

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01125/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Uday Kumar Varma, Administrative Member

ARUP DAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr.P.C.Das, counsel
Ms.T.Maity, counsel

For the respondents : Ms.P.Goswami, counsel

Order on : 21-09-2016

O R D E R

Ms. Bidisha Banerjee, J.M.

The present application is filed by the applicant seeking the following reliefs :

- a) To quash and/or set aside the impugned suspension order dated 31.8.15 issued by the senior Postmaster, Serampore Head Post Office, Serampore against your applicant being Annexure A/5 of this original application;
- b) To quash and/or set aside the impugned office order dated 12.1.16 passed by the Director of Postal Services, office of the Postmaster General, South Bengal Region, Yogayog Bhawan, Kolkata whereby he has rejected the appeal preferred by the applicant in respect of revision of order of suspension being Annexure A/9 of this original application;
- c) To quash and/or set aside the impugned office order dated 12.1.16 communicated by the Asst. Director of Postal Services-I, office of the Postmaster General, South Bengal Region, Kolkata whereby the appeal preferred by the applicant has been rejected by DPS but not by the Chief Postmaster General being Annexure A/13 of this original application;
- d) To pass an appropriate order directing the respondent authorities to revoke the order of suspension dated 31.8.15 in terms of the final report of the CID contained in Annexure A/16 of this original application and to reinstate the applicant in service with all consequential benefits.

2. The facts that could be culled out from the pleadings are as under :

The applicant was Public Relations Inspector (Postal) under Sr. Superintendent of Post Offices, South Hooghly Division. By an office memo

dated 12.8.15 the applicant was directed to attend Nivedita Bhawan at Salt Lake on 27.8.15 as Escort Official to take delivery of 154 sealed packets of materials relating to Primary Board Examination (TET), 2015 which was scheduled to be held on 30.8.15. The applicant was assigned duty for counting of such packets and collecting the same from Nivedita Bhawan. The applicant counted all the packets and kept in the bus booked for delivery of such materials. In the bus the applicant was accompanied by another Postal official of Postman cadre and two armed force personnel. Unfortunately back side of the bus was covered only by a fibre glass and without any iron grill. While crossing a bumper due to heavy jerking, one pack of question paper fell down from the back side of the broken fibre glass of the bus. The driver of the bus was cautioned by a passing ambulance that one of the glasses has broken and a packet has slipped out. The applicant immediately stopped the bus and ran in search of the packet. But the applicant found no trace of the said packet. The applicant informed the higher authorities and went to the nearest Nischinda Police Station for a physical count of the packets, where he was prevented by the officer in-charge from unloading the packets from the bus. Thereafter as per advice of Sr. Superintendent of Post Offices and Assistant Superintendent of Post (Headquarters), they went back to Nivedita Bhawan to make sure whether there was any loss of packets and found that one packet was missing.

On 28.8.15 the Assistant Superintendent of Posts (Headquarters) lodged an FIR with Nischinda Police Station for theft of a sealed packet, on behalf of the department against unknown person. On getting such information West Bengal Board of Secondary Education lodged a written complaint to the Inspector in-charge of Bidhannagar (East) Police Station on 29.8.15. Thereafter CID took up the matter for investigation.

In the meantime the case was inquired into by the Circle Office and Sr. Postmaster, Serampore HO placed the applicant under suspension on 31.8.15. On 8.9.15 the applicant made an appeal before the Director of Postal Services, South Bengal Regions seeking revocation of the said suspension order. But as

it was not responded to, the applicant made an appeal before the Chief Post Master General on 4.11.15 for revocation of the suspension order. On 12.1.16 the Assistant Director of Postal Services-I, Office of the Postmaster General, South Bengal Region rejected the appeal preferred by the applicant.

Hence the present OA has been filed.

3. The respondents in their reply have not denied the above averments made by the applicant. The respondents have stated that after rejection of the appeal preferred by the applicant on 12.1.16, the suspension case of the applicant was again placed before the Suspension Review Committee on 19.2.16 and 17.5.16 and the said committee recommended for continuation of the suspension order for a further period of 90 days, on every occasion. The respondents have further stated that the suspension case of the applicant was again reviewed by the Suspension Review Committee on 5.8.16 and recommended for continuation of the suspension order for another 90 days with payment of the subsistence allowance at the existing rate since the verdict of the ACJM, Bidhannagar Court on the Inquiry Report submitted by the CID was not received by the department at that time.

The respondents have alleged that the applicant has not exhausted the remedies available as the Revision Petition submitted by the applicant before the Chief Postmaster General, West Bengal Circle dated 21.4.16 is still pending disposal.

The respondents have therefore prayed for dismissal of the present OA.

4. The Id. Counsel for the applicant argued that the Disciplinary Authority of the applicant is Sr. Superintendent of Post Offices whereas he was placed under suspension by the Sr. Post Master. Therefore the suspension order was void ab initio. Moreover it could not be reviewed from time to time. It had to be revoked in terms of the latest decision of Hon'ble Apex Court in **Ajay Kr. Choudhary -vs- Union of India & Ors. [(2015) 7 SCC 291]**.

5. Per contra Id. Counsel for the respondents would argue that the suspension although ordered by Sr. Post Master on 31.8.05, was approved by

the Sr. Superintendent of Post Offices on 14.9.05 and the respondents have averred that Sr. Post Master is the Disciplinary Authority of the applicant. However, it could not be substantiated.

6. We have heard the rival contentions and perused the materials on record.

7. The question that fell for determination in this OA is whether

- (i) any authority lower than disciplinary authority can place an employee under suspension;
- (ii) whether such suspension order can be approved by the disciplinary authority;

8. Rule 10 of CCS (CCA) Rules explicitly lays down the following :

"10. Suspension

- (1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension -*
 - (a) where a disciplinary proceeding against him is contemplated or is pending; or*
 - (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or*
 - (b) where a case against him in respect of a any criminal offence is under investigation, inquiry or trial."*

9. No materials have been placed on record to show that the Sr. Post Master has been empowered to place an official of the rank of the applicant on suspension. Sr. Post Master is admittedly neither the appointing authority nor the disciplinary authority. Therefore the suspension order issued on 31.8.15 was bad ab initio.

10. An order void ab initio could not be validated by the disciplinary authority by giving his approval for its continuation. However the disciplinary authority in terms of Rule 10 could issue a fresh order in accordance with law.

11. In the aforesaid backdrop the suspension order dated 31.8.15 is quashed with all consequential benefits with liberty to the respondents to act in accordance with law.

12. The OA is accordingly disposed of. No order is passed as to costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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