



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 350/00076 /2017

In the matter of :-

An application Under Section 19 of the
A. T. Act, 1985;

- And -

In the matter of:-

Sri Amiruddin Mallick, Son of Late Abdul
Majid Mallick, aged about 58 years,
working as Sub-Post Master, Amlagora
Sub Post Office, Paschim Medinipur, Pin
- 721121 and residing at Habibpur,
Mithu-Masjid Chawk, P.O. Midnapore,
District - Paschim Medinipur, Pin -
721101 (W.B.).

...Applicant


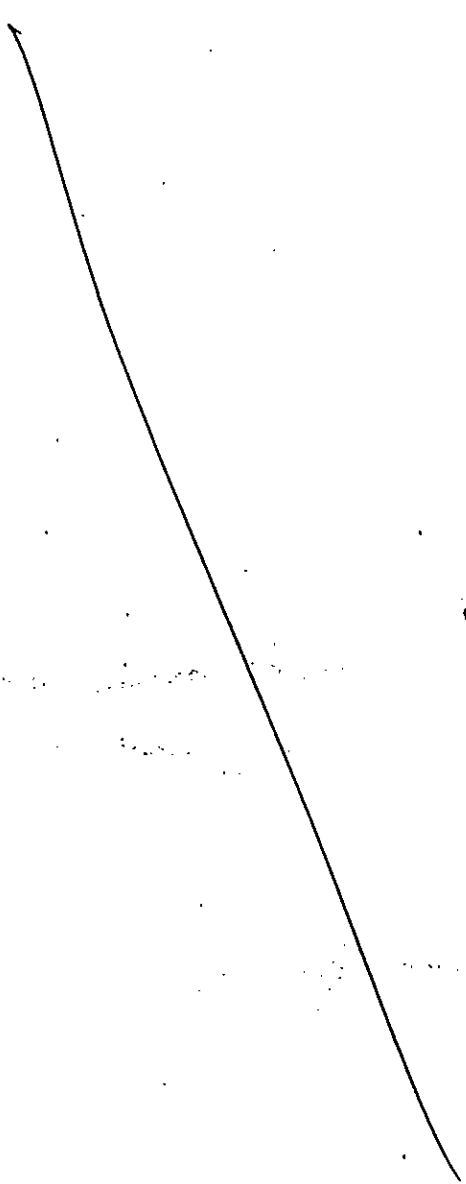
- Versus -

1. Union of India, Service through the
Secretary, Ministry of
Communication, Department of Post,
Dak Bhawan, New Delhi - 110001.

Amiruddin mallick

2. The Chief Post Master General, West
Bengal Circle, Yogayog Bhawan, C.
R. Avenue, Kolkata - 700012.
3. The Director of Postal Services,
South Bengal Region, Yogayog
Bhawan, C. R. Avenue, Kolkata -
700012.
4. Sri A. Prasad, Senior Supdt. of Post
Offices, Midnapore Division,
Midnapore - 721101.
5. The Senior Postmaster, Midnapore
H.O., Midnapore - 721101.

...Respondents



Present : Hon'ble Mr. A.K. Patnaik, Judicial Member
 Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the Applicant : Mr. K. Sarkar, Counsel
 For the Respondents : Mr. M.K. Ghara, Counsel

ORDER

Per Jaya Das Gupta, Administrative Member:

Heard Mr. K. Sarkar, Ld. Counsel for the applicant and Mr. M.K. Ghara, Ld. Counsel for the respondents.

2. This O.A. has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

- (i) To issue direction upon the respondents and their men and agents to quash the order of suspension vide No. SSP/Con/Amlagora dated 24.8.2016 issued by Shri A. Prasad, Sr. Supdt. Of Post, Midnapore Dn. Forthwith;
- (ii) To issue further necessary direction upon the respondents and their men and agents to cancel, set aside the appellate order dated 21.9.2016 issued by the Director of Postal Services, South Bengal Region, Kolkata - 12 vide Memo No. PMG(SB)/SF(vig)/A-23/10/2016 dated 27.12.2016 as there is no mention of reason and fact and circumstances for continuance of suspension without issuing chargesheet;
- (iii) To issue appropriate necessary direction upon the respondents to cancel, set aside the order of Review Committee communicated by the Sr. Supdt. Of Post, Midnapore Dn. Through his letter No. B/A-2016 dated 21.11.2016 as there is no mention the justified ground for extension of suspension for another 90 days;
- (iv) To issue further direction upon the respondent Nos. 1 to 3 to conduct an inquiry against Sri A. Prasad the then Sr. Supdt. Of Post Midnapore Dn. (Respondent No. 4 herein) for using filthy and unparliamentary words against a Muslim employee on the basis statement recorded by the Inspector of Post Offices, Garhbeta Sub Dn. In presence of two witnesses;
- (v) To direct the Sr. Postmaster, Midnapore H.O. to sanction leave for the period from 20.5.16 to 10.6.16 and drawal of pay and allowance.
- (vi) To issue appropriate necessary direction for production of connected departmental records at the time of hearing;
- (vii) Any other order or orders as the Ld. Tribunal deem fit and

