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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


Original Application No. 564 of 2009
Cuttack this the 24th day of April, 2012

Prafulla Kumar Panda Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be circulated to all the Benches of the Tribunal or not? ✓


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

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HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Shri Prafulla Kumar Panda, aged about 42 years son of Late Ananda Chandra Panda, Ex-GDSBPM, Mayurjhalia, Via-Gopalpur(Nayagarh), Dist. Nayagarh-752 025.

...Applicant

By the Advocate : Mr.T.Rath, Counsel.

-VERSUS-

1. **Union of India represented through the Chief Postmaster General, Orissa Circle, PMG, Bhubaneswar, Dist.Khurda.**
2. **Director, Postal Services, in the Office of Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.**
3. **Superintendent of Post Offices, Puri Division, At/Po./Dist.Puri.**

...Respondents

By the Advocate : Mr.S.Mishra, ASC

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O R D E R

A.K.PATNAIK, MEMBER (JUDL):

Applicant while working as GDSBPM of Mayurjhalia Branch Post Office in account with Gopalpur Sub Post Office was proceeded against under Rule 10 GDS (Conduct and Employment) Rules, 2001 vide Memorandum dated 22.6.2005 on the following allegations:

"Article-1

Sri Prafulla Kumar Panda, GDSBPM, Mayurjhalia BO (under put off duty) in account with Gopalpur S.O while working as such

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during the period from 26.11.1994 to 23.05.2003 showed Sanehwal M.O No.A-405 dated 23.04.2003 for Rs.4000/- (Rs. Four thousand) only payable to Sri Haribandhu Kalas, S/o.Padan Kalas, At/Po-Mayurjhalia, Via-Gopalpur, Dist. Nayagarh paid on 06.05.2003 without obtaining the signature of the payee on the said MO paid voucher. He did not pay the value of the MO to the payee in violation of Rule 109 of Rules for Branch Offices, Sixth Edition (2nd reprint).

Thus, by his above acts, Sri Prafulla Kumar Panda, GSBPM, Mayurjhalia BO (under put off duty) failed to maintain absolute integrity and devotion to duty as required of him under Rule 21 of GDS (Conduct & Employment) Rules, 2001.

Article-II.

That the aforesaid Sri Prafulla Kumar Panda while working as BPM, Mayurjhalia BO in account with Gopalpur SO during the period from 26.11.1994 to 23.05.2003 received an amount of Rs.60/-(Rs. Sixty) only from one Sri Rashmi Ranjan Pattanaik, depositor of Mayurjhalia BO SB accountNo.503201 on 22.04.2000. He entered the amount under his dated initial in the pass book impressed it with the BO date stamp and struck the balance. But the said Sri Panda failed to incorporate the amount into BO account in contravention of Rule 131 of Rules for Branch Offices, Sixth Edition (2nd print).

The said Sri Panda made entry of withdrawals of Rs.20/- (Rs.Twenty) and Rs.50/- (Rs. Fifty) only on 26.7.2000 and 24.12.2000 respectively in the aforesaid pass book under his initial and date stamp impression of the BO. But, he failed to show the said transactions in the BO SB journal, BO daily account and BO account book violating Rule-134 (iii) of Rules for Branch Offices, Sixth Edition (2nd reprint).

Thus, by his above acts, Shri Prafulla Kumar Panda, GDSBPM, Mayurjhalia BO (put off duty) failed to maintain absolute

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integrity and devotion to duty as enjoined in Rule 021 of GDS (Conduct and Employment) Rules, 2001."

The matter was enquired into and the Inquiry Officer submitted his report holding both the charges as "not proved". But the Disciplinary Authority disagreed with the report of the Inquiry Officer and sent the report of the Inquiry Officer along with his note of disagreement to the Applicant giving him the opportunity to submit his reply. The reason of disagreement recorded and sent to the applicant by the Disciplinary Authority read as under:

"The IO has held Article I as "not proved" on the basis of the admittance of receipt of the value of Sanehwal MO No. A-405 dated 23.04.2003 for Rs.4000/- (Ext.S-3) by the payee during oral inquiry. While dwelling on such a deposition to derive a conclusion, the IO has ignored the opinion of GEQD in Ext.S-23 wherein the opinion expressed clearly says that the specimen signatures of Sri Haribandhu Kalas do not agree with the signature of the payee appearing in the MO paid Voucher, Ext.S-3. Moreover, the observation of the IO that the statement recorded in Ext.S-20 is not that of Haribandhu Kalas is simply based on the denial of the payee, which is not acceptable in the statement, the name of the father of Sri Haribandhu Kalas alias Harihar Kalas has been noted as Padan Kalas. The defence has nowhere provided any evidence that this Harihar Kalas alias Haribandhu Kalas is not the son of Padan Kalas, whereas the address of Sri Haribandhu Kalas has been clearly noted as Haribandhu Kalas, S/o. Padan Kalas in the MO paid voucher (Ext.S-3), Negation of any fact based on documentary evidence cannot merely be accepted on speculation and surmise. In the oral inquiry, Sri Nrusingha Charan Mishra, the SW-2 has confirmed that Harihar Kalas is Haribandhu Kalas.

