

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**LIBRARY**

OA. 350/00322/2021

Date of order 22.03.2021



Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
: Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Amar Nath Chakraborti S/o Late Anil Kumar Chakraborti, aged about 58 years, working as Assistant Post Master, Postal Life Insurance (PLI); Deputy Manager, Business Office Barrabazar Head Post Office, 18 Balmukund Maccar Road, Kolkata-700007 and residing at 2/35, Jadavpur Co-operartive P.O.- Mukundapur, Nayabad Kołkata-700099.

.....Applicant

-Versus-

1. The Union of India, service through the Secretary, Ministry of Communication Department of Posts Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, West Bengal Circle, Yogayog Bhawan, C.R. Avenue Kolkata-700012.
3. The Post Master General, Kolkata Region, Office, Office of the Chief Postmaster



General, Yogayog Bhawan, C.R. Avenue
Kolkata-700012.

4. The Director of Postal Services, Kolkata Region, Office of the Postmaster General, Yogayog Bhawan, C.R. Avenue, Kolkata-700012.
5. The Senior Superintendent of Post Offices, North Kolkata Division, Kolkata-700037.
6. The Senior Post Master Barrabazar Head Office, Kolkata-700007.

.....Respondents.

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. S.P. Shaw, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, Judicial Member:

Heard both parties.

2. The applicant in this OA has sought for the following reliefs:

"8(a) to issue direction upon the respondents and their men and agents to cancel, quash the impugned Charge sheet dated 20.02.2019, Order of Punishment dated 16.05.2019 and order of appellate authority dated 11.01.2021 forthwith;

(b) to issue further direction upon the respondents and their men and agents after cancellation of the punishment order the pay of the applicant to be restored as Rs.62,200/- from the date of issue of punishment order i.e 16.05.2019 forthwith;

(c) to issue necessary direction upon the respondents and their men and agents to refund the

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Barabazar HO, Kolkata, on 14.02.2019, during the visit of the Divisional Head failed to produce the register of Business Post, Register of BNPL Customers, Register of GST information for inspection. He also failed to produce register, customer wise, month wise, cheques received and date of encashment of cheques deposited by BNPL customers. He was in charge of the Business office and was found very casual about the procurement of business. It was found that except him, the APM PLI Branch & Dy. Manager Business Office, no other Postal Assistants & Marketing Executive were present at the branch which showed his absolute negligence to supervise his subordinates under his control. It is asserted that as per the office MDW (Memorandum of Distribution of Work), the APM (LSG) is supposed to be the custodian of stamps, seals, computers and valuables of his share. He should maintain Attendance Register, Nominal Roll, Receipt Book, Order Book along with keys and necessary files of his Section under his personal custody. But, the applicant failed to produce any Register during the visit of the Divisional Head under the pretext that the keys are retained by the PAs, rendering the purpose of the inspectional visit, futile. As such, he was found to have reflected his gross laxity towards his responsibility and lack of diligence towards his duties. The Divisional Head, on the ground of gross negligence and lack of devotion to duty along with acting in a way unbecoming of a government servant, found his conduct as violative of Rule 3(1)(ii), 3 (1)(iii), 3(1)(xxi) of CCS (Conduct) Rules 1964 and imposed punishment of reduction to a lower stage in the time scale of pay by one (1) stage from Rs.62,200/- to Rs.60,400/- in the Pay Matrix of Level 7 (seven) for



a period of three(3) years only without cumulative effect vide Memo No. VR-33/SSP(N)/BBHO/2019/N dtd 16.05.2019 issued by the Senior Superintendent of Post Offices.

4. The applicant has challenged the legality and propriety of imposition of penalty on the following grounds *inter alia* :-

- (i) That, while issuing the Charge Sheet, no fact finding inquiry was convened. Neither the applicant was intimated about his inaction for production of Register nor any reasonable opportunity to the applicant was given. Therefore, the penalty has been imposed in violation of principles of natural justice and in an unfair manner.
- (ii) That, memo of distribution of work does not show that he has to procure business in respect of postal income and by not procuring the business of the Postal Department has caused any loss. Therefore, the charge sheet itself is issued with total non-application of mind, and reflects the malafide intention of the Disciplinary Authority as well as the Appellate Authority.
- (iii) That, the respondents were not able to produce any iota of evidence that the applicant had been negligent in performing his duty.
- (iv) That, by now allowing an enquiry before issuing punishment order, the respondents' action of issuing punishment order is totally biased action with malafide intention and an action of



personal grudge against the applicant and, therefore, it is bad in the eye of law.

