

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.298 of 2017

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (A)**

Rajendra Prasad Dash, aged about 41 years, S/o. late Dasarath Dash, resident of At-Chandeswar, PO-Devidwar, PS-Jajpur, Dist-Jajpur, Odisha, PIN-755007, presently working as Inspector of Posts (IP), Rajborasambar, PO-Rajborasambar, Dist-Bargarh, PIN-768036.

...Applicant

VERSUS

Union of India represented through:

1. Union of India, represented through its Secretary of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/O-Bhubaneswar, Dist-Khurda, Odisha-751 001.
3. The Director of Postal Services, Sambalpur Region, Sambalpur-768 001.
4. The Superintendent of Post Offices, Keonjhar Division, Keonjhargarh-758 001.
5. The Superintendent of Post Offices, Sambalpur Division, Sambalpur-768 001.

...Respondents

For the Applicant : Mr.C.P.Sahani, Counsel

For the Respondents: Mr.M.R.Mohanty, Counsel,

Heard & Reserved on : 20.08.2020

Pronounced on : 01.09.2020

ORDER

Per Mr.Gokul Chandra Pati, Member (A):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- “i) *Admit the Original Application.*
- ii) *After hearing the counsels for the parties be further pleased to quash the memorandum of charges at Annexure-A/1 and the impugned orders at Annexure-A/5 and A/7. And consequently, orders may be passed directing the Respondents to give all consequential benefits within a stipulated period.*

And/or

- iii) *Pass any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice considering the facts and circumstances of the case and allow the O.A. with costs.”*

2. In a nutshell, facts of the matter are that the applicant while working as Inspector of Posts, Anandpur Sub Division, was issued with a charge-sheet vide Annexure-A/1 dated 06.12.2014, containing the following Article of Charge:

“Kanakalata Ghadei direct RPLI agent code No.OIUE468 At/PO/Baunsagarh, Via-Anandpur seriously alleged for non-payment of her RPLI incentive bill for the period from 20.02.2012 to 31.08.2013. The lady agent reminded for this orally as well as in writing to this office again and again since September, 2014. On perusal of records it was found that the incentive bill for the period from 29.02.2012 to 31.03.2013 of the direct agent has been sent to IP Anandpur for verification and return vide this office letter No.L/1-350/incentive-Comm/2014-15 dt. 22.09.2014. In this connection again the IP, Anandur has been reminded vide this office letter of even number dated 21.10.2014. Shri Rajendra Prasad Dash, IP, Anandpur Sub Division has not yet returned the bill duly verified for sanction at this end. The lady agent Kanakalata ghadei seriously stated this fact in her written statement given before the SPOs, Keonjhar on 04.12.2014 at Anandpur MDG. She has also stated that she has not yet received a single paise as commission although she will get Rs.12,000/- (Rupees Twelve thousand) of commission as per her business target.

By the above act Shri Rajendra Prasad Das IP, Anandpur has shown gross negligence in discharge of his official duty with a dishonest motive. He has also disobeyed the order of SPOs, keonjhar since he has not complied the issue since September, 2014. In this case Shri Rajendra Prasad Dsh, IP, Andndpur has also misused the official position and poer for personal gain which is a severe violation of conduct rules.

By his above act Shri Rajendra Prasad Dash failed to maintain absolute integrity & due devotion to duty and also acted in a manner which is unbecoming on the part of a Govt. Servant in violation of Rule-3(I)(i)(ii) & (iii) of CCS(Conduct) Rules, 1964”.

3. In response to this, the applicant requested the Superintendent of Post Offices, Keonjhar Division (Respondent No.4) vide his letter dated 15.12.2014 (Annexure-A/2) to permit him to inspect/supply copies of the following documents to enable him to submit is defence.

- i) The ruling/instructions of competent authority on the basis of which the I.P. will deal the cases of direct agent of RPLI and its despatch particular.
- ii) The ruling/instruction of the competent authority containing the method/procedure for verification of RPLI incentive bills of direct agents by the I.P. in absence of any data/records with the office of I.P. and its despatch particular.

