

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

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No. O.A.806 of 2012

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

Shri Vijay Prasad (Postal Assistant),
Ranigunj Head Office, Asansol Division,
Son of Lt. Ramji Yadav,
Residing at Village – Hansi Pahari,
P.O. Mihijam,
District – Jamtara, Jharkhand.

..... Applicant.

Versus

1. Union of India
Served through Secretary,
Ministry of Communication Dakh Bhavan,
New Delhi – 110 001.

2. Postmaster General,
South Bengal Region,
Yogayog Bhavan,
Kolkata – 700 012.

3. Director of Postal Service,
South Bengal Region Yogayog Bhavan,
Kolkata – 700 012.

4. Senior Superintendent of Post Offices
Asansol Division,
Asansol, Pin – 713 301

..... Respondents.

For the applicant : Mr. S. Panda, Counsel

For the respondents : Mr. L.K. Chatterjee, Counsel
Ms. P. Goswami, Counsel

Reserved on : 30.08.2018

Date of Order : 12.10.2018

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been filed in order to seek the following reliefs:

"8.(a) To quash and/or set aside the impugned order passed by the Appellate order dated 15.06.2012 upholding the order of dismissal passed by the disciplinary authority dated 13.03.2012.

(b) To quash and/or set aside the report of the enquiry officer dated 22.06.2011 and exparte order of dismissal dated 13.03.2012 passed by the disciplinary authority ignoring the earlier exoneration of your applicant for the self same charge.

(c) To quash and/or set aside the second charge dated 17.03.2010 issued your applicant on the self same charges from which he was exonerated by the earlier inquiry officer.

(d) To direct the respondent authorities to immediately restore the applicant in his service and pay his arrear, current salary and consequential benefits.

(e) To direct the Respondent authorities to produce all the records of the case before the Hon'ble Tribunal for properly adjudicating the issues involved herein.

(f) To pass such further order or orders as this Hon'ble Tribunal may deem fit and proper."

2. Written notes of arguments have been exchanged between the parties and the Ld. Counsels have been heard at length.

3. The case in a nutshell is that the applicant was departmentally proceeded against, twice, for the first time vide charge memo dated 22.11.05 and for a second time vide charge memo dated 17.3.2010. The first proceeding culminated into his exoneration while the second into his dismissal.

4. The applicant has come up with this O.A. challenging the **Second charge sheet dated 17.3.2010** the dismissal order dated 13.3.12 and the Order dated 15.6.2012 passed by the Appellate authority upholding the Order of dismissal passed by the Disciplinary authority. He has alleged that he was dismissed inspite

of the fact the he was exonerated of the self same charges contained in the First Charge sheet dated 22-11-2005 and ignoring the fact that he was set free by the CBI Authority by exonerating him from all charges, as evident from the Chargesheet filed by the CBI authorities pursuant to one F.I.R. lodged by the PMG (South Bengal Region) involving 7 (seven) officials of Raniganj Head Office, involving the self same issue.

5. The legal lacunae in the conduct of the second proceeding have been highlighted as under:

(i) Illegality in the present charges framed in Article of charge No. I and II of the present charge sheet dated 17-03-2010. The facts, timings and the allegations of violations of Rules in the Article of Charge No. I and are identical to Article of Charge No. IV of the previous charge sheet dated 22-11-2005 issued, which resulted in his exoneration vide Order dated 29-10-10, as detailed in para 4(d) to 4(j) and 4(k) of the original application, which stands uncontroverted and not contradicted by the respondents in their reply (para 12 and para 13 to 17). Therefore framing of the Charges vide Article of Charge No. I and II in the second charge sheet dated 17-03-2010 is illegal and vitiated for the reasons that when the inquiry in respect of the charge sheet dated 22-11-2005 was over and the applicant was exonerated a second charge sheet on the same set of facts, timings and the alleged violation of Rules, was illegal and therefore not tenable in the eye of law. The supporting case laws cited are as under:

- (ii) Dwaraka Chand v. State of Rajasthan, AIR 1958 Rajasthan 38;
- (iii) State of Assam v. J. Roy Biswas AIR 1975 SC 277;
- (iv) K.K. Deb V. Collector C.E. Shillong AIR 1977 SC 1447,

