

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 133 of 2020

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

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

1. Mr. Akshaya Kumar Parija, aged about 59 years, son of Late Purna Chandra Parija, Presently working as Senior Accountant, Office of the Director of Accounts (Postal), Mahanadi Vihar, Cuttack – 753 004.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary, Department of Post, Dak Bhawan, New Delhi – 110001.

2. The Post Master General, Berhampur Region, Berhampur - 760001.

3. The Dy. Director of Accounts (Postal), Mahanadi Vihar, Cuttack – 753004.

.....Respondents.

For the applicant : Mr. D. K. Mohanty, Advocate.

For the respondents: Mr. R. K. Kanungo, Advocate.

Heard & reserved on : 29.01.2021

Order on :09.02.2021

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 and set aside the Memo No. Admin.I/C-465/Akshaya Kumar Parija/6113 dated 28.02.2020 (As per Annexure A/5) as well as the charge framed against the applicant under Rule 16 of CCS(CCA) Rules, 1965 vide Memo No. Admin.I/C-465/Akshaya Kumar Parija/5780 Dated 14.01.2020 (as per Annexure A/3) issued by the Respondent No. 2 for being concocted, baseless, arbitrary illegal, unjust, improper and not sustainable in law;*
- (ii) *to pass any other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.*

2. The brief of the case as inter alia averred by the applicant in the OA is that he while working as Senior Accountant received a letter dated 31.01.2019 (Annexure A/1) asking him to explain why disciplinary action will not be taken against him as he has been found subsidiary offender in the fraud of Rs. 1,32,63,494/- committed by Postmaster Bhawani Patna Head Post Office. The applicant submitted his reply dated 06.02.2019 (Annexure A/3) stating that he had never operated the pairing module for pairing of Post Office schedule with bank scroll and requested him to relieve him of the fictitious charge. After receipt

of the reply of the applicant Respondent No. 3 issued a charge sheet dated 14.01.2020 (Annexure A/3) to the applicant. The applicant submitted his reply dated 29.01.2020 (Annexure A/4) requesting Respondent No. 3 to conduct inquiry under Rule 16 (1-A) as per DOPT OM dated 28.10.1985 (Annexure A/6). It is submitted by the applicant that the Respondent No. 3 vide his letter dated 28.02.2020 rejected the request of the applicant and asked him to submit his defence representation against the charge sheet issued within ten days failing which ex parte decision will be taken. The applicant thereafter submitted his representation on 06.03.2020 (Annexure A/8) requesting to drop the Rule 16 proceeding. Hence the OA.

3. The respondents in their counter inter alia averred that the applicant was working in Accounts section since 2012 and had been imparted training in PACS Software at Bangalore and assigned with duties of paring work in Account Current Section of Postal Accounts Office, Cuttack. The Respondent submitted that in the report dated 12.01.2018 of the circle level inquiry conducted by the Postmaster General Berhampur Region, the applicant was found to be subsidiary offender and as per instruction dated 06.12.2019 (Annexure R/1) of APMG (Vigilance) to fix responsibility on subsidiary offenders and comply on

CLI inquiry points the charge sheet was issued inspite of request of Director of Accounts (Postal) Cuttack for dropping names of all staff of this office from the list of subsidiary offenders. The respondents further submitted that since Respondent No. 3 did not propose to withhold the increment of pay of the applicant as punishment hence holding of the inquiry in the manner laid down in sub rule 3 to 24 of Rule 14 before imposing other type of punishment is not mandatory as per Rule 16 (1-A) of CCS (CCA) Rules, 1965 and since in the instant case a minor penalty was to be imposed it leaves to the discretion of the disciplinary authority to decide whether an inquiry should be held or not, accordingly the applicant was intimated vide Annexure A/5 that holding of inquiry as requested by him was not necessary. The respondents further submitted that as per Rule 20(1) of Administrative Tribunal Act 1985 (Annexure R/2) "a tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance" and since no final punishment order in proceeding initiated against the applicant has been issued and the applicant has not exhausted all the remedies available under departmental rules the OA is liable to be dismissed.

4. In the rejoinder the applicant inter alia averred that the disciplinary authority had not conducted any *prima facie* inquiry to assess the contributory negligence on the part of the applicant in a realistic manner to establish that the applicant was responsible for the particular act of negligence as prescribed in Rule 106 and Rule 107 of P&T Manual Vol. III and neither did obtain any specific feed back regarding the involvement of the applicant in this fraud case so as to fix responsibility on him as a subsidiary offender. The applicant submitted that as per letter dated 13.12.2017 (Annexure A/9) the Director of Accounts Postal Cuttack at para 9 has stated that pairing work of unlinked items/checking of bank reconciliation statements of Bhawani Patna HO was badly in arrears from 2011 onwards due to discontinuation of manual pairing work and consequential non receipt of correct and complete E-Scrolls and E-Schedules and the pairing work was actually started sometime in the year 2015/2016 for the period from 2011 onwards. The applicant submitted that in the letter vide Annexure A/9 it was clearly written that "(a) no bank reconciliation statements which are required to be prepared by the post master at the end of each month as per Rule – 130 of P&T FHB vol. I was prepared. (b) that during administrative inspection of the HO the