4. Considering the above, the Superintendent of Post Offices, Keonjhar Division, sent a letter dated 15.12.2014 (Annexure-A/3) stating as under:

“There is no provision to supply the ruling instruction etc. Of competent authority by the Disciplinary Authority. Hence it is regretted. Besides this you have been charged for disobedience of order since you have not returned the incentive bill of lady direct agent. The documents/rules sought for you is of no relevancy to the case. You have received the memo of charges on 09.12.2014. You

are allowed five days more time to submit your defence representation if any i.e., within 23.12.2014. The Xerox copy of the written statement dated 04.12.2014 of Kanakalata Ghadei direct RPLI agent is sent herewith for your perusal”.

5. The applicant submitted his defence vide letter dated 5.1.2015 (Annexure-A/4), with a request to the Disciplinary Authority to drop the charges. While the matter stood thus, the applicant was transferred to Sambalpur Postal Division on 20.01.2015 and the Superintendent of Post Offices, Sambalpur Division (Respondent No.5.) was designated as the Disciplinary Authority (in short DA). Respondent No.5 took into consideration the defence representation of the applicant and passed an order dated 31.08.2015 (Annexure-A/5), the relevant part of which reads as follows:

“I have gone through the memo of charges, defence representation dated 05.01.2015 of Shri Rajendra Prasad Dash and all other available records of the case. In his defence representation Shri Rajendra Prasad Dash has stated that in the Direct Agent System, the documents like biodata, photo, specimen signature and code number are not supplied to IP at the time of their appointment and they are being attached to Sos. Further as per PLI Directorate letter No.26-02/2009-LI dtd. 18.09.2009, No.26-2/2003-LI dt. 25.09.2003 and No.26-02/2003-LI dt. 15.07.2003 circulated vide CPMG letter NolLI/ 1-12/2010 dt. 19.12.2014, the Ips/ASPs are not required to sign the confidential report of RPLI proposals procured by Direct agents. For the same Shri Dash submitted the bills to the SPOs, Keonjhar after complying the omission like signature in the bill etc. Delay in complying the correspondence is unavoidable due to voluminous work and reallocated offices of Ghatagaon Sub-Division. So he requested to drop the charge sheet and exonerate him from the allegation. The plea of said Shri Dash that due to voluminous work and reallocated offices of Ghatagaon Sub-Division is not acceptable. He has to return the bills to Divisional Office with the correct position of the provision thereof so that further action on the sanction of the RPLI incentive bill of Kanakabala Ghadei direct RPLI agent could have been taken early. As such the laxity shown in response to the SPOs, Keonjhar warrants deterrent action. However, I Shri Trilochan Ray, Supdt. Of Post Offices, Sambalpur Division, Sambalpur, taking a lenient view award Shri Dash, with the punishment of ‘CENSURE’ “.

6. Against the aforesaid punishment order, the applicant submitted an appeal dated 21.09.2015 (Annexure-A/6) to the Director of Postal Services, Sambalpur Region (Respondent No.3), who vide order dated 13.05.2016 (Annexure-A/7), rejected the appeal, recording his findings as under:

“I have gone through the memo of charge punishment awarded by the Disciplinary Authority, appeal of the appellant and the relevant records of the case in detail. It is a fact that there is no ruling/instructions that the I.P. should deal the proposals of Direct Agent of RPLI. It is also not practicable to verify the RPLI incentive bills of Direct Agents in absence of records. This fact as stated by the appellant was well known to him. As such when the SPOs sent the incentive bills on 22.09.2014, he should have returned the bills citing the provisions and his difficulties in verification of the incentive bills instead of sitting over the bills so that further action could have been taken at D.O. end. Therefore, the action of the

applicant was not desirable at all. The Disciplinary Authority has already taken a lenient view in this case.

Therefore, I M.A.Patel, Director Postal Services, Sambalpur Region, Sambalpur do not find any cogent reason to intercede on behalf of the applicant and reject the appeal of Shri Rajendra Prasad Dash".

