

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 796 of 2011

Date of order: 11th September, 2018

Present

Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

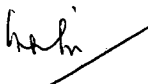
Sri Sankar Kumar Biswas,
Son of Adhir Kumar Biswas,
Aged about 44 years,
Working as Junior Accountant,
In the Office of the General Manager (PA & F),
Kolkata, residing at Banerjee Bagan,
Hridaypur, Barasat,
Kolkata - 700 127.

.. Applicant

- VERSUS -

1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Communications & Information
Technology, Department of Posts,
Dak Bhawan,
New Delhi - 110 001.
2. The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.
3. The General Manager (Postal Accounts &
Finance), West Bengal Postal Circle,
P-36, C.R. Avenue, Yogayog Bhawan,
Kolkata - 700 012.
4. Director of Accounts (Postal),
Kolkata, Office of the General Manager
(Postal Finance Wing),
West Bengal Postal Circle, P-36, C.R. Avenue,
Yogayog Bhawan,
Kolkata - 700 012.
5. Senior Accounts Officer (Postal),
Office of the General Manager (Postal Accounts
& Finance), West Bengal Postal Circle,
P-36, C.R. Avenue, Yogayog Bhawan,
Kolkata - 700 012.
6. Senior Accounts Officer (Admn.),
Office of the General Manager (PA & F),
West Bengal Postal Circle,
P-36, C.R. Avenue, Yogayog Bhawan,
Kolkata - 700 012.

.. Respondents



For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel
Mr. A. Mondal, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at the minor penalty which withheld one increment for three years without cumulative effect, the applicant has prayed for the following specific relief in the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985:-

"(a) An order quashing and/or setting aside the impugned charge sheet dated 9.6.2009, the order of the disciplinary authority dated 14.5.2010 and the Appellate Order dated 11.3.2011.

(b) An order directing the respondents to grant all consequential benefits to the applicant including restoration of his status/position which he would have enjoyed had there been no departmental proceedings against the applicant as was held by charge memo dated 9.6.09 which culminated in imposition of a penalty as upheld by the Appellate Authority.

(c) An order directing the respondents to grant all other benefits to the applicant which were denied and/or withheld due to the disciplinary proceeding and imposition of a penalty upon the applicant.

(d) An order directing the respondents to produce/cause production of all relevant records.

(e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard Ld. Counsel, perused pleadings, documents on record and additional documents as furnished by the Ld. Counsel for the respondents during hearing.

3. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant was initially appointed as Jr. Accountant and had joined the postal department on 8.12.1997. On 9.6.2009, he was served with a memorandum of charges under Rule 16 of CCS (CCA) Rules, 1965 while he was working as adhoc Sr. Accountant for a temporary period.

That, although the applicant had asked for certain documents, he was not furnished with the same barring one, consequent to which the applicant could not defend himself adequately and effectively and, ultimately, the disciplinary

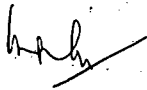
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authority imposed a minor penalty holding the applicant guilty of the charges levelled against him. The applicant preferred an appeal which was rejected by the appellate authority and as the actions of the disciplinary authority and the appellate authority are arbitrary, biased and prejudicial, the applicant has approached this Tribunal in the instant O.A.

4. Per contra, the respondents have argued that the applicant, who was acting as the Sr. Accountant in the office of the General Manager (Postal Accounts & Finance), West Bengal Circle had, in the course of performing his duties in CC IV Section, checked the NSC VIII issue discharge return for the month of July, 1999 prior to preparing an objection memo dated 27.10.2004 issued to Raniganj H.O. In the said objection memo, although certain unlisted certificates were shown as not to have been received in the Postal Accounts Office, the objection memo was raised without furnishing the office-wise break-up of the objected amount.

That, the applicant had also checked the NSC VIII issue discharge return for the month of January, 1998 before preparing the objection memo dated 30.8.2004 that was issued to Raniganj H.O. Therein also, objections were raised stating that discharge certificates as enlisted were shown as not to have been received in the Postal Accounts Office, Kolkata without furnishing the office-wise break-up of the objected amount. As such, according to Respondents, objection memos had been prepared negligently and as because the applicant had failed in his entrusted checking work, he had not adhered to the provisions of Para 2.14 and 2.16 of Postal Accounts Manual Vol. II, thereby violating Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964 for his lack of devotion to duties and for acting in a manner unbecoming of a Government servant.

