

24

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 820 of 2011
Cuttack, this the 23rd day of July, 2014

Bijay Ku. Behera Applicant
Versus
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

25

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HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)
HON'BLE MR. R. C. MISRA, MEMBER (Admn.)

.....

Bijay Kumar Behera, aged about 36 years, Son of Late Poliga Behera, Resident of Vill/PO- Bandhugan, Via/PS- Narayan Patna, Dist: Koraput, Orissa.

...Applicant
(Advocates: M/s. P.K.Padhi, J.Mishra)

VERSUS

Union of India Represented through -

1. Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi- 110001.
2. Director of Postal Services, Berhampur Region, At/PO- Berhampur, Dist- Ganjam, 760001.
3. Sr. Superintendent of Post Offices, Koraput Division, At/PO- Jeypore, Dist- Koraput, Orissa, 764001.

... Respondents

(Advocate: Mr. D.K.Behera)

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The case of the applicant in brief is that he was appointed as GDS BPM, Prajamuthai BO in account with Seimiliguda S O under Koraput Division on 12.04.2000. However, he was not a native of that village. The existing GDS MC, viz. Sri Ratnakar Pangi, was interested to work as BPM and

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as such it is alleged that he managed to make a conspiracy and lodged an FIR through his wife in Nandapur P.S. against him. Consequently, the applicant was arrested and forwarded to jail custody on 24.07.2004 for which he was placed under off duty w.e.f. 24.07.2004. It has been stated that from 21.07.2004 the applicant has not worked for a single day in the office. During his detention in jail custody the existing GDS MC, Mr. Pangi, had performed the duty of BPM in addition to his own duty of GDS MC by taking the charge of the applicant on 21.08.2004. Sri Pangi, GDS MC, had made some fixed entries in six RD pass books on 26th July, 2004 and 29th July, 2004, i.e. during the period the applicant was in jail custody. Charge sheet dated 06.03.2005/11.04.2005 was issued to the applicant giving him opportunity to show cause on the allegation leveled therein. Applicant denied the charged leveled against him. Thereafter the matter was duly inquired into. During the course of inquiry all the depositors denied to have given any money to the applicant and denied the transaction as alleged to have taken place on 29.07.2004 by the applicant. Inquiry Officer submitted its report holding that the charges leveled against the applicant are not proved. The report



of the I.O. was communicated to him to which he has also submitted his reply. But, the Respondent No. 3, i.e. Sr. Supd. of Post Offices, Koraput Division, considered the matter in proper perspective and without communicating any detailed note of disagreement differed from the view taken by the I.O. and held charges proved and imposed the harsh punishment of removal from service vide order dated 31.01.2008. Applicant preferred appeal against the said unilateral decision to the Appellate Authority, i.e. Respondent No.2, on 19.03.2008 but the Appellate Authority rejected the appeal of the applicant in letter dated 09.07.2009. Being aggrieved, the applicant has filed the instant O.A. seeking the following relief:

“.....to quash Annexure-A/3, A/7 and A/10 and direct the Respondents to reinstate the applicant in service with all consequential service benefits including back wages.”

2. The Respondents have filed their counter in which it has been stated that the applicant while working as GDS BPM, Prajamuthai BO in account with Seimiliguda S O under Koraput Division, was remanded to jail custody on 24.07.2004 by the Court of Ld. SDJM, Koraput in GR Case No. 531/04 filed U/S

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341/294/354/506 IPC and remained as such till he was released on bail on 30.07.2004. On release from custody, he remained absent from his duty on the plea of ill health on medical ground and handed over the charge of GDS BPM, Parajamuthai BO to the existing GDS MC (Sri R. Pangi) only on 21.08.2004. He has not provided any substitute to work in his place during the aforesaid period as required under Rule 7 of the GDS (Conduct and Employment) Rules, 2001. As such, he was the custodian of the office seal, stamp an other valuables till 21.08.2004. As he was detained in the police custody for period exceeding 48 hours he was placed under off duty under Rule 12(1) of GDS (Conduct and Employment) Rules, 2001 vide order dated 17.08.2004. For his lapses, he was proceeded under Rule 10 of GDS (Conduct and Employment) Rules, 2001. He was provided with all reasonable opportunities to defend his case. On conclusion of the inquiry, the I.O. submitted its report on 15.09.2007 disproving the charges leveled against the applicant. The I.O. came to the conclusion based on the fact that the applicant had not actually worked on the period covering fraud as he was under police custody. The I.O. relied upon oral evidence of the depositor that they had not

