

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.335 of 2010

Cuttack this the 28th day of March, 2016

Manamohan Parida...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? No


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.335 of 2010

Cuttack this the 28th day of March, 2016

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Manamohan Parida
Aged about 42 years
S/o.Jadumani Parida
Ex-GDSMD
A/PO-Nuagarh
Via-Astaranga
Dist-Puri

...Applicant

By the Advocate(s)-M/s.B.Pradhan
D.K.Mohanty

-VERSUS-

Union of India represented through :

1. The Director General of Posts
Ministry of Communications
Dak Bhawan
Sastri Marg
New Delhi-110 001
2. Chief Post Master General
Orissa Circle
Bhubanewar
At/PO-Bhubaneswar
Dist-Khurda-751 001
3. Senior Superintendent of Post Offices
Bhubaneswar Division
Bhubaneswar
District-Khurda
4. Director of Postal Services
Office of the Chief Post Master General
Orissa Circle
Bhubanewar
District-Khurda



5. Asst.Superintendent of Post Offices
Bhubaneswar Division
Bhubaneswar
District-Khurda

...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

R.C.MISRA, MEMBER(A):

This matter had earlier been disposed of by this Tribunal vide order dated 19.6.2010. Being dissatisfied and aggrieved thereby, applicant had moved the Hon'ble High Court of Orissa, which formed the subject matter of WPC No.15203 of 2012. The Hon'ble High Court, vide order dated 13.1.2014 set aside the aforesaid order and remitted the matter back to this Tribunal.

2. For the sake of clarity, the full text of the orders of the Hon'ble High Court dated 13.1.2014 are quoted hereunder.

"Heard.

This writ application has been filed challenging the order dated 19th June, 2012 passed in O.A.No.335 of 2010 by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack.

Learned counsel for the petitioner submits that the learned Tribunal, in a cryptic manner, has decided the case without discussing the materials available on record. He further submits that the ***finding of the learned Tribunal that the applicant was never appointed as GDSBPM was not correct.***

Learned counsel for the opposite parties -Union of India also submits that the petitioner was appointed as GDSBPM.

Learned counsel for the petitioner submits that the charge framed against the petitioner was never proved in the departmental proceeding. ***As the***

Q

24

charge was that money order received in the Post Office was not delivered to the addressee, who was to receive the same and the materials were produced during the enquiry that the amount was duly paid to the person, to whom it was sent. These questions have not been taken care by the learned Tribunal, while deciding the Original Application.

We, therefore, while setting aside the impugned order, remit the matter back to the learned Central Administrative Tribunal, Cuttack Bench, Cuttack to dispose of the Original Application by taking into consideration all the materials available on record as well as the submissions made before it by the learned counsel for both the sides. Since the matter is of the year 2010, the learned Tribunal is requested to expedite hearing of the matter so as to dispose of the same within a reasonable period.

The writ application is accordingly disposed of"

3. Having regard to the aforesaid direction of the Hon'ble High Court, the ^{relevant} ~~relevant~~ points to be decided by this Tribunal are as under.

- i) Whether applicant had been appointed to the post of GDSBPM and if so, who was the authority competent to initiate disciplinary proceedings against him.
- ii) Whether it had been established during inquiry that money order supposed to have been received by the payee had been received, thus making the charge null and void.

4. Before considering the above points, it would be proper to quote hereunder the relevant Paragraphs of the order dated 16.6.2012 of this Tribunal disposing of O.A.No.335 of 2010.

7. Mr.D.K.Mohanty, learned counsel for the applicant in support of his contention submitted that along with charge memo the RUDs ought to have been

R

25

supplied to the applicant. The listed documents having not been supplied, there has been gross violation of the principles of natural justice. According to Shri Mohanty, there has been gross delay in issuing charge memo to the applicant. The main thrust of argument of Shri Mohanty is that the removal order from service by the ASPO for the alleged incident while the applicant was functioning as GDSBPM is not sustainable in the eyes of law as the appointing authority of GDSBPM is only the SPO.

