

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No.450/2006
This, the 28th day of September 2007

Hon'ble Mr. M. Kanthalah, Member (J)

Harish Chandra Srivastava, aged about 55 years, Son of Sri Jung Bhadur Lal, Resident of 554/227, Gha, Shanti Nagar, Alambagh, Lucknow.

Applicant.

By Advocate Shri Vikas Agrawal.

Versus

1. Union of India through Director General Post, Dak Bhawan, New Delhi.
2. Director Postal Services, Head Quarter, Office of the C.P.M.G., U.P. Circle, Hazratganj, Lucknow.
3. Senior Superintendent, R.M.S., 'O' Division, Lucknow.

Respondents.

By Advocate Shri S.K. Singh.

ORDER

By Hon'ble Mr. M. Kanthaiah, Member (J)

The applicant has filed this O.A. challenging the orders of enhanced punishment passed by Respondent No.3 under Annexure-10 Dated 28.2.2006 and confirmation of the same by the Appellate authority Respondent No.2 dated 17.8.2006 Annexure-14, on the ground that no opportunity was given to him by Respondent No.3, while imposing enhanced punishment order and the orders of rejection of his appeal by Respondent No.2, is against the directions of



the Tribunal in O.A.No.212/2006 dated 28.4.2006 and also claims consequential relief thereon for refund of recovered amount.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant on the ground that in compliance of the orders of the Tribunal in O.A.No.212/2006, it was made over for payment to the applicant vide B.No.30 Dated 10.4.2006 and the pay at the stage of Rs.7400/- was restored and also made payment of Rs. 1500/- on 14.12.2006, in accordance with the decision of the Appellate authority.

3. The applicant filed Rejoinder Affidavit, denying the contentions of the respondents and thus reiterated pleas in Original application.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant while working as Supervisor No.1 in CRC, Lucknow on 15.7.2004 a show cause notice-Anenxure-1 was issued by Respondent No.3, with the allegation of misconduct/misbehavior and thus violation of Rule-3 (ii) of CCS (Conduct) Rules, 1964. He submitted a representation Dated 27.07.2004 (Annexure-2) denying the allegations made against him. But after examination and perusal of records, Respondent No.3 did not satisfy with the representation of the applicant and imposed penalty of reduction of two stages from Rs. 7400 to Rs. 7100/- for one year along with recovery of Rs. 5000/- in 20 installments of Rs.250/- per months each from the pay. Annexure-3 is copy of orders of Respondent No.3 dated 07.10.2004. Aggrieved by it, when he preferred departmental appeal, Respondent No.2 passed orders remitting back the case to Respondent No.3 for denovo proceedings from the stage of issue of



punishment order. Annexure-9 is the copy of such order Dated 31.01.2006. But by that time, Respondents complied the orders of Respondent No.3 dated 07.10.2004 (Annexure-3) in respect of recovery of Rs. 5000/- in 20 installments, as well as reduction of two stages below from Rs. 7400/- to Rs.7100/-, without waiting the result of appeal.

7. In pursuance of the orders of Respondent No.2, under Annexure-9, Respondent No.3 conducted de novo enquiry, without providing any opportunity to the applicant and passed orders dated 28.02.2006 (Annexure-10), under which, he enhanced the penalty for Rs. 34,300/- to be deducted at Rs. 2140/-. Against which, he preferred departmental appeal (Annexure-11 Dated 10.04.2006), on the ground that no opportunity was provided to him by Disciplinary authority (Respondent No.3) before passing orders, enhancing penalty under Annexure-10. And when, the department started recovery from the salary of the applicant and commenced execution of the order of Respondent No.3 under Annexure-10, he filed O.A. 212/2006 on the file of this Tribunal questioning the orders of Respondent No.3. The Tribunal disposed of the said OA with a direction to the Appellate authority (Respondent No.2) to consider several issues raised by the applicant in his earlier appeal and decide the same. Annexure-13 is the copy of the orders of the Tribunal Dated 28.04.2006. But Respondent No.2, rejected the appeal of the applicant, which is the impugned order dated 10.04.2006 (Annexure-14) in this OA on the ground that such orders are passed against the direction of the Tribunal and a Stereo type, non-speaking order.



8. Thus, the short and limited question involved in this case is whether, the orders of Appellate authority covered under Annexure-14 Dated 10.04.2006 is a non-speaking order and against the direction of the Tribunal in O.A.No.212/2006 Dated 28.04.2006 (Annexure-13) and thus the said orders of Respondent No.2, confirming the penalty imposed by Respondent No.3 and further, orders of Respondent No.3 under Annexure-10 are liable to be quashed.

9. Admittedly, when the applicant challenged the enhanced penalty imposed by the Respondent No.3 vide (Annexure-10) dated 28.2.2006 in O.A.No.212/2006, on the file of this Tribunal, the same was disposed of with a finding that the enhanced penalty cannot stand Judicial scrutiny as it amounts to enhancement of penalty by the Disciplinary authority, which has not been contemplated in the CCS (CCA) Rules, 1965 and does not go in accordance with the order of the Appellate authority. Thus, the said impugned order is interfered with to the extent that the earlier penalty imposed shall remain intact and period from which the penalty shall be commenced is the actual date from which the penalty was made operative in the instant case. Thus, directed the respondents to continue the recovery in accordance @ Rs.250/- per month as initially ordered with a direction to the Appellate authority to consider "several issues" as raised in the earlier appeal and decide the same.