7. Aggrieved with the above, the applicant has approached this Tribunal in the present OA on the following grounds:-

- i) D.G. Posts letter No.26-02/2009-LI dated 18.09.2009, No.26-02/2009-LI dated 25.08.2003 and No.26-02/2009-LI dated 15.07.2003 circulated vide letter No.LI/1-12/2010 dated 19.12.2014 (Annexure-A/8) 18.09.2009 categorically directs that Ips/ASPs are not required to sign Confidential Report of RPLI proposals procured by Direct Agents.
- ii) The bill was submitted unsigned which was returned to the direct agent by the applicant vide letter No.RPLI/Incentive/Misc./2014-15 dated 05.12.2014, followed by a reminder dated 12.12.2014 (Annexure-9 series). Therefore, the allegation that the applicant did not verify and returned the bill is not correct nor the applicant has ever disobeyed the orders of Respondent No.4.
- 16. Respondents have introduced a new allegation that the applicant has to return the bills to Divisional Office with the correct position of the provision thereof so that further action on the sanction of the RPLI incentive bill of Kanakalata Ghadei direct RPLI agent could have been taken early. This according to applicant, shows that the disciplinary authority was aware that it is not the duty of the applicant to verify the bill.
- iv) The Appellate Authority in his order at Annexure-A/7 has clearly admitted that it is not the duty of the applicant to verify the bill and has stated that "It is a fact that there is no ruling/instruction that the I.P. should deal the proposals of Direct Agent of RPLI. It is also not practicable to verify the RPLI incentive bills of Direct Agents in absence of records". Therefore, it has been contended by the applicant that there was no *prima facie* case to proceed against the applicant – much less imposition of punishment.
- v) Neither the Disciplinary Authority nor the Appellate Authority recorded the reasons in support of their decisions nor was there any material available to hold that the applicant was guilty of the charge. Therefore, the punishment as imposed by the Disciplinary Authority and affirmed by the Appellate Authority does not stand the scrutiny if law.
- vi) The applicant has relied on the decisions of Hon'ble Supreme Court in Siemens Engineering & Manufacturing Co. Of India Ltd. Vs. Union of India [1976(2) SCC 981] in which it has been held that where an authority makes an order in exercise of a quasi judicial function, it must record its reasons in support of the order it makes. Since the orders passed by the Disciplinary Authority and the Appellate Authority do not mention the reasons, those orders need to be set aside.

v) The applicant has also relied on the following judgments of Hon'ble Supreme Court to fortify his stand in the OA:

- (a) Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & Ors. (2009) 4 SCC 240.
- (b) S.N.Mukherjee vs. Union of India (1990) 4 SCC 549.
- (c) B.A.Linga Reddy vs. Krnataka State Transport Authority (2015) 4 ACC 515.
- (d) Krishna Swami Vs. Union of India & Ors. (1992) 4 SCC 605.
- (e) Workmen of Meenakshi Mills Ltd. & Ors. Vs. Meenakshi Mills Ltd. &Anr. 1992(3) SCC 336.
- (f) Oryx Fisheries Pvt. Ltd. Vs. Union of India (2010) 13 SCC427.
- (g) Mahavir Prasad vs. State of U.P. & Ors. AIR 1970 SC 1302.

vi) The applicant having not done any irregularity or negligence in duty thereby violating any rules or instructions, the punishment as imposed on him amounts colourable exercise of powers.

8. Per contra, the respondents have filed a detailed counter. The main thrust of the counter is that as a matter of practice, whenever a document or bill requires verification from any individual or office, it is sent to the Inspector of Posts under whose Sub-Division the area falls, to verify its correctness of the bills from the individual concerned. RPLI agents claim incentive for business procured by them i.e., the premiums deposited in respect of RPLI policies. The bills need to be verified from the offices in which the premiums have been deposited to ascertain the correctness of the bill. Hence, the bills are sent to the Inspector of Post Offices to verify it from the concerned offices. It has been pointed out that the incentive bill for the period from 29.02.2012 to 31.03.2013 of the direct RPLI agent in question in this OA, had been sent to the applicant by Respondent No.4 vide letter dated 22.09.2014 for verification and return followed by a reminder on 21.10.2014. The applicant did not take any action till 05.12.2014 when he returned the bills to the direct agent concerned, as a result of which the incentive bills got delayed, for which the applicant is solely responsible. Respondents have submitted that while imposing punishment the Disciplinary Authority has duly considered the defence representation submitted by the applicant as well as the related documents with due application of mind. Similarly, the Appellate Authority has also applied its mind to the facts and circumstances of the case and upheld the punishment as imposed by the Disciplinary Authority.