8. In response to the above, Shri S.K.Patra, learned ASC appearing for the respondents submitted that if at all the RUDs were not supplied, still then nothing prevented the applicant from making a prayer to the Disciplinary Authority to supply the same to him. Shri Patra, learned ASC further submitted that during the inquiry all the listed documents were exhibited and as many as 12 prosecution witnesses were examined. In so far as competency of ASPO to act as Disciplinary Authority is concerned, Shri Patra submitted that the applicant had not been appointed as a regular GDSBPM. He was only directed to look after the duties of GDSBPM in addition to his own duty as GDSMD as stop gap arrangement. Therefore, according to Shri Patra the status of the applicant remains unaltered as that of a GDSMD whose appointing authority is not the SPO. Therefore, Asst. Superintendent of Post Office is/was quite competent to act as Disciplinary Authority.
9. We have considered the submissions made by the learned counsel for the parties and perused the materials placed on record.
10. Applicant has not submitted any document to show that he had ever been appointed as GDSBPM. Therefore, we have no hesitation to hold that the applicant had been allowed only to look after the duties of GDSBPM in addition to his own duties as GDSMD. In so far as non-supply of RUDs are concerned, we do not find even a scrap of paper that the applicant had ever requested for supply of those documents. Even the applicant has not annexed to the O.A. any copy of such representation submitted by him against the report of the IO to come to a finding that ever he had urged such a point (non-supply of RUDs) before the D.A. which



has not been considered while imposing the punishment of removal from service. Viewed from this angle, we are not inclined to take cognizance of this point which has not been urged by the applicant either before the IO or DA during the course of inquiry. Be that as it may, it is the specific case of the Respondents that the signature of the applicant had been sent to GEQD for opinion which submitted its report by stating that the applicant had signed in place of the payee in the MO form collected on 18.10.2002. We also do not find any infirmity in the conduct of inquiry as well as the order issued by the Disciplinary Authority, Appellate Authority and the Revisional Authority. In view of the above, we find no merit in this O.A. Hence, this O.A. stands dismissed".

5. The ^{substance &}~~epitome~~ of the O.A. is that while working as Gramin Dak Sevak Mail Deliverer (GDSMD), Nuagarh B.O. under Astarang S.O., applicant had been directed to perform the duties of GDSBPM in the said Post Office. While working as such, he was issued with a Memorandum of Charge on the allegation that he had received Banerghatia Road M.O.No.A-6608 dated 19.9.2002 for Rs.4000/- on 24.09.2002 duly invoiced in B.O. Slip on 24.09.2002 from Astarang S.O.(Accounts Office) payable to one Bhramarbar Swain, At/PO-Nuagarh, Via-Astarang. Whereas applicant on receipt of the said M.O., applicant noted the particulars in Nuagarh B.O. Journal on 24.09.2002 and had shown the M.O. as "**paid**" till 25.9.2002 forging signature of the pay as well as witness on the M.O. form and misappropriated the said amount and thereby acted in contravention of Rule-10 and Note-1 below Rule 106 of "Rules of Branch Offices" (Seventh Edition). By this, it had been alleged that applicant had failed to maintain absolute integrity and devotion to duty

27

as enjoined in Rule-21 of GDS(Conduct & Employment)Rules, 2001. He did not submit any defence to the Memorandum of Charge. Consequently, an inquiry was conducted and the IO submitted his report holding the charge proved. On being called upon, applicant submitted his written representation against the report of the I.O. The Disciplinary Authority, in consideration of ~~the~~ all the materials imposed punishment of removal from service vide order dated 24.3.2008. Appeal preferred against the orders of the D.A. having been turned down by the Appellate Authority, applicant submitted a revision petition to the Revisionary Authority, who, ultimate rejected the same. Aggrieved with the above, applicant had prayed for quashing the orders of the Disciplinary Authority and the subsequent orders passed by the Appellate Authority and Revisionary Authority with direction to Respondents to immediately give him appointment with all consequential benefits.

6. Coming to the point in issue no.(i), we would like to note that by filing an affidavit dated ²⁸~~14~~.3.2014, ^P Senior Superintendent of Post Offices, Bhubaneswar Division (res.no.3) had indicated

“That the counter affidavit was filed by the Senior Superintendent of Post Offices, Bhubaneswar before the Hon’ble High Court of Orissa mentioning therein that the applicant was appointed as Extra Departmental Delivery Agent(now redesignated as Gramin Dak Sevak Mail Deliverer), Nuagarh Branch Office in account with Astarang Sub Post Office by the Inspector of Posts, Nimapara Sub-Division with



effect from 29.11.1983. The Inspector of Posts, Nimapara Sub-Division ordered him to look after the work of Gramin Dak Sevak Branch Postmaster (GDS BPM) of the same Branch Post Office on a temporary measure in addition to his own duties. ***The applicant was never appointed as GDSBPM and no such appointment letter was issued to this effect. For all purposes the Inspector of Posts, Nimapara Sub-Division is the Appointing Authority of the applicant and therefore, he is the competent authority to take appropriate disciplinary action against the applicant under the provisions of rules***".

