



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

Reserved on -31.05.2016

OA No.350/00347/2014

Dated of order: 3.6.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

Ganesh Prasad, Son of Late Rajkishore Bhakat, an employee of the Department of Posts & Telegraphs, Central Kolkata Division, Kolkata-700007 and retired as Chief Supervisor, SBCO, Park Street Head Post Office, Kolkata -700016 and residing at Berhampore, PO. Berhampore, District. Murshidasbad, Pin-742101.

..... Applicant

For the Applicant – Mr.A.K.Banerjee, Counsel

-Versus-

1. Union of India represented through the Secretary, Department of Post, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, West Bengal Circle, having its office at P-36, Chittaranjan Avenue, Kolkata-700012.
3. The Director of Postal Services, Kolkata Region, Office of the CPMG, West Bengal Circle, Kolkata-700012.
4. The Senior Superintendent of Post Offices, Central Kolkata Division, Kolkata-700007.
8. The Senior Postmaster, Park Street Head Post Office, Kolkata- 700016.

For the Respondents – Mr. S.K.Ghosh, Counsel

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ORDERMS. JAYA DAS GUPTA, AM:

Heard the Learned Counsel for both sides.

Consulted the records.

2. The Applicant, (Ganesh Prasad) has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"i) An order be passed directing the respondent authorities and/or its subordinates to rescind, revoke and/or cancel the Memorandum of minor penalty charge sheet dated 18th December, 2012 (being Annexure-A/2);

ii) An order be passed directing the respondent authorities to rescind, revoke and/or withdraw the ex parte order of punishment vide No. F6-1/6/2009-10/Disc./Sri Ganesh Prasad at Kolkata 700007 dated 22nd February, 2012 issued by the respondent No.4 for the reasons the same were issued without following the relevant service rules and the same being in complete violation of natural justice;

iii) An order be passed directing the respondents to rescind, revoke and/or withdraw the impugned Appellate Order dated 21st October, 2013/24th October, 2013 communicated under Memo dated the 5th November, 2013 being Annexure A-16 of this original application;

iv) An order be passed directing the respondents and each one of them to refund the amount deducted from the salary of the applicant with immediate effect with interest accrued thereto;

v) An order be passed directing the respondents and each one of them to produce all the records, papers and documents pertaining to

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this case before this Hon'ble Tribunal so that
conscionable justice may be administered;

vi) Pass such other order or orders,
direction or directions as Your Honour may deem
fit and proper."

3. The facts of this case, in nut shell, are that the applicant performed the duty of Chief Supervisor, SBCO, Park Street, HPO during the period from March, 2009 to June, 2009 and his responsibility was to keep supervision over the proper checking of withdrawal vouchers/closed vouchers (SB/MIS/RD) of the transaction made at Asylum Lane PO under accounts jurisdiction of Park Street HPO. He was found to fail in his duty of supervising the irregularities regarding encashment and disbursement of MIS accounts as per rules. Irregular closure of RD account, making payment through cash instead of cheques etc by the Applicant were also detected. It is the contention of the authorities that failure of Shri Ganesh Prasad, Chief Supervisor SBCO in supervision thus facilitated the commission of fraud on 17.3.2009 and 18.3.2009 causing a loss of about Rupees Three and Half Lakhs to the department. He was accordingly identified as one of the subsidiary offender and proceeded against under Rule 16 of the CCS (CC&A) Rules, 1965 on 18.12.2012 which is a minor penalty proceedings. The charge sheet was issued and he was given an opportunity to make such representation

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as he wished in his favour. In this connection the letter dated 18.12.2012 (A/2) from the postal authorities is extracted below:

"Department of posts India,
O/o the Sr. Supdt. Of Pos, Central Kolkata Division,
Kolkata-700007.
Memo No. F6-1/6/2009-10/Disc/Sri G.Prasad dated at
Kolkata-700007 the 18-12-2012.

