

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A./O50/00949/2015

Reserved on : 01.08.2018
Date of order: 21.08.2018

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]

Devanand Pandit, son of Late Ram Jatan Pandit, resident of Road No. 5, Lane No.07, New Colony Kharkhura, PO – Gaya, P.S. & District - Gaya, Pin – 823003.

..... Applicant

By Advocate : Shri Om Prakash Singh

Versus

1. The Union of India the Secretary-Cum-Director General, Department of Posts, Government of India, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General, Bihar Circle, Patna – 800001.
3. The Director Postal Services, Central Region, Bihar, Patna – 800001.
4. The Superintendent of Post Offices, Bhojpur Division, Arrah.

..... Respondents.

By Advocates: Mr. Rabindra Kumar Choubey

O R D E R

Per Jayesh V. Bhairavia, Member [J]:- The applicant has filed this OA seeking the following reliefs:

“8[I] Your Lordships may graciously be pleased to quash and set aside the order of Director Postal Services, Central Region, Bihar Patna, Respondent No.3 issued on 29.05.2014 vide CPMG, Bihar Memo No.Inv/C-2/1/2001 dated 29.05.2014 and corrigendum issued vide Respondent No.3 on 30.06.2014 under CPMP, Bihar Memo No. Inv/C-2/1/2001 dated 30.06.2014.

[2] Your Lordships may graciously be pleased to set aside the order of CPMG Bihar Patna, respondent No.2 issued on dated

10.04.2015 vide CPMG Bihar, Patna Memo No.Vig/RP-16/Appeal/D.N. Pandit/2014 dated 10.04.2015.

- [3] The respondents may be directed to sanction the recovered amount in applicant's favour.*
- [4] The respondents may be directed to restore the increment which was withheld and to sanction the resultant amount in favour of applicant.*
- [5] Any other relief/reliefs as Your Lordships may please deem fit and proper in the interest of justice.*
- [6] Cost of the case may please be awarded to the applicant for unnecessary expenditure incurred in litigation, mental agony financial harassment sorrow, suffering and pain."*

2. The applicant's cases in brief, is as follows:-

2.1 The applicant while working as Inspector at Piru Sub Division, Arrah from 02.11.2005 to 10.04.2008 carried out annual inspection of Sikraul Fatehpur B.O. in account with Piru SO under Bhojpur Division for the year 2006 and 2007 on 23.05.2006 and 28.05.2007 respectively. He had submitted his inspection remark on 21.05.2006 and 27.05.2007 respectively.

2.2 The competent authority had issued charge-sheet under Rule 16 of CCS [CCA] Rules, 1965 vide Office Memo dated 06.11.2013 [Annexure-A/1] wherein it was alleged that he failed to inspect the BO as per the prescribed "Questionnaire for Inspection of the Branch Post Offices". It is further alleged that he did not call for passbooks of SB/RD/TD Accounts standing at the BO for verification as prescribed and did not issue any notice in form SB-6 to the depositors. The said inaction/slackness on the part of the applicant facilitated/allowed one Shri Barmeshwar Nath Pandey, the then GDSBPM, Sikraul Fatehpur BO to continue commission of fraud in several SB/RD/TD Accounts at this BO, which continued from 28.03.2004 to 21.04.2010, thereby putting the department loss to the tune of Rs. 3,35,913/-. It is further alleged that had the applicant acted as per the rules, the fraud could have been detected much earlier and loss to the Govt. could have been minimized. Therefore, he was alleged to have violated the provisions contained in the Rules/Instructions, i.e. Question No. 16(A) of Inspection questionnaire for BOs and Rule 3[1][ii]&[iii] of CCS [Conduct] Rules, 1964. The copy of statement of imputation of misconduct had been provided to the applicant and he was directed to

submit his representation against the said memorandum dated 06.11.2013 (Annexure A-1).

2.3. In response to it, the applicant represented to the Chief Postmaster General on 03.01.2014 requesting to exonerate him from the charges considering his written statement of defence wherein he had contended that the fake accounts were opened by using passbooks of MSY and he was not made aware about it by anyone even by Piru SO or by his predecessor; that question no. 16(A) of Inspection Questionnaire deals in r/o existing accounts only; that the GDSBPM opened TD accounts on fake documents out of account and he had not committed any fraud. He had rendered 34 years of blameless spontaneous service with loyalty, sincerity and devotion to the department. He was at the verge of superannuation. Therefore, considering the same he may be exonerated of the charges. [Annexure-A/2].