That, the applicant was given all opportunities to represent against the charge memo and was supplied with documents as relevant to his case vide Office Memo dated 1.12.2009.



The applicant was thereafter penalized by the disciplinary authority with a minor penalty of withholding of increment without cumulative effect for three years vide orders dated 14.5.2010 and the appellate authority also upheld the order of punishment imposed by the disciplinary authority.

The applicant, however, had not preferred any Revision Petition to the revising authority and instead had approached the Tribunal without exhausting the entire departmental remedial channel. Hence according to the respondents, this O.A. should be dismissed as being premature.

ISSUE

5. The crucial issue to be decided in this O.A. is whether the chargesheet and the orders of disciplinary authority and that of the appellate authority are liable to be set aside.

6.(a) At the outset, the statement of imputation of misconduct as enclosed with the memorandum of charges dated 9.6.2009 (Annexure A-1 to the O.A.) is examined in detail:-

FINDINGS
 "STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ON WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SHRI SANKAR KUMAR BISWAS, SENIOR ACCOUNTANT, OFFICE OF THE GENERAL MANAGER (PAF), WEST BENGAL CIRCLE, KOLKATA

Shri Sankar Kumar Biswas, Senior Accountant, Office of the General Manager (Postal Accounts & Finance), West Bengal Postal Circle, Kolkata in course of performance of his duties in C.C.-IV Section for the period from 09.12.1997 to 24.8.2007 checked NSC VIII Issue discharge return for the month of 07/1999 before preparing objection Memo bearing No. UNP/Obs/KVP/C.C. - IV 251 dated 27.10.2004 issued to Raniganj Head Office.

In the objection Memo the following discharge certificate were shown to have not been received at PAO, Kolkata:

2 x 100 = Rs. 200/-
 5 x 500 = Rs. 2500/- (excess received)
 9 x 1000 = Rs. 9000/-
 2 x 5000 = Rs. 10,000/-
 2 x 10000 = Rs. 20,000/-

The said objection was raised without furnishing the office wise break-up of the objected amount.

[Signature]

Shri Sankar Kumar Biswas, Senior Accountant, Office of the General Manager (Postal Accounts & Finance), West Bengal Postal Circle, Kolkata in course of performance of his duties in C.C.IV Section for the period from 09.12.1997 to 24.8.2007 also checked NSC VIII Issue discharge return for the month of 01/1998 before preparing objection memo bearing No. UNP/Obs/KVP/C.C. - IV /151 dated 30.8.2004 issued to Raniganj Head Office.

In the objection memo the following discharge certificates were shown to have not been received at PAO, Kolkata:

4 x 100 = Rs. 400/-
6 x 500 = Rs. 3000/-
4 x 1000 = Rs. 4000/-
3 x 5000 = Rs. 15000/-
4 x 10000 = Rs. 40000/-

The said objection was raised without furnishing the office wise break up of the objected amount.

Issuance of such objection memos shown above, from (i) to (ii), are of no value. No effective action can be taken on such objections which have been raised in a slipshod manner. Thus it transpires that the objection memo was not drawn up properly and said Shri Sankar Kumar Biswas prepared the faulty objection memo without carrying out proper checking work.

It is, therefore, alleged that said Shri Sankar Kumar Biswas by his above acts failed in his entrusted checking work and thereby violated the Provisions of Paras 2.14 & 2.16 of Postal Accounts Manual Vol. II and is thereby alleged to have shown (a) lack of devotion to duty (b) acted in a manner which is unbecoming of a Govt. servant and thereby alleged to have violated Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

Next, the objection memos annexed as Annexure A-4 colly., as issued on 30.8.2004 as well as on 27.10.2004 are also perused and reproduced below as under:-

"OFFICE OF THE DIRECTOR OF ACCOUNTS (POSTAL) KOLKATA,
P-36, C.R. AVENUE "Yogayog Bhawan" KOLKATA - 700 012

No. UNP/Obs./KVP/CC-IV 251 Dated 27.10.2004

To
The Post master,
Raniganj H.O.
Pin - 713347

Sub: Irregularities in the NSC.VIII
/ Discharge return for the month of 7/99 (D)

The following irregularities have been noticed while checking of account of the above mentioned return. Kindly furnish the information/settle the discrepancy as called for

Against the item as noted bellows:-

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(1) Invoice Wanting:-

Please forward a true copy of the invoice under which the following certificate were received as the same has not been received by this office:-

Certificate No. Deno Office of Date of Issue Name of Purchaser
Issue

(2) Original Certificate No.

