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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.M A.350/565/2020

O.A.350/886/2020

Date of order : 04.01.2021

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

MANORANJAN DAS
VS.
UNION OF INDIA & OTHERS

For the applicant : Mr. S.K. Datta, counsel

For the respondents : Mr. S. Paul, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant has taken out this M.A. to seek stay of the impugned order dated 14.10.2020 (Annexure M/2) pending final decision on the O.A.

2. The brief facts leading to the application would be as under:-

On 09.10.2020 this Tribunal had passed the following order:-

"Heard Id. counsel for the parties.

Mr. S. Paul, Id. counsel appears on behalf of the respondents and seeks time to take instructions and obtain a copy of the OA. He should also take instructions whether the imputation of the memo dated 23.09.2020 could be included in the 1st charge sheet dated 10.08.2020 issued by the Supdt. of Post Offices.

List on 16.10.2020.

Therefore, pendency of the OA shall not be preclude the authorities from disposing of the representation of the applicant dated 01.10.2020.

Urgent plain copy of this order be handed over to the Id. counsel for both the parties."

Without disposing of the representation dated 01.10.2020, the Disciplinary Authority has imposed a penalty of recovery to the tune of Rs.2,70,000/-.

It was argued by the ld. counsel for the applicant that the authorities could have included the Article of Charge mentioned in Rule 16 memo dated 23.09.2020 which was for imposition of a minor penalty, in the Rule 14 charge sheet dated 10.08.2020.

Id. counsel invited our attention to the representation preferred by the applicant before the Superintendent of Post Offices, Contai Division dated 01.10.2020 whereby and whereunder he pointed out that the documents listed in the Rule 14 charge sheet, dated 10.08.2020, were not supplied to him thereby depriving him of the opportunity of effectively defending the charges and while his prayer for supply of documents was pending the Disciplinary Authority ought not have initiated a proceeding under Rule 16 of CCS(CCA) Rules, 1965 (minor penalty) vide memo dated 23.09.2020 arising out of the same fraud case of Ajaya B.O. Id. counsel would further contend that this Tribunal having noted the pendency of the said representation had permitted the authorities to dispose of the same whereas it is evident from the impugned order dated 14.10.2020 that the authorities not only failed to justify initiation of a minor penalty proceeding arising out of the same transaction (Ajaya B.O. fraud) but also failed to dispose of the representation dated 01.10.2020 which they admit to have received on 06.10.2020 as evident from para (D) of the impugned order, before



imposing the penalty which was in conscious violation of the direction. Without disposing of the representation the Disciplinary Authority i.e. Superintendent of Post Offices imposed a penalty of recovery of Rs.2,70,000/- from the pay of the applicant in 15 equal instalments of Rs.18000/- per month commencing from the month of October, 2020.

3. Id. counsel for the applicant would allege that the penalty imposed without rejecting the representation and affording an oral hearing is therefore also in utter violation of the principles of natural justice. He would vociferously pray for stay of the penalty order dated 14.10.2020 on the ground that the penalty of recovery in a minor penalty proceedings can only be imposed after the delinquent is given an oral hearing. In support, Id. counsel would place the decision of the Hon'ble High Court in W.P.C.T. No.113/2019 rendered on 06.03.2020 based on the decision in case of **O.K. Bhardwaj vs. Union of India** reported in (2001)9 SCC 180, that when the charge levelled against the delinquent was based on facts and the delinquent employee has not admitted the charges, the burden of proving truth of allegations lay on the Disciplinary Authority. An enquiry to the allegations in such circumstances where charges are denied, should be conducted on the part of the Disciplinary Authority before passing the final order on minor penalty by referring to a document or if such document is not available by initiating a formal enquiry and having the allegations proved through witnesses having direct knowledge of what had



transpired in connection with the factual matter, before any penal action is taken.

4. In view of such and having noticed that the balance of convenience is heavily tilted in favour of the applicant, we feel it appropriate in the interest of justice to stay the penalty of recovery, direct the Disciplinary Authority to dispose of the representation dated 01.10.2020 with a reasoned and speaking order within 4 weeks and to take a decision in regard to the applicant's prayer for inclusion of the Article of charges of the minor penalty into the major penalty charge memo. We further direct that pendency of this matter shall not preclude the authorities from withdrawing the penalty order of recovery as also the minor penalty charge memo to include the charge in the major penalty charge sheet. The respondents shall justify their action by way of filing reply within 4 weeks.

5. Accordingly the M.A. stands disposed of. List the O.A. on 15.02.2021.



(Tarun Shridhar)
Administrative Member



(Bidisha Banerjee)
Judicial Member

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