

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No.O.A.144 of 2011

Date of order : 23.06.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

UJJAL KR. DAS

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. A. Chakraborty, counsel  
For the respondents : Mr. L.K. Chatterjee, counsel  
Mr. U.P. Bhattacharya, counsel

ORDER

Per Justice V.C. Gupta, J.M.

Heard Id. Counsel for the parties.

2 It is a very peculiar case of its own kind. Therefore, some facts are need to be noticed.

3 This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved with an order passed by the Director of Postal Services, South Bengal Region, Kolkata-12(Annexure A/6 , page 55 of O.A.) which is reproduced herein below:-

"Whereas, Shri Ujjal Kr. Das, GDSBPM, Talbagicha B.O. in account with Hijli S.O. under Midnapore Division was proceeded against under Rule-10 of GDS(Conduct & Employment) Rules, 2001 vide SSPOs Midnapore Division memo no.FD-4/A-1/7/2004-05 dated 30/01/2006 enclosing the Articles of Charge under Annexure -I, statement of imputation of misconduct under Annexure -II, list of documents by which and list of witnesses by whom the Articles of Charge proposed to be sustained under Annexure-III and IV with the said memo.

And whereas, inquiry under the said Rule was conducted on appointment of IO and PO but the IO in his findings not proved each of the Articles of Charge due to non-supply of requisite documents or non appearance of the depositors and thereby the inquiry has been considered not done properly keeping in view the gravity of the charges.

And whereas, the disciplinary authority, the SSPOs Midnapore Division did not furnish any disagreement note on IO's report and failed to supply the requisite records to the IO but issued punishment order under his even memo no. Dated 18/11/2010 debarring the Charged Official from appearing in the recruitment examination for the post of Postman and Group-D and/or from being considered for recruitment as Postal Assistant/Sorting Assistant for a period of three(3) years.

Now, therefore, the undersigned in consideration of the facts and circumstances of the case and in exercises of power conferred under Rule-19 of GDS(Conduct & Employment) Rules, 2001 hereby directs *de-novo* proceedings of the disciplinary case right from the stage of framing of charges against said Shri Ujjal Kr. Das, GDSBPM, Talbagicha B.O."

The applicant has sought for quashing of this order in the O.A.

4. The applicant was served with a charge sheet of major penalty for misappropriating the amount which has been paid to him by the depositors and he did not deposited the same in their respective accounts. A criminal prosecution was launched against him under Indian Penal Code. During the pendency of the enquiry the trial ended in acquittal after giving the benefit of doubt to the applicant. He brought on record the copy of the judgment passed in criminal case before the Enquiry Officer gave his findings and stated that no charge has been proved. The relevant portion of the Enquiry Report dated 25.09.2009(Annexure A/4, page 52 of the O.A.) is as follows:-

"From the above noted articles of charges, depositors of the witnesses, briefs etc. and on examination of the listed documents in support of charges, following observation of the undersigned as Inquiry Officer are-

(a) In respect of articles-I

Charge is defalcation of Rs.34775/- from the Talbagicha SB a/c No.927251 in the name of Sri Bimal Kr. Bose on 43+1 dated since 14-11-1998 to 24-05-2002. But the records related to the SB work in a Branch office are SB journal/B.O. daily a/c and account book of that B.O. which were not supplied in full. The SB journal supplied up to 28-11-2001 and only 7 B.O.daily account of 44 dates of alleged non credit have had been supplied. Moreover the concerned depositor Sri Bimal Kr. Bose SW-I kept himself absent from appearance before the inquiry board despite of summon issued to him on 02-01-2007, 16-08-2007, 17-03-2008 & 26-12-2008 even personal endeavour of the PO. So the charge brought in article-I is not proved.

(b) In respect of Articles-II

In this article also the charge of non credit since 05-07-1999 to 28-05-2002 has brought the documents like SB journal has produced up to 28-11-2001 and only 5 B.O. daily a/c against 19 dates of non-credit have been supplied as supporting records against allegation of charge. On the other hand Sri Sasanka Sarkar the co-depositor of the Talbagicha B.O. SB a/c No.-927218 stated is his deposition of 10-04-2008 that he has no knowledge on defalcation of his deposited money or any discrepancy in his PB No. Body on behalf of the Dept. contacted or consulted with him before the day of his appearance before board of inquiry. Another amusigns thing in this article is that in the article of charge the account no has mentioned as 927218 but the pass book produced as document is a/c no.-927213. So this charge is not proved.

