

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 236 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 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.B.R.Mohapatra, counsel

Heard & reserved on : 5.2.2021

Order on : 26.3.2021

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/4 & A/6. 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 facts of the case in a nutshell are that while working as Inspector of Posts, Anandapur Sub Division under Keonjhar Division, the applicant was proceeded under Rule 16 of CCS (CCA) Rules, 1965 vide order dated

5.12.2014. The applicant requested the respondent No.4 who is the Disciplinary Authority, to permit inspection of relevant documents and to supply copies for submission of written statement of defence which were not supplied to him. The applicant submitted his written defence on 5.1.2015. Thereafter in March 2015 the applicant joined as IP, Rajborasambar Sub Division under Sambalpur Division on transfer and the SPOs, Sambalpur (respondent no.5) became the Disciplinary Authority. Respondent no.5 finalized the case on 31.8.2015 by punishing the applicant with the punishment of "withholding of one increment of pay falls next due for a period of 3 (three) months without cumulative effect". The applicant appealed against the order of punishment to the Director of Postal Services (DPS), Sambalpur on 21.9.2015 praying for setting aside the punishment order. On 9.5.2016 the appeal was finalized by the DPS, Sambalpur by rejecting the prayer of the applicant and modifying the punishment to "Censure". Hence the applicant has filed the present OA.

3. The respondents have filed their Counter stating that while continuing as Inspector of Posts, Anandapur Sub Division, SPO Keonjhar Division, respondent No.4 informed over phone to Ganeswar Sahoo, Overseer Mails, Anandapur Sub Division to accompany him for inspection of Panasadiha BO in account with Anandapur MDG on 4.12.2014 for rendering assistance. The same communication was also communicated to N.K.Singh, Driver, Keonjhar Division Office to communicate the information to Ganeswar Sahoo which he accordingly did. But the applicant being the immediate controlling authority of Overseer Mails, Anandapur Sub Division informed N.K.Singh that Ganeswar Sahoo will not accompany respondent No.4 since many arrear works have been entrusted to him. Therefore respondent No.4 inspected Panasadiha BO alone which attracts severe violation of conduct rules and insubordination to higher authority. Hence the applicant has been charge sheeted vide Annexure A/1 by respondent No.4 since he failed to maintain due devotion to duty and acted in severe violation of conduct rules. Before finalization of the proceeding the applicant was transferred and posted as Inspector of Posts, Rajborasambar

Sub Division under Sambalpur Division. Therefore respondent No.4 transferred the said proceeding to the respondent No.5 without finalizing the case. Being disciplinary authority, respondent No.5 found the applicant guilty and awarded him with the punishment of 'withholding of one increment of pay falls next due for a period of three months without cumulative effect.' Being aggrieved with the above punishment the applicant preferred an appeal to respondent No.3. Being the appellate authority respondent No.3 modified the penalty of withholding of increment of pay falls next due for a period of three months to 'Censure'. The respondents have submitted that the applicant after receipt of the article of charges had sought for the extracts of documents/information or to inspect the same and has sought for the ruling of competent authority. There is no provision of supplying the copy of rulings/instructions etc. of the competent authority by the disciplinary authority and thus his request for supply of the same could not be complied. The written statements of N.K.Singh, Driver, Keonjhar Division and Ganeswar Sahoo, Overseer Mails, Anandapur Sub Division, which were the basis of proceeding, were supplied to the applicant and he was also intimated about the date of inspection. It is submitted that the action of the applicant deliberately violating the instruction of his higher authority was not at all desirable since it created an atmosphere leading to insubordination to a higher authority. It is also submitted that the charges against the applicant is well established and the applicant has failed to establish his innocence. The respondents have therefore prayed for dismissal of the present OA being devoid of any merit.

4. The applicant has filed Rejoinder to the Counter filed by the respondents. In the Rejoinder the applicant has submitted that the incident took place on 4.12.2014 and on the next date i.e. on 5.12.2014 the disciplinary authority issued the charge sheet without any fact finding enquiry and without giving any opportunity of hearing to the applicant. Therefore it is clear that the disciplinary authority is biased against the applicant. The applicant has also relied on the following decisions in support of his case –

- i) UOI –vs- Mohd. Naseem Siddiqui [(2005) ILLJ 931 MP of Madhya Pradesh High Court
- ii) Canara Bank –vs- V.K.Awasthy [(2005) 6 SCC 321]

5. We have heard both the learned counsels for both sides and have gone through the pleadings on record and have considered the decisions relied upon by the applicant.

6. Learned counsel for the applicant submitted that since the applicant had specifically denied about the allegation made against him, therefore regular departmental enquiry should have been conducted as the same relates to factual aspect and in this regard he has relied upon the decision of Hon'ble Supreme Court in the case of O.K.Bhardwaj –vs- UOI [(2001) 9 SCC 180].

