

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 371 of 2015

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

Hon'ble Mr. Tarun Shridhar, Member (A)

1. Sri Hemanta Kumar Dash, aged about 54 years, S/o
 Late Sibaram Dash, At.-RameswarSahiKhalari, PO.
 Khalari, Via-Hulursingha, Dist. – Anugul, now working
 as SPM HulursinghaS.O..

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary-cum-
 Director General of Posts, Dak Bhawan, Sansad Marg,
 New Delhi – 110116.

2. Director of Post Services, Sambalpur Region, O/o Post
 Master General. Sambalpur, At/Po/Dist – Sambalpur
 – 768001.

3. Superintendent of Post Offices, Dhenkanal Division,
 At/Po/Dist – Dhenkanal – 759001.

4. Chief Post Master General, Odisha Circle, At/Po.-
 Bhubaneswar, Dist-Khurda-751001.

.....Respondents.

For the applicant : Mr. N. R. Routray, Advocate.

For the respondents: Mr. D. K. Mallick, Advocate.

Heard & reserved on :17.12.2020

Order on :18.01.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

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

- (i) *To quash Annexure A/1, A/3, A/7 and A/9 direct the respondents to give all consequential benefits.*
- (ii) *Any other order (s) as the Hon'ble Tribunal deems just and proper in the interest of justice.*

2. The case of the applicants as averred in brief in the OA is that the applicant while working as SPM Banarpal was issued one charge sheet dated 18.02.2011 (Annexure A/1) under Rule 16 of CCS (CCA) Rules, 1965 by Respondent No. 3 for not reporting either to Divisional Office or to System Administrator regarding disconnection of the system of Banarpal SO with speed net server of PTC Mysore from 21.01.2011 to 14.02.2011. In response to the charge sheet the applicant submitted his defense representation dated 28.02.2011 (Annexure A/2) stating that he was not trained official to work on eMO modules and Meghdoot miscellaneous computer and that he had reported regarding defect in link connection of the computer to System Administrator, BSNL authorities and also to Respondent No. 3 by registered post. It is submitted by the applicant that Respondent No. 3 without conducting any enquiry, providing any

reasonable opportunity of being heard and without supplying any document simply considered the representation and imposed the punishment of one increment for two and half years vide order dated 03.01.2013 (Annexure A/3). The applicant then preferred appeal to Respondent No. 2 vide letter dated 25.04.2011 (Annexure A/6) but Respondent No. 2 vide his order dated 25.10.2011 (Annexure A/7) held the applicant guilty but reduced the punishment to that off withholding of one increment of pay for a period of one year without cumulative effect. The applicant submitted that Respondent No 3 in his order dated 03.07.2013 (Annexure A/3) stated that the applicant was imparted training computer training thrice but he was imparted training only in Sanchay Post Module only and not in speed-net, e-MO and Meghdoot modules. The training for speed net, e-MO and Meghdoot modules were given to applicant from 23.08.2012 to 24.08.2012 and 14.11.2012 to 16.11.2012 vide order dated 13.02.2012 & 03.09.2012 (Annexure A/4 & A/5) which was after the said incident took place. The applicant further submitted that he was working single handily in double handed SOs and Respondent No. 3 never filled the vacancy in SOs wherever the applicant is posted as SPM or deliberately reliving the PAs posted there. The applicant then filed petition dated 06.12.2012 (Annexure A/8) to Respondent

No. 4 and it is submitted by the applicant that Respondent No. 4 without going through the entire record, case history and lack of training on e-MO, speed-net and Meghdoott Modules as on date of incident held the applicant guilty and upheld the punishment imposed by Respondent No. 3 and confirmed by Respondent No. 2. The applicant submitted that there has been gross miscarriage of justice and even though he has already completed more than 29 years of service, has been deprived of 2nd MACP which is given after completion of 20 years of service. Hence this OA.