5. The applicant has categorically replied to the allegation levelled against him vide charge memo dated 20.02.2019, as under:

Central Administrative Tribunal
For Redressal of Grievances

10, Post Box No. 100037
North Kolkata Divisional Post Office
Kolkata - 700037
Date: 25/02/2019

Re: Your Charge Memo No VR-33/SSP/NVBBHO/2019/N dated 20.02.2019
received on 25/02/2019.

Respected Sir

1. In reply to the Charge Memo No VR-33/SSP/NVBBHO/2019/N dated 20.02.2019 issued against me under Rule 16 of GCS/CCA Rules 1985, I submit that the following:

1.1. I am the Dy. Manager (Business Office) Barabazar H.O. I am the in-charge Divisional Head of the Business Office Barabazar H.O. I work from 06:00 hrs to 18:00 hrs. I have been working in the Business Office Barabazar H.O. since 26.11.2018. At about 06:20 P.M. (as per this Office wall clock and noted about 06:45 P.M. as recorded in the Visit Report dated 14/02/2019) I have been working as Dy. Manager (Business Office) Barabazar H.O. I have been working as Supervisor (AADHAR) Enrolment and Upgradation Service Centre. The said three branches function on different floors of the Barabazar H.O. in multi storied Building and so, obviously, I am to keep myself moving from floor to floor for supervising the work of these three branches assigned to me.

1.2. An allegation has been reflected in the Charge Memo dated 20.02.2019 that during the visit of Divisional Head I failed to produce the register of Business Post, the Register of BNP customers, the Register of GST Information, the register for customer wise month wise cheques received and date of encashment of cheques deposited by BNP customers. In this connection I submit that the Registers/records of the Business Office are maintained by the PAs, who keep them under lock and key before their departure from the Business Office at the end of the day's work. As the Divisional Head visited the Business Office at about 06:20 P.M. beyond the normal working hours upto 18:00 hrs, I was unable to show the registers.

1.3. The Daily Business Register was shown to the Divisional Head on



14.02.2019 and he noted all required information. GST.com was noted. There was nothing willful on my part regarding non-production of the Registers called for. The Charge against me that being the in-charge of the Business Office, business which I refute that I do very casual about the procurement of together which function on the different floors of the multi-coded building of Barabazar H.O. As regard noting of the Divisional Head in his VR dated 14.02.2019, it was found by the Divisional Head in his VR dated 14.02.2019 that he found that except myself no other Postal Assistants and Marketing Executives were present at the branch, which shows my absolute negligence to supervise subordinate staff under my control. My submission is that the PAS and MES were not available as they had left the office at the end of the day's work (upto 1800 hrs.) and the Divisional Head visited the Business Office at 18.20 hrs.

5. I refute the charge framed against me for violation of Rule 3(1)(i), 3(1)(ii) and 3(1)(xxii) under Rule 3 of CCS (Conduct) Rules, 1964 as there is no clarity in the matter of framing a charge sheet and no valid reason stands for action against me.

6. Daily Business Report is sent to the Sr. Postmaster Barabazar H.O. and the System Administrator sends same to the Circle Office daily.

7. A copy of the Compliance Report on the VR dated 14.02.2019 submitted to the Sr. Postmaster Barabazar H.O. on 26.02.2019 is enclosed for your kind perusal and kind information.

With best regards,

Yours faithfully,

(APM/PU & AADHAR and SC/103)
Dy. Manager B.O. Barabazar H.P.O.
(Kolkata) - 700007

6. During the course of hearing, learned counsel for the applicant developed his argument and put forth some additional grounds, which are as under:

(i) In the matter of **O.K.Bhardwaj Vs UOI & Ors, (2001) 9 SCC 180**, (the date of judgement 04.10.1996), the Hon'ble Apex Court held that even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employer, an enquiry should also be called for.

This is the main requirement of the principles of natural justice and the said requirement cannot be dispensed with.

(ii) The General Clauses Act, 1897 Section 16 of the Act says only the appointing authority can issue punishment order but, in the case of present applicant the Senior Superintendent has issued penalty order. That, the Postal Manual Vol. 3 cannot supersede the statutory provision of law in force.

(iii) That, Divisional Head had visited the office at 6:20 Hours and repeatedly he has claimed that the CCTV footage will prove that the Divisional Head had visited the applicant's place after the normal office hours, but the respondents even after receipt of the appeal did not even bother to hold enquiry about the inspection time, instead issued punishment order without any opportunity of hearing, which is purely malafide and vindictive action of the respondents.

(iv) While issuing the punishment, the respondents had practically given multiple punishments; for the pay reduction from 62,200/-to 60,400/- will not only reduce his pay as a punishment but will also affect his increment for three years. Therefore, the punishment amounts to double jeopardy.