7. Learned counsel for the applicant had drawn the attention of this Tribunal to the allegation as made against the applicant in the charge memo (Annexure A/1). In support of his submission that instruction was given by higher authority i.e. SPOs Keonjhar division through one Sri N.K.Singh, Driver to ask the SPO so that later can direct the applicant to accompany the inspecting party and the said higher authority for inspection at Panasadiha BO. The said telephonic message from higher authority was given at about 16.25 hours on 3.12.2014. When the SPO did not give any instruction to the applicant to go to that place along with the inspecting party, there was no scope for the applicant to know about it. Learned counsel for the applicant further has drawn attention of this Tribunal to the statement given by the driver Sri N.K.Singh and another employee Sri Ganeswar Sahoo in support of his submission that both of them have not stated categorically that any such instruction was intimated to the applicant. On the other hand the SPO did not allow the applicant to go to the place in question for attending the inspecting party for inspection.

8. This Tribunal cannot re-assess the evidence adduced during the departmental enquiry and since this case is of no evidence, this Tribunal can go through the same Accordingly this Tribunal has gone through the materials on record to ascertain as to whether any material engaged against the applicant to show that he has disobeyed the instruction given by the superior

authority i.e. Superintendent of Post Offices, Keonjhar. The Superintendent of Post Offices has not been examined as witness in this case although it has been mentioned in the charge memo that his order was not carried out by the applicant. On the other hand K. Behera has issued the charge memo in question. But he has not imposed the punishment but the same has been imposed by another Superintendent of Post Offices. In this case no illegality has been committed by K. Behera in issuing the charge sheet. But the statements of N.K. Singh, Driver and Ganeswar Sahoo, Overseer Mail have been relied upon by the concerned authority to come to the conclusion that the applicant had directed Ganeswar Sahoo not to accompany the inspecting authority i.e. Superintendent of Post Offices to the next inspection scheduled to be held on 4.12.2014. Taking into consideration the pleadings of the parties and the materials on record the relevant portion of the statements of N.K. Singh, Driver and Ganeswar Sahoo, O/S Mails, Anandapur are quoted below in order to ascertain as to whether this is a case of “No evidence” :

Relevant portion of the Statement of Ganeswar Sahoo, O/S Mails, Anandapur Sub Division

“After half an hour I telephoned to Naba Singh who informed that the Superintendent said that I need not accompany. Few days back Rahendra Sir told me that “there is no ruling that you should accompany Superintendent. I will not spare you. Our work is being hampered”. Previously I have accompanied Supdt. To many BOs. Due to unwillingness of Rajendra Sir, I could not accompany Supdt. to Panasadiha BO. For this I am shocked.”

Relevant portion of the Statement of Nabakishore Singh, Driver, Keonjhar Postal Division

“At 5.30 hours on 04.12.2014, Thursday, Srijukta Rajendra Prasad Dash, SDI (P), Anandapur called me and told, “Naba Bhai, Ganeswar Sahoo is not giving VR or any report since last 4 months. I have arranged other works for him. If essentially required, then you will take him. Please convey this information to Sir (SPOs, Keonjhar). When I told this to Sir (SPOs, Keonjhar), he said, “All right we will go. Inform O/S Mails that he will not go.” I denied Ganesh, O/S Mails to accompany.

.....Ganesh, O/S Mails also called me and told that he would accompany. I denied him as per the direction of Sir.”

9. Thus it is ascertained from the statements of N.K. Singh, Driver and Ganeswar Sahoo, O/S Mails, Anandapur, that the Superintendent of Post Offices, Keonjhar (mentioned as Sir by these witnesses) had told N.K. Singh, Driver that Ganeswar Sahoo, O/S Mails need not accompany him i.e.

Superintendent of Post Offices, Keonjhar. Thus from the record, this Tribunal is satisfied that the applicant had not refused to comply with the order of Superintendent of Post Offices and had never directed Ganeswar Sahoo to go along with the Superintendent of Post Offices to the place where inspection was scheduled to be held. On the other hand he has intimated N.K.Singh to intimate the Superintendent of Post Offices that since Ganeswar Sahoo is busy in other important work, N.K.Singh should ascertain from Superintendent of Post Offices whether presence of Ganeswar Sahoo is still necessary for the purpose of inspection in question. Thereafter N.K.Singh was intimated by Superintendent of Post Offices that presence of Ganeswar Sahoo is not necessary. In view of the said statement and version given by N.K.Singh, Driver and Ganeswar Sahoo, O/S Mails, Anandpur it is clearly made out that there is no material against the applicant to show that he has instructed Ganeswar Sahoo not to accompany the higher authority and there is no material to show that the applicant had violated any instruction of the Superintendent of Post Offices or there was any violation of the Conduct Rules as alleged in the charge memo. Since this is clearly a case of no evidence, this Tribunal finds that the punishment imposed is to be set aside. Accordingly the memorandum of charges vide Annexure A/1 and the impugned orders vide Annexure A/4 and A/6 are quashed and set aside. The applicant will be entitled to all consequential benefits which is to be granted by the respondents within a period of three months from the date of receipt of the copy of this order.

10. Accordingly the OA is allowed to the above extent. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)