

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the 10th day of **July, 2018**.

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J).**

Original Application Number. 330/00325/2011.

Suryabhan Prasad, S/o Late Heera Nand, Ex. GDS M.D/M.C, R/o Village and Post Rajaura Khurd via Paniyara, District - Maharajganj.

.....Applicant.

VE R S U S

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi .
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Senior Superintendent of Post Office (SSPOS), Gorakhpur Division, Gorakhpur.

.....Respondents

Advocate for the applicant : Shri R.K. Mall
Advocate for the Respondent : Shri M.K. Sharma

O R D E R

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

The applicant has filed this Original Application with the prayer for the following main reliefs:-

- “i. to quash the impugned order dated 28.09.06 passed by S.S.P.Os Gorakhpur (Annexure No. A-1) and order dated 05.05.10 passed by P.M.G, Gorakhpur (Annexure No. A-2)
- ii. to restrain of the applicant from the date of put off duty dated 01.03.06 and direct to the department to provide the all benefits of service.”

2. The facts of this case in brief are that the applicant was appointed as a Gramin Dak Sevak (in short GDS)/Mail Deliver cum Mail carrier on 4.8.1995 and was deputed to officiate against a vacant post of GDS/BPM Paniara. While officiating as BPM, the applicant was proceeded against under the rule 10 of the GDS (Conduct and Employment) Rules, 2001 (in short Rules) and the disciplinary authority after considering the report of the enquiry officer to inquire into the charges, passed an order dated 25.07.2005 (Annexure A-3 to the OA) for recovery of Rs. 7542/- from his pay and for taking back the applicant on duty. He was reinstated and continued till 1.03.2006, when the respondent no. 3, SSPO Gorakhpur (in short SSPO) reviewed the case and the applicant was put off duty on 1.03.2006 as per the order at Annexure A-4 to the OA.

3. Thereafter, the applicant was issued a show cause notice dated 24.03.2006 (Annexure A-6) to submit representation as to why the penalty will not be enhanced to dismissal from service as

the punishment order dated 25.07.2005 was not commensurate with the charges. The order dated 28.09.2006 (annexure A-1 to the OA) was passed by the respondent no. 3 dismissing the applicant from service. Revision against the order was filed with the respondent no. 2 i.e. PMG, Gorakhpur (in short PMG) who dismissed the same. Then the applicant filed the OA No. 720/2009 which was disposed of by this Tribunal vide order dated 30.09.2009 (Annexure A-7) remitting the case to respondent no. 2 for fresh disposal of the applicant's appeal dated 14.03.2007, which was accordingly dismissed by the respondent no. 2 vide order dated 5.5.2010 (Annexure A-2 to the OA).

4. Main grounds advance in the OA against the impugned orders include the following:-

- SSPO had no jurisdiction to issue the show cause notice dated 24.03.2006 under the rule 20.
- Since the notice dated 24.3.2006 was issued beyond 15 days of putting the applicant off duty, the put off order shall cease to be effective on expiry of 15 days under rule 12(2).
- Under rule 19, the appellate authority can exercise power to review the order within 6 months, after which the power is vested with the head of the circle or region. DPS, Gorakhpur is not the appellate authority nor a head of the circle or region. Hence, he cannot review the order after 6 months as per the rule 19. Hence, the revision proceeding is illegal.

5. In the Counter Affidavit, the respondents have not disputed the facts. In reply to the contention in the OA about the jurisdiction of the SSPO to issue the revise the punishment order, it is stated in the para 25 of the Counter Affidavit that the SSPO "may review the matter on direction of higher authority, i.e., Director Postal Services, Gorakhpur in any time." In reply to the averment in para 4(XIV) of the OA regarding violation of the rule 12(2), nothing specific has been stated or replied in the Counter Affidavit. In reply to the averment in para 4(XXII) of the OA about lack of power of the DPS or SSPO to revise the punishment order under the rule 19 after 6 months, there is no satisfactory reply or explanation in the Counter Affidavit, which, in para 32 states as under:-

"32. That the contents of paragraph 4(XXII) of the original application is misconceived and wrong hence denied. In this context it is submitted that the averment made in the para under reply are argumentative in nature and should be replied in time of arguments. The order passed by the respondent Department is in accordance with law."

