



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/00522/2020.

Date of order : This the 22nd Day of November, 2020.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Mr Tarun Shridhar, Administrative Member

Surajit Kumar Das,
Son of late Bimal Kumar Das,
Aged about 47 years,
Working as Postal Assistant/ Gunjabari SO,
Gunjanbari Post Office,
Residing at Temple Street, Patakura,
Post Office and District – Coochbehar,
Pin – 736 101.

..... Applicant.

By Advocate Mr A. Chakraborty & Ms P. Mondal.

-Versus-

1. The Union of India,
Through the Secretary,
Ministry of Communication,
Department of Post Dak Bhawan,
New Delhi -110001.
2. The Chief Postmaster General,
Yogayog Bhawan,
C.R. Avenue,
Kolkata – 700012.
3. The Director of Postal Services,
North Bengal & Sikkim Region,
Siliguri, Darjeeling – 734001.
4. The Superintendent of Post Offices,
Cooch Behar Division,
District – Cooch Behar, 736101.

..... Respondents.

By Advocate Ms P. Goswami.

ORDER

Ms Bidisha Banerjee, Member(J)

This O.A has been preferred to seek the following reliefs :

"8.I. Memo no. F1-1/G/3/2017 (Surajit Kumar Das) dated 03.02.2018 issued by Superintendent of Post Offices, Cooch Behar Division, Cooch Behar 736101 cannot be sustained in the eye of law and same may be quashed.

II. Order No F1-1G/3/2017 dated 06.09.2018 cannot be sustained in the eye of law and the same may be quashed.

III. Office Order being Memo No. Vig/2/199/2018 dated 06.05.2020 issued by the Director of Postal Services, North Bengal & Sikkim Region, Siliguri along with the forwarding letter No F1-1/G/3/2017/ Appeal/S. Das dated 13.05.2020 cannot be sustained in the eye of law and the same may be quashed.

IV. An order do issue directing the respondents to refund the amount recovered from the applicant at an earliest along with grant of all consequential benefits."



2. The facts in a nutshell being as under :

The applicant was served with a minor penalty charge sheet alleging some irregularities. He denied the charges by way of a representation. A penalty of recovery from salary was imposed alleging his contributory negligence. He preferred an appeal that was disposed of on 06.05.2020. Pursuant to the direction in O.A.225/2020 the appellate authority simply modified the penalty. But the applicant is aggrieved as the penalty of recovery could not have been imposed without an enquiry since he had denied the charges. In support the applicant would refer to the decision in O.K.Bhardwaj vs. Union of India & Ors.

3. Heard Ld. Counsel for both sides, perused the materials placed on record.

4. At hearing Ld. Counsel for the applicant would draw our attention to the decision of Hon'ble Calcutta High Court in WPCT 112 of 2019 where under similar circumstances, having noted that a penalty was imposed invoking Rule 16 of CCS(CCA) Rules 1965 but without an enquiry, the Hon'ble High Court having noted the decision in O.K.Bhardwaj maintained the order of this

Tribunal setting aside the penalty imposed on the respondent/applicant and permitted the Writ Petitioner/respondents to initiate regular departmental enquiry by appointing Enquiry Officer. The decision of the Hon'ble High Court is extracted to the extent found relevant and germane to the lis.

"21. We have gone through all the decisions cited at the bar. Law on the point of necessity to hold an enquiry into the conduct of a delinquent employee is quite explicit.

22. In **O.K. Bhardwaj (supra)**, the Supreme Court had the occasion to deal with a similar question and was pleased to observe as under:

"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 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."

23. Reliance placed by Mr. Bose on paragraph 5 of the decision in **Food Corporation of India, Hyderabad Vs. A. Prahalada Rao**, reported in (2001) 1 SCC 165, does not advance the cause of the writ petitioners too far. It cannot be overlooked that the Supreme Court while interfering with the decision of the High Court impugned before it had the occasion to observe that if in a given case the discretion conferred on the disciplinary authority by the relevant regulations is misused or is exercised in an arbitrary manner, it is open to challenge before an appropriate forum. The *ration* of the decision, as this Bench understands, is that mere denial of the charges by the delinquent employee may not lead to the conclusion that a formal enquiry should be held in all cases but if the discretion conferred not to hold an enquiry is misused or exercised arbitrarily, such an exercise would be subject to judicial review and each case has to be decided on its own facts.

24.Having raised such a point, the minimum that was expected of the disciplinary authority was to refer to the documentary evidence to prove the incorrectness of Uday's plea and to show, in black and white, that he was indeed so entrusted. From the order passed by the disciplinary authority dated December 11, 2014, what we find is that the factual issues raised by Uday were not dealt with. The disciplinary authority simply mentioned "the argument of the charged official is not convicting at all."

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27. In the present cases, this Bench has no manner of doubt that both Uday and Prasenjit were denied proper and reasonable



opportunity of defending themselves by reason of no formal enquiry having been initiated by their disciplinary authority, and thereby they have suffered severe prejudice.

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.

32. Since the incidents are somewhat old, there can be no doubt that if at all it is decided to proceed against Uday and Prasenjit, the writ petitioners shall not waste much time and complete the disciplinary proceedings initiated against them within the shortest possible time but obviously after extending due, adequate and reasonable opportunity of defence to them."

5. Ld. Counsel citing the aforesaid decision would seek identical relief as granted by the Hon'ble High Court. Since admittedly and indubitably the present applicant was penalised in an identical manner i.e. without an enquiry and this fact was glossed over by the appellate authority, its order dated 06.05.2020 as contained in Annexure A-6 is quashed and matter is remanded back to the said appellate authority to pass an appropriate order in the light of the decision (supra) within a period of 8 weeks from the date of receipt of a copy of this order. Till such time the penalty of recovery as imposed by the appellate authority shall remain stayed.

6. Accordingly the O.A stands disposed of. No order as to costs.

(TARUN SHRIDHAR)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)