A discreet insight into the facts of the case exhibited documents and evidence adduced during oral inquiry makes me

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believe that the charges leveled against the said Sri Panda in Article-I are proved and I prefer to record my disagreement with the views expressed by the IO.

In his observation about the charges in Article-II, the IO has not been able to clearly distinguish between missing credits of deposits in Ext.S-13 and the plea of the charged official to make bogus entries in it to enhance the transactions. Admittance of the delinquent to have made bogus entries and the entries in the pass book and other connected records prove the misdemeanor of the charged official to the hilt. Hence, I do not agree with the observation of the IO and observe that the charges leveled against the charged official in Article-II stands proved."

Reply to the aforesaid disagreement note of the Disciplinary Authority was submitted by the Applicant on 18th June, 2007 in which while contesting the findings recorded by the Disciplinary Authority against Article I, the Applicant has fairly admitted that the charge of non-accounting of Rs.60/- deposit in SB Account No. 503201 on 22.4.2000 was a mistake committed by him for which he has prayed for excuse for the same. The ground taken by the applicant in his reply dated 18th June, 2007 in support of his stand that the reason of disagreement given by the Disciplinary Authority against Article I is not sustainable, reads as under:

"3. The Payee of this MO, Shri Haribandhu Kalas was examined in this case as state witness No.3 who has deposed on the following points along with other State witnesses of the prosecution.

(a) He admitted the signature appearing in the MO paid voucher Ext.S-3 to be his own made on the date of payment of Rs.4000/- to him on 06.05.2003 being the value of the MO;

(b) Sri Surendra Kalas, who signed as witness to payment of the charged MO also examined in this case as State witness No.7 who categorically admitted to have witnessed

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payment of Rs.4000/- the value of the MO in question to the payee Sri Haribandhu Kalas by the CO in his presence. He also identified the signature of the payee Sri Haribandhu Kalas made before him on the MO paid voucher correctly.

(c) One bogus complaint recorded from one fictitious person named Harihar Kalas signed both in English and Oriya has been exhibited in this case as Ext.S-20 which formed the subject matter of this charge;

(d) One Preamble heading on this Ext.S.20 was written after wards with another Pen and ink other than the pen used in writing and endorsing the words "written before me" by the recording officer who recorded the preamble "statement of Harihar Kalas alias Haribandhu Kalas, Late Padan Kalas, At/Po.Mayurjhalia, Via Gopalpur dated 9.5.03. In this writing made by recording officer nowhere "s/o" was mentioned before the name of Padan Kalas. How the Disciplinary Authority surmised that Harihar Kalas is the son of Padan Kalas from this preamble is not understood.

(e) In the said written statement Ext.S-20 nowhere the executants has mentioned the fact that Harihar Kalas has any alias of Haribandhu Kalas. When the executants did not admit the fact of such alias matter, how the recording officer who is not a man of that locality nor acquainted with him can establish the fact is not understood;

(f) The witness to this statement Ext.S.20 is Sri Basanta Kumar Das who has been examined in this case as State Witness No.8, who clearly deposed in this case as he was not present while this exhibit S.20 was recorded and from whom recorded but he has put his signature on Ext.S.20 on the request of the recording officer Sri N.C. Mishra subsequently.

(g) The Prosecution could not produce any witness in this case named Harihar Kalas, who has signed this Ext.S.20. Rather Sri Haribandhu Kalas, payee of this MO who has been examined in this case as SW No.3 has categorically denied to

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have written or signed this Ext.S.20 and also refused to have any other alias of Harihar Kalas.

(h) The GEQD was examined in this case as State witness No.10. In the cross examination he has admitted categorically that "the definition of questioned document includes disowning of one's writings in a particular document". It clearly establishes that neither the payee Haribandhu Kalas disowns his signature on the MO paid voucher nor complained about nonpayment of MO. As such, the MO paid voucher containing the signature of payee Ext.S.3 is not a questioned document. This aspect concludes the feasibility and authority or admissibility of the GEQD in this case;

(i) The GEQD further admits in his cross examination that the signature of payee appearing in the MO paid voucher S.3 is not in the handwriting of this CO;

(j) The CO was examined by the preliminary inquiring officer in this case who deposed that he examined the CO and obtained his written statement which could have clarified the situation which has deliberately been concealed and not exhibited in this case."

