



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, CALCUTTA

O.A. 350/1660/2014

O.A. 350/1276/2014

O. A. No. 350/0 1270 of 2015

Shri Gour Gopal Ghosh, son of Late Satish Chandra Ghosh, aged about 61 years, worked as Sub Postmaster, under the Superintendent of Post Offices, Murshidabad Division, Behrampore (B), Pin-742101 and residing at Village & P.O. Hazrapur, Nabagram, P.S. Kandi, District Murshidabad, Pin-742136.

... Applicant

-Vs-

1. Union of India through the Secretary to the Govt. of India, Ministry of Communications & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.

2. The Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Kolkata-700012.

3. The Director of Postal Services, Kolkata Region, Yogayog Bhawan, C.R. Avenue, Kolkata-700012.

4. The Superintendent of Post Offices,
Murshidabad Division, Behrampore (B),
District Murshidabad, Pin-742101.

... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.350/1660/2014

With

O.A.350/1276/2014

O.A.350/1270/2015

Date of order : 15.01.2021

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

GOUR GOPAL GHOSH
VS.
UNION OF INDIA & OTHERS

For the applicant : Mr. B. Chatterjee, counsel

For the respondents : Mr. P.N. Sharma, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant in this O.A. filed three O.As. He filed O.A.

No.350/1276/2014 seeking the following reliefs:-

"a) An order quashing and/or setting aside the Memorandum of Charge Sheet dated 19.07.2012 issued by the respondent No.4 and the entire proceeding held thereunder;

b) An order quashing and/or setting aside the order of the Disciplinary Authority and the penalty imposed by the Disciplinary Authority dated 01.10.2012 and the order of the Appellate Authority dated 08.02.2013 and the order of the Revisional Authority dated 07.11.2013;

c) An order do issue directing the respondents to restore his pay scale with all consequential benefits;

d) An order directing the respondents to produce/cause production of all relevant records;

e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

In O.A. No.350/1660/2014 the applicant has sought for the following reliefs:-

"a) An order quashing and/or setting aside the Memorandum of Charge Sheet dated 24.08.2012 issued by the respondent No.4 and the entire proceeding held thereunder;

b) An order quashing and/or setting aside the order of the Disciplinary Authority and the penalty imposed by the Disciplinary Authority dated 18.10.2012 and the order of the Appellate Authority dated 16.01.2013;

c) An order do issue directing the respondent to refund the amount of Rs.70,240/- which was recovered from Pay and Allowances of the applicant including 18% interest thereof till the date of actual payment;

d) An order directing the respondents to produce/cause production of all relevant records;

e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

Thereafter he filed O.A. No.350/1270/2015 praying as under :-

"a) An order quashing and/or setting aside the Memorandum of Charge Sheet dated 22.08.2012 issued by the respondent No.4 and the entire proceeding held thereunder;

b) An order quashing and/or setting aside the order of the Disciplinary Authority and the penalty imposed by the Disciplinary Authority dated 22.01.2013 and the order of the Appellate Authority dated 26.06.2013 as well as the order of the Revisional Authority dated 19.03.2015;

c) An order do issue directing the respondent to refund the amount of Rs.65,000/- which was recovered from Pay and Allowances of the applicant including 18% interest thereof till the date of actual payment;

d) An order directing the respondents to produce/cause production of all relevant records;

e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."



3. At hearing, Id. counsel for the applicant would draw our attention to a Division Bench order of the Hon'ble High Court at Calcutta in W.P.C.T.No.112/2019 and 113/2019 wherein minor penalty proceedings were initiated and without an enquiry penalty of recovery was inflicted. Hon'ble High Court 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.

XX

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."

4. Hon'ble High Court of Orissa, Cuttack in W.P.C.T.No.4343/2011

passed the following order on 22.08.2011:-

"Heard learned Counsel for the petitioners.

This Writ Petition is directed against the order of the Central Administrative Tribunal, Cuttack Bench, Cuttack dated 11.11.2010 in O.A.No.634 of 2009. The opposite party was the applicant before the Tribunal. The Original Application was filed before the Tribunal challenging the order of punishment directing recovery of an amount of Rs.60,000/- from the pay and allowance of the opposite party on monthly instalments of Rs.6,000/- starting from December, 2007 onwards. The Tribunal in paragraph-4 of the impugned order specifically came to a conclusion that it is not the case of the petitioners that the opposite party had misappropriated the Government money nor was the case of the petitioners that for the direct culpable negligence pecuniary loss was caused to the petitioners. It is the positive case of the petitioners that due to failure in supervisory duty of the opposite party another employee misappropriated the Government money and subsequently he died by committing suicide.

