

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/766/2016

Cuttack this the 30th day of August, 2018

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Rajendra Prasad Dash, aged about 41 years, S/o. Late Dasarath Dash, resident of At-Chandeswar, PO-Devidwar, PS-Jajpur, Dist-Jajpur, Odisha, PIN-755 007, presently working as Inspector of Posts (IP), Rajborasambar, PO-Rajborasambar, Dist-Bargarh, PIN-768 036.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani

P.K.Samal

D.P.Mohapatra

-VERSUS-

Union of India represented through:

1. The Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO/Bhubaneswar, Dist-Khurda, Odisha, Sambalpur Region, Sambalpur-768 001.
4. The Superintendent of Post Offices, Keonjhar Division, Keonjhar-758 001.
5. The Superintendent of Post Offices, Sambalpur Division, Sambalpur-768 001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Inspector of Posts (IP), Rajborasambar Post Office in the District of Bargarh at the time of filing of this O.A. In the present O.A. he has challenged the order of punishment of withholding of one increment of pay for a period of three months without cumulative effect issued by the Superintendent of Post Offices, Sambalpur Division(Respondent No.5) under Rule-16 of CCS(CCA) Rules, 1965. The imputation of charge against the applicant is as follows:

Article-I

"Smt.Sumatilata Muduli wife of Shri Maheswar Muduli, GDS Packer, Kiriburu Hill Top SO Had sought for an information under RTI Act, 2005 vide her application dated 06.03.2012 regarding non sanction of leave and payment of allowance of her husband

for the period from 04.12.2003 to 09.12.2003, 24.12.2003 to 31.12.2003 and 09.02.2004 to 11.02.2004 during the period Smt.Muduli had worked as substitute. The information was called for from IP, Champua vide this office letter NoSB/RTI/37-3/2012 dt. 03.04.2012. Shri Rajendra Prasad Dash was working as IP, Champua Sub Division during the period from April, 2012 to August, 2013. Shri Rajendra Prasad Dash, IP, Champua in response to RTI information had replied vide his letter No.IP/RTI Act-Misc/2012-13 dt. 10.04.2012 that on perusal of pending files as well as PF of official the leave document/sanction memo etc. Were not available at his end. Hence Shri Rajendra Prasad Dash, IP, Champua replied to the CPIO i.e., SPOs, Keonjhar Division in that way. As per report of IPO, Champua the information was supplied to the information seeker. Being aggrieved with the reply of CPIO the information seeker appealed to the DPS, Sambalpur for a suitable/correct reply. ON this, the CPIO again sought for the correct reply from IP Champua Sub Division. In the meantime Shri U.K.Purkait had joined as IP, Champua Sub division and Shri Rajendra Prasad Dash had been transferred and joined as IP, Anandapur Sub Division.

Shri U.K.Purkait the present IP, Champua Sub Division replied to the information that a sanction memo of IP, Champua is available in the PF of Shri Maheswar Muduli, GDS Packer, Kiriburu Hill Top vide memo No.PF/GDS Packer-Kiriburu Hill Top dt. 25.10.2010 sanctioned by Shri Sujeet Kumar Maharana the THEN IP, Champua Sub Division. Shri Purkait also supplied a copy of the said sanction memo to the CPI. The same sanction memo was sent to PM, Keonjhar HO for drawal of allowance and accordingly the allowance was drawn and the case was settled.

In this RTI case Shri Rajendra Prasad Dash IP had supplied false information to the CPIO with some dishonest motive misusing his official position and power for his personal gain which is a severe violation of conduct rules.

By his above act Shri Rajendra Prasad Dash has failed to maintain absolute integrity & due devotion to duty and also acted in a manner which is unbecoming on the part of a Govt. Servant in violation of Rule-3(1)(i)(ii) & (iii) of CCS(Conduct) Rules, 1964".

The applicant in his letter dated 15.12.2014 (A/1) addressed to Superintendent of Posts, Keonjhar Division asked for inspection and providing the extract of the following documents.

- i) The copy of the I.P. Champua Memo No.PF/GDSPacker-Kiriburu Hill Top dt. 25.10.2010 sanctioned by Shri Sujeet Kumar Maharana.
- ii) Reply vide IP/RTI Act-Misc/12-13 dt. 10.04.2012.

- iii) Personal File No.PF/GDSPKR-KBHill Top from 2003 to 25.10.2010.

