

Central Administrative Tribunal

Lucknow Bench, Lucknow

Original Application No: 325/2009

This the 19th day of April, 2012

Hon'ble Justice Shri Alok Kumar Singh, Member, (J)

Hon'ble Shri S. P. Singh, Member (A)

Nirbhai Singh aged about 38 years son of Sri Ram Avtar R/o Manhai P.O.Hafizabad P.S. Fatehpur Chaurasi district Unnao.

Applicant

By Advocate Shri P.R. Gupta.

VERSUS

1. Union of India through its Secretary, Department of Post Ministry of Communication Dak Bhawan, New Delhi.
2. Chief Postmaster General U.P. Circle Hazratganj Lucknow.
3. Postmaster General Kanpur Region Kanpur.
4. Director Postal Services Kanpur Region Kanpur.
5. The Superintendent Post Offices Kanpur (M) Division Kanpur.

Respondents

By Advocate: None

(Order Reserved On:11.4.12)

O R D E R

By Hon'ble Shri S. P. Singh, Member (A)

The applicant has instituted this O.A. seeking following relief(s):-

- (i) To set aside the impugned arbitrary recovery order of Rs. 100000/- dated 18.6.2009 and 23.1.2008 passed by respondent No. 4 and 5 as contained in Annexure No. 1 to this O.A.
- (ii) To direct the respondents to relieve the applicant for P.A. cadre training along with other successful candidates.
- (iii) To pass any other appropriate orders as deemed fit, judicious and proper in the circumstances of the case in favour of the applicant.
- (iv) To allow the O.A. of applicant with costs.

2. While working as the Postman, Safipur, the applicant was issued a charge sheet (Annexure-3) under Rule 16 of CCS (CCA) Rules

S.P.

1965. A statement of imputation was also enclosed with the memorandum dated 26.12.2009. It was also stated in the said memorandum that if the applicant fails to submit his representation within 10 days of the receipt of the memorandum, it will be presumed that he had no representation to make and orders are liable to be passed against the applicant exparte. The statement of imputation is reproduced below:-

श्री निर्भय सिंह, पोस्ट मैन सफीपुर के अनाचार अथवा कदाचार के साक्ष्यों का विवरण

श्री निर्भय सिंह विभागीय पोस्टमैन सफीपुर के पद पर कार्य करते हुए उन्होंने कर्तव्यों का पालन नहीं किया जो कर्तव्य का पालन उनके लिए आवश्यक था। चूँकि हेड पोस्टमैन का पद सफीपुर डाकघर में नहीं था। अतः उन्हें आवश्यक था कि स्टेट बैंक सफीपुर शाखा से कैश की प्राप्ति हेतु जाना चाहिए था कि जो कर्मचारी जाता था उसके साथ जाते। इस कर्तव्यहीनता के कारण दिनांक 20.04.07 को 6,00,000.00 के कैश की बदमाशों द्वारा लूट की वारदात कर दिया जबकि श्री छंगालाल जी०डी०एस०, ई०डी०डी०ए०, उक्त नगदी धनराशि सफीपुर स्टेट बैंक शाखा से सफीपुर उप डाकघर ला रहे थे। उनकी इस कर्तव्य परायणता के अभाव में उनकी भी भूमिका सरकारी धनराशि की लूट की क्षति से सम्बद्ध है।

अतः आरोपित है कि उनके द्वारा डाक नियम पुस्तक-6 भाग III के नियम 106 (I) का स्पष्ट रूप से उल्लंघन किया गया है। ऐसा नहीं अपनी ड्यूटी के अनयत्र उन्होंने अपने कर्तव्यों के प्रति सत्यनिष्ठा एवं कर्तव्य परायणता अपनाने में पूर्णरूप असफल रह करके सी०सी०एस० (कन्डक्ट) रूल्स 1964 के नियम 3 (I) (I) एण्ड (III) का उल्लंघन किया है जैसा कि एक सकारी कर्मचारी से अपेक्षा नहीं की जाती थी इसके परिणाम स्वरूप विभाग को 6,00,000.00 की आर्थिक क्षति उठाना पड़ा।

3. Instead of sending his reply in defence, the applicant demanded some documents for preparing his defence representation. A copy of the applicant's letter dated 12.1.2008 is annexed at Annexure-6.