1. Sri Ganesh Prasad, Chief Supervisor, SBCO, Park Street H PO, Kolkata-700016 is hereby informed that it is proposed to take action against him under Rule 16 of CCS (CCA) Rules, 1965. A statement of imputations of misconduct or misbehaviour, on which action is proposed to be taken as mentioned above, is enclosed.
2. Sri Prasad is hereby given an opportunity to make such representation as he may wish to make against the proposal.
3. If Sri Prasad fails to submit his representation within ten (10) days of the receipt of the memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Sri Prasad 'ex parte'.
4. The receipt of the memorandum should be acknowledged by Shri Ganesh Prasad.

Encl: As stated above

Sd/-

Sr. Supdt. Of Pos
Central Kolkata Division,
Kolkata-700007.

To
Sri Ganesh Prasad,
Chief Supervisor, SBCO,
Park Street HPO,
Kolkata-700016."

The Applicant on 5.1.2013 requested the authorities for inspection of certain documents which will help him to submit his reply to the charge. Such request of the applicant was acceded to by the respondents and he was allowed to inspect the relevant documents on 17.1.2013 and 23.1.2013. The relevant extract of the official communication dated 22.1.2013 (A/7) and 31.1.2013 (A/10) are extracted below:

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ANNEXURE-A/7

Department of Posts, India
 O/o the Sr. Supdt. Of Pos, Central Kolkata Division,
 Kolkata-700007.

To
 Sri Ganesh Prasad,
 Chief Supv. SBCO,
 Park Street HPO,
 Kolkata-700016.

No.F6-1/6/09-10/Disc/Sri G.Prasad dated at Kolkata -
 700007 the 22.01.13.

Sub: Inspection of relevant documents.

You are requested to attend at the O/o the Sr. Supdt. Of Pos, Central Kolkata Division, Kolkata-700007 at 13:00 hrs on 23.01.2013 in order to inspect further the relevant documents. You are also requested to submit the defence representation if any within 28.1.2013 (Monday) positively. If no representation is received within this target date i.e. 28.1.2013 ex parte decision will be taken in this case.

Sd/- Sr. Supdt. Of Pos
 Central Kolkata Divison,
 Kolkata-700007.

Copy to : Sr. Postmaster, Park Street HPO, Kolkata-700016 for information.

Sd/- Sr. Supdt. Of Pos
 Central Kolkata Division,
 Kolkata-700007.

ANNEXURE-A/10

Department of Posts, India
 O/o the Sr. Supdt. Of Pos, Central Kolkata Division,
 Kolkata-700007.

To
 Sri Ganesh Prasad,
 Chief Supv. SBCO,
 Park Street HPO,
 Kolkata-700016.

No.F6-1/6/09-10/Disc/Sri G.Prasad dated at Kolkata -
 700007 the 31.01.13.

Sub: Disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965 against Sri Ganesh Prasad, Chief Supervisor, Park Street HPO, Kolkata-700016.

Sir,

With reference to your representation u/s it is to intimate you that you have already inspected relevant documents on 17.1.2013 and 23.1.2013 and you are not permitted this time for further examination of documents.

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As such, you are hereby directed to submit your defence representation if any within three (3) days positively from the date of receipt of this letter. If no representation is received within this target date, ex parte decision will be taken in this case.

Sd/- Sr. Supdt. Of Pos
Central Kolkata Division,
Kolkata-700007.

Copy to: Shri S.G.Giri, Sr. Postmaster, Park Street HPO, Kolkata-700016 for information w.r.to his office letter No. B-staff/PKST/12-13 dated 29.1.2013. He is requested please to deliver the above said letter to Sri Prasad, Chief Supervisor, SBCO, Park Street HPO under clear receipt immediately and to report compliance by return FAX.

Sd/- Sr. Supdt. Of Pos
Central Kolkata Division,
Kolkata-700007.

4. However, in spite of repeated order, asking for his representation the applicant failed to submit any such representation tasking the plea that he has not been allowed to inspect all the documents. The authorities, however, felt that documents relevant to his case have been shown to him. Ultimately an ex parte order was passed on 22.2.2013.

