



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CALCUTTA BENCH.

**DETAILS OF THE APPLICATION:**

**PARTICULARS OF THE APPLICANT:**

Niranjan Kumar Ram, son of late Jagoo Ram Kumar, aged about 60 years, working as Sub-Post Master, Ghugudanga S.O. under SSPO/North Lolkata-700 037. residing 260, Saradapally, Sector-I, P.O. Makhla, Dist. Hooghly, PIN-712245.

... APPLICANT.

-V E R S U S-

**PARTICULARS OF THE RESPONDENTS:**

1. Union of India, service through the Secretary, Department of Posts, Dak Bhawan, New Delhi-100 001.
2. The Director of Postal Services, ~~Kolkata~~ region, Yogayog Bhawan, C.R.Avenue, Kolkata-700 012.
3. The Chief Post Master General, ~~Kolkata~~ region, Yogayog Bhawan, C.R.Avenue, Kolkata-700 012.
4. Sr. Superintendent of Post Offices, North Kolkata Division, Kolkata.

... RESPONDENT.

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O.A.350/60/2016  
M.A.350/62/2016

Date of order : 19.2.2016

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

NIRANJAN KR. RAM  
VS.  
UNION OF INDIA & OTHERS  
(D/O India Post)

For the applicant : Mr.A. Chakraborty, counsel  
Ms. P. Mondal, counsel

For the Respondents : Mr. B.P. Manna, counsel

ORDER

**Bidisha Banerjee, Judicial Member**

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

- "a) The speaking order dated 10/12/2015 issued by the Director of Postal Services, Kolkata Region cannot be sustained in the eye of law and as such the same may be quashed;
- b) The order dated 21.08.2015 issued by the SSPO, North Kolkata Division, cannot be sustained pin the eye of law and therefore the same may be quashed;
- c) An order do issue directing the respondents to refund the amount directly recovered from the pay of the applicant."

2. Brief facts of this case are that the applicant, SPM, Ghugudanga P.O. was issued a minor penalty charge sheet dated 30.07.2015 for negligence of duty while working as APM , SO(MIS) Branch of Cossipur HO in connection with a case of misappropriation of Government money in several MIS accounts of Dum Dum MDG. It was alleged that the applicant did not check and verify the relevant records for which



13

the fraudulent transactions could not be detected at the very initial stage. The applicant prayed to the authorities on 07.08.2015 for providing him the relevant documents in order to defend his case but those documents were not supplied to him. However, on 20.08.2015 he made a detailed representation denying the charges, but the same was not considered and a punishment order was issued by the Disciplinary Authority on 21.08.2015 imposing punishment of recovery of Rs.181760.00 from the pay of the applicant in equal 8 monthly instalments with effect from August, 2015 onwards. The applicant preferred an appeal against the same which was not considered. Being aggrieved the applicant had preferred O.A.No.350/1603/2015 before this Tribunal which was disposed of on 09.10.2015 with the following directions:-

*"6. I have heard the Id. counsel for the parties and perused the materials on record. The Hon'ble Apex Court in the decision rendered in O.K. Bharadwaj vs. Union of India & Ors. [(2001)9 Supreme Court Cases 180] decided as under:-*

*"3.....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."*

*7. It is noticed that the proceedings initiated against the applicant was a minor penalty proceedings and no formal enquiry was held to find out the degree of involvement of the applicant and his culpability which resulted in the alleged loss of the department. It is also noticed that the charge of "absolute lack of monitoring" required to be enquired into, substantiated and quantified appropriately before penalising the applicant with a recovery. Whereas a disproportionate penalty has been inflicted, I have also noted the tenor of the decisions referred to herein above and their implications in regard to punishment of recovery on account of pecuniary loss as inflicted upon the present applicant.*

*8. In the aforesaid backdrop, I direct the Appellate Authority, Director, Postal Services , Kolkata Region to consider the matter, delve into the charges levelled, culpably of the present applicant, the decisions referred to*



*hereinabove and the reasons as to why the applicant shall not be entitled to the benefit of the said decisions and pass a reasoned and speaking order on the appeal within two months from the date of communication of this order. Till such decision is communicated, the recovery, if not already started, shall remain stayed."*

Pursuant to the aforesaid directions, the appeal preferred by the applicant was rejected by the respondents vide order dated 10.12.2015. The applicant has filed the present O.A. challenging the said Appellate Order.

3. The respondents have filed written reply denying the claim of the applicant. They have stated that the O.A. is not maintainable both in law and facts. They submitted that as per order of C.A.T., Kolkata Bench in O.A.No.350/1603/2015 the Appellate Authority passed a reasoned and speaking order on the appeal rejecting the same. Again the applicant has come up with this O.A. challenging the appellate order, which is devoid of any merit and is liable to be dismissed.

