in the charge sheet and was also supplied copies of all the listed documents. The IO had even allowed for changing of AGS when the applicant prayed for it. The copy of deposition of SW 1 & SW 2 has not been filed by the applicant to show that there has been any wrong recording of depositions. The evidentiary value of said two witnesses and contradiction inherent improbable if any from the statement of the said witnesses and other witnesses can only be ascertained by the inquiring officer after conclusion of the inquiry. Therefore, this Tribunal does not find at this stage that there has been any incorrect recording of deposition by intervention of any other witnesses. The presence of other witnesses at the time of recording of deposition of SW 1 has been categorically denied by the inquiring officer and rejected by the appellate authority. This Tribunal, in the absence of any sufficient material in this regard is not satisfied that the deposition of SW 1 or any other witnesses has been recorded in any improper manner. The presence of another witness while recording

the statement of SW 1 has been duly explained by the inquiring officer mentioning that since SW 1 was carrying one small child, therefore help of another person was required to take the said child outside, so that recording of statement of SW 1 can be made. Therefore, the appearance of another person at the time when statement of SW 1 was to be recorded merely for the purpose of taking away the child from SW 1 do not show that the inquiring officer is any way biased against the applicant. The attempt taken by the inquiring officer to procure attendance of some other witnesses do not also show that he is any way biased against the applicant. Allowing some more witnesses to be examined on the prayer of the presenting officer also do not show that the inquiring officer is any way biased against the applicant. The other allegation as made against the inquiring officer by the applicant are not supported with any satisfactory material and this Tribunal in the circumstances of this case and on the basis of material available on record is not satisfied that there was bias by the inquiring officer against the applicant. This Tribunal is also not satisfied that any irregularity or illegality has been committed by the inquiring officer while conducting the inquiry till it was stayed by this Tribunal. However, taking into consideration the fact that the inquiring officer is not conversant with local language and was taking the help

of presenting officer for the purpose of ascertaining the exact answer from the witnesses, it will be just and proper to direct the disciplinary authority to appoint another inquiring officer who would be conversant with local language and may not be required to depend fully on the presenting officer for the purpose of ascertaining the exact answers given by the witnesses.

9. Therefore the OA is disposed of with direction that the disciplinary authority shall appoint another inquiring officer, preferably who is conversant with local language so that there will be no problem in recording the statement of the witnesses. The proceeding shall commence from the stage in which it was stayed by this Tribunal. It is directed that the inquiry shall be completed preferably within a period of 6 months in view of decision of Hon'ble Supreme Court reported in Prem Nath Bali vs Registrar High Court (2015) 16 SCC 415.
10. Accordingly, the OA is disposed of with above direction but in the circumstances without order to cost.

(C. V SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)