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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. O.A. 495 of 2013

Date of order : 27.6.2016

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

DINESH CH. BARMAN

VS.

UNION OF INDIA & ORS. (Posts)

For the Applicant : Mr. J.R. Das, Counsel

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

ORDER (Oral)

Justice Shri Vishnu Chandra Gupta, Judicial Member:

Heard the Ld. Counsel for the applicant and the respondents and
also perused the records.

2. The applicant filed this petition seeking the following reliefs:-

"a) An order directing upon the respondents to cancel, rescind, withdraw a set aside the purported Appellate/revisory order dated 07.06.2012, Disciplinary Order dated 11.11.2011, Inquiry Proceeding, Inquiry Report dated 30.3.2011 and the Charge memo dated 31.5.2010 and put off duty order dated 13.10.2005, approval order dated 14.10.2005 thereto.

b) An order directing upon the respondents to reinstate the applicant at his original post and status with all consequential benefits including the put off duty period to be treated as on duty for all purpose.

c) An order directing upon the respondents to place all the relevant records he placed before the Hon'ble Bench for conscionable justice.

d) An order directing upon the respondents consider the representation made by the applicant dated 06.09.2012 as per Hon'ble Court's direction dated 30.7.2012.

e) Any other order and/a further order/orders as to this Hon'ble Tribunal, seems fit and proper.

f) Costs.

g) Any other appropriate order reliefs as your Lordships may deem fit and proper.

And your applicant as duty bound shall ever pray."

3. The brief facts of the case are that the applicant was served with a memo of charges for the misconduct committed by him during the period commencing from 16.10.1999 to 13.10.2009 while working as GDSBPM/Brahmanir Chowki B.O. According to charges he accepted various amounts from several persons but did not deposit the same in their respective accounts and misappropriated the same.
4. After serving the memo of charge a departmental enquiry was conducted and after conducting the enquiry, the disciplinary authority passed an order awarding punishment of debarring the applicant from being considered for recruitment to Gr. 'D' (now called MTS) for a period of three years with immediate effect. His punishment order was passed on 11.11.2011 after considering the representation and the enquiry report submitted by the enquiry officer to the disciplinary authority. The applicant did not prefer to file any appeal against this order. However, the appellate authority suo motu exercised the power of reviewing the order after exercising the jurisdiction under Rule 19(1)(ii) of GDS (C&E) Rules, 2011, issued notice to the applicant to show-cause dated 21.3.2012 why the penalty may not be enhanced. The applicant submitted his representation of 5.4.2012. Thereafter considering the representation of the applicants and the reply submitted by him during the enquiry proceedings wherein the applicant admitted all the charges, arrived at a finding that the punishment awarded by the disciplinary authority is not commensurate with the gravity of the charges even if there is no loss to the government or this might be the first case of charged official, hence he deserves severe punishment. The punishment was enhanced by awarding the applicant "removed from



engagement" which shall not be a disqualification for future employment.

This order was passed on 7.6.2012 by the Director of Postal Services being appellate authority as is evident from the order itself dated 7.6.2012.

Thereafter the applicant made a representation to Postmaster General, North Bengal & Sikkim Region, Siliguri vide letter dated 24.8.2012 directing the applicant that he may prefer a revision petition before the Postmaster General, North Bengal & Sikkim Region, Siliguri against the revisionary order dated 7.6.2012 under Rule 19(1)(ii) of the GDS (C&E) Rules, 2011 to the concerned Divisional Head. The letter dated 24.8.2012 is reproduced hereinbelow:-

" DEPARTMENT OF POSTS, INDIA
OFFICE OF THE POSTMASTER GENERAL,
NORTH BENGAL & SIKKIM REGION,
SILIGURI-734001

To

Shri Dinesh Chandra Barman,
S/o Lt. Kalipada Barman,
Vill. + P.O. Brahmanih Chowk,
Via.-Diwanhat, Dist. – Coochbehar,
Pin – 736 134.

No. Vig./Punishment/Rev-24/D.C.Barman

Dated: 24.8.2012

Subject: Appeal/Representation against enhanced
penalty-prayer for due consideration.

Ref. : Ref. Your Appeal/Representation dated 13.8.2012.

With reference to your appeal/representation referred above, requesting exonerate you from the charges brought against you and reinstate you at the existing post and status from the date of said removal and treat the period of put off duty as on duty for all purpose, it is intimated that as the punishment order dated 11.11.2011 issued by the disciplinary authority has suo-moto been reviewed by the Appellate Authority and the Appellate authority revised the punishment order of the disciplinary authority with "Removal from engagement which shall not be a disqualification for future employment."

In above circumstances, you may prefer revision petition before the Postmaster General, NB & Sikkim Region, Sikkim against the Revisionary order dated 7.6.2012 under Rule 19 of GDS (C&E) Rules, 2001 through the concerned Divisional Head.



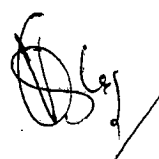
This issues with the approval of DPs, NB & Sikkim Region, Siliguri.

The Assistant Director,
Office of the Postmaster General,
North Bengal & Sikkim Region,
Siliguri-743 001."

5. The fact reveals that the applicant did not prefer an appeal. The appeal is a creation of a statute and the appellate authority can exercise the power of appeal only when the aggrieved person preferred an appeal. If the department was aggrieved, but department also did not file any appeal. Hence, appellate authority cannot in any way while exercising the powers of appeal cannot review the punishment. At the same time, the appellate authority cannot exercise the power under Rule 19 which are vested in revisional authority and in the garb of that the appellate authority cannot pass an order under Rule 19 as the same is not permissible under law.

6. When the representation was made by the applicant against the enhanced punishment to Postmaster General, North Bengal & Sikkim Region, Siliguri and Director of Postal Services, Siliguri, the aforesaid reply has been given which also reveals that Director Postal Services treated the order dated 7.6.2012 as an order passed by the appellate authority and directed the applicant to file a revision under Section 19 of GDS (C&E) Rules, 2001 to the concerned Divisional Head.

7. From above facts it clearly emerged out that authorities in this case acted arbitrarily. The appellate authority is subordinate to the revisional authority cannot exercise the power of a superior authority of revision. Hence, the order passed by the appellate authority while exercising the power of the revisional authority cannot be allowed to sustain and the same is liable to be set aside.



8. Accordingly, this petition deserves to be allowed. The applicant would be entitled to all consequential benefits on the ground of setting aside the order dated 7.6.2012 passed by the appellate authority. However, the order passed by disciplinary authority shall continue to operate.

9. The O.A. is, accordingly, disposed of. There shall be no order as to costs.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)

SP