Relevant penalty imposed on the applicant is extracted below:

"ORDER

I, Sri N.G.Saha, SSPOs, Central Kolkata Division, Kolkata-700007 in exercise of powers conferred upon me under Rule 12 (2) of CCS (CCA) Rules, 1965 do hereby ordered to recovery of a sum of Rs. 40,000/- (Forty thousand) only from the pay of Sri Ganesh Prasad, Chief Supervisor, SBCO, Park Street HPO, Kolkata-700016 from February, 2013 @ Rs. 20,000/- (Twenty thousand) upto superannuation till March, 2013.

Sd/- (N.G.Saha)
Sr. Supdt. Of Pos
Central Kolkata Division,
Kolkata-700007."

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5. The recovery to the tune of Rs. 40, 000/- had already been made in pursuance of the penalty order quoted above and in the meantime, the applicant retired from service on reaching the age of superannuation.

6. The learned counsel for the applicant submitted an order passed by this Bench on 3.6.2015 in OA No. 1961 of 2010 (Bikash Kanti Mishras Vs Union of India and others) to substantiate his stand that imposition of punishment of recovery for contributory lapse or negligence, as in the instant case, is not sustainable in the eyes of law. The relevant portion of the order is quoted hereunder:

"6. We have considered the rival submissions of the parties with reference to the pleadings and material placed support thereof. We find that the respondents have not disputed in their counter as also in course of hearing that the disciplinary proceedings were initiated under Rule 16 of the Rules ibid and after following due process of rules and principles of natural justice, the applicant has been visited with the punishment of recovery for his contributory lapses, which facilitated the BPM, Tiroi BO to commit fraud. It is worthwhile to mention that imposition of punishment for contributory lapse or negligence has received due consideration in very many cases in past viz in the case of C.H.Harihara Nandan vs Presidency Post Master, Madras and another reported in (1988) 8 Administrative Tribunal Case page 673 by the Ahmedabad Bench of the Tribunal J.M.Makwana Vs UOI and others reported in 2002 (1) ATJ 283 and by the Cuttack Bench of the Tribunal in OA No. 634 of 2009 disposed of on 11th November, 2010 (Sukomal Bag Vs UOI and Ors) which was also upheld by the Hon'ble High Court of Orissa vide order dated 22.8.2011 in WP (C) No. 4343 of 2011 in which recovery for contributory lapses/negligence was held to be illegal. Aforesaid being the facts and law, we see no justification to uphold the order passed by the Disciplinary Authority

dated 11.05.2010 and the order of the Appellate Authority dated 20.8.2010 which are hereby quashed and the Respondents are directed to refund the amount, if any, already recovered from the pay of the applicant within a period of thirty days from the date of receipt of copy of this order.

7. In the result for the discussions made above, this OA stands allowed. There shall be no order as to costs."

7. Since a decision has already been taken by a Division Bench on a similar matter, there is no scope for us to take any alternate view regarding imposition of punishment of recovery in such minor penalty cases. Hence we quash the order of punishment of recovery of Rs. 40,000/- imposed on the applicant along with the Appellate order.

8. Last but not the least; we would like to observe that there are several punishments for minor penalties available under Rule 11 of the CCS (CCA) Rules, 1965 to be imposed if an employee is found guilty in a proceedings initiated under Rule 16 of the Rules, 1965. Therefore, under ordinary circumstances, we would have remanded the matter back to the Disciplinary Authority for considering imposition of any other minor penalty available under Rule 11 of the Rules, instead of recovery. But the applicant has in the meantime retired from service and no punishment can be imposed in a proceedings initiated under Rule 16, which does not subsist after retirement. We, therefore, refrain from remanding the matter back after quashing the present order of punishment.

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9. Hence, it is ordered that the sum of Rs. 40,000/- recovered from the salary of the Applicant in February and March, 2013 be refunded back to the Applicant within two months of getting a certified copy of this order. This OA succeeds. There shall be no order as to costs.

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(Ms. Jaya Das Gupta)
Member (Admn.)

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(Justice V.C.Gupta)
Member (Judl.)

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