2.4 It is contended that the Disciplinary Authority did not accept the defence of the applicant and found the charges levelled against the applicant proved and, therefore, awarded the punishment of withholding of next increment of pay for one year without cumulative effect and also a recovery of Rs. 96,000/- from the pay of the applicant in ten equal installments of Rs. 8000/- each commencing from the month of June, 2014, vide memo dated 29.05.2014 [Annexure-A/3]. Further, by corrigendum dated 30.06.2014 [Annexure-A/4] installments were made “twelve” instead of ‘ten installments.’

2.5. Aggrieved by the said punishment order dated 30.06.2014 and 29.05.2014 , the applicant filed an appeal on 11.07.2014 before the competent Appellate Authority, i.e. CPMG, Bihar Circle, Patna [Annexure-A/5]. However, the said Appellate Authority confirmed the punishment imposed upon him, vide its order dated 10.04.2015 [Annexure-A/6].

2.6. The applicant pleaded that he received a copy of inquiry report dated 14.02.2011 [Annexure-A/7] relating to alleged fraud in Sikraul Fatehpur BO through RTI and it was established in CLI report that there were total eight subsidiary offenders whose alleged negligence in duty was the reason of fraud and Shri Barmeshwar Nath Pandey, GDSBPM was the Principal Offender. An FIR in this regard was also lodged against him and the departmental proceeding is going on.

3. The learned counsel for the applicant submitted that as per

findings of CLI report, three Inspectors of Post Offices, namely Shri Manoj Kumar, Shri Devanand Pandit [applicant] and Shri Anil Kumar, were charge-sheeted for violation of Question No. 16(A) of Inspection questionnaire for BOs and Rule 3[1][ii]&[iii] of CCS [Conduct] Rules, 1964 for failure in their duty and facilitated the fraud/loss of Rs. 3,95,913/- to the department. The charges levelled against all three employees/delinquent were common. The disciplinary proceedings were conducted by the different authorities/officers. The charges were found proved against all the three employees. However, the disciplinary authorities had imposed different punishment upon the charged officials though the charges levelled against the CO were identical in nature.

It is further contended that in the case of co-employee/delinquent, i.e. Shri Manoj Kumar, he was awarded punishment of recovery of Rs. 15000/- only and Rs. 5000/- per month commencing from the pay of November, 2014 by Superintendent of Post Offices, Bhojpur Division, Arrah under memo dated 18.11.2014 [Annexure-A/8].

And in the case of Shri Anil Kumar (charged official-delinquent) he was awarded punishment of recovery of Rs. 5000/- in ten installments of Rs. 500/- each from his pay commencing from 01.11.2013 and stoppage of his next increment for three months without cumulative effect, vide memo dated 29.10.2013 by Senior Superintendent of Post Offices, Patna [Annexure-A/9].

4. However, in the case of the applicant the quantum of punishment awarded by the Director Postal Services (HQ), Patna is higher than that of the punishment awarded to two other Inspectors of Post Offices, i.e. one Manoj Kumar and Anil Kumar. Therefore, the learned counsel for the applicant submitted the punishment awarded to the applicant is discriminatory in nature and the said action of the respondents is in violation of Article 14 of the

Constitution of India.

5. It is further submitted that as per the CLI inquiry report dated 14.02.2011 submitted by the Director Postal Services (HQ), Bihar Circle, Patna it was found that the modus operandi of the principal offender, i.e. Shri Barmeshwar Nath Pandey, GDSBPM working at Sikraul Fatehpur BO in account with Piru SO was that he used to misappropriate the amount deposited by the depositors of Accounts by not taking into the BO Account and used to enter the deposits in paras books. GDSBPM accepted money from the depositor for deposit in TD Accounts and issued unused MSY blank pass books with fake Account No. of TD himself. The said GDSBPM obtained blank MSY pass books and even succeeded to obtain date stamp impression in collusion with the staff of Piru SO. It was further observed in the said inquiry report that the major lapses was non-maintenance of stock register of blank MSY pass book either at BO or SO point, non maintenance of Register for sanctioned warrant of payment in respect of BO, non keeping of proper watch over retention of cash at BO and closure of account without pass book. It is also observed that along with the principal offender there were eight subsidiary offenders including the name of applicant and other Inspector, i.e. Shri Manoj Kumar and Shri Anil Kumar (Annexure A-7 refers).