3. The Respondents in their counter inter alia averred that the department had started working in computers from the year 2008 and all the staff of Dhenkanal Division were being trained on various departmental modules. The applicant was also imparted training on various modules like Sanchaypost module and Meghdoott module vide memo dated 17.02.2006, 23.04.2007 and 06.05.2010 (Annexure R/1 series) and besides that training on e-enabled services like eMO has been imparted by the System Administrator at workplace of the applicant. The respondents submitted that the applicant has been working on computer in Banarpal SO since 2009 and inspite of much working knowledge in computers the applicant stopped working on computers with effect from 21.01.2011 for which the e-enabled

services like eMO, speed post etc remained unattended and thereby the customers were deprived of getting these services. The respondents further submitted that when System Administrator visited Banarpal SO on 05.02.2011 he took print out of 16 eMOs and booked three speed post articles which implies that the applicant was deliberately not working on computer with plea that there was disconnection of system to speed net server of PTC Mysore from 21.01.2011 and that this right hand was not functioning properly after road accident he faced on 03.07.2010. It is submitted by respondents that the system administrator again imparted training on eMO to the applicant on 05.02.2011 but the applicant willfully avoided performing the office work in computer for which a number of eMOs and other e-enabled services could not be provided to the customers and for his intentional non performing works on computer the applicant was proceeded against under Rule 16 of CCS (CCA) Rules 1965 and after considering his representation the Superintendent of Post Offices, Dhenkanal Division awarded punishment of withholding of one increment when it falls next due for a period of two and half years without cumulative effect. The appeal of the applicant was considered by Director of Postal Services (appellate authority) who disposed of the appeal by modifying the punishment to that of withholding of one increment of

pay for a period of one year without cumulative effect when it falls next due. The applicant's further appeal before the CPMG Odisha Circle was also rejected. The respondents further submitted that the applicant is boisterous and does not discharge his duty properly. He had been served DO letter thrice and severe warning for never attending the office in time vide letter dated 24.05.1990, 01.04.2003, 12.06.2006 & 29.05.1998 (Annexure R/2 series) Further the applicant was awarded with a punishment of withholding of one increment for six months without cumulative effect vide memo dated 28.01.2005 which has been mentioned in his service book. The applicant was also charge sheeted under Rule 16 of CCS (CCA) Rules 1965 with six article of charge and was awarded with punishment of reduction of pay by one stage for a period of three years without cumulative effect vide memo dated 13.06.2005 which was modified by the appellate authority. The respondents submitted that all these punishment orders speak as to how he has maintained absolute integrity, sincerity, neutrality and due devotion to duty with best satisfaction to his authorities. The copy of service book where the order of punishment are noted is at Annexure R/4.

4. The statement of imputation of misconduct or misbehaviour raised by the respondent vide memo dated 18.02.2011 is as follows:

"Sri Hemanta Kumar Dash a trained official in various modules of software while working as officiating SPM Banarpal SO in account with Angul HO from 21.01.2011 till date neither reported to Divsional Office nor to System Administrator Angul HO regarding disconnection of the system of Banarpla SO to speed net server of PTC Mysore from 21.01.2011 to 14.02.2011. No eMO was printed nor paid data updated till 14.02.2011 except on 05.02.2011 i.e. the date on which Sri S. K. Mohapatra printed 16 (sixteen) e-Mos & booked three speed post articles. From record it was observed that Sri Dash was not working on computers on the plea that his right hand was not functioning properly after the road accident he faced on dated 03.07.2010 though he was found doing the office work manually with his right hand without applying for leave as enjoined in the provisions of Rule 61 of Postal Manual Volume III. His plea of managing double handed office single handedly do not justify non working on computers as he was required to handle one computer at a time. His intentional month long stoppage of work in computer adversely invited comments from PMG/DPS Sambalpur regularly.

By the above acts, the said Sri Dash in his aforesaid capacity of officiating SPM Banarpal SO not only wilfully avoided to perform the assigned duty contravening the provisions of Rule 62 of Postal Manual Volume III but also failed to maintain due devotion to duty and acted in a manner which is unbecoming on the part of government servant as enjoined in Rule 3 (1) 9ii) & 3 (1) (iii) respectively of CCS (Conduct) Rules 1964."

5. The applicant in his defence statement dated 18.02.2011 stated the following:

"With due respect & humble submission I Sri Hemanta Kumar Dash, SPM, Banarpal S.O. beg to lay few points before you for your kind & sympathetic consideration on my punishment.

(1) That, I am officiating as SPM, Banarpal, S.O. from 21.01.2011 forenoon taking over the office charge from the SPM, D.C. Khuntia who has retired from service on this date.

(2) That, I am not trained about EMO Modules &Meghdoot Miscellaneous computer training till this date.

