

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 187 of 2017

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

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

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Director of Postal Services, Sambalpur Region, Sambalpur-768001.
4. The Superintendent of Post Offices, Keonjhar Division, Keonjhargarh-758001.
5. The Superintendent of Post Offices, Sambalpur Division, Sambalpur-768001.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

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

Heard & reserved on : 09.04.2021 Order on : 09.07.2021

O R D E R

Per Mr. Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

“(i) Admit the Original Application, and
(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 & 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 deem just and proper in the interest of justice considering the facts and circumstances of the case and allow this OA with costs.”

2. The brief facts of the case are that the applicant while working as Inspector of Posts, Anandapur Sub Division under Keonjhar Division was proceeded under Rule 16 of CCS (CCA) Rules, 1965 vide order dated

5.12.2014. The applicant requested the Superintendent of Post Offices, Keonjhar, who is the disciplinary authority to permit him inspection of relevant documents and to supply copies for submission of written statement of defence which was accordingly supplied to him. On 5.1.2015 the applicant submitted his written defence. On March, 2015 the applicant was then transferred to Rajborasambar Sub Division under Sambalpur Division and the SPO, Sambalpur became the disciplinary authority. On 31.8.2015 the case was finalized and the applicant was punished with statutory punishment of 'Censure'. On 21.9.2015 the applicant appealed against the order of punishment to the Director of Postal Services (DPS), Sambalpur. On 18.5.2016 the appeal was finalized upholding the punishment of the disciplinary authority and the appeal was rejected. Hence the present OA.

3. The respondents have filed their Counter stating that after examining all the facts, circumstances and all other connected records and taking into consideration the defence statement dated 5.1.2015 of the applicant, the disciplinary authority awarded the punishment of Censure to the applicant. It is submitted that the applicant failed to submit conclusive para wise comments on the complaint dated 27.10.2014 of Krushna Chandra Patra and he should have acted promptly and submitted a detailed conclusive enquiry report. But he did not do so and submitted a false report in a vague manner. Respondent No.4 has inquired into the said complaint of Krushna Chandra Patra and established that the applicant had collected 11 number of SB passbooks, 7 number of RD passbooks and 7 number of RPLI PR books of Baunsagarh BO without granting any receipts to the account and policy holders and as such the policies might have lapsed. Therefore it is stated that the action taken by the disciplinary authority is based on all available records. Hence the contention of the applicant that without verifying the facts on record the disciplinary authority has issued the charge sheet, is not correct and thus the order of the disciplinary authority is not illegal and prejudicial as alleged by the applicant. Therefore the respondents have submitted that the OA being devoid of any merit is liable to be dismissed.

4. The applicant has filed rejoinder to the Counter reiterating the facts as stated in the OA.
5. Heard both the learned counsels and perused the pleadings on record.
6. The statement of imputation (Article 1) vide charge memo reads as follows:

"The complaint dated 27.10.2014 of Shri Krushna Chandra Patra an insurant of RPLI of village Baunsagarh addressed to PMG, Sambalpur was enquired by the SPOs, Keonjhar on 04.12.2014 at Anandapur MDG. There was allegation of non-return of RPLI premium pass books and some RD accounts taken away by Shri Rajendra Prasad Dash, IP, Anandapur Sub Division during the course of his annual inspection of Baunsagarh BO during the month of June 2014. In this connection Shri Ganeswar Sahoo, O/S mails, Anandapur Shri Fakir Charan Sahoo, O/S Mails Anandapur, Shri Bijay Kumar Sahoo, Cash Overseer Anandapur MDG, Shri Ajay Kumar Shur, BPM Baunsagarh BO and one lady direct RPLI agent KankalataGhadei were examined by me on 04.12.2014 and 05.12.2014 respectively. On inquiry it was established that the IP, Anandapur had collected 11 number of SB passbooks 7 numbers of RD passbooks and 7 numbers of RPLI PR books from the insurant/depositor of Baunsagarh BO on the day of his inspection without granting any receipt to the GDSBPM. The above said passbooks and PR books were not returned by the IP, Anandapur till the date of inquiry i.e. 05.12.2014.