4. Disciplinary Authority, Superintendent Post Offices, Kanpur passed exparte order dated 23.1.2008(annexure-2) as under:-

उक्त आरोप पत्र का वितरण कर्मचारी को किया गया। आरोपित कर्मचारी ने अपना प्रतिरक्षा पत्र देने के बजाय एक आवेदन पत्र दिनांक 04.01.2008 को भेजा जोकि 07.01.2008 को मण्डलीय कार्यालय में प्राप्त हुआ। उसमें उसने यह दर्शाया कि उनकी धर्मपत्नी की तबियत खराब है। अतः उसने निर्धारित समय के बाद दस दिन का और समय मांगा और अपनी धर्मपत्नी के बीमार होने की पुष्टि हेतु चिकित्सा प्रमाण पत्र आदेश पत्र के साथ भेजा परन्तु इस कार्यालय के सम संख्यक पत्रांक दिनांक 07.01.2008 के माध्यम से सूचित किया गया कि दिनांक 16.01.2008 तक अपना प्रतिरक्षा पत्र भेज दे, परन्तु वह नहीं प्राप्त हुआ बल्कि उसका दिनांक 12.01.2008 का कुछ अभिलेखों के देखने के सम्बन्धित आवेदन पत्र दिनांक 15.01.2008 को प्राप्त हुआ।

इससे यह परिभाषित हुआ कि उक्त कर्मचारी ने प्रतिरक्षा पत्र न देने की धारणा बना रखी है और उसके मामले में निर्णय में पुनाषातीत विलम्ब करने की



धारणा बना लिया जोकि उसकी अवांछनीय अवधारणा का प्रतीक है। ऐसी स्थिति में केष के शीघ्र निर्णय करने हेतु एक तरफा निर्णय की आवश्यकता है।

अतः आरोप पत्र तथा अन्य सम्बंधित आरोपों का अवलोकन गम्भीरता से करने के पश्चात् इस निष्कर्ष पर पहुँचा हूँ कि उसका दिनांक 20.04.2007 को श्री छंगालाल ई.डी.डी.ए. के साथ स्टेट बैंक न जाना तथा इस बात का स्पष्ट प्रमाण है कि उनकी इस अकर्मण्या से विभाग को इतनी बड़ी धनराशि की क्षति उठाना पड़ा है, जिसके लिए वह दोषी है तथा आरोप पत्र में वर्णित डाक नियम पुस्तक के नियम 106 (1) उल्लंघन करता है।

इस प्रकार से होने वाली आर्थिक क्षति का सहभागी होने के कारण आंशिक क्षति की आर्थिक पूर्ति का अषत उत्तरदायी है।

अतएव मैं वी०के० चौबे, अधीक्षक डाकघर, कानपुर (मु०) प्रखण्ड कानपुर 1,00,000.00 रु० की राशि उसके वेतन से वसूली के आदेश पारित करता हूँ जिसकी वसूली 100 किस्तों में 1000-00 की मासिक दर से की जानी है।

5. The applicant submitted an appeal on 3.3.2008 (Annexure-7) to the Appellate Authority, Director Postal Services, Kanpur Region, Kanpur against the impugned penalty of recovery imposed by the Disciplinary Authority, the Superintendent Post Offices. At the same time, he filed O.A. No. 192/2008 which was decided on 28.5.2008 with a direction to the Appellate Authority to dispose of the pending appeal of the applicant as per rules with a reasoned order within a period of two months from the date of supply of the copy of the order. Till then the recovery was also ordered to be kept in abeyance. The appeal was decided by the Appellate Authority on 18.6.2009(Annexure1) which reads as under:-

“The memo of charges was delivered upon the appellant on 28.11.2007 and he has submitted his defence representation on 4.1.2008.

The disciplinary authority after going through the defence representation has passed the orders for the punishment of recovery of Rs. 1,00,000/- awarded vide memo No. FX-7/6/SAfipur/07-08, dated 23.1.2008. The memo of punishment was served upon the appellant on 30.1.2008.