6. Based on this report, the learned counsel for the applicant submitted that the Disciplinary Authority and the Appellate Authority failed to appreciate the fact that the applicant was working as Inspector and he was neither custodian of any type of Bank Pass Book nor defrauded any amount and not contributed any facility or permission to the principal offender or any other official in defraud of cash.

7. It is further contended that as per Rule 12 of CCS [CCA] Rules,

1965 that “Director General P&T Orders” that recovery is a special type of punishment and in the case of proceeding relating to recovery of pecuniary losses caused to the Government by negligence or breach of orders by a Government servant, the penalty of recovery can be imposed only when it is established that the Government servant was responsible for a particular act or acts of negligence or breach of orders or rules and that such negligence or breach caused the loss. It is also provided that in the case of loss caused to the Government, the competent disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of an officer, and while determining any omission or lapses on the part of an officer the bearing of such lapses on the loss considered and the extenuating circumstances in which the duties were performed by the officer, shall be given due weight. However, in the case of the applicant the disciplinary authority and the appellate authority totally failed to appreciate the aforesaid provision. Therefore, also the impugned order is bad in law. The learned counsel placed reliance on the said provision which is produced at Annexure A/10.

8. Respondents contested the case by filing a written statement and denied the contention of the applicant. According to the respondents, Sri D. N. Pandit, the applicant herein, while working as Inspector, Posts, Piru Sub Dn., Piru from 02.11.2005 to 10.04.2008, he had inspected account maintained at Sikraul Fatehpur BO in account with Piru SO for the year 2006 and 2007. He had submitted his inquiry reports to Divisional Office, Ara on 21.07.2006 and 27.07.2007 respectively. However, on receipt of complaint of depositor of Sikraul Fatehpur BO a detailed enquiry was conducted by the Director, Postal Service (HQ), Bihar Circle and as per the said inquiry report dated 14.02.2011 It was found by the competent authority that the applicant did not verify even a

single pass book of Saving Bank Accounts [SB/RD/TD] standing at Sikraul Fatehpur BO which was to be collected from the depositors for verification as prescribed in inspection questionnaire. Further, Sri D.N. Pandit did not carry out on spot collection of SB/RD/TD pass books during the inspection for their verification from BO SB journal/account office/HO about DLT and balance vis-à-vis pass book entry. The inspection was not done as per inspection questionnaire.

9. The respondents pleaded that as per the norms 29 paras had to be covered in the inquiry report but only 19 and 21 paras were covered in the inquiry report submitted for the year 2006 and 2007 respectively. This conduct of the applicant facilitated the fraud/loss of Rs. 3,35,913/- to the Department. Therefore, the applicant was charge-sheeted and after considering the defence of the applicant the Disciplinary Authority held that the charges levelled against the applicant was proved and accordingly awarded the punishment. vide Memo dated 29.05.2014 (Annexure A-3 refers).

10. The respondents further pleaded that Sri Barmeshwar Nath Pandey, GDSBPM, Sikraul Fatehpur BO committed fraud in several SB/RD/TD accounts from 28.03.2003 to 21.04.2010 and the total defrauded amount is Rs. 3,95,913/-.

11. The respondents admitted that the Disciplinary Authority decided the case of different charged officers to the best of that eligibility and recorded the findings followed by award of punishment upon the charged official. The applicant cannot claim equity with the other co-offenders because the disciplinary proceeding conducted and concluded by the different disciplinary authorities.

12. The applicant filed a rejoinder to the written statement and

reiterated the submissions which he has already submitted in this application. However, he relied on a decision rendered by Hon'ble Apex Court in case of **State of Uttar Pradesh and Ors. vs. Rajpal Singh**, [2010] 5 SCC 783 wherein it has been held that – “It is undoubtedly open for the Disciplinary Authority to deal with delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in awarding of punishment, would be discriminatory.” The learned counsel for the applicant also placed reliance on the order passed by this Tribunal in OA No. 813 of 2013 dated 30th July, 2015, judgment rendered by Hon'ble Apex Court in case of **LIC of India & Ors. Vs. Triveni Sharan Mishra** reported in 2014 [3] AISLJ 219, **Man Singh vs. State of Haryana** and Ors. reported in 2008 [12] SCC 331, **Tirth Kumar Sharma vs. UOI & Ors.** reported in 2014 [3] AISLJ 287 [CAT] and submitted that the punishment imposed on the applicant is arbitrary and unfair as compared to his co-employees, in similar cases penalty should be similar and therefore, the impugned order is illegal.

