

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/00223/2013

Date of order: 19.01.2018

Present : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Narayan Thakur,
Son of Sri Jageswar Thakur,
Aged about 42 years,
Residing at 18/1, Mahendra Roy Lane,
Post Office - Gobinda Khatic Road,
Police Station - Topsia,
Kolkata - 700 046.

.. Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary to the
Government of India,
Ministry of Communication,
Department of Posts,
Dak Bhawan,
Samsad Marg,
New Delhi - 110 001.
2. The Director General of Post,
Ministry of Communication,
Department of Posts,
Dak Bhawan, Samsad Marg,
New Delhi - 110 001.
3. The Chief Post Master General,
West Bengal Circle, Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.
4. The Post Master General,
Office of the CPMG,
Kolkata Region,
Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.
5. The Director of Postal Services,
Kolkata Region,
West Bengal Circle Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.
6. The Senior Post Master,
Alipore Head Post Office,
Kolkata - 700 027.

.. Respondents

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Ld. Counsel for the applicant and respondents are both present and heard, documents examined.

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

“(a) To pass an order directing the Respondent Authorities to set aside the said impugned Statement of Imputation of misconduct or misbehaviour vide Memo No. FD4-1/10/2011/SBCO dated 18.11.2011 issued by the said Disciplinary Authority (Respondent No. 6 herein) against the applicant;

(b) To pass an order directing the Respondent Authority to set aside the impugned order No. FD4-1/10/2011/SBCO dated 10.5.2012 issued by the said D.A. against the applicant;

(c) To pass an order directing the Respondent Authority to set aside the impugned order No. Vig/Z-34/6/12/Appeal dated 8.2.2013 issued by the A.A. (Respondent No. 5 herein) against the applicant;

(d) An order directing the Respondent Authorities to exonerate the applicant from all the charges under Article II and Article III made against him;

(e) An order directing the Respondent Authorities to release all the amounts deducted from the salary of the applicant so far since the impugned order dated 10.5.2012 forthwith with interest;

(f) An order as to cost;

(g) Any other order/orders as Your Lordships may deem fit and proper.”

3. The case of the applicant as submitted by his Ld. Counsel is as follows:-

That, the applicant had joined Postal department in June, 2000 as PA (SBCO). A fraud was detected in Savings Bank and Recurring Deposit Account committed by Gramin Dak Sevak Branch Post Master of Khankar Bazar Branch Post Office under Mograhat Sub Post Office relating to the period from 2003-2006.

That, the applicant has been posted at Diamond Harbour H.O. on and from 26.9.2005 as EA (SBCO) that is during the last nine months of the

period to which the fraud was related.

That, after six and a half years, the applicant was served with a statement of imputation of misconduct or misbehaviour vide memo dated 18.11.2011 and was charged for failing to act as per provisions of Rule 122 and Rule 126(2) of P.O. S.B. Manual having failed to detect the said fraud earlier.

That, although the applicant had submitted his defence to the disciplinary authority, the said authority did not consider his submission judiciously; instead penalty was imposed by way of recovery of major amount of loss from the applicant's salary.

That, the applicant thereafter preferred an appeal before the appellate authority, who upheld the penalty order issued by the disciplinary authority.

4. That being aggrieved and having no other alternative, the applicant preferred the instant O.A.

5. The respondents, on the other hand, argued that the matter is related to misappropriation in different SB/RD Accounts that have been started at the Khankar Bazar Branch Post Office committed by one, Shri Dasarathi Sarkar, GDSBPM, Khankar Bazar B.O. in account with Magrahat S.O. under Diamond Harbour H.O. for which department has sustained a huge loss to the tune of Rs. 15,10,368.10. The applicant, while performing the duties of PA/SBCO Diamond Harbour H.O. during the period from 26.9.2005 to 30.6.2005, failed to call the list of balance of RD accounts that have been started at Magrahat S.O.; these details were not send by Magrahat S.O. directly (before the 10th of the month following due month of agreement) as was required under Rule 126(2) of POSB Man Vol-I (2006 Edition).

