

Reserved
(On 27.09.2016)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 6th day of October, 2016

Original Application No. 534 of 2007

Hon'ble Justice Dinesh Gupta, Member - J
Hon'ble Ms. Nita Chowdhury, Member - A

Abhilash Chandra Saxena, son of Sri Jagdish Chandar Saxena, Posted-Extra Department Branch Post Master Post Office Tisua (Fatehganj East) District-Bareilly, Resident of Mohalla Kanoongoyan pati Gali Ke Picheey Fareedpur, District-Bareilly.

... Applicant

By Adv: Shri J.K.N. Mishra.

VERSUS

1. Union of India through Secretary, Ministry of Communication, Department of Postal Service, New Delhi.
2. Director Postal Services Bareilly Region, Bareilly.
3. Senior Superintendent Post Office Bareilly Mandal, Bareilly.
4. Praveer Adhikahak Dakghar Bareilly Mandal, Bareilly.
5. Assistant Superintendent (East) Post Office Tisua (Fatehganj East) Bareilly.

... Respondents

By Adv: Shri Anil Dwivedi.

ORDER

Delivered by Hon'ble Ms. Nita Chowdhury, Member - A

The present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:

"a. issue a writ order or direction in the nature of certiorari quashing the impugned order dated 14.01.2007 passed by Revisional Authority.

b. issue a writ order or direction in the nature of mandamus to directing the respondents not to interfere the working of applicant and maintain status quo during pendency of this original application before this Tribunal and also paid salary from month to month accordingly.

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- c. *issue any other suitable order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case in the interest of justice.*
- d. *Award the cost."*

2. The brief facts of the case as narrated by the counsel for the applicant are that the applicant was engaged as E.D.B.P.M. Post Office, Tisua (Fatehganj East), Bareilly on 13.04.1991 and is working continuously on the same post till today. A complaint was filed against him by one Ram Avtar Saxena. After receiving the complaint the applicant was put off duty on 17.01.2000. Thereafter, the competent authority i.e. the SSPO, Bareilly passed an order and after conducting an enquiry asked him to submit his representation, if any, within 15 days against the proposed punishment. Thereupon the applicant submitted his representation dated 02.05.2006 and thereafter, the order of punishment was passed on 29.12.2006 debarring the applicant from appearing in the Postman examination for the period of three years and also ordered the recovery of amount of Rs. 3161/- from the TRCA of the applicant. Subsequent to this without any justification the Revisional Authority/the authority immediately superior to the authority passing the orders i.e. D.P.S., Bareilly Region *suo moto* and without any reason issued a show cause notice to the applicant on 14.01.2007 under Rule, 19 of GDS

h/h

(Conduct and Engagement) Rules, 2001 proposing the enhancement of penalty given by SSPO, Bareilly of removal from service. This action of the respondents is totally unjustified and hence, the applicant has preferred this OA.

3. The respondents have in their arguments and CA not deferred with any of the factual points presented by the applicant and have infact repeated the same. Therefore, they are not being reiterated. With regard to the enhancement of the punishment order dated 29.12.2006 they informed that the said punishment order dated 29.12.2006 was reviewed by the Revisional Authority/the authority immediately superior to the authority passing the orders i.e. D.P.S., Bareilly Region, Bareilly as a result of which, the Revisional Authority/the authority immediately superior to the authority passing the orders issued a show cause notice to the applicant vide Memo No. RPB/Vig/Rev. 158/07 dated 14.01.2007 under Rule 19 of GDS (Conduct and Employment) Rule, 2001 proposing the enhancement of penalty of removal from service upon the applicant. All action taken by the respondents are in conformity with the relevant rules and in accordance with law. In any view the matter cannot be said to discriminatory, arbitrary or against the statutory rules. They also mentioned that instead of replying to the show

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cause notice dated 14.01.2007, the applicant has filed the instant Original Application by virtue of misleading the Hon'ble Court and has got interim order in his favour.

4. Learned counsel for the respondents further submitted that the enquiry against the applicant has been conducted as per provisions of GDS Rules and the punishment order has also been passed by the Disciplinary Authority in accordance with the rules and show cause notice under Rule 19 of GDS (Conduct and Employment) Rules, 2001, has also been passed by the Revisional Authority/the authority immediately superior to the authority passing the orders in accordance with rules. It is also submitted that Sri Krishna Kumar Saxena, EDMP, Tisua, Distt., Bareilly had also been proceeded against under Rule 8 of the EDAs (Conduct and Service), Rules, 1964 by the Disciplinary Authority i.e. ASPOs East, Bareilly and he had also been punished by imposing penalty of debarring from appearing in department examination for two years and also punishment of 'CENSURE' has been imposed on him. It is categorically submitted that the show cause notice under rule 19 of GDS (Conduct and Employment) Rules, 2001 is perfectly just and proper and has rightly been served to the applicant, which does not call for any judicial interference of the Tribunal.