(3) That you have charged me that there was no any information has been reported to you or S.A. S.K. Mohapatra dtd. 21.01.2011 to 14.02.2011. It is not true fact. The S.A. S.K. Mohapatra was called for the see the defect Computer as the net link connection of the computer was defect. The link connection of the computer after day beginning he saw the link connection three lights are not remaining continuously and frequently coming & going up & down and said it is the BSNL Problem and told me to intimate the BSNL Officer regarding this. Therefore on the same day i.e. on 21.01.2011 I have reported this fact to the SDO Telephones, Nalco Exchange, Nalco Nagar with copy to your vide Regd. Letter No. 5494, dt. 24.01.2011 at Banarpal. No action have been taken against this letter. Thereafter on 01.02.2011 has been reported to you with copy to SDO, Telephones Nalco Exchange, Nalco Nagar vide RI. No. 5525 dt. 01.02.2011 at Banarpal. No action has been taken against it.

(4) That on 05.02.2011 Sri A. K. Mohapatra, S.A. has been called for by me over phone and he has come & faced the same problem on the link connection which was frequently coming and disconnecting continuously. After waiting for 3 hours to 4 hours on opening the computer he was able to booking 3 speed articles and some EMO printing. This was possible as I collected these three stamp fixed envelopes from the customers on requesting that the receipts would have to delivery by the next day. Sri S.K. Mohapatra stayed at Banarpal S.O. for 6 to 7 hours to work this much of work. In the mean time the electric line was also going and coming at Banarpal the electric power cut is continuing continuously everyday. It is not possible for a SPM as a single to wait for the this type of occurs for a long time by collecting the letters for booking and to give the receipts by the next day is not a proper process and also all the customer are not willing for such type of business. It is only possible for the knowing persons who has faith on us. Actually all customers have no patience to wait for along time to get the receipts of their letters. For defective link connection of the computer and for power cut of the electric line. S.K. Mohapatra advised to report this defect of the link connection to the BSNL, Nalco Nagar.

(5) That thereafter on 11.02.2011 this fact has been reported to you vide RI. No. 5562 dt. 11.02.2011 at Banarpal S.O. with copy to SDO, Telephones, Nalco Exchange, Nalco Nagar. No action has been taken by you. And more letters have been send since before. Instead of several reports no action has been taken on a SPM's report. Therefore you are in a harassing mode above me and remained in a silent mood without demcare any writings of me.

(6) That, my service in postal department is 25 years. I have been working manually from the beginning of the service. As a practice of work I am able to manage the load of works with painful and defective hand. But I am not in a practice of computer work which should have to work speedily on various types of work by a single person. On a road accident occurred on 03.07.2010 I remained on medical leave for two months without pay. As I am the only earning member of my family I was bound to join in my service inspite of recovery of pain on my right hand. The medicine are continued for this purpose till this date.

(7) That on visit of the D.P.S., Sambalpur on 28.01.2011 has also faced the electric power cut and my hand defective. He has also felt the needness of one genset and a computer hand staff as soon as possible for this office.

(8) That, after all types of these failures I am himself have been going to SDO, Telephones Nalco Exchange, Nalco Nagar and brought a mechanic from the Nalco Nagar Telephone exchange who took the link connecting article from our office on 15.02.2011 and after repairing this article connected with our computer on 18.02.2011 by this link connection remained quietly. Thereafter on 19.02.2011 the same problem of the link connection arrived. So no work is done with the same defecting set.

(9) That for this the S.A. S.K. Mohapatra has been called for over phone but he has not attended till this date.

Therefore, I request you to be good and kind enough to consider my above cases sympathetically and remove the punishment from me and for which I shall be highly obliged."

6. The relevant portion of Supdt. Of Post Offices order dated 09.03.2011 is extracted below:

"I have gone through his representation dated 28.02.2011 and connected records and observed that Sri H. K. Dash was deliberately avoiding to work in computers and tried to hoodwink each and every visitor/officer who asked for it. As seen from records he was imparted computer training thrice, once from 13.02.2006 to 17.02.2006 secondly from 26.03.2007 to 30.03.2007 and lastly from 28.06.2007 to 02.07.2010. Whether one works single handedly in a double handed office or jointly with another SPM working in computer has become mandatory for which knowledge of computer was essential. Inspite of above training if Sri Dash felt shortage of training input he should have time and again requested to Divisional Superintendent for such a training. But instead of doing that he has kept awaiting for this for which he himself was responsible. During his last visit to Banarpal SO during October 2010 SPOs had given him, his personal mobile number to contact and intimate every problem relating to his work, which he had never minded to use. Moreover the system administrators report every time speaks that the server and one node of his office are in good working condition and the official was given adequate operational learning practice by him since installation of e-MO software wef 11.08.2010. Even the System Administrator had given a detailed working training to Sri H. K Dash on 05.02.2011. Instead of taking advantage of this practical learning Sri Dash continued to avoid working in computers shamefully. So the contention that he was not trained in computer is an unaccepted plea.