own

proper."

3. It is the submission of the applicant that on 12.7.2016 he had complained to Director of Postal Services against Shri Bikash Kanti Mishra, Sr. Postmaster, Midnapore HPO for holding back his salary from 20.5.2016 to 13.6.2016 and also against Sr. Superintendent of Post Office for holding back sanction of GPF withdrawal for Rs. 9,00,000/-.

4. He was suddenly sent a letter by the Sub-Divisional Inspector of Post, Garhbeta Sub-Division which is extracted below asking for his statement regarding alleged telephonic conversation with Sr. Superintendent of Post Office, Midnapore Division:-

"To
The SPM,
Amlagora SO.

No. A1/IPOs/Corr/16

Dated at Amlagora the 24.8.2016

Sub: Phonic conversation of Amiruddin Mullick, SPM(HSG-II), Amlagora S.O. along with the Sr. Supdt. Of Pos, Midnapore Division on 24.8.2016 – obtaining of statement regarding.

It is informed by the Sr. Supdt. Of Pos, Midnapore Division, Midnapore over phone to undersigned regarding misbehavior with SSPOs, Midnapore Division, of Amirudding Mallick, SPM, Amlagora S.O. by saying to the SSPOs following aggressive words:-

1. You are sitting at your chair only and doing nothing etc.

You are requested to provide your statement regarding your phonic conversation and misbehavior over phone to the SSPOs, Midnapore Division on 24.8.2016.

Soumya Chatterjee
Sub Divisional Inspector of Posts
Garhbeta Sub-Division
Garhbeta-721127

This communication to the applicant was dated 24.8.2016. He had replied to such letter on the same day i.e. on 24.8.2016. But on the same day a suspension order was issued to him, at Annexure A-9, by the Sr. Superintendent of Post Offices, Midnapore Division which is extracted

25/9

below:-

" Office of the Sr. Supdt. Of Post Offices, Midnapore Division,
Midnapore – 721101

"Memo No. SSP/Con/Amlagora dated at Midnapore Dt. 24.8.16

Whereas a disciplinary proceeding against Amiruddin Mallick, SPM, Amlagora S.O. is contemplated.

Now, therefore, the undersigned in exercise of powers conferred by sub-rule (1) of Rule 10 of the CCS (CCA) Rules, 1965, hereby places the said Amiruddin Mallick, SPM, Amlagora S.O. under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Amiruddin Mallick, SPM, Amlagora S.O. should be Amlagora and the said Amiruddin Mallick shall not leave the headquarters without obtaining the previous permission of the undersigned.

Sr. Superintendent of Post Offices,
Midnapore Division, Midnapore, - 721101"

5. The applicant had appealed to the higher authority namely the Director of Postal Services against the order of suspension issued by Shri A. Prasad, Sr. Supdt. Of Post Offices of Midnapore Division on 21.9.2016. The Director of Postal Services on 27.12.2016 gave an order after consideration of the appeal of the applicant which is extracted below:

" Dept. of Posts, India
O/O THE POSTMASTER GENERAL
SOUTH BENGAL REGION, YOGAYOG BHAWAN,
KOLKATA – 700 012

NO. PMG (SB)SF(Vig)/A-23/10/2016 Dated at Kolkata, the 27.12.16

This is regarding disposal of the appeal dated 21.9.2016 preferred by Shri Amiruddin Mallick, SPM, Amlagora S.O. against the order of suspension issued vide SSPOs Midnapore Division memo no. SSP/Con/Amlagora dated 24.8.2016.

2, In the appeal dated 21.9.2016, Sri Mallick has raised the following arguments against the order of suspension issued vide SSPO, Midnapore Division memo no. SSP/Con/Amlagora dated 24.8.2016.