Applicant has claimed that, Hon'ble Supreme Court and High Courts have held that when a departmental Inquiry is over & the Government servant is exonerated, no subsequent inquiry can be ordered unless there is special provision in the Service Rules. In CCS (CCA) Rules 1975 there is provision for revision of order of the Disciplinary authority by the competent Revisioning Authority under Rule 29 of CCS (CCA) Rules 1965, but in the instant case the charge Sheet dated 17-03-2010 was not initiated by the said Disciplinary authority under the orders of the competent Revisioning authority since the charge sheet dated 17-03-2010 was framed much earlier and more than seven months prior to issuance of the order of the disciplinary authority on 29-10-2010 exonerating the applicant from the charge framed in the charge sheet dated 22-11-2005.

(ii) Illegality in the present charge framed in Article of charge No III of the second charge sheet dated 17-03-2010, impugned in the present OA:

The charge as framed by the disciplinary authority in the Article of Charge No III of the Charge Sheet dated 17-03-2010 is "The applicant while under suspension did not attend the ASPOs (HQ) in the O/O the SSPOs (Disciplinary authority) for official work despite order issued by the Disciplinary authority from time to time." Whereas in para 4(j) of the original application before this Hon'ble Tribunal, the applicant has averred that direction to a Government servant under suspension to attend for official work, is illegal in terms of instructions circulated vide Department of Home Affairs O.M. No. 142/2/83-ADVI dated 6th April 1983 issued on the basis of Judgment of Andhra Pradesh High Court in the case of Zonal Manager FCI v Khaled Ahmed Siddique (LAB IC 1140) (Published in para 13 of CHAPTER 3 Suspension- general order) of the Swamy's compilation of CCS(CCA) Rules 1965 that "a direction to the Employee to attend the office and make attendance at office daily during working hours is illegal".

It is alleged that "the Respondents, have not denied the fact in para 18 of their reply. The Respondents in para 6.1 to 6.3 of their reply to the original Application of the applicant introduced an extraneous and irrelevant matter, outside the sphere of the charge sheet dated 17-03-2010, just to influence this Tribunal which was not true except that though PMG South Bengal Region, Kolkata 700012 Lodged FIR to the CBI Kolkata against 7 officials of Raniganj H.O. including the applicant CBI had set him free after investigation from submission of Charge sheet in the Court for his on involvement in Criminal case. The matter is, however, totally extraneous since it was not included in the charge sheet dated 17-03-2010".

(iii) The appellate order is not a reasoned order and has not been issued in proper application of mind.

That the Appellate authority failed to discuss the point of defence of the applicant that charge sheet dated 17-03-2010 was invalid since it was issued on 17-03-2010 when the previous charge sheet dated 22-11-2005 was still under inquiry stage and the disciplinary authority ordered only on 29-09-2010 i.e. after 7 months twelve days of the second charge sheet.

That the reasons given by the appellate authority for non consideration of the claim of the appellate regarding validity of the charge sheet 17-03-2005 is not based on any provision of Rules or evidences adduced during inquiry and his contemplation that when the applicant participated the inquiry with defence assistant, the charge sheet dated 17-03-2010 was a separate issue and it cannot be linked up with the previous charge sheet, is absolutely a total non application of mind. The above observation of the Appellate authority was not based on evidence on record of the inquiry, since the record of the inquiry would unveil as appeared in para 2(v) & (vi) of the appeal that the fate of the previous charge sheet dated 22-11-2005 was not known to the appellant prior to the issue of the final order on 29-10-2010 and only on receipt of the said final order, the

appellant/ applicant applied to the disciplinary authority on 29-11-2010 to withdraw the charge sheet dated 17-03-2010 for issuing the same on the same set of allegations and the violation of same set of Rules as contained in the previous charge sheet date 22-11-2005 with request to the I.O. to stay the inquiry till a decision of the disciplinary authority was received."