Post decentralisation of RD works since 2003, the RD data relating to Sub office transactions in H.O. was to be fed by SBCO in system software as per Rule 122 of POSB Man Vol. - I (corrected upto 31.12.2006).

The applicant having been entrusted with the basic job of balance verification of RD accounts, failed to carry out his duties in checking the system of RD accounts for which a continuous fraud continued to be committed and the department sustained a loss permanently to the tune of Rs. 1,10,180/- towards settlement of RD claims.

6. Hence, a chargesheet under Rule 16 of the CCS (CCA) Rules, 1965 was prepared and issued and subsequently disciplinary action against the said applicant was initiated vice No. FD4-1/10/2011/SBCO dated 18.11.2011. The said proceedings were finally disposed of on 10.5.2012 whereby the official was punished with recovery of Rs. 27,500/- from his pay. The appellate authority upheld the penalty as imposed by the disciplinary authority.

7. Having heard both Counsels, the documents on record were examined in details whereby it is found:

- (a) That, the applicant was served with a memorandum dated 18.11.2011 (Annexure 'A-1' to the O.A.).
- (b) That, the applicant submitted a statement of defence dated 28.11.2011 (Annexure 'A-2' to the O.A.) to the disciplinary authority.
- (c) Thereafter the disciplinary authority, having taking into account such statement of defence and the charges so framed, issued the minor penalty of recovery which would be ensured from the pay of the applicant in 14 instalments out of which thirteen instalments were of Rs. 2000/- p.m. and last instalment was for Rs. 1500/- for final and 14th instalment of recovery.

It has been brought out very clearly in the order of the disciplinary authority that as per Agreement, work of different categories of accounts under Small Savings Scheme are done at SBCO and as the RD work was entrusted to the charged official, namely the applicant, hence, it was his duty to obtain the six monthly list of RD Accounts of Magrahat S.O. to verify it with proper consultation with the concerned supervisor and

Postmaster Diamond Harbour H.O.

The disciplinary authority has also not accepted the argument of the charged official/applicant for non-functioning of the system software leading to non-receipt of return from SOSB Branch and six monthly RD lists of balances from Magrahat S.O. as because if the default of system software had been reported to the Supervisor or to the Postmaster, immediate remedial action could have been taken but the charged official/applicant had chosen to remain silent about the non-functioning of the system software during the relevant point of time. The argument that the computer was not supplied to SBCO Branch of Diamond Harbour H.O. as defended by the applicant has also not been accepted by the Disciplinary Authority as because in the absence of specific orders of competent authority for suspension of RD work at SBCO Branch Diamond Harbour H.O. regarding non-submission of six monthly list of balances in respect of RD accounts by Magrahat S.O. for ledger agreement such lists had to be prepared manually. The Disciplinary Authority had correctly concluded that had such kind of irregularity been detected by the charged official/applicant, such kind of fraud could have been prevented which led to substantial pecuniary loss for the respondents.

8. The orders of the appellate authority dated 8.2.2013 in response to the applicant's appeal dated 22.6.2012 was examined in detail wherein the appellate authority had taken into consideration the submissions made by the charged official/applicant, had referred to the rules of POSB Man. Vol. I and thereafter, after application of mind, had upheld the penalty imposed by the disciplinary authority. It is worthwhile to record the order of the appellate authority as below:-

“ DEPARTMENT OF POSTS, INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL
WEST BENGAL CIRCLE: KOLKATA- 700 012

This is regarding disposal of appeal dt. 22.6.2012 preferred by Sri Narayan Thakur, PA, SBCO, Alipur HO against the order passed by Sr. PM, Alipore HO who awarded punishment of recovery of Rs. 27,500/- from pay in a disc. Proceedings initiated under Rule-16 of CCS (CCA) Rules, 1965.