At A/3 is a letter dated 25.10.2010 from the successor of the applicant to the Post Master, HSG-I, Keonjhar HO in which it was informed that Shri Maheswar Muduli, GDS Packer, Kiriburu Hill Top SO had taken leave in three spells of 06 days, 08 days and 03 days between 04.12.2003 and 11.02.2004. The applicant was also supplied the reply dated 10.04.2012 as sought by him under the RTI Act. He submitted his defence representation on 5.1.2015 to the Superintendent of Post Offices, Keonjhar Division (Respondent No.4). The Superintendent of Post Offices, Sambalpur Division (Res.No.5) in the capacity of disciplinary authority perused the representation of the applicant and awarded the punishment of "withholding of one increment of pay falls next due for a period of 3 (three) months without cumulative effect" vide order dated 31.08.2015(A/7). The applicant filed an appeal against this order to the Director of Postal Services, Sambalpur Region (Res.No.3) on 21.9.2015. However, the appeal was rejected by the Appellate Authority/DPS, Sambalpur Region. Against this order the applicant submitted a petition to the Chief Post Master General Orissa Circle (Res.No.2) who in his order dated 19.7.2016 considered the petition filed by the applicant and rejected the same. Aggrieved by this the applicant has filed the present O.A. praying for the following reliefs:

- i) Admit the Original Application, and
- ii) After hearing the counsels for the parties be further pleased to quash the Memorandum of Charge at Annexure-A/1, impugned punishment order vide No.B-71(Sub-2) dated 31.08.2015 at Annexure-A/7 and the orders at Annexure-A/9 & A/11. And consequently, orders may be passed directing the Respondents to release all consequential benefits within a stipulated period with interest. And/or

- iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow this O.A. with costs.

2. The applicant has based his prayer mainly on the ground that in the RTI Application the document called for was the leave sanction memo which was not available on record. The leave sanction form (APP-45) together with the format of the leave sanction order has been prescribed under Rule-7 under Gramin Dak Sevak (Conduct & Employment) Rules, 2001 and Gramin Dak Sevak (Conduct & Engagement) Rules, 2011. After the leave is sanctioned a copy of the sanction memo in the format as prescribed above should be retained as an office copy. This document was not available in the files. Although the letter dated 25.10.2010 from the Inspector of Posts, Champua to the Postmaster Keonjharh HO was available on file, it is only a request letter to the Postmaster by the Inspector of Posts, Champua and is not a leave sanction memo as asked under the RTI Application. Since the leave sanction memo was not available on file, the question of giving false information does not arise. Since the letter dated 25.10.2010 (A/3) was not a leave sanction memo, the Postmaster of Keonjharh HO could not draw the allowances for the leave period till the substitute alleged non sanction of leave in RTI Application dated 06.03.2012. The Charge Memorandum issued against the applicant is therefore illegal and arbitrary and violation of the principles of natural justice as well as the principle laid down in Rule-11 of CCS(CCA) Rules, 1965 that penalty should be imposed on a Government servant for good and sufficient reasons. The applicant has not been afforded opportunity to peruse the Personal File of Shri Maheswar Muduli, GDS Pakcer, Kiriburu Hill Top SO and the punishment has been imposed on him without application of mind. He has also alleged that the Superintendent of Post Offices, Keonjhar Division

did not have a good relationship with the applicant and therefore, he has deliberately and purposefully harassed him. In the Annual Performance Assessment Report (APAR) for the year 2014-15 adverse entries were deliberately made and very low grading was given for his performance by the then SPO, Keonjhar Division who has also imposed punishment on the applicant. The Post Master General, Sambalpur Region on deciding the appeal of the applicant had expunged all the adverse entries made by the SPO, Keonjhar Division from the applicant's APAR. The applicant also claims that in a similar case one Dibakar Singh who had also reported similar reply under RTI Act was not proceeded against and the action has been taken against the applicant in a discriminatory manner.

3. The Respondents in their reply filed on 4.9.2017 have contested the claim of the applicant. It is their contention that the applicant had suppressed the information that a letter dated 25.10.2010 was available on record and had falsely stated that no leave sanction order was available on the file. Based on his report, wrong information was supplied to the applicant under the RTI Application. His successor Shri U.K.Turkait who had joined as IP Champua Sub Division after the transfer of the applicant had supplied the correct information vide letter dated 25.10.2010. The applicant did not mention anything about the existence of the letter dated 25.10.2010 although it was available on file. Although the applicant submits that no leave sanction order was available on file his suppression of the letter dated 25.10.2010 had resulted in wrong information being given to the information seeker under the RTI Act. The RTI case was very badly handled by the applicant. Hence the orders passed by the Disciplinary Authority, Appellate Authority and the Reviewing Authority are legally valid.