Secondly he had thrown down the entire gauntlet on the shoulder of the Divisional Superintendent that no action was taken by him despite letters written to him on dated 01.02.2011 & 11.02.2011. But as per records, these were the letters which were routinely being written to SDOT BSNL, Nalco simply endorsing copy to Divisional Office. Sri Dash knew well that by writing letters now a days problems cannot be solved by BSNL authorities. Each time I have enquired with BSNL authorities over phone they have categorically opined in a single voice that "Your SPM Banarpal either keeps his set in disorder or likes not to work in computers". Moreover as per his letter he had informed them about broad band link failure, but what prevented him to work in Sanchaya Post. SO daily account generation or postman modules which were not linked to broad band connectivity? This poorly shows his distracted mind which was not getting tuned to computer work but not the link failure as he stated. Had it been so how Sri S.K. Mohapatra System Adminsitrator was able to print out e-Mos on 05.02.2011 & how on the day of visit by DPS Sambalpur on 28.01.2011 the IPOs Talcher was able to print the pending EMOs and why he did not handle the same? I have also got the information from Sri S. K. Mohapatra that each time he talks to Sri Dash on pending eMOs (not printed/not paid) the telephone is immediately transferred to one GDS Packer Sri SubohdaS amal who takes eMO print daily. Is it not wonderful to see that when his GDS packer can take eMO print outs without training, why Sri Dash cannot?

Thirdly the allegation about frequent power cuts to DPS and other officials on visit is simply an eyewash. To safeguard against the future power cuts DPS in his para 7 of the VR dated 28.01.2011 had suggested to supply one working generator to this office but his observation in Para 16, Para 18, Para 19 & Para 23 speaks volumes onhis no work culture in Sanchaya Post Signature scanning

& pass book printers in which he is fully trained. His total month long attendance to computer, speed net, pass book printer, data entry, signature scanning etc are proof enough to suggest that he had not felt like to work in computers, power cut being a simple excuse only.

In view of this, none of his rudimentary voices against the Superintendent appears to be reasonable. He has to work in computers or go on leave which is the next best alternative for him. Was there not a single day or two when power and broad band both were in order? Why then he failed to produce computer generated daily account or to work in Sanchaya Post. The tolerance has a limit and he has crossed that limit. The anguish expressed by PMG/DPS etc are enough to note his nuisance and he has to break his pattern of working manually. Challenging the Divisional authority against his own wrong doings is nothing but an expression of his arrogance which needs to be immediately curbed through an exemplary punishment only. There is no place to show subtle niceties to him, as the whodunit behind the entire episode was he himself. As such I Sri Sanjaya Kumar Mohapatra, Supdt. Of Post Offices, Dhenkanal Division, Dhenkanal finding no other way to resurrect his habit do hereby order to withhold one increment when it falls next due for a period of two and half years without cumulative effect. I hope this will help drive his present style of non working towards a working ambience."

7. In response to the appeal of the applicant dated 25.04.2011, the appellate authority in its order dated 25.10.2011 rejected the appeal. The relevant portion of the order is extracted below:

"4. I have carefully gone through the records of the case, viz., the memo of charges with all other records and applied my mind.

The averments made by the appellant in para (i) above to the effect that Banarpal being a double handed SO was managed him single handedly and that the Disciplinary Authority did not accede to his request to depute another official to this office. The appellant cannot by himself make a judgment on the manning of the Offices in the Division. It is up to the Head of the Division to take an appropriate action in this regard. However the appellant cannot consider this as an impediment for him to work on computers. Rather working on computers would have made his work easier. Therefore the contention of the appellant is not acceptable. The submission of the appellant that he was not trained on Departmental Softwares is not a fact. The appellant has been imparted training on Departmental Softwares at least on three occasions as noted by the Disciplinary Authority vide his memo no. G-1-1/Ch.VIII dt. 09.03.2011 and that he has not submitted anything to the contrary in his appeal. The appellant has been proceeded for his inability to work on e-enabled services like e-MO. The submission of the appellant that the System Administrator has not imparted necessary training to him due to his ulterior motive is not supported by any evidence. Further the person, against whom the appellant has made such serious allegations, has not been afforded an opportunity to clarify his stand. Therefore giving any credence to such imputations will be preposterous. The pertinent aspect of the memo of charge

was whether there was pendency of printing of large number of e-Mos for pretty long time and the initiative taken by the appellant to clear the pendency. The appellant has not submitted anything substantial in his appeal to disprove the crux of the charge.