6. Learned counsels for the applicant and respondent are heard. They mainly reiterated the pleadings. On being asked by the Court to clarify about how the issuing authority of the order dated 28.09.2006 (Annexure A-1) i.e. SSPO can exercise under the rule 19 after lapse of more than one year, learned counsel for the respondents had nothing more to say except referring to what has been mentioned in the Counter Affidavit.

7. On careful reading of the impugned order dated 28.09.2006 of the SSPO, it is seen that the points raised in the representation of the applicant have been mentioned. These points are lack of jurisdiction of SSPO to review the punishment order under rule 20 (as the show cause notice dated 24.03.2006 referred to the rule 20) and the said notice is beyond the time within which the appellate authority can revise the punishment order. In reply to these points raised by the applicant, the order dated 28.09.2006 (Annexure A-1) stated as under:-

“कर्मचारी का उक्त कथन तमात्र अपने बचाव के लिए है उसने अपने द्वारा दिए गये गबन के सम्बन्ध में कोई ऐसा प्रमाण नहीं दिया है जिकवह निर्दोष है। वह इस मामले में पूर्णरूप से दोषी है जो कि जॉच में पूर्णरूप से सिद्ध हो चुका है इसलिए ऐसे कर्मचारी का डयूटी पर बने रहने का कोई औचित्य नहीं है।

अतः मैं आरोएल०चौरसिया प्रवर अधीक्षक डाकघर गोरखपुर मण्डल श्री सूर्यभान प्रसाद ग्रामीण डाक सेवक डाक वाहक/वितरक रजौड़ा खुर्द “कम्पियरगंग” गोरखपुर ‘पुट आफ डयूटी’ को तत्काल प्रभाव से सेवा से बर्खास्तगी **dismissal** का आदेश देता हूँ।”

Hence, the points raised by the applicant in his representation to the SSPO have not been discussed or the findings of the competent authority on these points have not been recorded in the order dated 28.09.2006.

8. The show cause notice dated 24.03.2006 of the SSPO refers to the proposed action under the rule 20. The order dated 28.09.2006 passed by the SSPO also refers to rule 20. Hence, on what basis the

PMG in his order dated 05.05.2010 stated that the revisional authority SSPO, Gorakhpur has erred in quoting the rule 20 instead of correct rule 19 of the GDS rules and the applicant cannot get the benefit of this clerical error. We are not able to accept the contention of the PMG that reference to rule 20 was a clerical error. Both the show cause notice dated 24.3.2006 and the order dated 28.09.2006 passed by the SSPO, it is mentioned that the action is being taken under the rule 20 of the GDS (Conduct and Employment) Rules, 2001 and it is not possible that the clerical error has occurred in both the orders passed on different dates. Hence, the orders are considered to be passed under the rule 20, which states as under:-

“20. Review

The President may, at any time, either on his own motion or otherwise, review an order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice;

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Sevak concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 9 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if any enquiry under Rule 10 has not been held in the case, no such penalty shall be imposed after enquiry in the manner laid down in Rule 10 subject to the provisions of Rule 11:

Provided further that such review petition may be preferred within two years subject to the condition that the review petition is based on new

evidence which was not available previously and has the effect of changing the nature of the case:

Provided further that the powers of the President under this rule shall be exercised by a plenary board comprising of Member (P) and Member (O) or comprising of such authorities as may be delegated from time to time”

It is clear from the plain reading of the rule 20 that it is to be exercised by the President based on new facts or materials. It is not the case of the respondents here that some new materials have come to notice in this case. Further, whether SSPO has been authorized to exercise the power of the President under the rule 20 has not been mentioned by the respondents. Hence, the impugned order dated 28.09.2006 is not sustainable under the rule 20.

9. Even if we assume that while issuing the show cause notice and passing the order dated 28.09.2006, the SSPO has exercised power under rule 19 as mentioned by the PMG in order dated 5.5.2010, we notice that the rule 19 states as under:-

“19. Revision

(1) Notwithstanding anything contained in these rules-

(i) Regional PMG. for those Gramin Dak Sevaks who work in region headed by PMG; and in the rest of the cases by the Head of the Circle (Chief Post master General),

(ii). Any other authority immediately superior to the authority passing the orders; or

(iii). Any other authority specified in this behalf by the Government by general or special order, and within such time as may be specified in that general or special order;

may, at any time. either on its own motion or otherwise call for records or any enquiry or disciplinary case and revise an order made under these rules, reopen the case and after making such enquiry as it considers necessary, may –

(a) confirm, modify or set aside the order,

or

(b) pass such orders as it deems fit.