- i) That he while working as APM, Midnapore H.O. was transferred as PA, Amlagora in the tenure transfer order issued by the SSPOs, Midnapore Division on 13.5.2016, though he did not complete tenure at Midnapore H.O.

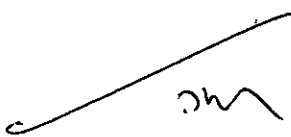


- ii) He served in the department for about 34 years with sincerity and with due regards to his higher authorities. But in spite of this he was placed under suspension by SSPOs, Midnapore Division vide his memo no. SSP/Con/Amlagora dated 24.8.2016 with the allegation that he had told Shri A. Prasad SSPOs, Midnapore Division these words "You are sitting at your chair only and doing nothing etc."
- iii) The order of suspension issued by Shri A. Prasad, SSPOs, Midnapore Division is illegal and bad in law.
- iv) Shri A. Prasad, SSPO, Midnapore Division is himself the complainant in this case and therefore he cannot function as Disciplinary Authority for issuing the suspension order dated 24.8.2016.

3. I have carefully gone through the appeal and relevant papers, documents and files with the observations:-

- i) The issue of his transfer from Midnapore H.O. to Amlagora S.O. in the tenure transfer memo dated 13.5.2016 is not related to the suspension case.
- ii) The issue regarding the veracity of the grounds will be decided during the Departmental inquiry and also in course of the Departmental Investigation.
- iii) Regarding the arguments of the appellant that the order of suspension issued by the SSPO, Midnapore is illegal and bad in law, it may be stated that as per Rule 10(1) and Rule 10(1)(a) of the CCS (CCA) Rules, 1965, the appointing authority or any other authority to which it is subordinate or Disciplinary Authority or any authority empowered in that behalf by the President may place a govt. servant under suspension where a Disciplinary Proceedings against him is contemplated or is pending. In the instant case Shri A. Prasad, SSPOs, Midnapore division being the appointing authority of the appellant was empowered by the above mentioned rules to issue the suspension order.
- iv) Regarding the contention of the appellant that Shri A. Prasad himself being the complainant cannot function as the disciplinary authority for issue the suspension under dated 24.8.2016, it may be pointed out that functioning as disciplinary authority is all together a different issue. Sri A. Prasad was the appointing authority of the appellant and in that capacity he issued the suspension order. But as he himself is the complainant in the case he cannot and also has not initiated the disciplinary proceeding. However, the suspension case was placed before the suspension review committee and the said committee in their meeting dated 18.11.2016 observed that as the departmental investigation into the case has not yet been concluded the suspension order may be continued for another period of 90 days. The appeal of Shri Amiruddin Mallick is accordingly disposed of.

(Rajeev Umrao)
Director Postal Services,
South Bengal Region,
Kolkata - 700 012"



6. Suspension proceedings and disciplinary proceedings are different in nature. In a disciplinary proceeding it is certainly correct that the *complainant cannot be the disciplinary authority in view of Nemo Debit Esse Judex in Propia Causa* – No one ought to be a judge in his own cause. But for any deemed misconduct, (which will be established in the disciplinary proceeding) a superior officer can always suspend a subordinate employee for maintaining discipline and decorum in the office, in anticipation starting a disciplinary proceeding.

Suspension is not a penalty and a superior officer can always suspend a subordinate to maintain official discipline. But the appellate order is incomplete to the extent that no final decision on the appeal against suspension as such has been given. Rather it has been disposed of by referring to proceedings of the suspension review committee.

8. Under Rule 27(1) of the CCS (CCA) Rules the appellate authority should consider whether in the light of provision of Rule 10 of CCS (CCA) Rule and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly. Such revoking is also covered under Rule 10(5)(c).

9. Accordingly, the portion of the appellate order:

"However, the suspension case was placed before the suspension review committee and the said committee in their meeting dated 18.11.2016 observed that as the departmental investigation into the case has not yet been concluded the suspension order may be continued for another period of 90 days.

The appeal of Shri Amiruddin Mallick is accordingly disposed off."

is quashed and set aside.

The Appellate authority is granted 4 weeks time from the date of receipt of a copy of this order to dispose of the Appeal as per law.

(Jaya Das Gupta)
Administrative Member

(A.K. Patnaik)
Judicial Member