7. In addition to the above, vide order dated 9.11.2015, this Tribunal had made a query to Mr. Patra, learned ACGSC, as to how he could take a different and distinct stand before the Hon'ble High Court as well as this Tribunal regarding applicant's holding the post of GDSBPM on regular basis as well as in charge GDSBPM, ***Mr. Patra fairly submitted that the submissions made by him before the Hon'ble High Court that applicant was a regular GDSBPM was wrong and erroneous and applicant is actually in charge GDSBPM.***

8. Applicant has not filed counter-affidavit and/or any unimpeachable document in support of his claim that he had been appointed to the post of GDSBPM, Nuagarh B.O. This point had also been answered by this Tribunal, while disposing of this matter on 19.06.2012. Since appointment of the applicant to the post of GDSBPM, Nuagaon B.O. stands unsubstantiated and uncorroborated, the only inference that apparently could be drawn is that, he, in addition to his own duties as GDSMD, had



29

been discharging the duties of GDSBPM, Nuagaon by the orders of the Inspector of Post Offices, Nimapara Sub-division.

9. The above being the position, we answer the point in issue(i) that applicant had never been appointed to the post of GDSBPM and in the circumstances, authority who was competent to initiate disciplinary proceedings against the GDSBPM cannot be claimed to the appointing authority in so far as applicant's appointment as GDSMD is concerned. On the other hand, the authority who had initiated disciplinary proceedings, indisputably, being the appointing authority in respect of GDSMD and admittedly, the proceedings that had been initiated against the applicant in the capacity GDSMD by the said authority, challenge of the applicant regarding competency of the authority to initiate disciplinary proceedings against him, does not stand to judicial scrutiny.

10. Next point to be answered is whether during the course of inquiry, it had been established that money order supposed to have been received by the payee had been received.

11. Applicant for the reasons best known has neither produced the report of I.O. nor the written statement of defence made by him thereon. However, we have gone through the orders of the Disciplinary Authority and the Appellate Authority with a view to test the veracity of the statement made by the applicant that money order had been delivered to the payee. Perusal of those documents never throw any light on



30

this aspect. Even in the written notes of submission, no such point has been canvased. If at all during inquiry the allegation based on which applicant had been charge-sheeted, it was established that the applicant had delivered the money order to the payee, then what prompted him not to bring this fact to the notice of the Disciplinary Authority or the Appellate Authority, as the case may be. Burden of proof in this regard lies on the applicant to prove his *bana fide*.

12. From the above, it is quite clear that applicant has not been able to substantiate his claim that he indeed, had paid the M.O. amount to the tune of Rs.4000/- to the payee and during the course of inquiry, this fact had been established.

13. It is the settled position of law that in a matter of disciplinary proceedings, the role of the Tribunal is limited. Except in exceptional circumstances, where the charges are vague, unspecific or the proceedings are initiated by an incompetent authority, the conclusion arrived at is perverse and based on no evidence and/or the principles of natural justice has been violated to the prejudice of the applicant, there is no scope for the Tribunal to intervene in the matter. In the present case, none of the deficiencies as mentioned above exists. Further, on perusal of the records, it becomes quite clear that the principles of natural justice have been satisfied, and due opportunity has been afforded to the applicant to defend his case. It is noticeable that the appellate authority and the



31
reviewing authority have issued detailed and exhaustive orders covering all aspects while confirming the punishment imposed by the Disciplinary Authority.

14. Having therefore, further considered the matter, in the light of the directions issued by the Hon'ble High Court in WPC No.15203 of 2012, and having taken into account all the materials available on record and submissions from both sides, we do not see any ground to interfere with the orders of punishment passed by the departmental authorities.

Thus, the O.A. being devoid of merit is dismissed with no costs to the parties.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

BKS