inspecting officer has to see that Debit/credit scrolls have been obtained and entered in the registers which are to be checked by the disbursing officer. But such guideline was also not followed. (c) that the fraud of cheque valuing Rs. 500250/- was committed by the delinquent servant in December – 2012 which could have been detected by the administrative inspection conducted on 31-12-2012 and the perpetration of the offence could have been arrested at its outset.” Therefore neither the applicant nor any other person working in postal accounts office, Cuttack can be a subsidiary offender in this case. The applicant submitted that the Disciplinary Authority in this case had vide letter dated 29.05.2019 (Annexure A/10) intimated the PMG, Berhampur region vide para 12 that none of the officials of this office i.e. Postal accounts Office Cuttack is treated as subsidiary offender in the fraud case which has been solely committed by Sri Kabiraj Harjan due to lack of effective supervision/executive inspection by the divisional administration, therefore the issue of charge sheet to the applicant is bad in law. The applicant submitted that the Sr. DDG cum CVO had also in his DO letter dated 09.02.2018 had said that the CLI Report is very vague and non specific to the issue of investigation and vigilance action desired which is

narrated in the Dy Director letter dtd 06.11.2019 (Annexure A/11). The applicant further submitted that it is very clear and conspicuous from the letter of the disciplinary authority dated 15.10.2019 (Annexure A/12) that names of all officials who were working in accounts current section during the period from January 2013 to July 2016 were supplied to the PMG Berhampur who included the name of the applicants as subsidiary offenders, therefore the charge sheet was issued arbitrarily by the disciplinary authority.

5. The respondents in their counter to the rejoinder inter alia averred that the applicant was identified as one of the subsidiary offender as per CLI report dated 27.09.2017 issued by the PMG vide memo dated 12.01.2018 (Annexure R/3). The respondents submitted that the applicant was working in account current section in the special drive as per Annexure R/4 wherein it has been specifically mentioned that there was no specific allocation of any unit to any official in that period rather official were directed to clear arrear pairing works on special drive so as a result all the officials working in account current section at that point of time must have performed pairing works of different HOs including Bhawanipatna HOs and none of them who are identified as subsidiary offenders in this case could be

able to detect the fraud from April 2012 to April 2017. The respondents submitted that as per letter dated 22/25.11.2019 (Annexure R/5) the CPMG, Odisha Circle had categorically instructed to fix responsibility on subsidiary offenders and comply on CLI points of PMG, Berhampur region. The respondents submitted that in accordance with directions issued by Sr. DDG & DVO DO letter dated 09.02.2018 supplementary CLI in continuation with earlier CLI report was carried by the PMG Berhampur Region on 09.04.2018 (Annexure R/9) wherein the officials of PAO, Cuttack were found responsible for their contributory lapses as per para 16.4 of the earlier CLI report.

6. Learned counsel for the applicant relied on some citations in his rejoinder including the following citations:
 - a) Hon'ble Apex Court in Transport Commissioner Madras vs. A. Radha Krishna Murthy (1995) 1 SCC 332.
 - b) O. K. Bharadwaj vs Union of India and others (2001) 9 SCC 180.
 - c) Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar vs. Union of India (1999) 7 SCC 409.
 - d) Hon'ble Supreme Court in Sawai Singh vrs. State of Rajasthan (1986) 3 SCC 454 : 1986 SCC (L&S) 662 : AIR 1986 SC 995.

e) Hon'ble Supreme Court in Surath Chandra Chakrabarty vrs. State of W.B. (1970) 3 SCC 548 : AIR 1971 SC 752.

f) Hon'ble Supreme Court in M. B. Viglani vs. Union of India (2006) SCC (L&S) 919.

g) Hon'ble Supreme Court in Anant R. Kulkarni Vs. Y. P. Education Society and tohers (2013) 6 SCC 515.

h) (1987) 2 SCC 179 State of U.P. Vs. Brahm Datt Sharma & another.

i) (1995) 3 SCC 134 (Deputy Registrar, Co-operative Societies, Faizabad vs. Sachnidra Nath Pandey & ors.

j) (2006) 12 SCC 28 (Union of India vs. Kunisetty Satyanarayana.)

k) This Tribunal order dated 15.11.2019 in OA No. 485/2017, order dated 22.06.2017 passed in OA NO. 634/2009, order dated 25.04.2017 in OA NO. 106/2016 and order dated 22.03.2012 in OA No. 97/2011.

7. We have gone heard the learned counsels, carefully gone through their pleadings and citations relied upon.

8. The applicant is facing one proceeding under Rule 16 of CCS (CCA) Rules 1965 i.e. minor penalty proceeding. Charge memo vide Annexure A/3 was issued against him on 14.01.2020 on the allegation

that there was irregularity in not pairing of cheques which resulted in fraud of amount to the tune of 1,32,63,494/-. Similar charge memo have been issued in respect of 37 persons also. The applicant has filed annexure A/7 series that show cause notice have been sent to 7 other persons.

