

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O.A.350/342/2014

Date of order : 5.2.2014

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**NIRMALENDU DAS  
VS.  
UNION OF INDIA & OTHERS  
(D/O India Post)**

For the applicant : Mr. N. Chatterjee, counsel

For the Respondents : Ms. P. Goswami, counsel

**ORDER**

**Bidisha Banerjee, Judicial Member**

In this O.A. the applicant has sought for the following reliefs:-

- "a) to direct the respondents to cancel, withdraw and/or rescind the chargesheet dated 21.09.2012, its corrigendum dated 27.09.2012; order of punishment dated 19.10.2012 and the order of the appellate authority dated 07.01.2014; as contained in Annexures "A-4", "A-7" & "A-11" herein respectively;
- b) to direct the respondents not to recover any sum from the pay packet of the applicant in terms of the order of punishment dated 19.10.2012 as contained in Annexure "A-7" herein till the disposal of this application;
- c) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the issues involved therein;
- d) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. This is the second journey of the applicant to this Tribunal. In the earlier round when the applicant preferred O.A.No.1256/2013 by order dated 30.09.2013 this Tribunal directed as under:-



"This application is filed seeking the following reliefs:-

"8.i. To direct the respondents to cancel, withdraw and/or rescind the purported chargesheet dated 21.9.2012 and its corrigendum dated 27.9.2012 as contained in Annexure "A-4" herein;

ii. To direct the respondents to cancel, withdraw and / or rescind the purported order of punishment dated 19.10.2012 as contained in Annexure "A-7" herein."

2. We find that no appeal has been preferred against the penalty order dated 19.10.2012. The applicant has asked for certain documents to give a effective reply to the charge-sheet which was not served upon the applicant.

3. As per the mandate issued by the Hon'ble Supreme Court in **O.K. Bhardwaj v. Union of India** reported in 2002 SCC (L&S) 188 it has been decided 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 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."

Hence the penalty i.e. imposed is in violation of the mandate given in O.K. Bhardwaj.

4. As no appeal is filed the applicant is given liberty to file an appeal against the penalty order within a period of 10 days. The respondent authorities shall be disposed of the appeal within a period of 3 months in view of the observations made hereinabove and the mandate of O.K. Bhardwaj. Till such time the penalty shall remain stayed.

5. The O.A. is disposed of accordingly. No costs.

Pursuant to such direction the applicant preferred appeal on 08.10.2013 to the Director of Postal Service, Kolkata Region. Vide communication dated 19.12.2013 the applicant was informed that recovery of penalty has been stopped with immediate effect till further order and to Acquaintance Rolls for Rs.4000/- each which stood deducted in the month of October, 2013 and November, 2013 have been prepared and the applicant was asked to deduct payments of the same. By a memo dated 06.01.2014 one Sri A.D. Patel, Director of



Postal Service, South Bengal Region was intimated that the Chief Postmaster General, West Bengal Circle has authorised him to exercise the statutory power of Appellate Authority in disposing of the appeal preferred by Nirmalendu Das, P.A., Park Street H.P.O., Kolkata on 08.10.2013. It was incumbent upon the Appellate Authority by virtue of the earlier order of this Tribunal to consider whether the mandate as given in **O.K. Bharadwaj** has been violated while issuing the penalty order. The Appellate Authority stated in his order dated 07.01.2014 why he upheld the penalty in the following manner:-



*".....I have gone through all facts and circumstances of the case, written statement of the appellant dated 05.08.2011 and 28.08.2012 before the ASPOS of Central Kolkata Division, representation of the official against the charge sheet, findings and order of the Disciplinary Authority, the order dated 30.09.2013, of the Hon'ble CAT, Bench, Kolkata, submission of the official in appeal and other related records and observed the followings :-*

*Sri Das, the appellant had asked for 4 (four) documents to the SSP, Central Kolkata Division vide his application dated 26.09.2012, copies of which were supplied to him by the SSP Central Kolkata Division vide his letter No. F6-1/6/2009-10/Disc./ N. Das dated 03.10.2012. Sri Das did not desire to be heard in person and also never called for any formal enquiry prior to his filing of application before the Hon'ble CAT Bench Kolkata. Therefore, his submission before the Hon'ble CAT Bench Kolkata is not correct and quite miss-leading. His argument about non-supply of Postal Manual, Circulars and ignorance of Rules are not acceptable. He cannot take it as an excuse. Sri Das, the appellant had failed to discharge his duties and responsibilities of the post and that of joint custodian of the office. The Appellant has virtually admitted the charges brought against him in his written statement dated 05.08.2011 and 28.08.2012. Moreover the charges against him have been proved. Thus the appeal submitted by Sri Das has no merit. The offence committed by Sri Das is serious enough and the punishment awarded by the Disciplinary Authority is commensurate with gravity of offence.*