Brief of the case is as under:-

Sri Narayan Thakur while working as PA Diamond Harbour HO during the period from 26.9.2005 to 30.6.2006, a huge amount of fraud to the tune of Rs. 15,10,368.10 during the period from 2003 to 29.6.2006 was committed by Sri Dasarathi Sarkar, GDSBPM, Khankar Bazar BO in account with Magrahat SO under Diamond Harbour HO in different SB, RD accounts standing at Khankar Bazar BO. As per Rule 122 of POSB Man. Vol. I SB procedure, after decentralisation of RD Scheme, the RD datas relating to SOs transactions in HO will be fed by SBCO in the system software and as per Rule 126 (2) of OSB Man. Vol. I Savings Bank Procedure, 2nd Edition corrected upto 31.12.2006 (with author's note) the SOs have to submit the list of balance in respect of RD accounts to SBCO before 10th of month following the due month of agreement. But while Sri Thakur worked as PA, Diamond Harbour HO during the aforesaid period, Sri Thakur failed to maintain devotion to duty as required under Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

Being aggrieved by above order of punishment, Sri Thakur preferred the instant appeal.

Salient points highlighted by the official are as under:-

1. Rule quoted in the statement of imputation of Rule 122 along with author's note but author's opinion is not applicable while imputing charges.
2. Chargesheet be ab initio and ipso facto stands vitiated for initiating issuance after 7 yrs. Of incidence.
3. SBCO branch of Diamond Harbour HO was not computerised till 30.6.2006 and subsequently RD, MIS accounts of SB could not be created under HO system software till 30.6.2006. The charge of violation of Rule 126(2) of POSB Man. Vol. I is not based on provision of rule but based on suspicion since the rule lays down the procedure to be followed by SO staff as well as HO staff and the rule does not contain that SBCO will call for the list of balances from SOs.
4. Charge sheet does not contain assessment of contributory negligence to the charged official in realistic manner, actual amount of loss and fraud in RD A/Cs, modus operandi etc.

The case is examined and it is observed that:-

1. It is fact that Rule 122 of POSB Man. Vol.I along with author's note was quoted in the statement of imputation and author's note may not be followed by the charged official but in the statement of imputation violation of Dte's order No. 113-1/2002-SB dt. 13.12.2002 was clearly indicated. Author's note in this regard on decentralisation of RD work derives from Dte. Order as stated ibid. So, though it is true that system software at the material time was not in operation to feed data of RD transaction of Khankar Bazar BO at Diamond Harbour HO, yet the charged official during his incumbency failed to verify the defrauded transaction of RD A/c with the held of SORD list of transaction, RD

journal, SO summary etc. And even he miserably failed to watch over the receipt of consolidated journal from HO.

2. Till completion of pastwork verification and identification of subsidiary offender in this fraud case there was no feasibility to issue charge sheet.

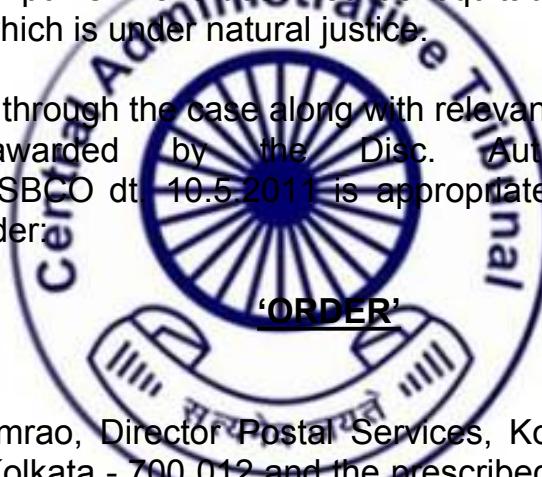
3. The charged official has got enough opportunity to submit his representation against the specific violation of Rule 122 and 126(2) of PO SB Man. Vol. I. The basic duty of balance verification of RD A/cs of Magrahat SO after 2003 was obviously under the share of the charged official for which he has been identified as subsidiary offfender.

4. The argument made by the CO that system software was not in operation till 2006 that does not mean the work as required under rule was stopped by the authority. The charged official failed to comply the job on his part as was required under Rule 122 & 126(2) of PO SB Man. Vol. I (corrected upto 2006).