5. In view of the foregoing discussions, I Shri Lalitendu Pradhan, Director Postal Services, Sambalpur Region, Sambalpur hold the appellant guilty of the charge levelled against him. However reckoning the past services rendered in the Department by the appellant and taking an extremely lenient view I do hereby reduce the penalty to that of 'Withholding of one increment of pay for a period of one year, without cumulative effect, when it falls next due'. The appeal is disposed of accordingly."

8. The relevant portion of the order dated 11.07.2013 of the Revisionary authority to the appeal of the applicant dated 06.12.2012 is as follows:

"I have carefully gone through the petition, brief history of the case, parawise comments, charge sheet, defence representation of the petitioner and other related records.

I find that the petitioner does not have a case to support the main charge against him, i.e. reluctance to work on computers. Quite contrary to his plea on not being well versed with computer operations, it is found that he has been given training on computer operations, it is found that he has been given training on computers from time to time. Whenever, he was telephoned by his higher office, he passed the call to GDS packer, who was able to take print out of E-MOs on computer, which shows, that the computers were functioning & broadband was also functional & therefore, circumstantially it is proved that he was actually himself avoiding to work on computers. The fact that computers & broadband were functional is also proved by the fact that whenever IPOs, or the system administrators visited the office they found that, the computers & broad band was found to be working. Therefore the plea of the petitioner that there was either a problem in the computer or the broadband connection & that is why he was not working on computers is not a valid plea. Even the BSNL people have reported that the SPM's report for non-functioning of broadband was just a ploy to avoid work in computer.

Hence, I do not find any reason to interfere in the orders of the appellate authority.

I, Shri S. K. Chakrabarti, CPMG, Odisha Circle, Bhubaneswar, therefore reject the petition and order accordingly."

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

a) Hon'ble CAT, Jabalpur Bench order dated 23.12.1987 passed in TA No. 449/86 in Samir Kumar Ghosh Vrs. Union of India and others.

b) Hon'ble CAT, Madras Bench order dated 22.11.1988 passed in OA No. 287/1988 in case of D.J.J. Bethel Raj vrs, Sub-Divisional Officer, Telegraphs and another.

10. We have heard the learned counsels, gone through the pleadings, citations referred to and materials on record. The citations relied upon by the learned counsel for the applicant is not applicable to the facts and circumstances of this case.

11. As per the settled law on the scope of judicial review of the disciplinary proceedings, the Tribunal can interfere in the disciplinary proceedings if there is violation of natural justice or statutory rules or if the findings are based on no evidence. In this regard Hon'ble Supreme Court in the case of B. C. Chaturvedi vs. Union of India & Anr.. reported in 1996 AIR 484 has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority

is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

12. In the case of Union of India Vs. P. Gunasekhran 2015 (2)

SCC page 610, Hon'ble Supreme Court has held as under:

“.....In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a) *The enquiry is held by a competent authority;*
- b) *The enquiry is held according to the procedure prescribed in that behalf;*
- c) *There is violation of the principles of natural justice in conducting the proceedings;*
- d) *The authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e) *The authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f) *The conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g) *The disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h) *The disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i) *The finding of fact is based on no evidence.”*

13. The respondents have submitted that the applicant has been found guilty in previous two occasions in the departmental proceedings and the said fact has also been entered in his service book. No rejoinder has been filed by the applicant to challenge the averment made in the counter in this regard. The applicant had been given

training three times i.e. on 17.02.2006 and 23.04.2007 on Sanchaypost Module and on 06.05.2010 on Meghdoot module. The applicant has also been given adequate operation learning practice of eMO software since installation i.e. from 11.08.2010 and even though the System Administrator had given detail working knowledge on eMO on 05.02.2011 the applicant continued to avoid working in computers. The applicant has not filed any material to show that he be heard in person during the enquiry under Rule – 16 (1) (b) of CS (CC&A) Rules, 1965. Therefore we do not find any illegality in the action of the respondents in conducting the inquiry. In the light of the aforesaid judgments of Supreme Court, it is clear that the judicial review of departmental inquiry is based on different principles and the scope of interference is limited. The orders of Disciplinary Authority and Appellate Authorities are in accordance with law. In view of misconduct on the part of applicant, it cannot be said that punishment is disproportionate and shocking warranting any interference.

14. Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)