Taking into consideration the materials available on record vis-à-vis the reply submitted by the Applicant, finally the Disciplinary Authority vide order dated 7th March, 2009 imposed the punishment of "removal from service" with immediate effect. Thereafter the Applicant preferred an appeal on 28th March, 2008 in which, the Applicant, besides challenging the findings of the Disciplinary Authority in so far as Article I is concerned, has prayed for modification of the order of punishment of removal to that of any other punishment as non accounting of Rs.60/- in SB Account, contained in Article II, is a mistake of fact having no violation of Branch Office Rules. The said appeal was rejected and communicated to the applicant vide order dated 01/05.01.2009 for which he has approached this Tribunal in the instant

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OA praying to quash the order dated 07.06.2007 under Annexure-A/9, the order dated 07.03.2008 under Annexure-A/11 and the order dated 01/05.01 2009 under A/13 and to direct the Respondents to reinstate him to service with all consequential benefits.

It is profitable to note that the order dated 07.06.2007 under Annexure-A/9, is the disagreement note of the Disciplinary Authority; Annexure-A/11 is the order of punishment imposed by the Disciplinary Authority and Annexure-A/13 is the order of rejection of the appeal.

The Respondents contested the case of the applicant and have prayed that this OA being devoid of any merit is liable to be dismissed. According to the Respondents, in the matter of Disciplinary Proceeding, it is within the domain of the Authority to impose any punishment taking into consideration the gravity of the matter after following/complying with Rules/procedures and principles of natural justice. Judicial intervention in such matters come to play only when there has been infraction of any of the Rules/Procedure in the matter of conducting the proceeding/enquiry and/or imposition of punishment without complying with the principles of natural justice. In the instant case, as the punishment was imposed on the applicant, after following due procedure of Rules and complying with the principles of natural justice, the contentions raised by the applicant in support of the relief being a after-thought is of no help to him. Applicant also filed rejoinder, more or less reiterating the stand taken in the OA.

Heard. Perused the materials placed on record. We find that Exbt. S-3 is the signature of Haribandhu Kalash on the MO acknowledgement. Exbt. S.1 to S.5 are the signatures of the Applicant and Exbt.S.6 to 11 are the sample signatures of Haribandhu Kalash. Q1 is the handwriting mark of Haribandhu Kalas. As it appears,

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the Disciplinary Authorities recorded his disagreement note on the report of the Inquiry Officer based on the report of the GEQD. The GEQD's report is placed at Annexure-R/4 in the counter filed by the Respondents which reads as under:

"The documents of this case have been carefully and thoroughly examined.

2. The person who wrote the blue enclosed writing and signatures stamped and marked S7 to S12 did not write the red enclosed writing and signature similarly stamped and marked Q1.

3. It has not been possible to express a definite opinion regarding the authorship of the writing marked Q1 in comparison with the writing marked S1 to S6."

In the enquiry, the Inquiry Officer has held the Article I as "not proved" on the basis of the admittance of receipt of the value of Sanehwal MO No. A-405 dated 23.04.2003 for Rs.4000/- (Ext.S-3) by the payee during oral inquiry.

The Disciplinary Authority disagreed with the said finding of the Inquiry Officer on the ground that the Inquiry Officer has ignored the opinion of the GEQD in Ext.S-23 (report of the GEQD) wherein the opinion expressed clearly indicates that the specimen signatures of Sri Haribandhu Kalas do not tally with the signature of the payee appearing in the MO paid Voucher (Ext.S-3). This observation of the Disciplinary Authority appears to be incorrect because no such finding has been reflected by the GEQD in his report under Annexure-R/4/ (Ext.S.23). Similarly, we find that the finding of the Inquiry Officer that the statement recorded in Ext.S-20 is not that of Haribandhu Kalas was not accepted by the Disciplinary Authority as the recording of the Inquiry Officer was only on the basis of the denial of the payee. After going through disagreement note, report of the Inquiry Officer and GEQD we are convinced that the reason of disagreement on Article I of the charge given by the Disciplinary Authority is untenable in the eyes of law. Therefore, we feel that

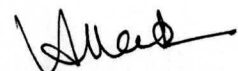
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imposition of punishment of dismissal for the rest charge is too harsh which needs reconsideration by the authority competent to do so. Hence, we quash the orders under Annexure-A/11 and A/13 and remit the matter back to the DA for imposition/modification of punishment other than removal/dismissal. While doing so, the Disciplinary Authority should also pass specific order on the treatment of the period from the date of dismissal till reinstatement. The entire exercise shall be completed within a period of 60(sixty) days.

In the result this OA stands disposed of to the extent stated above.

There shall be no order as to costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)