(c) In respect of article-III

In this article it has been alleged that Sri Ujjal Kr. Das the then BPM Talbagicha B.O. had taken Rs.6000/- opening of MIS a/c in the name of Smt. Binapani Banerjee and Smt. Krishna Bagchi but opened one SB a/c bearing no.927250 for Rs.20/- and Smt. Krishna Bagchi has brought as witness to prove the charge. The concerned SB PB a/c no.-927250 issued by the A/c office Hijli has also produced before the inquiry as document. Smt. Bagchi in her deposition before the inquiry board categorically stated that the a/c was

opened by her mother when she was not present in the Talbagicha B.O. The amount of deposit made by her mother was also not in her knowledge. Further she stated that her statement dtd 29-07-2004 as per dictation of officer who obtained it. She also stated that 1<sup>st</sup> para of her statement dtd.29-07-2004 is not correct. So it is clear that she has no knowledge about the opening of the said a/c, as her mother had done every thing. Moreover the correction in deposited amount from Rs.20/- to Rs.6000/- in the PB a/c no.927250 made by whom is also in dark as the hand writing is not known by anybody like investigating officer Sri S.S. Hazra & SW-4, presenting officer Smt. Ila Bera or Smt. Bagchi the co-depositor of the said PB. Any report from the expert is also absent. In this position the charge is not proved."

5. Thereafter the Disciplinary Authority after going through the Enquiry Report passed an order dated 18.11.2010(Annexure A-5, page 54 of the O.A.) which is being reproduced herein below:-

"In this office letter of even No. Dated 30.01.2006 Sri Ujjal Kumar Das, GDS BPM, Talbagicha B.O. in account with Hijli S.O. was proceeded against under Rule-10 of GDS(Conduct & Employment) Rules-2001. With the said memo the statements of articles of charge, statements of imputation of misconduct, List of documents by which the articles of charges brought against Sri Das were proposed to be sustained and List of witnesses by whom the articles of charge brought against Sri Das were proposed to be sustained were enclosed as Annexure-I, II,III,IV respectively. The charge sheet is enclosed as Annexure -I. The said memo was received by Sri Das on 01.02.2006. Sri Das in his representation dated 08.02.2006 denied all the charges brought against him and begged to be heard in person. His representation is enclosed as Annexure-II. Accordingly Sri Ashok Kumar Sarkar, the then ASPOs, Midnapore Sub Division and Smt. Ila Bera, the then IPO(PG), Midnapore Division were appointed I/O and P/O respectively. Regular hearings were held and the charged official was given all reasonable opportunities to defend his case. Sri Sarkar, I/O on completion of enquiry proceedings submitted his report to this office through his letter No.IO/Mid Dn-I/U.K. Das dated 26.05.2009. The copy of which is enclosed as Annexure -III. The report of the I/O was sent to Sri Das vide this office memo of even no. dated 10.09.2010, a copy of which is enclosed as Annexure-IV. On receipt of report of I/O Sri Das submitted his representation dated 16.09.2010 a copy of which is enclosed as Annexure -V.

The undersigned has carefully gone through all relevant records and has found that the amount involved in this case has fully been recovered and the Government has sustained no loss. Taking everything into consideration, I Sri Manoj Kumar , Sr. Supdt. Of Post Offices, Midnapore Division, Midnapore-721101 in exercise of the powers conferred in Rule-5. of GDS(Conduct & Employment) Rules-2001 hereby punish Sri Ujjal Kumar Das, GDSBPM, Talbagicha B.O. who on reinstatement is working as GDS Packer, Salua S.O. with debarring from appearing in the recruitment examination for the post of Postman & Gr-D and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of three years under Rule 9(ii) &(iii) of GDS (Conduct & Employment) Rules-2001."

6. The above order reveals that the report of the enquiry was served upon the charged officer and representation was sought in respect of the report of enquiry wherein the applicant was exonerated. It is also mentioned in the order that a representation dated 16.09.2010 has been given by the applicant which has been annexed as Annexure A-V.