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tendered deposits in respect of their RD accounts. The Disciplinary Authority did not agree with the findings of the I.O. as it was found that the applicant was very much in the office up to his date of arrest and that in case of any necessity to remain absent from duty he had to arrange his own substitute at his own risk and responsibility. He was supposed to act as BPM either himself or through his substitute till handing over of the charge on 21.08.2004. However, the applicant had not denied/disowned his handwriting in relevant records/pass books during the course of inquiry. The applicant was supposed to be the custodian of the stamps, seals and other valuables till handing of the charge to the GDS MC. Therefore, the entries made in the pass book and other record and impressions of the date stamps are the acts of the charged official and same was proved in the inquiry. Since the entries in the pass books were made by the applicant in its own handwriting with his initials, it cannot be accepted that he did the same without accepting the required cash from the concerned depositors. The depositors although denied to have paid the amount to the applicant, but they failed to clarify the circumstances under which the entries have been made in their passbooks which



are supposed to be under their personal custody. His contention that foul plays in passbooks were made by Sri Pangi, GDS MC of his office, during his absence cannot be accepted as the passbooks were maintained by the applicant himself and as such he is responsible for impressing the BO date stamp in the pass books. It has been stated that although the applicant had not physically worked as BPM, there are every possibility of handling the BO date stamp from 30.07.2004 to 21.08.2004, i.e. the date of his relieve from the post of BPM in question. The I.O. in its report relied on the oral evidence of the witnesses but he failed to find out the circumstances under which the pass books entries have been made in respect of the deposits not counted for. The applicant has also miserably failed to adduce any evidence in his favour to prove that the entries in the pass books in question were not made by him. Hence disagreeing with the I.O's report, the Disciplinary Authority awarded the punishment of removal from service on the applicant which was upheld by the Appellate Authority in a well reasoned order. Last but not the least, it has been stated that since the proceedings were initiated as per Rules and imposition of punishment was also in compliance with the rules and in

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3\

conformity with the principle of natural justice after granting the applicant full opportunity, there is hardly any scope for this Tribunal to interfere in the matter.

3. The Applicant has filed rejoinder in which it has been stated that the I.O. after due inquiry has submitted its report holding that the charges are not proved. Respondent No.3 without communicating notes of disagreement held that the charges are proved and imposed the order of punishment of removal from service. It has been stated that it is highly improbable that a man can commit misappropriation while he was in jail custody. But, Respondent No.3 in spite of the clean chit of the I.O. has come to his own conclusion without any evidence that the applicant is guilty of the charges and imposed the punishment of removal from service, which was upheld by the Appellate Authority without due application of mind and without verifying the records that the applicant was in the jail custody up to 30.07.2004 and from 31.07.2004 to 20.08.2004 he was under the treatment of Dr. D.S.Das and only after his recovery he handed over the charge to the existing GDS MC, Sri R. Pang, on 21.08.2004, who acted as

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32

BPM during the absence of the applicant. Hence, he has prayed for the grant of relief claimed in the O.A.

4. Heard the arguments advanced by Sri P.K.Padhi, Ld. Counsel for the applicant, and Sri D.K.Behera, Ld. Addl. Central Govt. Standing Counsel, and perused the materials placed on record.

5. Mr. Padhi's contention is that the applicant was falsely implicated on the criminal case on the F.I.R. lodged by the wife of the existing GDS MC of the said B.O., viz. Sri Ratnakar Pangi. The said B.O. was open and official works were discharged by Sri Pangi in his absence. Sri Pangi used the official seals for day to day discharge of duty in absence of the applicant. No inventory was prepared when the office was open by the existing GDS MC when the applicant was in judicial custody. The entire allegation relates back to 26.07.2004 and 29.07.2004 during which the applicant was physically in jail custody. The Disciplinary Authority came to the conclusion that the entries and initials made in the RD pass books are of the applicant without getting the opinion from the GEDQD/handwriting expert, especially, when the depositors/account holders/operators of the said RD account in