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5. Counsel for the applicant submitted in his Rejoinder Affidavit that the disciplinary action taken against the applicant and other E.D.M.P. Krishna Kumar Saxena, under Rule 8 of EDAs (Conduct and Service) Rule 1964, in the enquiry report submitted by the Inquiry Officer Krishna Kumar has also been found guilty. So on that basis, Krishna Kumar was debarred from appearing in the departmental Examination for two years only. But the applicant was punished grievously when charge found lesser than Krishna Kumar Saxena.

6. Counsel for the respondents has filed Supplementary C.A. in reply to the R.A. reiterating the same facts as narrated in the CA.

7. Heard, the rival contentions of learned counsel for the parties and perused the pleadings on record.

8. Learned counsel for the applicant has relied upon Rule 19 of GDS (Conduct and Engagement) Rules, 2001. The relevant part of the Rule is quoted below:-

"Revision of punishment on application in the case of ED Agent only once; but *suo motu* further review can be done by higher authorities:-

In exercise of powers conferred under Rule 16 of Extra -Departmental Agents (Conduct and Service) Rules, 1964, the Central Government or the Head of the Circle/Postmaster-General (Region) or the authority immediately superior to the authority passing the orders can, at any time, either on its

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own motion or otherwise, call for records of any inquiry or disciplinary case of an Extra-Departmental Agent and revise any order made under the said rules, reopen the case or after making such inquiry as it considers necessary may confirm, modify or set aside the order or pass such order as it deems fit. However, no case can be reopened under the rule *ibid* after the expiry of six months from the date of order to be reviewed except by the Central Government or by the Head of the Circle/Postmaster-General (Region) and also before the expiry of the time-limit of three months prescribed for preferring an appeal. Thus, to put the records straight, the powers to revise the order in disciplinary cases of Extra-Departmental Agents under the said rule can be exercised by the authority immediately superior to the authority passing the order, on its own motion or otherwise, only within a period of six months from the date of the order to be revised but the Central Government or the Head of the Circle/Postmaster-General (Region) can exercise these powers at any time as no time-limit is fixed for them. Therefore, it is explicitly clear that the powers under these rules are vested in the above-mentioned authorities but the powers can be exercised by either of the said authorities only once in disciplinary cases of Extra-Departmental Agents. As such, once a case has been revised by either of the said authorities in any manner, no further application for revision from an Extra-Departmental Agent can be entertained on any ground."

9. In the present matter the order of punishment was passed by the SSPO through order No. F-1/S/00-01 dated 29.12.2006 which was reviewed by the Revisional Authority/the authority immediately superior to the authority passing the orders i.e. D.P.S., Bareilly Region, Bareilly vide show cause notice dated 14.01.2007 under Rule, 19 of GDS (Conduct and Engagement) Rules, 2001 i.e. after a gap of about 15 days, less than the prescribed appeal period of three months. Clearly, therefore, we find that the order has

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been passed before the expiry of time limit of three months prescribed for preferring an appeal which is prescribed under Rule 19 of GDS (Conduct & Engagement) Rules, 2001.

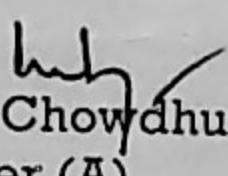
10. However, while we perused the order issued by the Director Postal Services, Bareilly Region, Bareilly, it is noticed that he has not given any detailed reasoning for coming to the conclusion that the punishment awarded to the applicant is not commensurate with the allegation made out against him. The respondents must show the reason for coming to a conclusion different from that taken by the Enquiry Officer and then call upon the applicant to submit his representation against the same.

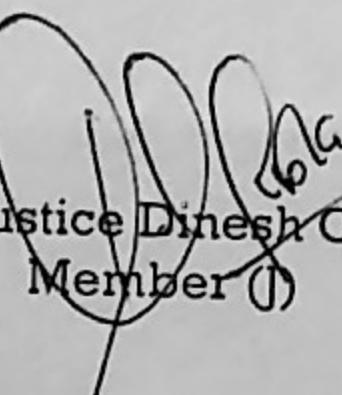
11. In the above circumstances, the OA is allowed and the show cause notice issued by the Revisional Authority/the authority immediately superior to the authority passing the order dated 14.01.2007 is quashed with the liberty that the applicant may be issued a fresh notice in which a speaking order be passed giving the reasoning/reasons for proposed enhancement of punishment. Therefore, the procedure prescribed under Rule 19 of GDS (Conduct & Engagement) Rules, 2001, must be followed before taking a decision by the

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Revisional Authority/the authority immediately superior to
the authority passing the orders. No order as to costs.

/ss/


(Ms. Nita Chowdhury)
Member (A)


(Justice Dinesh Gupta)
Member (J)