6. The earlier charge memo dated 17.3.05 contained the following indictments, as extracted infra:

" Article – I

It is alleged that Sri. Vijoy Prasad while working as KVP Counter, PA. Raniganj H.O. during the period from April 2005 to 08.10.2005 made payment in respect of Raniganj H.O. KVP no: 68 AA 846650-653 and 22 EE 838532 of denomination of Rs. 1000/- and Rs. 500/- respectively issued under Regn.no: 75305 to the holder on 26.05.2005. But Sri. Prasad did not journalise on 26.05.2005 the KVP no: 68 AA 846650-653 of denomination of Rs. 1000/- issued under Regn.No: 75305, thus he is alleged to have acted in contravention of Rule 33 (1) (a) of POSB Man. Vol. II and thereby violated Rule 3 (1) (i), 3 (1) (ii) & 3 (1) (iii) of CCS (Conduct) Rules, 1964.

Article – II

It is alleged that Sri. Vijoy Prasad while working as KVP Counter, PA. Raniganj H.O. during the period from April 2005 to 08.10.2005 made double payment on 26.05.2005 in respect of Raniganj HO KVP no: 68 AA 846675 of denomination of Rs. 1000/- issued under Regn no: 75347. The said KVP NO: 68 AA 846675 was discharged on 26.09.2003 as per remark on the application for purchase form, thus he is alleged to have acted in contravention of Rule 23(2) of PO SB Man. Vol II and thereby violated Rule 3 (1) (i), 3 (1) (ii) & 3 (1) (iii) of CCS (Conduct) Rules, 1964.

Article – III

It is alleged that Sri. Vijoy Prasad while working as KVP Counter, PA. Raniganj H.O. during the period from April 2005 to 08.10.2005 shown payment in discharge journal dated 26.05.2005 in respect of Raniganj HO KVP no: 75 AA 554021 of denomination of Rs. 1000/- issued under Regn no: 79204. But the said KVP is undischarged as per guard file, thus he is alleged to have acted in contravention of Rule 23(2) of PO SB Man: Vol II and thereby violated Rule 3 (1) (i), 3 (1) (ii) & 3 (1) (iii) of CCS (Conduct) Rules, 1964.

Article – IV

It is alleged that Sri. Vijoy Prasad while working as KVP Counter, PA. Raniganj H.O. during the period from April 2005 to 08.10.2005 prepared KVP discharge summary of Raniganj HO and its SO for the month of March 2005' on 13.04.2005 whimsically.

As per KVP discharge Summary of Raniganj HO and its SOs submitted to DA(P)	As per Cash Account of Raniganj H.O.
Total no of paid voucher: SO:- 4752 HO:-3513	
KVP value for SO :- 22996100	HO+SOs Value :- 48102100
KVP interest for SO :- 20455157.50	HO+SOs int :- 44288988.50
KVP value for HO :- 27554500	
KVP interest for HO :-26118821	Total = 92391088.50
Total :- 97124578.50	

i.e Rs. 4733490 was shown excess in the KVP discharge summary meant for Audit paid vouchers of denomination of Rs. 10,000/- for the month of March 2005' of Raniganj H.O was not sent to Audit with other paid vouchers as well as KVP is discharged summary, thus he is alleged to have acted in contravention of Rule 51(1) and 52(1) & (2) of POSB Man: Vol II and thereby violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964."

7. The Disciplinary Authority the SSPO has exonerated the applicant on 29.10.10 of all charges in the following manner.

Discussion

In connection with misappropriation of govt. money through fraudulent encashment of KVPs at Raniganj H.O, KVP discharge Journal for the month of February & May 05 had been sought from Raniganj H.O. But the Raniganj H.O. could not supply it immediately. After passing of few months, the KVP discharge journal for the month of May 05 had been obtained from Raniganj H.O. The said discharge journal content the signature of APM-I of Raniganj HO. On receipt of said journal, the purchase application forms in the KVP guard file had been tallied with the KVP discharge journal. It was found that some of the KVPs, shown to have been discharged in the month of May 05 in the discharge journal, stand un discharged as per KVP purchase application form. On the basis of this irregularity, the C.O. was charge-sheeted. The office copy of KVP discharged journal for the month of May 05, supplied by APM-I Raniganj H.O, we one of the listed documents of the charge sheet.