4. In the rejoinder filed by the applicant on 9.11.2017, the applicant has reiterated his position that the letter dated 25.10.2010 is not a leave sanction order and was not being asked for in the RTI Application. Therefore, there was no error in his action and the orders at A/7, A/9 and A/11 are arbitrary and illegal. The applicant has reiterated that the Disciplinary Authority was biased against him as seen from the low grading given in the APAR for the year 2014-15 which was subsequently struck down by the PMG, Sambalpur Region.

5. I have heard the arguments of both the learned counsels on 23.08.2018 and perused the documents submitted by them. The limited issue in the present O.A. is whether the punishment imposed on the applicant by the Disciplinary Authority and upheld by the Appellate Authority as well as the Reviewing Authority is legally sustainable. There is no doubt that the applicant in his report on the RTI application stated that no leave sanction order was available in the file which is correct. The said leave sanction order in respect of Shri Maheswar Muduli has not been produced by the respondents also. There is only a letter written by the Inspector of Posts, Champua to the Postmaster, HSG-I, Keonjhar HO dated 25.10.2010(A/3) which reads as follows:

Sub: Non payment of duty allowance to substitute.

Sri Maheswar Muduli, GDSPKR, Kiriburu Hill Top SO had taken leave for the following period providing Smt.Sumatilata Muduli as his substitute.

S.No.	Period	No. Of Days	Nature of leave
01	04.12.2003 to 09.12.2003	06	Leave without allowance
02	24.12.2003 to 31.12.2003	08	Paid leave
03	09.02.2004 to 11.02.2004	03	Paid leave

The said Smt.Muduli, the substitute is yet received her due duty allowance. Therefore the due duty allowance may kindly be sanctioned against her".

This is not a leave sanction order, but payment of duty allowance has been recommended in the said letter which could not have been done without a formal sanction of leave. The respondents, however, have not been able to produce the leave application or the leave sanction order for Shri Maheswar Muduli.

6. In the Charge Memorandum issued to the applicant, it has been mentioned that the applicant had supplied false information to the CPIO with some dishonest motive misusing his official position and power for his personal gain which is a serious violation of Conduct Rules. In the subsequent departmental proceedings this aspect has not been dealt with nor any inquiry has been made about the misuse of the official position and personal gain by the applicant.

7. The applicant has submitted a copy of the blank format for application for leave for Gramin Dak Sevaks along with a blank format of the Leave Sanction Order. It is quite obvious that a formal application for leave and a leave sanction order in the prescribed format in respect of Shri Maheswar Muduli should have been kept in the Personal File or in the relevant records. The Respondents have, while producing the letter dated 25.10.2010, failed to produce the leave sanction order for Shri Muduli. In his appeal to the Chief Post Master General, the applicant had stated the correct position as follows:

“b) The letter as above is not the leave sanction memo. That the format of leave sanction memo has been appended in A.P.P. 45 the copy of which is enclosed for kind ready reference of the Appellate Authority. Hence the I.P. Champua letter No.PF/GDSPKR-KB Hill Top dated 25.10.2010 is not a leave sanction memo. Accordingly I reported the fact to the SPOs/cum-CPIO, Keonjhar Division vide my letter dated 10.04.2012 correctly. It is not out of place to state that my predecessor Shri Dibakar Singh has also reported that there is no leave sanction memo. Hence the allegation that I submitted false information is against the truth. Therefore, the allegation needs to be dropped”.

8. Inasmuch as the information in the RTI application was regarding the leave sanction order, and it was not available in the records, the applicant had committed no error in reporting about its absence. The letter dated 25.10.2010 is not a leave sanction order and its non-reporting cannot be held against the applicant.

9. In view of the above facts and points of law involved in the case, I am of the view that the Charge Memorandum dated 06.12.2014 is without a valid basis and is therefore illegal. I therefore quash the Charge Memorandum dated 06.12.2014(A/1) and consequently the subsequent orders at (A/7), (A/9) and (A/11) are also quashed and set aside. The respondents are directed to pass necessary orders to grant all the consequential benefits to the applicant within a period of two months from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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