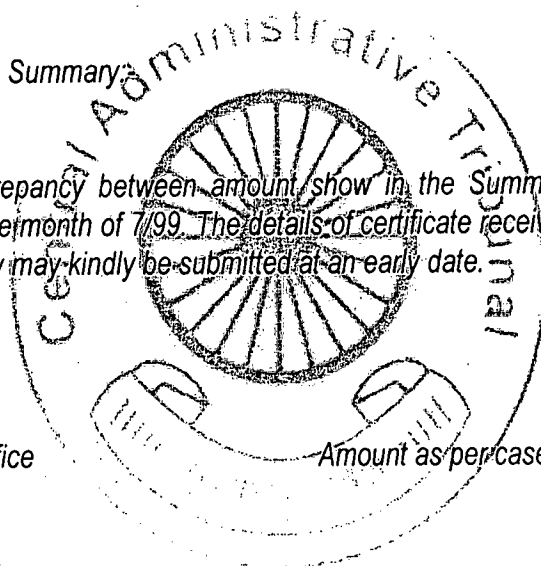
Original Certificate number of the following duplicate certificate has not been quoted on the 'Top of the certificate, which is/are required as per para 44 of POSB Manual Vol-II

Please intimate the same immediately:-

Certificate Deno Issue office Name of Purchaser

(3) Discrepancy in Summary:

There is discrepancy between amount show in the Summary and Cash Certificate received for the month of 7/99. The details of certificate received is / are given below. A fresh summary may kindly be submitted at an early date.



6 NSC VIII Office

Amount as per case

Amount shown in the summary

Certificate received

| | | |
|-------------------------------|-------------------------|--|
| 100 x 100 = Rs. 1000 | 100 x 8 = 800 | |
| 500 x 73 = Rs. 36500 | 500 x 78 = 39000 | |
| 1000 x 173 = Rs. 173000 | 1000 x 164 = 164000 | |
| 5000 x 80 = Rs. 400000/- | 5000 x 8 = 390000 | |
| 10000 x 116 = Rs. 1,16,0000/- | 10000 x 114 = 1,14,0000 | |
| 452 17,70,500/- | 442 17,33,800 | |

For Director of Accounts (Postal)
Kolkata

[Signature]

"OFFICE OF THE DIRECTOR OF ACCOUNTS (POSTAL), KOLKATA,
P-36, C.R. AVENUE "YOGAYOG BHAWAN" KOLKATA - 700 012

No. UNP/OBs./NS/CC-IV-151

Dated: 30/8/2004

To
The Postmaster
Raniganj H.O.
Pin - 713347

Sub: Irregularities in the 6 years NSC VIII
Discharge return for the month of 1/98

The following irregularities have been noticed while checking of account of the above mentioned return. Kindly furnish the information/settle the discrepancy as called for

Against the item as noted below:-

(i) Invoice Wanting:-

Please forward a true copy of the invoice under which the following certificate were received as the same has not been received by this office:-

Certificate No. Deno. Office of Date of Issue Name of Purchaser
Issue

(2) Original Certificate No.

Original Certificate number of the following duplicate, certificate has not been quoted on the Top of the certificate, which is/are required as per para 44 of POSB Manual Vol.II

Please intimate the same immediately:-

Certificate No. Deno Issue Office Name of Purchaser.

Discrepancy in Summary:-

There is discrepancy between amount show in the summary of cash certificate received for the month of 1/98. The details of certificate received is/are given below. A fresh summary may kindly be submitted at an early date.

6 years NSC VIII Office
Amount shown in the summary

Amount as per cash
Certificate received

The Summary

100 x 19 = 1900
500 x 157 = 78500
1000 x 363 = 363000
5000 x 198 = 990000
10000 x 129 = 1290000

866 2723400

100 x 15 = 1500
500 x 151 = 75500
1000 x 367 = 367000
5000 x 195 = 975000
10000 x 125 = 1250000