4. Heard Id. counsel for both sides and perused the records.

5. As per punishment order, the respondents started recovering the amount from the salary of the applicant. An interim order was issued in this matter on 25.01.2016 restraining the respondents from making any further recovery from the salary of the applicant. The respondents have filed M.A.No.350/62/2016 for vacating/modifying the interim order.

6. 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 10.12.2015 why he upheld the penalty in the following manner:-

*.....I have gone through the facts and circumstances of the case, records, evidences and representations of the charged official against the charge sheet and representation in appeal and the points raised by the appellant and have come to the conclusion that the charges against the appellant are mainly two types in character. The first allegation is that being a supervisor of SO(MIS) branch, the appellant did not point out the irregularities that for matured/prematured closure prescribed SB-7A form was not used instead SB-7 form was used. The second allegation is that for payment over Rs.20000/- cheque was not issued instead direct cash payment was made or payment effected through reinvestment or transfer to SB account followed by withdrawal of the same from SB account in cash. It is fact maintenance of duplicate MIS or RD ledger at HO in respect of accounts standing open at SOs was discontinued but maintenance of records at H.O. in respect of MIS accounts opened at SOs and closure thereof was never stopped. The disconnection order does not also affect the checking function of HO of vouchers and LOT of SOs. The appellant being supervisor of HO and holding a very responsible and sensitive post had miserably failed to carry out this checking. It is also agreed that there was shortage of SB-7A Forms in Post offices. This fact is also known to the Directorate. But this shortage did not give free hand to the post offices for use of SB-7 instead of SB-7A for matured/prematured closure. Para 3 of the Dte's letter No.110-01/2010-SB dated 23-08-2010 clearly outlined what procedure would be followed on the event of shortage of SB-7A forms. The appellant did not keep watch whether the subordinate offices had followed this guidelines or not. Regarding mode of payment through cash exceeding closure amount Rs.20000/- instead of cheque, the appellant did not spend a single word in support of his stand. This means the appellant has nothing to say regarding this particular allegation. In both the Cases of allegation maintenance of SO ledger is not a factor. Now without mentioning "not relevant" why 'available' term has been used by the Disciplinary Authority. From the letter No.FS-1/04/2011/North/N.K. Ram dated 14.08.2015 it appears that the term "Not relevant" has been used in respect of documents which are not relevant and "Available" has been used in r/o document which are relevant and available. This is just practice of using terms. This does not affect the decision of the disciplinary case. The appellant also raised the point of shortage of staff at SO ledger section. The charges discussed with non carrying out proper supervision. There was no shortage of supervisor in H.O. The Charged official may for the time being look after the duties of APM(Treasury). But this extra duty does not absolve him from supervision in the work of SO(MIS) functioning. Basically the functioning of head office is completely associated with monitoring, checking and supervising work on all types of activities with a view to keep the subordinate offices under its control in a streamline manner in accordance with Rule. Definitely the role of supervisor in SO(MIS) of head office is entrusted in such a way that he holds a basic as well as great responsibility over the stream line functioning without committing any*



kind of irregular action of the Subordinate offices. If the system fails, the entire checking procedure will be collapsed and irregularity can not be arrested. The very purpose of functioning of a Account office will go in vain. So if any kind of occurrence of misappropriation in the Subordinate Offices and if being a Supervisor holding a sensitive post does not take care over monitoring, checking and supervising, his performance surely be assessed with the analogy that pecuniary loss caused to the Govt. by negligence or breach of orders. He will be held responsible not personally but directly for a particular act or acts of negligence or breach of order or Rules and that such negligence or breach directly caused to loss.

*From the above facts it is clear that the appeal has no merit.*

*In view of the above, I, T. Mangminthang DPS, Kolkata Region W.B. circle Kol-700012 and the prescribed appellate authority in this case in exercise of power conferred under Rule 24 and 27 of CCS(CCA) Rules 1965 hereby reject the appeal of Shri Niranjan Kr. Ram. The appeal is thus disposed off."*

**7. In 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."*

**8. 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.

9. In the present case, the applicant has not been supplied the relevant documents which he needed to prepare his defence note. However, he made a detailed representation denying 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.

10. 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.

Xxx

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."

11. 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.

12. Accordingly both the O.A. and M.A. stand disposed of. No order as to costs.

*A*  
 (Dr. Nandita Chatterjee)  
 Administrative Member  
 sb

*e*  
 (Bidisha Banerjee)  
 Judicial Member