During the ongoing of the Departmental Inquiry, the said Sri Prasad, the C.O. requisitioned for the DA(P)'s copy of KVP discharge journal for the month of May 05 & accordingly it was supplied after collecting it from the DA(P) as per order of the Inquiry officer. There is no similarity between the office copy of KVP discharged journal & that of the DA(P)'s copy of KVP discharge journal for the month of May 05. As per the DA(P)'s copy of KVP discharge journal for the month of May 05, no fraudulent payment could be traced. The C.O. was charge sheeted on the basis of office copy of KVP discharge journal of May 05. Resultantly, the charge has not been proved.

Further Sri Vijay Prasad had worked as KVP counter PA Raniganj HO for the period from 28-3-2005 to Oct 2005 at Raniganj H.O. The KVP discharge return. dispatched to DA(P) for the month of March 05 by Raniganj H.O has ample discrepancies & the C.O. was responsible for preparing & submission of the KVP return to DA(P).

From the above discussion it is clear that the listed document viz. KVP discharge journal which was supplied by APM-I of Raniganj HO is not exact office copy for which charges brought against the CO was not proved. But it is not understood how and what circumstances APM-I had submitted the KVP discharge journal for the month of May 2005 (ext. S-2) of Raniganj H.O to this office. The said discharge journals bears the signature of APM-I. The C.O. is the custodian of the office copy of KVP discharge journals. The disciplinary authority is sure some thing behind it. I do agree with I.Os report. As per office records, there are much cases of misappropriation of Govt. money through fraudulent encashment of KVP's in the month of March 05. As there is no mention of it in the charge sheet of the C.O. & there are defective listed documents, so the charge against the C.O is not proved. Considering the facts discussed above. I pass the order as below.

Order

I, Sri Sannar Naik, Sr Supdt of Post Offices, Asansol Division, Asansol being the appointing authority in exercise of power conferred upon me under Rule 12(2) of CCS(CCA) Rules, 1965 order that Sri Vijay Prasad the then KVP counter PA Raniganj HO and now attach to Asansol H.O be exonerated from all 4 charges levelled against him.

Such exoneration was ordered, after the issuance of the 2nd charge memo dated 17.3.2010.

8. In **B.C. Chaturvedi v Union of India & Others, (1995) 6 SCC 749**, the Hon'ble Apex Court on the scope of judicial review has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a Competent Officer or whether the inquiry was held by a Competent Officer or whether Rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical Rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary

proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a Competent Authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."

In **Ranjit Thakur v. Union of India & Others, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611**, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

9. We note that although the allegation in the 2nd charge sheet was not exactly identical but both related to the same nature of lapse, therefore in essence they were similar. It is incomprehensible as to how an authority, who issued a charge memo on 17.3.2010 would exonerate the applicant on 29.10.10 and then dismiss him subsequently on the basis of the charge memo dated 17.3.2010 which in essence contained similar charges.

We note that the DA has recorded as under:

"The Inquiry Officer confirmed that the charged official held the charge of KVP counter PA at Raniganj HO from 28.03.2005 to 08.10.2005, but did not prepare the KVP Discharge return for March, 2005 and got it done by other (SW-1) and supervised by the concerned APM". The DA agreeing with it observed instead of doing his allotted duty, he got it done by another PA who was not authorized to do the monthly summary of KVP discharge. And thus, Sri Vijoy Prasad, as KVP counter PA, Raniganj HO failed to maintain absolute integrity, devotion to duty and did some things which is unbecoming of a Govt. servant and hence violated Rule-3(a)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rule, 1964. And so, the charge brought against the Charged Official under Article-I are fully established. It is thus established that the applicant had not prepared the KVP discharge return.

He has further observed that "from written statement dated 23.08.2007 of Sri Subhendu Mondal (S-4), it revealed that SW-1 (Subhendu Mondal) prepared KVP discharge summary/return for March, 2005 as per request of KVP counter PA, Sri Subir Mukherjee and APM(KVP) who signed the summary on 13.04.2005. And so, he was not the counter PA on 13.04.2005".

Therefore it is palpable from the DA's observation that one Subhendu Mondal and not the applicant had prepared the discharge summary on being requested by one Subir Mukherjee and the APM, yet the applicant was found guilty of the lapse.