5. As per Rule 126(2) Magrahat SO was required to submit the list of balance of the RD to SBCO directly. But in the instant fraud case the said SO did not send it and no watch over the matter was done by the said CO for which the checking system got breakdown and the incessant fraud in the RD account committed by the BPM Khankar Bazar BO. So the CO raised some irrelevant points here.

6. At per DG's instruction Vig. Letter No. 8-3/2003-INV dt. 25.2.2003 the recovery of punishment deserves as equitable to his individual lapses issued which is under natural justice.

I have gone through the case along with relevant records and found punishment awarded by the Disc. Authority vide No. FD4-1/10/2011/SBCO dt. 10.5.2011 is appropriate. Therefore I pass the following order:



I, Rajeev Umrao, Director Postal Services, Kolkata Region West Bengal Circle, Kolkata - 700 012 and the prescribed appellate authority as contained in Rule-24 of CCS (CCA) Rules, 1965, in exercise of power conferred upon me by Rule 27 ibid hereby uphold the punishment issued by the Disc. Authority and dispose of the appeal of Sri Narayan Thakur, PA(SBCO), Alipore HO.

(Rajeev Umrao)
DPS(Kolkata Region)
West Bengal Circle
Kolkata - 700 012.

Narayan Thakur,
PA(SBCO), Alipore HO
(Through Sr. Postmaster Alipore HO Kolkata - 700 027)."

9. During the oral arguments the Ld. Counsel for the applicant pointed out that no copy of the enquiry report had been given to the charged official/applicant. Ld. Counsel for the applicant has also cited in his support

an order dated 15.6.2015 in O.A. No. 5 of 2013 of the Jabalpur Bench, wherein the main contention of the applicant was that he had made a request for inquiry which ought to have been considered by the disciplinary authority. On a careful perusal of the submissions made by the applicant at Annexure 'A-2' to the O.A. dated 28.11.2011 as well as appeal at Annexure 'A-5' to the O.A. dated 22.6.2012, of the charged official/applicant, nowhere has the applicant requested for a formal enquiry. The relevance of decision of the Jabalpur Bench hence stops short as the grounds differ in the applications.

10. In his rejoinder to the reply, the applicant has raised the issue of delay in issue of the chargesheet. It has been brought out in the order of the appellate authority, however, that charge sheet could only be issued upon completion of past work verification and identification of subsidiary offender in this fraud.

Ad seriatim, we now note as to why the grounds of seeking the relief have failed to be substantiated by the applicant successfully:-

(a) The ground that the disciplinary authority erred materially in fact and in law by passing the impugned punishment dated 10.5.2012 has not been proved as because Respondents have demonstrated clear sifting of evidence and reference to the extant rules in this regard.

(b) The appellate authority's order is based on clear application of mind and observance of rules.Hence, the ground that there was no proper appreciation of consideration of evidence, fails.

(c) The fact that applicant's natural justice has been violated is not correct as because he has been given opportunity at every stage to defend himself and he has done so as evidenced by Annexure 'A-2' and 'A-8' to

the O.A.

It is a settled principle of law that the Tribunal cannot go into the basic decision, that is the nature and quantum of penalty imposed in a disciplinary proceeding. It can only interfere in a case just to see whether:-

- (i) statutory provision or rules prescribing the mode of enquiry were disregarded.
- (ii) rules of natural justice were violated.
- (iii) there was no evidence, that is, punishment has been imposed in the absence of supporting evidence.

If there are some legal evidence on which the findings can be based, the Tribunal cannot go into the adequacy of reliability of that evidence, even if it be of the view that on the same evidence, its conclusion may have been different.

- (iv) consideration extraneous to the evidence or the merits of the case taken into account.
- (v) the conclusion was so wholly arbitrary and capricious that no reasonable person could easily arrive at the conclusion.

The instant application does not call for interference on any of the above grounds.

11. Hence, the O.A. fails to succeed and is dismissed on merit. The parties will bear their respective costs.



(Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

SP