On the basis of the aforesaid observations, the Tribunal directed that no punishment for recovery of a sum of Rs.60,000/- could have been imposed on the opposite party by the Disciplinary Authority and accordingly allowed the Original Application and set aside the order of punishment.

After hearing learned counsel for the petitioners and on perusal of the reasons assigned by the Tribunal in the impugned order, we find no justification to interfere with the same.

The Writ Petition is accordingly dismissed."

5. Ld. counsel for the applicant has invited our attention to an order of this Tribunal dated 03.06.2016 passed in O.A.350/347/2014.

Relevant portion of the said order is reproduced below:-

"7. Since a decision has already been taken by a Division Bench on a similar matter, there is no scope for us to take any alternate view regarding imposition of punishment of recovery in such minor penalty cases. Hence we quash the order of punishment of recovery of Rs.40,000/- imposed on the applicant along with the Appellate order.



8. Last but not the least, we would like to observe that there are several punishments for minor penalties available under Rule 11 of the CCS(CCA) Rules, 1965 to be imposed if an employee is found guilty in a proceedings initiated under Rule 16 of the CCS/CCA Rules, 1965. Therefore, under ordinary circumstances, we would have remanded the matter back to the Disciplinary Authority for considering imposition of any other minor penalty available under Rule 11 of the Rules instead of recovery. But the applicant has in the meantime retired from service and no punishment can be imposed in a proceedings initiated under Rule 16, which does not subsist after retirement. We, therefore, refrain from remanding the matter back after quashing the present order of punishment."

6. Ld. counsel for the applicant would submit that the applicant already superannuated from service and although the penalty order deserves to be quashed, the matter need not be remanded back to the Disciplinary Authority for consideration of imposition of minor penalty since no minor penalty under Rule 16 of CCS(CCA) Rules can be imposed after a person had retired from service.

7. In the present case, the Disciplinary Authority while issuing the penalty of recovery has simply said as under:-

"I have carefully gone through the representation of the Charged Official and found it not convincing at al. The Charged Official surprisingly defended himself in various ways but he misinterpreted the intentions of the Rulings shown in the charge sheet. As because he is contradictory in his defence.

The official have admitted the fact that he worked at SO SB Branch Kandi HO but he is not willing to take the responsibility of posting works on OTA basis as works on OTA are also governed by Departmental Rules & Regulation.

If he had taken proper action in time by bringing it to the notice of his supervisor then the subsequent withdrawals in those accounts against fake deposits could be arrested.

So due to in action on his part at HO Level, huge fraudulent transaction took place in those SB A/cs.

However considering all the aspects, his age, length of service and to meet the end of justice I pass the following order.

ORDER

I, Sri Jagannath Biswas, Supdt. of Post Offices, Murshidabad Division in exercise of Power conferred upon me under Rule 12 of CCS(CCA) Rules 1965



do awarded punishment to Sri Gour Gopal Ghosh, formerly PA, Kandi HO and now SPM Kandi Court SO with a recovery of Rs.70240=00(Rupees Seventy thousand two hundred and forty) only by five(5) equal monthly instalment i.e. Rs.14048-00 per month. This order is to be effected from the next month of completion of punishment issued by this office vide memo no.B-128/III dated at Berhampore(B) the 1.10.2012."

The applicant in his reply to the charge memo had objected to the charges levelled against him on the ground that the charges were not clear, specific or precise, that no written statement was obtained from him and that without any enquiry the responsibility could not have been fixed on him. Brushing aside his contentions, the Disciplinary Authority imposed a penalty of recovery which was upheld by the Appellate Authority as well as the Revisionary Authority. 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 28th 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.

9. It is discernible that in the present case, no opportunity was provided to the applicant to have his say. He had specifically denied the charges, asked for documents, yet no enquiry was called for. No written opinion of the Disciplinary Authority is on record as to why he chose not to provide an open enquiry to the applicant, thereby denying him natural justice.

10. In the aforesaid backdrop, all the impugned orders are quashed with liberty to the respondents to act in accordance with law.

The O.As are accordingly allowed. No order as to costs.

(Tarun Shridhar)
Administrative Member

(Bidisha Banerjee)
Judicial Member