A perusal of the order dated 18.11.2010 further reveals that punishment was awarded to the applicant considering the fact that the entire amount alleged to have embezzled, has been recovered and as such the Government sustained no loss. Therefore, the applicant was awarded the punishment of debarring him from appearing in the departmental examinations for the post of Postman and Gr-D and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of three years under Rule 9(ii) &(iii) of GDS (Conduct & Employment) Rules-2001. The whole order shows that no disagreement note was given by the Disciplinary Authority and no such order of disagreement was served on the charged official calling for his explanation on the disagreement note, if any.

7. The applicant is not aggrieved by the punishment awarded by the Disciplinary Authority and he did not challenge the order of the Disciplinary Authority by way of appeal or revision before the authorities concerned. However, a revisional order dated 18.01.2011 referred to herein above has been annexed with Reply of the respondents as Annexure R/1. A perusal of the said order reveals that order was passed directing the *de-novo* proceedings right from the stage of framing of charges against Shri Ujjal Kr. Das, GDSBPM, Talbagicha B.O. It is not evident from the order of the Revisional Authority as to on whose instance the revision has been filed. It is also not evident from the order that the revisional authority took a *suo motu* decision or any opportunity of being heard was given to the applicant before passing of such order.

8. Ld. Counsel for the respondents vehemently argued that as per Rule 19 of Gramin Dak Sevak (Conduct & Employment ) Rules, no notice was required to be served upon the applicant as the punishment was neither enhanced nor altered.

9. Rule 19 of GDS(Conduct & Employment) Rules is reproduced below:-

**"19. Revision**

(1) Notwithstanding anything contained in these rules-

- (i) the Head of the Circle, or Region
- (ii) any other authority immediately superior to the authority passing the orders ; or
- (iii) any other authority specified in this behalf by the Government by general or special order, and within such time as may be specified in that general or special order;



may, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise an order made under these rules, reopen the case and after making such enquiry as it considers necessary, may

(a) confirm, modify or set aside the order

or

(b) pass such orders as it deems fit:

Provided that no such case shall be reopened under this rule after the expiry of six month from the date of the order to be revised except by the Government or by the Head of Circle or by the Postmaster-General(Region) and also before the expiry of the time-limit of three months specified for preferring an appeal under Rule 14:

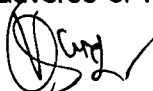
Provide further that no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the Sevak concerned has been given a reasonable opportunity of making representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses(v) and (vi) of Rule 9 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed except after the enquiry in the manner laid down in Rule 10, in case no such enquiry has already been held.

(2) No application to revise an order made on an application for a revision or order passed or made on a revision shall be entertained."

10. It is also one of the important aspects of the case that the applicant neither filed any appeal nor the department filed any appeal.

11. There is nothing on record as to when the Revisional Authority came to the conclusion that the order requires revision whether it is on *suo motu* or on application of any person. No such application is available on record. The order of revision was passed on 18.01.2011 and the punishment order was passed on 18.11.2010. The second proviso contained in Rule 19 of the GDS(Conduct and Employment) Rules says that "no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the Sevak concerned has been given a reasonable opportunity of making representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses(v) and (vi) of Rule 9". It is further stated in Rule 19 that "No application to revise an order made on an application for a revision or order passed or made on a revision shall be entertained." That means the order passed by the authority within Rule 19 shall be final.

12. In this case the question arises whether the order of *de novo* enquiry affects the rights of the applicant and the order is adverse or not to the interest of the applicant.



Admittedly no opportunity of being heard at any point of time has been given to the applicant by the Revisional Authority . The order passed is ex parte. The applicant was not given the chance to defend his case. Hence, we are of the view that *per se* the respondents have violated the principles of natural justice and as such the impugned order that cannot be allowed to sustain.

13. More over, there is no prohibition in Rule 19 of GDS(Conduct & Employment) Rules to issue a notice to the party against whom the order is proposed to be passed nor there is any provision to dispense with the notice on the cases of *suo motu* exercise of power.

14. In view of the peculiar circumstances of the case and considering the status of the applicant who is a Sub Postmaster, we are of the view that the order of revision dated 18.01.2011 cannot be allowed to sustain. The same is accordingly quashed. The Revisional Authority after giving an opportunity to the applicant of being heard and to place his case, shall decide the matter afresh according to law.

15. With these observations, the O.A. is allowed. There shall be no order as to cost.

(J. Das Gupta)  
Administrative Member

(Justice V.C. Gupta)  
Judicial Member

s.b