9. The applicant submits that the allegation as made against him is regarding his involvement as subsidiary offender. It is alleged that due to his contributory negligence in not duly pairing of cheque resulted in fraud to the tune of Rs. 1,32,63,494/-. Learned counsel for the applicant draws attention to A/9 & A/10 filed along with the rejoinder to say that the applicant is not at fault as he has not done the pairing of cheque and that there is supervising authority to look after those aspects. He further submitted that no charge sheet has been issued to the supervisory authority.

10. Learned counsel for the applicant further stated that in his show cause he has denied the allegation made against him and had prayed for holding of regular inquiry as mentioned in A/4. But his prayer has been rejected by the disciplinary authority by passing order vide Annexure A/5.

11. This Tribunal, in the case of Banmali Sabar versus Union of India and others, had passed order on

09.11.2020 in OA NO. 771/2019)reported in 2020 (3) CAT at page 240) wherein it had dealt a case in which the delinquent applicant had prayed for regular inquiry under Rule 16 (1) (A) of CCS (CCA) Rules 1965 by referring to DOPT OM dated 28.10.1985 where in it is stated:

“Rule 16(1-A) of the CCS (CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases where a minor penalty is to be imposed, Rule 16(1) *ibid* leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government Servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the Disciplinary Authority could after without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice. OA NO. 771/19 17 [G.I Dept of Per. & Trg. O. M. No. 11012/18/85- Estd.(A), dated the 28th October, 1985]”

But in the present case it is seen that the applicant has not prayed before the respondents or before the disciplinary authority that he is required to inspect certain document or to cross examine any witness.

12. The applicant in his letter dated 29.01.2020 had stated:

“With reference to the Memo No. Admn. I/C-465/Disc./Akshaya Kumar Parija/5780, dated 14.01.2020. received on 20.01.2020, I beg to submit the following:

- 1) *At the outset I beg to intimate your kind honour that I am completely innocent and deny the charges in toto levelled against me in the memorandum cited above as there is not an iota of truth.*

- 2) From the statement of imputation of misconduct it appears that the issue involved are very serious which require detailed probe to arrive at the truth of the allegation since performance of my duty was inextricably inter linked with the duty of supervision, approval and review by the concerned AAO/AO/Sr. A.O and superior authorities in the hierarchy during that period.

*In view of the above, I request you that for justice and fair play I may be **heard in person** and inquiry as mandated under Rule-16 (1-A) as laid down in Deptt. of Personnel and Training OM No. 11012/18-85-Estt. (A), dated 28.10.85 in the manner prescribed in sub rule 3 to 23 of Rule 14 of CCS (CCA) Rules, 1965 may kindly be conducted so that I may not be deprived of reasonable opportunity to prove my innocence in the present case."*

In the rejection order dated 28.02.2020 (Annexure A/5) it is stated

"I have gone through your representation dated 29.01.2020 and connected records of the case thoroughly.

As admitted, you have worked in Account Current Section during the period from 16.09.2014 to July-2016, which dealt with the whole pairing process relating to drawings from bank and reconciliation thereof. It is evident that the massive cheque fraud had been committed by Shri Kabiraj Harijan, Ex-Postmaster, Bhawanipatna HO, which could not be unearthed during that period due to contributory negligence in duty on your part causing loss to the Department to the tune of Rs. 1,32,63,494/- . You have also been identified as subsidiary offender in the said cheque fraud case as per CLI Report dated 27.09.2017 issued by the PMG, Berhampur Region, Berhampur vide Memo No. Inv/90-55/2017-18 dated 12.01.2018.

Hence, the undersigned comes to the conclusion that further inquiry in the matter is not necessary as requested by you. However, you are hereby once again directed to submit your defence representation against the charge sheet issued vide this office Memo No. Admin-I/C-465/Disc/Akshaya Kumar Parija/5780 dated 14.01.2020, if any within ten days of receipt of this letter failing to which decision will be taken ex-parte as per Rule."

Thus it is seen from annexure A/5 that the disciplinary authority has applied its mind in proper perspective to the facts and circumstances of this case and thereafter has rejected the prayer made by the applicant for regular inquiry.

13. No punishment has yet been imposed against the applicant. It is not known as what further steps will be taken by the disciplinary authority and the appellate authority while dealing with the matter at appropriate stage in accordance with law. Therefore it is premature to jump to any conclusion that the applicant will be prejudiced in any way being deprived of his right to put forth his case before the authority. It is normally expected that concerned authorities will follow the principle of natural justice and the procedures as per the rules and regulations governing the field. Therefore this Tribunal is not inclined to interfere with the matter at this stage. The citations as relied by learned counsel for the applicant are not applicable to the facts and circumstances of this case.

14. However the applicant would be at liberty to raise all points, as permissible under the law, before the appropriate authorities at appropriate stages and we are not passing any final findings with regards to the allegations made against the applicant in the disciplinary proceeding in question.

15. Accordingly the OA is disposed of with above observation but in the circumstances without any order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)