Provided that no such case shall be reopened under this rule after the expiry of six months from the date of the order to be revised except by the Government or by the Head of Circle or by the Postmaster General (Region) and also before the expiry of the time limit of three months specified for preferring an appeal under Rule 14:

Provided further that no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the Sevak concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) and (vi) of Rule 9 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed except after the enquiry in the manner laid down in Rule 10, in case no such enquiry has already been held.

(2) No application to revise an order made on an application for a revision or order passed or made on a revision shall be entertained ”

The proviso to the rule 19 specifies the authorities who can exercise power under rule 19 to revise a punishment order after lapse of 6 months, which is the case in this case as the show cause notice has been issued on 24.03.2006 to revise the punishment order dated 25.07.2005 after lapse of more than 6 months. There is nothing on record furnished by the respondents to prove that the SSPO under whose signature and authority the order dated 28.09.2006 has been issued, is the authority competent to revise the punishment order under rule 19 after lapse of 6 months from the date of passing of the punishment order proposed to be revised. No specific or satisfactory reply to the averment of the

applicant in para 4(XXII) of the OA in this regard has been furnished in the pleadings of the respondents.

10. From the discussion in para 7 and 8 above, it is clear that the SSPO does not have authority under the rule 19 or the rule 20 of the GDS (Conduct and Employment) Rules, 2001 to revise the punishment order dated 25.07.2005 (Annexure A-3). Therefore, the impugned order dated 28.09.2006 cannot be sustained and is bad in law.

11. Coming to the order dated 5.5.2010 (Annexure A-2) passed by the PMG in appeal filed by the applicant challenging the order dated 28.09.2006, it is noticed from the order dated 5.5.2010 that the applicant had raised the point that the revision order is illegal as the SSPO did not have power to revise or review the punishment order under rule 19 or 20. This has been rejected by the PMG by stating as under:-

“(9)(10). It is admitted that the revisional authority i.e. SSPOs Gorakhpur has erred in quoting the rule -20 instead of correct rule -19 of GDS rules but the petition cannot get benefit of this clerical error. The punishment reviewed by the DPS was within time and the SSPOs Gorakhpur followed the instructions of DPS as and when he get the said instructions. The rules of revision of penalty by appellate authority within 6 months is applicable only in those cases where the appellate authority review any punishment “Suo Motu”. In this

case, the SSPOs has acted upon the instruction given by DPS.”

A plain reading of the rule 19 would reveal that the interpretation of the PMG that the SSPO on being instructed by the DPS can revise the punishment order under the rule 19 even after 6 months from the date of the punishment order dated 25.07.2005 is not borne out from the rule 19 as well as facts of the case. From the show cause notice dated 24.03.2006, it is clear that it has been issued with the signature of the SSPO and it states that the ‘undersigned’ i.e. SSPO is of the view that the punishment is not commensurate to the charge leveled against the applicant. There is no mention about the instructions of DPS or any higher authority on behalf of whom the SSPO is issuing the said show cause notice to the applicant. Similarly, the order dated 28.09.2006 as quoted in para 7 clearly states that the order of enhanced punishment is being passed by SSPO, it is not under orders of the DPS or it is issued on behalf of any higher competent authority as stated in the order dated 05.05.2010. Hence, we are not able to agree with the reason mentioned by the PMG in his order dated 05.05.2010 that the order dated 28.09.2006 is valid as it is passed by the SSPO under instructions of the DPS.

12. In view of the above, the order dated 28.09.2006 is illegal and is bad in law. Since the appellate authority while adjudicating the appeal of the applicant has overlooked the legal deficiencies and

laches in the order dated 28.09.2006, the order dated 5.5.2010 passed by the appellate authority is also not sustainable under law. In the circumstances the impugned orders dated 28.09.2006 (Annexure A-1) and dated 5.5.2010 (Annexure A-2) are set aside and quashed. The respondents are directed to reinstate the applicant in service with all consequential service benefits including the salary for the period from the date when the applicant is put on off duty i.e. from 1.03.2006 till the date the applicant joins duty after reinstatement in service.

13. The OA is allowed as above. There will be no order as to costs.

MEMBER- J.

MEMBER- A.

Anand...