He has opined further, "it is pointed out by the charged official that as per Rule - 53, the counter PA at the close of each day kept the KVP paid vouchers with the journal under the custody of the APM. No doubt, the said rule of P.O SB Manual Vol-II speaks so, but it does not mean that the official who is entrusted with the duty of preparation and dispatch of return will remain indifferent."

Further the DA has failed to address the issue of legality and propriety of the 2nd charge memo when proceedings in regard to the first one was on.

10. We note similar lapse in the Appellate order. The Appellate Authority in its order dated 15.6.12 has recorded the following:

"VI Vide his written dated 21.11.2005 (Ext. S-I), 'the appellant clearly admitted to have continuously worked as KVP Counter' PA for the period from 28.03.2005 to 08.10.2005. During his incumbency, the returns for the month of March, 2005 were prepared. So, the appellant cannot evade his responsibility in this regard as pointed out in the charge-sheet."

He has then proceeded to observe "the applicant is therefore not found directly involved in the lapse" yet attributed the lapse for supposedly manning the KVP counter from 25.3.05 to 8.10.05.

The authority has opined further as under:

"6. Misappropriation of Govt. money to the tune of Rs. 94.52 crore in the shape of showing excess payment under the head 'KVP/NSC Discharged' without supporting paid vouchers was detected at Raniganj H.O. during the period from July, 1992 to 2005. The appellant was one of the identified delinquent officials whose serious negligence in discharging their codified duties was detected in course of departmental investigation. After carefully going through the instant appeal vis-a-vis the punishment order, the inquiry report and the evidences adduced in the inquiry, I find that the appellant is clearly responsible for the lapses on his part which led to such a huge pecuniary loss to the Govt during his incumbency as KVP/NSC Counter P.A., Raniganj H.O. The punishment order is fully commensurate to the nature of lapses on the part of the appellant and I see no reason to interfere in the punishment order."

Accordingly, I do hereby pass the following order, which will meet the ends of justice.

Therefore the misappropriation has been attributed to the applicant whereas charge of misappropriation has not been levelled against the applicant. Therefore inarguably and indubitably the appellate authority's order is goaded by extraneous considerations.

11. A bare perusal of the aforesaid conclusion would also vividly demonstrate and highlight that the authorities have chargesheeted the applicant for alleged lapses during 28.3.05 to 8.10.05 yet punished him for the lapses that continued from 1992 to 2005. They have sought to punish the applicant for his alleged lapses from 28th March to 8th October, 2005 for constituting loss which continued

and was perpetrated over a long period of time from July, 1992 to 2005 but was not committed by him, which was ghastly.


The authorities could not have legally and factually attributed the inaction/non action/ lapse that was committed by the employees between 1992 – 27.3.2005 to the applicant who supposedly manned the counter for a brief period of time, from March to October 2005.

Further, such lapse that continued from 1992 - 2005 would never have resulted if there was periodic verification of records. The lapses and/ or negligence on the part of higher authorities in failing to verify and supervise the functioning of the subordinate employees at the material time, which led to the fraud, could not be brushed aside. The applicant who admittedly and irrefutably manned the counter only from March – October, 2005 could not have been held responsible for the lapses that accumulated during the years from 1992 till February, 2005 and contributed to the whopping amount of 92 corers.

The conclusion of the authorities that the negligence of the applicant during such short period paved way for a fraud that was continuing under the aegis of authorities for last 13 years prior to his joining as PA in the counter in question, could neither be comprehended nor countenanced that too when the applicant was exonerated in the manner done, as enumerated supra.

Such conclusion was, without any iota of doubt, based on no evidence.

If the applicant was found negligent he ought to be punished for his own laxity, irresponsibility and inattention. But he should not be asked to bear the brunt of the offence not committed by him.



Moreover the Appellate Authority has also failed to address on legality and propriety of the 2nd charge memo while the proceedings on the first charge memo, with identical charges, were on.

12. Both dismissal order as well as the appellate order therefore overtly smack of arbitrariness, non-application of mind and are excessively disproportionate. The orders are therefore quashed.

13. Consequentially the matter is remanded back to the authorities to delve into the points of defence put up by the applicant and observations supra, apply their mind on the same and pass appropriate order in accordance with law within 2 months from the date of receipt of a copy of this order. The interregnum between the order of dismissal and further orders would be treated in accordance with law.

14. The present O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh