

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 332/2009

Reserved on 3.2.2015

Pronounced on 18/2/15

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Paras Nath Yadav aged about 45 years son of Sri Ram Deen resident of village and post Rehuwa, District Sitapur at present posted as Postal Assistant, Sub Office, Sidhauli, District- Sitapur.

Applicant

By Advocate: Sri Surendran P

Versus

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Superintendent of Post Offices, Sitapur.

Respondents

By Advocate: Sri S.P.Singh

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

Whereof it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the orders dated 11.1.2008, 6.10.2008 and 5.5.2009 contained in Annexure No. 1 to 3 and the show cause notice dated 9.7.2008 contained in Annexure No. 5 and return back the recovered amount from the pay of the applicant.

2. During the course of arguments, learned counsel for the applicant has made a statement at bar that he does not want to press for quashing of order dated 11.1.2008 as prayed in the O.A. in the relief clause since he has not preferred any appeal to the said order.

3. The brief facts of the case are that the applicant while working with the respondents organisation was charge sheeted

vide charge sheet dated 12.12.2007, through which certain charges were levelled against the applicant. Against the said charge sheet, the applicant submitted the reply and the respondents have passed the order dated 11.1.2008 through which the recovery of Rs. 20,000/- was imposed upon the applicant which is to be recovered @ 1000/- per month. After service of the said order, the applicant has not preferred any appeal but the revisionary authority suo moto issued a show cause notice upon the applicant, through which the punishment so imposed upon the applicant was proposed to be enhanced and accordingly, the authorities passed an order on 6.10.2008 through which recovery of Rs. 30,000/- in 30 installments @ Rs. 1000/- per month was passed. The applicant against the said order preferred an appeal and the appeal so preferred by the applicant was also rejected by the authorities by means of order dated 5.5.2009. The learned counsel for the applicant has categorically indicated that the respondents while issuing the show cause notice dated 9.7.2008 has not indicated any reason of issuing such a notice and just reiterating the contents of the charge sheet and came to the conclusion that the penalty so imposed upon the applicant is much less than the misconduct of the applicant and a penalty of recovery of Rs. 30,000/- in 30 installments @ Rs. 1000/- per month was imposed upon the applicant. Not only this, the learned counsel for the applicant has also relied upon a decision of the Hyderabad Bench of this Tribunal in the case of N.Rama Rao Vs. President, Council of Scientific and Industrial Research, New Delhi and another reported in (1987) 5 Administrative Tribunals Cases 575 and has indicated that when the show cause notice is not in accordance with law and is without assigning any reason, the same is arbitrary and is liable to be interfered with.

4. On behalf of the respondents, reply as well as Supple. Counter reply is filed and through which it is indicated by the

respondents that while working as S.B.Assistant at Sidhauri, Sitapur, the applicant opened few accounts in which he has made wrong entries and on account of his lapses, the Govt. suffered a loss, as such charge sheet was served upon the applicant and he was punished with recovery of Rs. 20,000/- vide memo dated 11.1.2008. Subsequently, the punishment so awarded to the applicant was reviewed by Director, Postal Services and proposal for enhancement of Rs. 40,000/- was made and the said proposal was reviewed and finally the respondents have passed an order dated 6.10.2008 for recovery of Rs. 30,000/- in 30 installments @ Rs.1000/- per month each. The entire amount is already recovered from the applicant. Not only this, it is vehemently argued by the learned counsel for respondents that on the date shown in the charge sheet, the applicant was on duty as SB Assistant to make entries in all the relevant documents like pass book and ledger card but he did not do so which facilitated the fraud, as such the govt. suffered a loss and the respondents rightly awarded the penalty of recovery upon the applicant, as such there is no illegality in doing the same. Through Supple. Counter reply, the averments made in the counter reply are reiterated and contents of Rejoinder Reply are denied.

5. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated and contents of counter reply are denied. It is once again vehemently argued by the learned counsel for the applicant that revisional authority without indicating any reason issued the show cause notice and proposed for enhancement of penalty. As such, without indicating any reason, the decision taken by the revisionary authority is liable to be interfered with and is liable to be quashed.

6. Heard the learned counsel for the parties and perused the records.

7. The applicant was working with the respondents organization and while he was working at Shidholi, Sitapur, certain irregularities were found and accordingly charge sheet was issued upon the applicant indicating therein certain charges against the applicant. The applicant submitted the reply and finally the authorities passed an order on 11.1.2008, through which, the respondents have passed an order of recovery of Rs. 20,000 to be recovered from the applicant @ 1000/- per month. The applicant has not filed any appeal to the same. After a period of about six months, the revisionary authority issued a show cause notice upon the applicant and in the said show cause notice, the revisionary authority has just indicated the contents of the charge sheet and proposed to impose a penalty upon the applicant of recovery of Rs. 40,000/- to be recovered in 40 installments @ Rs. 1000/- per month besides withholding of one increment for next one year without cumulative effect. The applicant was asked to submit the reply which the applicant did on 17.7.2008 indicating therein that the custodian of blank passbook is the SPM who has signed the pass book prepared by the applicant, so the entire responsibility of fraud lies on the SPM. It is also indicated by the applicant that in accordance with Rule 110 of CCS (CCA) Rules, 1965, any penalty prescribed in rules may be imposed for good and cannot be imposed without any reason whatsoever. Not only this, the applicant also requested the authorities to drop the proposal for enhancing the punishment to be imposed upon the applicant. The respondents being not satisfied with the such representation of the applicant passed an order on 6.10.2008 indicating therein that penalty of recovery of Rs. 20,000/- so awarded to the applicant by the SPO, Sitapur keeping in view the gravity of charges against him and it was his duty to prepare pass books by himself. It is also indicated by the Director, Postal Services that SPM is the custodian of the blank pass books but these are being supplied the demand

of the counter Asst. who is required to prepare the passbooks. Not only this, the respondents also indicated that there is no rule 110 in CCS (CCA) Rules, 1965 and the applicant is wholly responsible for non-issue of pass books in his hand own writing. As such, on account of negligence of the official, the Govt. exchequer suffered a loss and accordingly in exercise of power conferred under Rule 29 (1) (v) of CCS (CCA) Rules, 1965, the penalty so imposed upon the applicant is enhanced to a sum of Rs. 30,000/- to be recovered in 30 installments @ Rs. 1000/- per month and also withholding of next increments for one year without cumulative effect. The applicant preferred an appeal against the said order and the appeal so preferred by the applicant was also considered and rejected by the Appellate Authority.


8. The question is whether the notice dated 9.7.2008 is a proper and speaking notice since no reason has been given as to why the revisionary authority proposing to enhance the recovery imposed by the disciplinary authority. It is the contention of the learned counsel for the applicant that no reason whatsoever has been given in this order and it is not a speaking order. Despite this fact, the applicant requested the authorities by means of reply to the said show cause notice to drop the proceedings but despite that no reason were given by the authorities while enhancing the punishment. It is undisputed fact that the show cause notice dated 9.7.2008 is not a speaking notice and no reason have been given as to why the revisionary authority came to the conclusion that the applicant was guilty of the charges levelled against him and the penalty so imposed upon the applicant also does not commensurate with the misconduct.

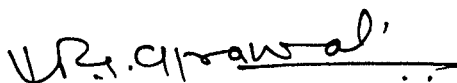
9. It is explicitly clear that the show cause notice dated 9.7.2008 is therefore, illegal and consequential order of enhancing the punishment of recovery vide order dated 6.10.2008 and the appellate order dated 5.5.2009 are also illegal.

10. The present show cause notice is not a speaking order. The Hon'ble High Court in the case of **H.S. Srivastava Vs. Special Land Acquisition Officer reported in 1993(11) LCD 441** pleased to observe that **"An order adversely affecting an employee has to be a speaking order."**

11. Considering the submissions of the learned counsel for parties and after perusal of records, it is clear that the show cause notice issued to the applicant is not a speaking order, as such order passed by the respondents on 6.10.2008 and appellate order dated 5.5.2009 are liable to be interfered with and are accordingly quashed. The excess amount so recovered from the applicant be refunded to him without any interested within a period of three months from the date of certified copy of this order is produced.

12. The O.A. is allowed. No order as to costs.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER(J)

HLS/-