The complaint letter dt. 27.10.2014 had also been sent to the IP, Anandapur to submit parawaise comment within three days of receipt of the letter vide Divisional Office letter No. CR9/Misc/Ch.I dt. 21.11.2014. In reply to Divisional Office letter the IP had replied in a vague manner vide his letter no. CR/Misc-01/14-15 dt. 27.11.2014, which is complete a false report.

It was established during inquiry on 04.12.2014 and 05.12.2014 that the above passbooks have not been returned by the IP, Anandapur till 05.1.2014. By the above act of Shri Rajendra Prasad Dash, IP, Anandapur the insuants have failed to deposit their premium and thereby their policies might have lapsed.

By the above act, Shri Rajendra Prasad Dash, IP, Anandapur has shown gross negligence in discharge of official duties with a dishonest motive and also he has misused his official position and power for his personal gain which is a sever violation of conduct rules.

By his above act Shri Rajendra Prasad Dash failed to maintain 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(1)(ii) & (iii) of CCS (Conduct) Rules, 1964".

7. The applicant in his defense representation dated 05.01.2015 raised the following contention and grounds:

“CONTENTION AGAINST THE ALLEGATION

As per settled principles and in accordance with rule 4(i) of postal manual volume III read with guidelines/instruction enshrined in CCS (CCA) Rule 1965 the allegation should be a definite charge or charges. The charges should be clear, specific and

precise so as to provide the opportunity to the charged officer to submit an effective defence representation. Further the statement of allegations on which charges are based should contain a dispassionate and objective enumeration of the order of events or succession of facts or any other corroborative material on which it is proposed to rely for bringing home the charge/charges.

Secondly, as stipulated in Rule 69 of the Postal Manual Volume III, "it is necessary and desirable that disciplinary authorities before initiating action against employee verify facts from the original records." But in this case the respected disciplinary authority didn't carry out a dispassionate and objective assessment of the facts from records or any other recorded corroborative materials before concocting the allegation against me which I am submitted in my under mentioned submissions.

That the disciplinary authority himself recorded the statements of Sri Ganeswar Sahoo, O/S Mails Anandapur Sub Division on 05.12.2014 very secretly without my knowledge though I am his immediate controlling authority. Similarly Sri Fakir Charan Sahoo, O/S Mails, Anandapur Sub Division was examined on 05.12.2014 without my knowledge. Sri Bijay Kumar Sahoo, C/O/S, Anandapur MDG and Sri Ajay Kumar Syr, GDSBPM, Baunsagarh were examined on 04.12.2014. Sri Ajay Kumar Sur, GDSBPM is working under me. The circumstances leads to anybody to believe that the disciplinary authority is not interested to go into the truth but very much interested to brand me an offender by examining my subordinates on 04.12.2014 and 05.12.2014 secretly. Without getting any time for objective assessment he issued the charge sheet on the very day i.e. on 05.12.2014.

That it is alleged that I have collected the SB/RD passbooks and RPLI PR Books on the day of my inspection. The date and year of inspection and particulars of SB/RD accounts with depositors name and particulars of RPLI PR books have not been mentioned in the statement of imputation. Hence the allegation has been based on the basis of surmises/conjecture only.

That I inspected Baunsagarh BO on 30.06.2014 and verified the required number of SB/RD/RPLI Br books by collecting from the insurants/depositors and return to them on the spot. The respected disciplinary authority will never disagree and dispute that the passbooks are collected on the day of inspection on the spot and return to the depositors, etc on that moment after verification. For this work no receipt is being granted. I am also confident that my disciplinary authority is not granting any receipt to the depositors when pass books are collected for verification on the date of inspection. Hence the allegation is downright falsehood.

