

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00326/2020

Date of Order :19.10.2020

C O R A M

HON'BLE MR. M.C.VERMA, JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER



Hemant Kumar Jaiswal, S/o Sri Bijay Kumar Jaiswal, resident of Mohalla- Dilawarpur, Kali Tazia Road, Munger, at present posted as Head Treasurer at Munger Head Post Office, Munger.

..... Applicant.

- By Advocate : Shri J.K.Karn.

-Versus-

1. The Union of India through the Director General Cum Secretary, Department of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna-800001.
3. The Postmaster General, East Region Bhagalpur, O/o the Chief Postmaster General, Bihar Circle, Patna-800001.
4. The Director of Postal Services, East Region Bhagalpur, O/o Chief Postmaster General, Bihar Circle, Patna-800001.
5. The Superintendent of Post Offices, Munger Division, Munger-811201.

..... Respondents.

By Advocate :- Shri Kumar Sachin.

O R D E R [ORAL]

Per M.C.Verma, Member (Judi.):- Being aggrieved by order dated 17.04.2020 [Annexure A/1] passed ex parte by the Disciplinary Authority without holding the inquiry or without assigning any

reason as to why the inquiry is not necessary has imposed punishment of recovery of a sum of Rs. 5,50,000/- from the pay and allowances of the applicant in forty four equal instalments of Rs. 12,500/- per month with effect from April 2020 and being aggrieved by order dated 26.08.2020 [Annexure A/2] whereby the appeal preferred against the order of Disciplinary Authority has been rejected by the Appellate Authority. The contention raised in the OA includes that he was not allowed to avail the provisions contained in Rule 16 (1-A) of CCS (CCA) Rules, 1965 before making any order imposing on the government servant any statutory penalty.



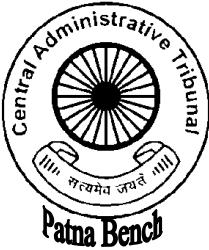
2. The OA came on Board on 21.09.2020 for notice hearing and on that day rather to direct to issue notice to the respondents, learned counsel for the respondents prays for time to seek instruction in the matter from the respondents. The order passed on 21.09.2020 verbatim reads as under :-

“Heard. Assailing the impugned order passed by Disciplinary Authority and Appellate Authority, learned counsel for applicant contended that certain documents required for submitting the defence to show cause and applicant was not supplied said documents, irrespective of his demand and that ex parte proceeding was conducted. He also referred Rule-16 (1-A) of CCS(CCA) Rules and representation dated 13.04.2020 of the applicant and urged that applicant requested the authorities to allow him to avail the provisions contained under Rule-16(1-A) of CCS(CC&A) Rules, 1965 read with the G.I. Department of Personnel & Trg, OM No-11012/18/85-Est.(A) dtd. 28th Oct. 1985, which allows holding of an inquiry in the manner laid down in sub-rule (3) to (23) of Rule-14, before imposing any statutory penalty but no departmental inquiry too was conducted nor any order as to why departmental inquiry was not necessary was passed by the Disciplinary Authority.

It was inquired from counsel for respondents whether any order that no departmental inquiry is necessary was passed or whether this issue whether departmental inquiry is necessary or not was ever considered by the Disciplinary Authority? It was also inquired from him whether in the facts and circumstances of instant case, would it not be appropriate to hold departmental inquiry and then only too pass appropriate order? Learned counsel for respondents requests for adjournment and also requests to supply him copy of order passed today.

Adjourned to 25.09.2020. Copy of this order be supplied to both counsels through e-mail."

3. Respondents instead of oral information of the raised query opted to file short reply and crux of that reply is that the Chief Supervisor SBCO Munger informed about some irregularities in SB work of NB Road SO and the applicant was Office Superintendent of that time received the report, he was suppose to put the report to the Divisional Superintendent Headquarter without any delay but he put up said report before the concerned authority on 27.07.2017. Said activities of the applicant identified as the subsidiary offender in the fraudulent occurred during 21.07.2017 to 27.07.2017 and hence, charge memorandum dated 26.02.2020 was issued and instead of submitting his reply, he sought certain document. He was permitted to visit the office and inspect the documents but the applicant did not come. It is stated in reply that the Disciplinary authority in compliance and accordance to the Rule 16 (1-A) of CCS (CCA) Rules 1965, which "ibdi leaves it to the discretion of the Disciplinary Authority to decide whether to inquiry should be held or not", the Disciplinary Authority decided to proceed ex-parte against the applicant and passed order vide order



dated 17.04.2020 ordering therein recovery of the sum of Rs. 5,50,000/- only from the pay and allowances of the applicant in forty four equal instalments of Rs. 12,500/-.

4. Applicant to this reply has also filed representation

though as noted above, no notice has been issued so far in this case.



5. Heard. Learned counsel for the respondents referred the

reply and conceded that no order regarding dispensation of inquiry was passed by the Disciplinary Authority. He further submits that

once applicant has made prayer for holding departmental inquiry, it was incumbent to give reason for dispensed with the inquiry.

Learned counsel for the applicant argues that applicant has made

prayer for holding inquiry. It is also not disputed that no order for

dispensation of inquiry much less giving reason was passed by the

Disciplinary Authority. He referred Rule 16 of CCS (CCA) Rules and

asked that though order for withholding increment or etc. is not in

the impugned order. He requested to set aside the impugned order

and allow the OA particularly in view of the reply filed by the

respondents.

6. Having considered the entire facts, the allegation against

the applicant that he withheld one letter during the period in which

some fraud took place and during the same as relating activities,

charge memorandum was issued, the applicant demanded some document and requested for holding of departmental inquiry and the Disciplinary Authority without passing order as to why the disciplinary inquiry is not necessary much less assigning reason passed the order ex parte imposing the penalty. The Appellate Authority affirmed the said order of Disciplinary Authority. On these cumulatively in case that neither reasonable opportunity was given to the applicant to deny him nor any order as required under CCS (CCA) Rules for dispensation of inquiry has been passed. Though the matter is at notice stage hearing but in back drop of glaring facts, we do not want to issue notice rather it is appropriate to quash the impugned order at the notice stage hearing itse.f and to pass appropriate direction.

7. Accordingly, the impugned orders vide Memo No. F4-1/17-18/Disc./H.K.Jaiswal dated 17.04.2020 (Annexure A/1) and order vide Memo No. Vig/ER/Appeal/H.K.Jaiswal/Munger/2020 dated 12.08.2020 issued by Appellate Authority the Director Postal Services (ER), Bihar Patna communicated to applicant vide letter dated 26.08.2020 are quashed and set aside. However, this order or us would not be an impediment for the respondents to consider the matter afresh and to pass an order as per law after following proper procedure established under Rules.

8. The OA stands disposed of accordingly.



[Sunil Kumar Sinha]
Member (A)

[M.C. Verma]
Member (J)

Pkl/