10. The judgment of the Tribunal, it is clear that the impugned enhancement order covered under (Annexure-10) was interfered by this Tribunal giving direction to the respondents to continue the penalty imposed on earlier by the 3rd Respondent and to continue to recover at Rs. 250/- per month and also further directed to the 2nd



Respondent to consider the several issues raised by the applicant in his first appeal and decide the matter.

11. From the reading of the orders of the Respondent No.2 covered under (Annexure-14) dated 17.8.2006, he considered the main issues raised by the applicant in his first appeal basing on the direction given by the Tribunal in O.A.No.212/2006 and concluded that the punishment awarded by the Disciplinary authority is adequate and thus, rejected the appeal. Para-5, which is the operative portion of the orders is not clear, whether it was in respect of initial punishment or in respect of subsequent enhanced punishment but the top of the order covered under Annexure-14 shows that this is the appeal dated 10.4.2006 against the penalty of Rs. 34,300/- imposed on the applicant by Respondent No.3 dated 28.2.2006, which is in respect of second appeal.

12. While discussing the issues raised by the applicant in his first appeal, the appellate authority in para-5.3 of its order, touched the points raised in respect of his finding of denovo proceedings from the stage of first punishment order, and also in respect of the grounds urged in the 2nd appeal that no opportunity was provided to him by the disciplinary authority, before imposing enhanced punishment. The said order of appellate authority also further says that since the original punishment order was not in force, thereafter the interpretation that the punishment was enhanced by the disciplinary authority without show cause notice is wrong and not acceptable. It further says that actually the disciplinary authority considered the whole case as a fresh and passed the fresh punishment order which was found fit by him.



13. From such finding of the appellate authority, it is clear that though he dismissed first appeal of the applicant, he gave finding in respect of enhanced punishment which was the subject matter in second appeal. The direction given to the appellate authority by this Tribunal in O.A. 212/2006, was in respect of first appeal that is in respect of punishment awarded under Annexure-3 Dated 07.10.2004, under which the applicant was awarded penalty of reduction of pay by two stages from Rs. 7400/- to Rs. 7100/- for one year along with recovery of Rs. 5000/- from his pay in 20 installments. But without giving any finding in respect of such penalty imposed by the Respondent No.3, which was subject matter in first appeal, giving finding in respect of enhanced penalty and confirmation of such orders by Respondent No.2 under Annexure-14 is nothing, but beyond the scope of the direction of the Tribunal in its order covered under Annexure-13. Thus it amply proved that the Annexure-14 Dated 17.8.2006 is not in consonance of the directions of the Tribunal in O.A.No.212/2006.

14. While disposing of O.A.No.212/2006, the Tribunal clearly stated that the earlier penalty imposed shall remain intact and also directed the respondents to continue the recovery in accordance at Rs.250/- per month as initially ordered. But without sticking to such direction, the respondents have started deductions basing on enhanced penalty at Rs. 2140/- per month and after confirmation of enhanced penalty by Respondent No.2, in the impugned order Annexure-14 Dated 17.8.2006, they again started deduction at Rs. 2140/- per month , for recovery of enhanced penalty of an amount of Rs. 34,200/-



15. Without starting deduction of Rs. 250/- per month as ordered by the Tribunal in O.A. 212/2006, the respondents started deduction of enhanced penalty of Rs. 34,300/- at Rs. 2140/- per month and also issuing finding confirming enhanced penalty by Respondent No.2 in the impugned order Anenxure-14 Dated 17.8.2006 also clearly establish that the orders of Respondent No.2 are not in accordance with the direction given by this Tribunal in its order in O.A.N.212/2006.

16. From the above discussions, the applicant has clearly established that the orders of Respondent No.2 under Annexrue-14 is not in accordance with the directions given by the Tribunal in O. A.No.212/2006 (Annexure-13) and on such grounds, the impugned order Annexrue-14 is liable to be quashed.

17. The applicant has also challenged the order of Respondent No.3 (Annexure-10) under which was imposed enhanced penalty but in his earlier application O.A.No.212/2006, the same impugned orders was the subject matter and when the Tribunal also gave clear finding as such impugned orders, it is not open to the applicant, to again challenge the same in this OA and as such no decision is warranted on such issue in this OA.

18. In the result, the claim of the applicant to quash the impugned order covered under Anenxrue-14 Dated 17.8.2006 is allowed with a direction to the respondents to refund any of the amount deducted from the pay of the applicant basing on the said impugned order. The respondents are at liberty to take steps against the applicant as per the direction of the Tribunal in earlier OA No.212/2006 Dated 28.4.2006, confining to the initial punishment imposed by disciplinary authority and appeal preferred against the same before the 2nd



Respondent since no specific finding arrived in respect of the penalty imposed by the Respondent No.3 in its initial punishment order dated 07.10.2004 Annexure-3. No costs.



M. KANTHAIAH
(MEMBER (J))

28.09.2007

/AMIT/