Ans

37

course of the inquiry deposed before the Inquiry Officer that they have not given any money to the applicant and denied the transactions on 26.07.2004 and 29.07.2004. How, the I.O. after taking into consideration all the materials in a well-reasoned/discussed order came to the conclusion that charges leveled against the applicant are not proved whereas Respondent No.3 without giving any notes of disagreement and without affording any opportunity of being heard held the charges to have been proved and imposed the harsh punishment of removal, which is against the rules and well settled law of the land. In this regard, Mr. Padhi placed reliance on the decision of the Hon'ble Apex Court in the case of **Narayan Mishra Vs State of Orissa reported in 1969 SLR 657** and followed by the Tribunal in the case of **Kabindra Prasad Pandeya Vs. UOI and other reported in ATC 1991 (16) 702, S.Gopalan Vs .G of works CPWD, New Delhi ATC, 1991 (16) 691, Prakash Sanmukhlal Vs UOI and Ors, 1993 (23) ATJ 726 and D.S.P. Singh Vs UOI and Ors, 5/2005 Swamysnews 61 (Patna)**. Mr. Padhi sums up his argument by stating that since this is a case of no evidence and imposition of harsh punishment of removal is passed on no material and in



34

violation of the cardinal principle of natural justice, the order of the Disciplinary Authority and Appellate Authority are liable to be set aside.

6. On the other hand, besides reiterating the stand taken in the counter, Mr. Behera contended that the applicant was in the jail custody from 24.07.2004 till 30.07.2004 and on release he remained absent from his duty on the plea of ill health/medical ground and handed over the charge of GDS BPM to existing GS MC on 21.08.2004. As per the rules, he was required to be provided substitute during his absence. Therefore, presumption would be that he was the custodian of the official seals, stamps and other valuables till 21.08.2004. Since Disciplinary Authority found that the handwritings and initials made in the RD passbooks have not been disowned by the applicant, the conclusion reached by the I.O. cannot be held to be correct. The Disciplinary Authority is within its domain as per the rules to disagree with the report of the IO which he did before issuing the order of punishment as such it cannot be said that the punishment imposed on the applicant in any manner has been passed on no evidence and is disproportionate to the charges leveled against him. However, the applicant preferred



37

an appeal against the said order of removal, which was duly considered by the Appellate Authority and in a well reasoned order rejected the appeal of the applicant. Accordingly, Mr. Behera has prayed that this Tribunal not being Appellate Authority over the decision of the competent authority of the department, there is hardly any scope for the Tribunal to interfere in the matter and this O.A. is liable to be dismissed.

7. We have minutely considered the arguments advanced by Ld. Counsel for the respective parties.

8. Law is well settled in plethora of judicial pronouncements that however suspicious grave may be that cannot be proved in a domestic enquiry (Ref. **H.C.Goel vs UOI, AIR 1964 SC 364**). Further, it is well settled law that on probability, assumption, presumption and conjunction, one cannot be punished. There must be adequate evidence to substantiate the charges leveled against an employee and that onus lies on the prosecution to prove the charges. It is not the applicant to disprove. On examination of the entire matter, we find that in the instant case, the depositors/account holders have denied to have made any deposit on the date concerned. It is an admitted fact that the



applicant was in jail custody from 24.07.2004 to 30.07.2004 and after being released on bail he remained away from his duty/office till 21.08.2004 on which date he handed over the charge to the existing GDS MC. It is also not in dispute that in the absence of the applicant, work of GDS BPM was managed by the exiting GDS MC. No material has been produced to show that GDS MC had ever given any complaint before the authorities that inspite of remaining away from the work place, the applicant was misutilizing his official position. No material has also been produced that official seals, stamps, valuables and other stationeries were not available in the work place. Merely because the applicant was absent without providing any substitute as required under the rules it cannot be presumed that he was the custodian of the seals etc. and, accordingly, he is responsible for the incident alleged against him.

Be that as it may, we find another serious flaw in the procedure adopted by the authority, viz. as per the rules and well settled position of law, the Disciplinary Authority is under obligation to communicate the reason of disagreement after receipt of the report of the IO, if he does not agree with his finding. In



such a case, the applicant will have an opportunity to give his reply/explanation on the notes of disagreement of the Disciplinary Authority. Admittedly, the applicant was exonerated from all the charged by the I.O. The Disciplinary Authority in his letter dated 23.10.2007 supplied the report of the IO in which he did not agree with the report of the IO with regard to all the charges and the reasons for such disagreement as communicated to the applicant are as under:

The PO has observed that the date stamps and other valuables were at the custody of the Charged Official and his involvement cannot be ruled out. It is agreed upon as to the findings of the P.O.

You have maintained the BO account book and necessary entries during the period where the entry of the transaction was made in the Pass Books. So your involvement is proved.

Sri B. Padhi O/S Mails deposed that he examined the Charged Official with help of the Pass Books as per the no. of exhibits noted against each. So on the basis of the depositions of Sri B. Padhy there is evidence to show that the transaction have been dealt by you.

The Charged Official in cross examination of the O/S Mails has not disproved his version nor extracted any point suitably denying the fact.