7. Ld. Counsels were heard and records were perused.

8. From the perusal of the pleadings and materials on record the issue that cropped up for determination was whether,

(i) The SSPO was competent enough to impose the minor penalty.

and,

(ii) Whether the penalty order is sustainable as no enquiry was held to allow an opportunity to the applicant to effectively put up his defence.

9. To determine the same, this Tribunal, on 15.03.2021 upon hearing the parties, at length, directed as under :-

"Ld. counsel for both sides are present.

Respondents are directed to take instructions whether the Sr. SPO empowered to penalize the applicant with the penalty as a Disciplinary Authority in view of the fact that the applicant was appointed in terms of the order of Director of postal services as annexed in Annexure A-2 of the OA."

In compliance thereof, the respondents have submitted as under :-

The penalty imposed is a minor penalty in terms of Rule 11 (iii)

(a) of CCS (CCA) Rules.

In terms of Part VI of General Central Services Group 'C' the Senior Superintendent of Post Offices (SSPO in short) was empowered to impose such punishment. The extract is as under:

		Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rule 11)		Appellate Authority
Description of service	Appointing Authority	Authority	Penalties	
1	2	3	4	5
Post Offices Postmaster in Higher and Lower Selection Grades; Ministerial staff in Higher and Lower Selection Grades	Director of Postal Services	Director of Postal Services; Senior Superintendent. Gazetted Postmaster including gazetted Sub Postmaster; Superintendent of Post Offices. Deputy Presidency Postmaster; Deputy Postmaster in the Postmaster's Service, Class II. Gazetted Postmaster including Gazetted Sub Postmaster under the control of Senior Superintendent	All (i) to (iv) (i) to (iv) (i) to (iv) All	Postmaster-General Member (P) Postal Board Director of Postal Services Director of Postal Services; (in circles under the charge of Postmaster General); Deputy Director (in other circles). Presidency Postmaster, Postmaster in the Grade of Presidency Postmaster. Director of Postal Services.

The above position is explicit that the SSPO could impose such minor penalty as has been imposed.

10. The discernible facts are as under:

(i) The procedure for imposing the minor penalty under Rule 16 of the CCS(CCA) Rules lay down the following: (*extracted with emphasis for clarity*)

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and

(e) recording a finding on each imputation or misconduct or misbehavior.

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(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) representation, if any, of the Government servant on the advice of the Commission;
- (vii) the findings on each imputation of misconduct or misbehavior; and
- (viii) the orders on the case together with the reasons therefor.

The provision makes it imperative for the Disciplinary Authority to apply its mind on facts and decide whether an inquiry is necessary in the matter.

11. Where the charges are factual and are denied, as in the present case, in *O.K. Bhardwaj Vs. Union of India*, reported in (2001) 9 SCC 180, Hon'ble Apex Court has succinctly held as under:

"3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."



12. The Hon'ble High Court at Kolkata in the matter of *Uday Chand Majumder and Ors vs. Union of India and Ors in WPCT No. 112 & 113 of 2019* has affirmed the view of this Tribunal in O.A. No. O.A. No.385 of 2017 and O.A. No.350 of 2016 dated 09.05.2019 of quashing a minor penalty imposed without an enquiry, where charges were factual and were denied, by applying the ratio of O.K.Bhardwaj. The Hon'ble High Court held as under:

"28. There is, thus, no reason to interfere with the orders passed by the Tribunal on the original applications interfering with the orders of penalty.

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31. The orders of the tribunal setting aside the penalty imposed on Uday and Prasenjit are maintained. However, the writ petitioners shall be free to initiate regular departmental inquiry against Uday and Prasenjit by appointing enquiry officer(s). If a decision to that effect is taken, the proceedings shall resume from the stage till after submission of response by Uday and Prasenjit to the charge- sheets."

13. In view of the above, having regard to the fact that the applicant has specifically denied the charges and has alleged that there is no clarity in the matter of framing the charge, he has specifically disputed the time when inspection took place, i.e. beyond office hours, due to which he was unable to produce the connected files, ledgers etc, whereas the penalty order has been affirmed already, the Appellate Order dated 11.01.2021 is quashed and the matter is remanded back to Appellate Authority to consider the matter in the light of the decision cited supra and to issue his orders within a period of two months. While doing so, the Appellate Authority shall consult the CCTV footage to find out at what time the Divisional Head visited the Business Office at Barabazar Head Office on 14.02.2019 to ascertain

whether such visit was during office hours or beyond the normal working hours of the office and shall duly apply its mind on the reply of the applicant, to the charge memo, dated 06.03.2017 (sic) [Annexure-A/3], quoted above, and decide whether the applicant deserved an open enquiry, and based on the outcome quash the penalty order and direct an enquiry.

14. The O.A. stands disposed of accordingly. No costs.




(Dr. Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)

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