*In this case, I find that the disciplinary authority has correctly confirmed the role of the appellant and accordingly responsibility too. In such cases it will be appropriate to consider the case with due seriousness so as to curb the practice of misappropriation of amounts deposited in Postal Offices by the account holders. Therefore, I do not want to intervene in the decision of the Disciplinary Authority and dispose of the appeal accordingly.*

ORDER

I, A D Patel, Director of Postal Services, Office of the Postmaster General, South Bengal Region, Kolkata hereby reject the appeal dated 08.10.2013 preferred by Sri Nirmalendu Das, Postal Assistant, Park Street H.O, Kolkata-700016 and confirm the penalty of recovery of Rs. 2,00,000 (Rupees Two Lakhs) only imposed by the SSP Central Kolkata Division, Kolkata-700007, vide his memo No. F6-1/6/2009-10/Disc/Sri N. Das dtd. 19.12.2012."

3. **O.K. Bhardwaj vs. Union of India** reported in (2001)9 SCC 180,

Hon'ble Supreme 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."

4. Government of India's decision issued under G.I., Department of Personnel & Training, O.M.No.11012/18/85-Estt.(A), dated the 28<sup>th</sup> October, 1985 on the subject "Minor penalty-Holding of enquiry when requested by the delinquent" is extracted hereunder for better appreciation. It reads as under:-

".....Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provide for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) *ibid* leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the



*Disciplinary Authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."*

Such instructions imply that where Government Servant asks for inspection of certain documents and crossexamination of prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an enquiry is not mandatory. In case he is of the opinion that no enquiry is required, he should indicate the reasons in writing instead of rejecting the request summarily.

5. In the present case the applicant had not only denied the charges but asked for the following documents vide his letter dated 26.09.2012:-

- 1. *An extract of Rule 84(B) of Postal Manual (Vol. VI), Part- III (Sixth Edition corrected upto 30<sup>th</sup> June 1986);*
- 2. *An extract of Rule-168(II) of Post Office Savings Bank Manual Volume-I;*
- 3. *An extract of Rule 33(2) of Post Office Savings Bank Manual, Volume-I;*
- 4. *An extract of Rule-115(2) of Post Office Savings Bank Manual, Volume-I"*

Therefore, he had no intention to admit the charges. This factual denial of the charges would mandate holding of a full fledged enquiry or an open enquiry as propounded by Hon'ble Supreme Court in **O.K. Bharadwaj(supra)**. The Appellate Authority ignoring or brushing aside the observation of this Tribunal in the earlier round that the penalty imposed is in violation of the mandate in **O.K. Bharadwaj**, somehow managed to uphold the penalty by stating that the applicant has virtually admitted the charges.



6. In a recent case where minor penalty proceedings were initiated and without an enquiry penalty of recovery was inflicted, Hon'ble High Court at Calcutta in W.P.C.T.No.112/2019 and 113/2019 observed as under:-

*"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."*

7. In view of the mandate of Hon'ble Supreme Court in **O.K. Bharadwaj**, DOPT instructions dated 28.10.1985 and the recent decision of Hon'ble High Court at Calcutta in W.P.C.T.No.112/2019 and 113/2019 (extracted above), we feel it appropriate in the interest of justice to quash the orders of the Appellate Authority and Disciplinary authority and remand the matter back to the Disciplinary Authority to act in accordance with the decision of the Hon'ble Apex Court in **O.K. Bharadwaj(supra)**, DOPT instructions dated 28.10.1985 and the recent decision of Hon'ble High Court at Calcutta in W.P.C.T.No.112/2019 and 113/2019 as extracted supra.

8. Accordingly the O.A. is disposed of. No order as to costs.

(Dr. Nandita Chatterjee)  
Administrative Member  
sb

(Bidisha Banerjee)  
Judicial Member