853 2669000

For Director of Accounts (Postal)
Kolkata

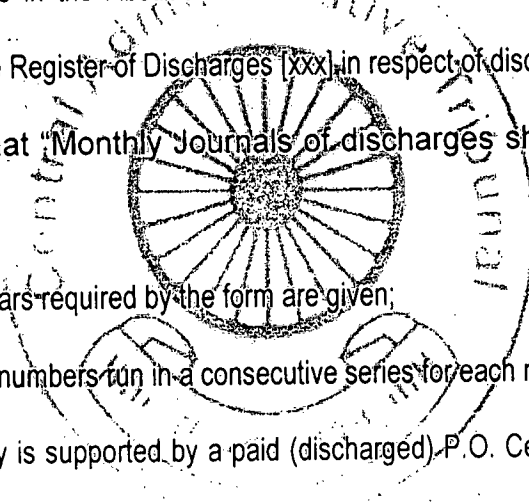
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It is inferred from the two objection memos that, while the applicant had detected discrepancies between amount shown in the summary and the Cash certificates received for the month of July, 1999 and January, 1998, he did not fill up Part II wherein the details of the certificate numbers, denomination, issuing office and names of purchasers had to be recorded. It is abundantly clear that without such details, it is difficult, if not impossible, to track as to which issuing Post Offices had contributed to the discrepancy.

(b) Paragraphs 2.14, 2.16 read with para 2.55 of Postal Accounts Manual Vol. II have been referred to in the memorandum of charges by the respondents.

Para 2.14 refers to "Examination of Summaries" wherein it has been categorically stated that Summaries for the monthly account should, after check, made over to the checker for postings in the Abstract of P.O. Certificates issued and discharged [xxx] in respect of issues and in the Register of Discharges [xxx] in respect of discharges.

Para 2.16 states that "Monthly Journals of discharges should be examined to see:-

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- (i) That all particulars required by the form are given;
 - (ii) That the entry numbers run in a consecutive series for each month;
 - (iii) That each entry is supported by a paid (discharged) P.O. Certificates or Safe Custody receipt if any voucher is wanting, it should be called for, a check slip in Form No. D.G. (PA)-319-A being prepared and kept in the proper place;
 - (iv) That the amount shown in the column for "Interest" is correct with reference to the dates of issue and discharge of the certificates; and
 - (v) That the totals of the journals are correct.

Para 2.55 refers to the result of checking which is crucial to the imputation of misconduct:-

Contents of para 2.55 (a) are reproduced as below:-

"2.55 (a) Trivial irregularities e.g. entries in Issue Lists not made in serial order etc. discovered during check should be entered in half margin memorandum (Forms No. D.G. (PA)-325 and 325A), which will be returned by Postmasters in original with their replies noted thereon. Irregularities of an important nature should be entered in any objection statement in Form D.G.(PA)-335 or in a half margin memorandum in

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Form D.G. (PA)-33G, as the case may be. These generally fall under classes mentioned below:-

- (1) Objections due to want or incompleteness of vouchers etc. These are removable on receipt of the voucher or on suitable explanation.
- (2) Objections all the score of excess payments or short credits. These are removed on the amount being recovered. Until such recovery is reported, the amounts are included under "Postal Advances."
- (3) Amounts of excess recoveries from or short payments to investors. These are liable to be demanded by the investors at any subsequent time and should therefore be included under "8446-Postal Deposits."

(b) Short or overpayments of interest of Re. 1/- and less need not be communicated to Postmasters, Recoveries of overpayments may be waived by the Accounts Officer in charge and the order recorded on the back of the discharged P.O. Certificates. Similarly short payments may also be recorded on the back of the P.O. Certificates under the signature of the Account Officer in charge, no action being taken for refund of the amount of investors.

(c) Short credits or overpayments on account of P.O. certificates exceeding Rs. 10 should be reported to the Head of the Circle."

Hence, admittedly, as the applicant was responsible for checking, the responsibilities earmarked in Paras 2.14 and 2.16 are applicable to him. More so, as called for in 2.55 (a) of the said Manual, Irregularities of an important nature should be entered in an objection form or in a half margin memorandum as categorised as objections due to want or incompleteness of vouchers, objections on account of excess payments or short credits and amount of excess recoveries from or short payments to investors. When the applicant had prepared the objection memo, clearly the discrepancy between cash and certificates had been either on account of incompleteness of vouchers / excess payments or short credits and it was his bounden duty to enter such vital irregularities, in a prescribed form for this purpose. In the objection memo furnished before us, we find that apart from a brief summary at the end of the memo, no other details have been entered and, hence, the applicant's negligence in preparing the objection memo has not been proved to the contrary. The applicant has neither been able to effectively rebut the charges of negligent preparation of objection memos either before the Disciplinary or the appellate authority.