I inspected the office on 30.06.2014. Sri Krushna Chandar Patra in his complaint dt. 27.10.2014 stated that Sri Bijay Kumar Sahoo, O/S Mails collected the pass books etc in May 2014. Sri Ganeswar Sahoo, O/S Mails, Anandapur in his written statement dt. 05.12.2014 stated that he has collected the books on 08.07.2014. Sri Bijay Kumar Sahoo, C/O/S, Anandapur MDG in his written statement dt. 04.12.2014 stated that he collected the passbooks on 04.04.2014 without noting the particulars of the passbooks. Sri Fakir Charan Sahoo O/S Mails, Anandapur Sub Division in his written statement dt. 05.12.2014 stated that he had accompanied me on the day of my inspection i.e. on 30.06.2014. Sri Ajay Kumar Sur, GDSBPM, Baunsagarh BO in his written statement dt. 04.12.2014 did not mention the date of collection of PBs not particulars of Pass Books. In this situation actual date of collection of passbooks not been confirmed.

That the deponents who have given their written statement before the Superintendent on 04.12.2014 and 05.12.2014 were not examined regarding grant of receipt to the depositors/insurants in lieu o PBs/PR Books collected from them nor

they have stated to have granted any receipt. Hence it is questionable whether actually PBs/PR books were collected by them or not. If collected what is the recorded proof.

That Sir, Sri Ganeswarsahoo, O/S Mails, Sri Bijay Kumar Sahoo, O/S Mails have not given any passbooks/PR books to me on any date or I have directed them orally/writing at any time to collect the pass books. I beg to invite the attention to the Rule 3(2) (iii) & (iv) of CCS (Conduct) Rule 1964 wherein it is clearly forbidden to give any verbal direction to subordinate. In consonant with this Rule I have never directed the overseers verbally to collect the passbooks or the overseers didn't seek any confirmation in writing for such oral instruction. Because I have never given them any such oral or writing orders for collecting passbooks.

The different deponents stated on 04.12.2014 and 05.12.2014 before the Supdt. that they have collected the passbooks on different dates which creates conundrum. As example it is pertinent to mention that Sri Krushna Chandra Patra in his complaint dt. 27.10.2014 stated to have collected the passbooks/PR books of Shraban Kumar Patra in May 2014 whereas Sri Ganeswar Sahoo stated to have collected the said passbooks on 08.07.2014.

PR Books of Urmila Patra i.e. 88678 allegedly collected and given to me on 05.4.2014 and 08.07.2014 is not correct. In this policy deposit Rs. 67.00 has been accepted on 11.07.2014 (extract of transaction enclosed). Similarly in the RPLI policy of Uttam Patra i.e. 88682 transaction of Rs. 100.00 has been accepted on 11.07.2014. Thus the allegation has been concocted out of vengeance by the respected disciplinary authority for unknown reasons. Hence the allegation is fallacious, malicious and hypothetical having no legs to stand upon.

5. GROUNDS ON THE BASIS OF WHICH THE ALLEGATION IS NOT SUSTAINABLE.

The allegation is not clear, specific and precise containing full particulars of the passbooks/PR books etc.

The deponents who were examined by the disciplinary authority on 04.12.2014 and 05.12.2014 stated to have collected the pass books on different dates which is not only contradictory but also creates something confusion.

Collection of pass books for verification at the time of inspection doesn't require to grant any receipt as the passbooks were verified in the presence of depositors/insurants and returned to them on spot.

The particulars of passbooks/PRBs verified by me in Baunsagarh BO inspection on 30.06.2014 mentioned in the WS of the deponents given before Superintendent on 04.12.2014 and on 05.12.2014.

The relevant records like grant of receipts to the depositors in support of collection of passbooks/PR Books were not enquired and examined to establish the truth. Besides the receipts or any report in which the pass books were submitted to me by the O/S Mails are not insisted upon. No receipts has been granted to overseer by me or any report to this effect containing the particulars of the Passbooks/PR books have been received from the O/S by me.