Being aggrieved with the aforesaid decision of the disciplinary authority the appellant has referred the instant appeal on 3.3.2008 which is within prescribed time limit.

The appellant has raised the following points in his appeal:

1. The SPM Safipur at his own accord has ordered to GDS DA to bring the cash from SBI lonely.
2. At the time of the incident, the appellant was working in his beat. His name has been unnecessarily dragged into the case.
3. The requisite documents were not supplied to the appellant resultantly denial of opportunity to defend himself properly.



4. No verbal/written order was given to the appellant for carrying the cash from SBI

My point wise reply is as under:

1. Not admitted. As per MDW, it was the legitimate duty of the appellant to accompany the SPM or other member of staff at the time of drawing money from SBI.
2. Not admitted. In the absence of treasurer, the appellant should have remained at office having due contact with the SPM whether his services for this specific purpose is needed or not but the appellant has failed to do so.
3. Contention of the appellant is not correct.
4. Not admitted. In accordance with MDW it was duty of appellant to assist SPM in cash transaction in which he utterly failed.

I have gone through Chargesheet, punishment, appeal and other relevant documents carefully and came to conclusion that omission and Commission on the part of appellant stand proved which ultimately landed the DOP to huge loss & he can not be absolved of the charges.

Therefore, I P.K. Tripathi, in capacity of Director Postal Services, Kanpur in exercise of appellate power conferred upon me vide Rule 27 of CCS(CCA) Rules 1965 do hereby uphold the punishment for recovery of Rs. 10,0000/- imposed vide Memo No. FX-7/6/Safipur/07-08 dated 23.1.2008 from SPOs Kanpur(M) and reject the appeal of appellant dated 3.3.2008."

6. We have heard the counsel for the parties and perused the material on record to assess the rival contentions.

7. We find that the disciplinary proceedings have been conducted inconformity with the principle of natural justice and as per procedure laid down in CCS(CCA) Rules 1965. The applicant has been given fair treatment by the Disciplinary Authority and by the Appellate Authority. Their findings have been clearly recorded in the foregoing paras. The speaking orders have been passed by these authorities. These speaking orders give clearly reasons for taking the decisions. The documents required by the applicant in his letter dated 12.1.2008 (annexure-6) have been dealt with by the Disciplinary Authority while passing the exparte order dated 23.1.2008 (AnnexureA-2). This was also further dealt with by the Appellate Authority, Director Postal Services Kanpur Region, Kanpur while passing his order dated 18.6.2009(Annexure-1). These authorities have also given their findings passed on cogent material and after proper appraisal of the entire relevant evidence on record. The Appellate Authority has considered the grounds taken in appeal and recorded his finding as mentioned above.

8. Procedural provisions laid down under CCS (CCA) Rules 1965 were strictly followed at all stages and adequate opportunity was given to the delinquent official. Procedural provisions are generally

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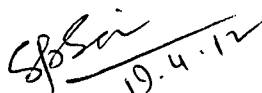
meant for affording a reasonable and adequate opportunity to the delinquent employee. They are generally speaking conceived in his interest. Violation of any or every procedural provision cannot automatically vitiate the order passed. If no prejudice is established to have resulted there from, no interference is called for.

9. It is well settled principle of law that judicial review is not against the decision. It is against a decision making process. The orders passed by the Disciplinary Authority or the Appellate Authority are not found to be in violation of any rules/regulations/statutory provisions. The review in such cases is open only on the grounds of malafide, arbitrariness and perversity. No such allegations have been made against the orders passed by the Disciplinary Authority and Appellate Authority.


10. The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment can not be equated with an appellate jurisdiction. The Tribunal can not interfere with the findings of the competent authorities where they are not arbitrary or utterly perverse. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

11. In view of the position stated above, we do not find any illegality or irregularity in the impugned orders passed by the Disciplinary Authority and Appellate Authority, the O.A. has therefore no merit.

12. Under the facts and circumstances mentioned above, O.A. is liable to be dismissed and is dismissed. No order as to costs.


19.4.12
(S.P. Singh)

Member (A)


19.4.12
(Justice Alok Kumar Singh)

Member (J)