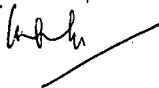
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(c) The applicant had submitted the following in his defence:

According to him, the documents as prayed for were not furnished to him in totality. It is seen, however, that vide memo dated 8.9.2009 (Annexure A-3 to the O.A.) the objection memos dated 27.10.2004 and 30/8/2004 had indeed been furnished to him and as these have been referred to in the memorandum of charges against the applicant, these two memos are vital in his case. The documents at Srl. 1, 3, 4, 5 and 6 (as enlisted at A3 to the O.A.) do not appear to be of support the applicant's case that the objection memo had been prepared correctly.

The applicant had taken a stand that he had not been granted MACP and other consequential benefits and that had been singled out for penalty. The respondents, however, during hearing, have confirmed that, as stated in Annexure A-5 (page 32) to the O.A., incumbents at Sr. Nos. 26 to 31 were all at some point of time Sr. Accountants in PAO, Kolkata and all the incumbents including the applicant had been similarly penalized. The incumbent at Srl. No. 28 had filed an O.A. No. 863 of 2011, but his case was dismissed by the Tribunal vide orders dated 30.8.2013. Hence, the applicant cannot take the plea of discrimination at this stage.

Another ground advanced by the applicant is that he was not directly involved in any financial loss to the Government. The respondents have stated that a sum of Rs. 1,24,89,07,951.50 was found charged in the discharge journal without supporting paid vouchers. Even if the applicant was not directly involved in any fraud, his negligence had led to non-detection of the issuing Post Offices wherefrom the discrepancies between cash and certificates had occurred. It is noted here that the imputation of misconduct was based on charges of "negligence" and not on "fraud" which was a criminal offence. Had the applicant been vigilant in preparing his objection memos, the discrepancies detected by him could have been tracked to its source and the respondents could have taken corrective action in this regard.



The applicant has alleged bias in the actions of the disciplinary authority and the appellate authority. The applicant has also alleged that extraneous findings have influenced the decisions of the concerned respondent authorities. Hence, we examine the orders of the disciplinary authority who have clearly analysed the evidence stating as follows:-

- (i) That, sufficient scope of natural justice was accorded to the applicant;
- (ii) That, relevant documents as well as applicant's submissions were taken into account;
- (iii) That, rules had been adhered to and
- (iv) That, negligence of the applicant arising from procedural lapses were serious in nature and, in particular, the disciplinary authority had referred to the following provisions in his order:-

"7.4. As per Para 2.60 of PAM, Vol. II, the objection statement should be forwarded to the concerned Postmaster and the Charged Official correctly forwarded the objection statement to the Postmaster Raniganj. But the objection statement should be specific and distinct in so far as the office-wise break-up of objected amount as well as wanting certificates are concerned. If the objection statement is not correctly prepared, all further exercises would become futile.

7.5 Format of an objection statement is in Form DG (PA)-335 as prescribed in Para 2.55 of PAM, Vol. II. The form prescribes mentioning of the Post Office in respect of which the irregularity is reported. In this case, the objection memos under reference are faulty and have not been completed with the names of defaulting Post Offices."

Next, we examine the orders of the appellate authority, who had stated that, while filing his appeal, the applicant, in his appeal, had not mentioned anything beyond what he had submitted in his statement of defence except of referring to harshness of punishment imposed upon him.

The appellate authority has further stated that identification or issue of objection statement is a critical function related to accounts check. The appellate authority has further held that as the applicant has not been able to prove that he had filled the objection memo accurately and as per the provisions of Postal Accounts Manual Vol. II, the authority did not find that he could be absolved of

[Signature]


the charges of negligence and the charges, being minor penalty, was not excessive in his case.

Hence, upon following the Hon'ble Apex Court's decision in ***High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416***, we find that in this matter natural justice has not been denied, bias was not established, extraneous considerations were not detected, statutory provisions were not flouted and the punishment could not be called excessive given the established charges. Hence, we are of the view that the orders of the Respondent authorities do not call for any intervention in this matter.

It is noted, however, that the applicant had not preferred any appeal to the Revisional Authority and he had approached the Tribunal without exhausting all the departmental remedies as are available to him. The applicant is therefore at liberty to prefer such a Revisional appeal, if rules so permit, subject to applicable time frame and the Revisional authority may dispose of the same thereafter in accordance with law within a specific time period not exceeding three months of receipt of such revisional appeal, if any.

With this, the O.A. is disposed of. There will be no orders on costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

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