There are no reasons to collect the pass books aimlessly.

The averments of the deponents including O/S Mails are quite confusing proving the allegations as not correct.

In absence of particular date, year, account number, name of the depositors/insurants in the statement of imputation the assertion is proved hypothetical, fallacious and malicious.

In view of the above reasons and circumstances the allegation has no legs to stand upon, but has been made a colossus in the feet of clay.

8. The relevant portion of the order of disciplinary authority dated 31.08.2015 is extracted below:

"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 Shri Dash has stated that allegation is not in accordance with Rule 4(i) and Rule 69 of Postal Manual Volume-III. Baunsagarh BO was inspected on 30.06.2014 where as the alleged date of collection and particulars of SB/RD/RPLI PR books as mentioned in the written statements of Shri Krushna Chandra Patra & Shri Ganeswar Sahoo differs. So in absence of particulars, date, year, account number and name of the depositors/insurants in the statement of imputation the assertion is hypothetical. Collection of passbooks during inspection does not require to grant any receipt. The particulars of pass books/PR Books verified by him in Baunsagarh BO inspection on 30.06.2014 mentioned in IR were quite different from that mentioned in the written statement of the deponents given before the SPOs on 04.12.2014 and 05.12.2014. So he requested to consider the case dispassionately and drop the charge sheet exonerating him from the charges. It is a fact that there is allegation of non return of passbooks/PR Books of the depositors/insurants but the same are not specifically pointed and corelated with the IR. But the said Shri Dash failed to submit conclusive para wise comments on the complaint dated 27.10.2014 dealt in Divisional Office File No. CR9/Misc/Ch.I which is not acceptable. However, basing on the circumstances of the case I, Shri Trilochan Ray, Supdt. of Post Offices, Sambalpur Division, Sambalpur take a lenient view and award Shri Dash with the punishment of "CENSURE" with a hope that Shri Dash will mend himself and take care in future while replying to Divisional Office."

9. The relevant portion of the appeal dated 21.09.2015 of the applicant is extracted below:

"That Sir, as my defence representation dt. 05.01.2015 has not been taken into consideration giving speaking/reasoned order there on. It is humbly requested to treat my defence representation dt. 05.01.2015 as an important part and parcel of this appeal."

10. The relevant portion of the order dated 18.05.2016 of the appellate authority is extracted below:

"I have gone through the memo of charges, punishment awarded by the Disciplinary Authority, appeal of the applicant and the relevant records of the case in detailed and found that the appellant was not prompt enough to submit satisfactory comments on

the complaint dated 27.10.2014 which put the Divisional Administration in convenient position. The appellant being a senior and responsible officer should have been prompt enough to respond to the communication of Divisional Office which he was not done led to germination of the case. The Disciplinary Authority has already taken a lenient view in this case.

Therefore, I MA. Patel, Director of 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.”

11. It is seen from the orders of the disciplinary authority and the appellate authority that the charges against the applicant as regards to complaints against him of collecting the SB/RD/PLI passbooks and not returning to them till the date of inquiry i.e. 04.12.2014 & 05.12.2014 have not been proved. The punishment of “CENSURE” has been imposed by the disciplinary authority on the applicant because he failed to submit conclusive para wise comments on the complaint dated 27.10.2014. The appellate authority confirmed the said punishment on the ground that the applicant was not prompt enough to submit satisfactory comments on the complaint. It is seen from the records that the applicant was asked vide letter dated 27.10.2014 to submit para wise comments within three days of receipt of the letter. But the applicant submitted the reply on 27.11.2014 a month later.

12. We are aware of limited scope of interference of Tribunal in the disciplinary proceedings, but we find that the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case and the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations while imposing the punishment in question. As the charges in the inquiry are not proved, therefore the impugned order vide Annexure A/5 & A/7 are set aside and quashed.

13. The OA is accordingly allowed. No costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)