9. Applicant has filed a rejoinder to the counter more or less reiterating the grounds as averred in the O.A., inter alia, with a submission that the being biased and predetermined, punishment was imposed by the Disciplinary Authority, which was upheld by the Appellate Authority. The applicant has

enclosed copy of two charge-sheets issued by the respondent no.4 to state that he intended to harass the applicant. Reference has also been made to adverse entry in the APAR of the applicant by respondent no.4, which was expunged by higher authority.

10. Heard the learned counsels for applicant and respondents who reiterated the stand in the pleadings and perused the records. In this case, the applicant has been awarded a minor punishment of "Censure" for the charge of delaying action on verification of the bills presented by one RPLI agent in spite of instructions of the respondent no.4. The applicant tries to justify his action stating that as per the instruction of the DG, he was not competent to verify the bills in question. There is nothing on record to show that the applicant has informed the respondent no.4, in reply to his letters and reminders asking him to verify the bill, that he was not competent to do such verification. The applicant mentioned about the instructions of the DG in para 4(ii) of his defence representation dated 5.1.2015 (Annexure-A/4). It is stated in para 4(iii) of the above letter that he sought for instructions/rulings from respondent no.4 for procedure for such verification. But from the OA, it is revealed that such request was made by the applicant vide his letter dated 15.12.2014 (Annexure-A/2) only after receipt of the charge-sheet. At para 4(iii) of his defence representation, the applicant has stated that the bill was found by him to be deficient for which he sent it to the RPLI agent on 5.12.2014 to comply the deficiency.

11. The submissions at para 4(iii) of the defence representation contradict the submissions in para 4(ii) that the applicant had nothing to do with the said bill as per the DG's instructions. Further, the applicant has not given any satisfactory explanation (except that he was entrusted with voluminous work) for not taking any action till 5.12.2014 on respondent no.4's letter dated 22.9.2014 by which the bill in question was sent to the applicant for verification followed by another letter dated 21.10.2014 to remind him. If the applicant was not clear as to whether he can do such verification, nothing prevented him to request for instruction from his higher authorities. It is clear from the records that instead of taking necessary action, the applicant chose to sit over the matter from 22.9.2014 till 5.12.2014 in spite of instructions of the respondent no.4. Hence, it cannot be said that the findings of the disciplinary and appellate authorities in the impugned orders at Annexure-A/5 and A/7 are without any evidence or basis.

12. The contentions of the applicant about harassment caused to him by the respondent no.4 are also not convincing. Issue of charge-sheets by a senior officer cannot be taken as action to harass an officer. Moreover, in this case,

although respondent no. 4 has issued the charge-sheet at Annexure-A/1, the punishment order dated 31.8.2015 (A/5) has been issued by the respondent no. 5 and it was upheld by the appellate authority i.e. respondent no.3. Hence, it cannot be said that the respondent no.4 was harassing the applicant by issuing the charge-sheet at Annexure-A/1.

13. The applicant has referred to a number of judgments of Hon'ble Apex Court in para 5.7 of the OA, stating that the disciplinary authority has failed to establish the charges and imposed the punishment without assigning any reason. Such contentions are not correct since the respondent nos.5 and 3 have passed speaking and reasoned orders dated 31.8.2015 (Annexure-A/5) and dated 13.5.2016 (Annexure-A/7) respectively, considering the factual background as discussed in paragraph 10 and 11 of this order. Hence, the cited cases are factually distinguishable.

14. In a number of cases, Hon'ble Supreme Court has held that it is not open for the Tribunal to interfere with the disciplinary proceedings in judicial review unless there are specific violations. In the case of **Union of India & Ors. Vs. P. Gunasekaran, reported in (2015) 2 SCC 610**, the law laid down is as under:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. 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 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.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- 16. re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

15. Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, while examining the scope of judicial review in disciplinary proceedings 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 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.

.....

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.”

16. In the facts and circumstances of the case and the settled position of law as discussed above, I am of the considered opinion that the applicant has failed to advance sufficient grounds in this OA to justify any interference of this Tribunal in the matter. Accordingly, the OA is dismissed. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)