Sri D. Rana, ASPOs I/C deposed that the whole preliminary inquiry was conducted by Sri B. Padhi as per his order and direction.

Since the Charged Official is the custodian of B.O. records including the valuables no other person is authorized to handle the same on his behalf and

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Charged Official therefore cannot deny his responsibility.

In view of the above, it is held that the transactions in the RD Pass Books are done by the Charged Official himself and he misappropriated the amounts thereof collected from the depositors."

The applicant submitted his reply and the Disciplinary Authority imposed the punishment of removal by holding as under:

"1. In para I of his defence representation dated 05.11.07 in response to the show cause notice dated 13.10.07 Sri Behera the C.O. has questioned the custody of stamp and seals of the B.O. That as asserted by him he was in charge of the B.O. upto 21.07.2004. In case of necessity to remain absent from duty as a condition of service he had to arrange his own substitute at his risk and responsibility. He has stated nothing as regards provisions of substitute by him till taken over charge by the GDSMC on 09.08.04. So the plea taken by the C.O. that he was not in custody of date and stamp and other valuables is not true.

2. As regards para 2 of the C.O's defence he has stated that as he was in Police custody; entries alleged to have been made by him in the relevant pass books for the period from 26.07.04 to 29.07.04 has no leg to stand and is far from truth. In this connection it is to state that he is supposed to act as BPM either himself or through his substitute till handing over charge on 09.08.04. Further he has not denied/disowned his hand writing in relevant records/pass books.

3-5. Questioning authority of the Overseer Mails to investigate into the case has no relevancy with the charges. O/s mails are empowered to do so which is well known to each and every BPM. So I reject the plea of the Charged Official.

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6. In circumstance of the case Sri Behera the C.O. was supposed to be in charge of the stamps, seals and other valuables till handing over of charge to the GDSMC on 09.08.04. So he entries made in the pass book and other records and impressions of date stamps upto this date are the acts of the C.O. and the same has been proved in the inquiry."

9. Rule 15 of the CCS (CC&A) Rules, 1965 deals with regard to the manner of action to be taken by the Disciplinary ^{Authority} ~~After~~ on receipt of the report of the enquiry wherein it has been provided that the disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be. Sub Rule (2) of Rule 15 provides that the disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who

shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant. Whereas, we find that in this case, the Disciplinary Authority picked up something from the charge sheet as well as report of the IO in the name of disagreement note and wanted the applicant to submit his reply although Rule 15 clearly provides that the Disciplinary Authority has to supply a copy of the report of the IO together with its own tentative reasons for disagreement, if any, with the findings of the Inquiry Authority on any article of charge to the Government Servant. Supply of disagreement note is not an empty formality. The Legislation made the provision with a view to allow opportunity to the delinquent to answer. Unless detailed reasons are given it will be difficult on the part of the delinquent to know what was in the mind of the Disciplinary Authority. Therefore, the Disciplinary Authority is not only required to furnish the disagreement note but the disagreement note must disclose the details of the reasons and the reason(s) as to why he did not agree with the finding of the IO which is conspicuously silent in the Disagreement note whereas



the same has been justified in the order of punishment. Therefore, we are at one with the Learned Counsel for the Applicant that principle of natural justice was grossly violated as the applicant was deprived of making an effective reply to the said note of disagreement. Therefore, judging on the anvil of the aforesaid premises, the irresistible conclusion is that the order of the Disciplinary Authority is unsustainable being in violation being de hors the rules and principles of natural justice. The above view is also fortified by the decisions relied on by the Learned Counsel for the Applicant. It is a settled legal proposition that if initial action is not in consonance with law, subsequent order/proceedings would not sanctify the same. In such a fact situation, the legal maxim "*Sublato fundamento cadit opus*" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls and by applying the law laid down by the Hon'ble Apex Court we nullify the subsequent orders issued by the Appellate Authority and remand the matter back to the Disciplinary Authority to deal with the matter strictly in accordance with the rules from the stage of receipt of the Inquiry



Report. We make it clear that the status of the applicant shall be as he was prior to the date of the removal from service.

10. We hope and trust that the period from the date of removal to till date shall be decided by the competent authority after conclusion of the proceedings. We also hope and trust that the Disciplinary Authority will do well to complete the proceedings at an early date provided the applicant co-operates in the matter.

11. In the result, the O.A. stands allowed to the extent stated above. There shall be no order as to costs.


(R.C.MISRA)

Member (Admn.)


(A.K.PATNAIK)

Member (Judicial)

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