13. Heard the parties and perused the materials on record.

14. In the present OA, it reveals that the applicant was working as Inspector, Piru Sub Division Arrah from 02.11.2005 to 10.04.2008 and he made annual inspection of Sikraul Fatehpur B.O. in account with Piru SO under Bhojpur Division on 23.05.2006 and 18.05.2007 respectively. Thereafter, he had submitted his inspection remarks on 21.05.2006 and 27.05.2007. Subsequently, in the year 2010 the respondents had received complaint dated 21.04.2010 from Smt. Shanti Devi and Shri Ravi Bhushan Pandey account holder as well as depositor with Sikraul Fatehpur Branch.

Therefore, detailed enquiry was made by the respondents and as per the CLI report dated 14.02.2011 it was came to knowledge of the respondents about fraud committed by various officers working at the said Branch which involved loss to the tune of Rs. 3,35,913/- to the department. As per the said inquiry report one Barmeshwar Nath pandey working as GDSBPM at Sikraul Fatehpur in account with Piru SO was found as principal offender and eight other subsidiary offenders which include the applicant, i.e. Shri D.N. Pandit as also Shri Manoj Kumar and Shri Anil Kumar, all of them were working as Inspector of Posts, Piru Sub Division at the relevant time.

15. The applicant was charge-sheeted, vide memorandum dated 06.11.2013 and was served with statement of imputation of misconduct whereby it was alleged that the delinquent applicant violated the provisions contained in the Rule 3[1][ii] and [iii] of the CCS [Conduct] Rules, 1964 and Question No.16[A] of Inspection Questionnaire for BOs [Annexure-A/1]. After providing due opportunity to the applicant for his defence the Disciplinary Authority vide order dated 29.05.2014 [Annexure-A/3] found that the charges levelled against the applicant fully proved. The said Disciplinary Authority observed in its findings as under:-

“I hold that the charges levelled against said Shri D.N. Pandit, ASP, [PG] are fully proved. The lapses on his part caused non detection of fraud in time which ultimately put the Government to huge loss. He has worked as IP, Piru Sub Division from 02.11.2005 to 10.04.2008 and inspected the B.O. twice in the year 2006 and 2007. Inaction/slackness on his part facilitated/allowed Sri Barmeshwar Nath Pandey, the then GDSBPM, Sikraul Fatehpur B.O. to continue commission of fraud in several SB/RD/TD accounts at the B.O. from 28.03.2003 to 21.04.2010 thereby putting the department to loss to the tune of Rs. 3,35,913/- , detected as yet. Past work verification is yet to be finalized and this amount may increase much more. The said Sri D.N. Pandit, therefore, deserves to be punished suitably to meet the ends of justice to make good the huge loss sustained by the department and for the lapses on his part.”

16. Accordingly, the said authority had awarded the punishment of withholding of next increment of pay for one year without cumulative effect and also recovery of Rs. 96000/- from the pay of Shri D.N.Pandit, ASP [HQ], the applicant, , O/o the SSPOs, Gaya Division Gaya in ten installments of Rs. 8000/- each commencing from the pay for the month of June, 2014 followed by the corrigendum dated 30th June, 2014 whereby instead of recovery in ten equal installments it was ordered to be recovered in 'twelve installments' [Annexure-A/4].

17. It is noticed that against the said order of punishment, the applicant had submitted statutory appeal before the appellate authority which was decided on 10.04.2015 [Annexure-A/6] affirming the decision taken by the Disciplinary Authority.

18. The learned counsel for the applicant mainly submitted that an amount of Rs. 3,35,913/- was alleged to be defrauded by the principal offender, i.e. Barmeshwar Nath Pandey while working as GDSBPM at Sikraul Fatehpur in account with Piru SO and other subsidiary offenders which include the applicant and other two Inspectors, namely, Manoj Kumar and Anil Kumar. The other offenders namely Shri Manoj Kumar, APO and Shri Anil Kumar, APO were also charge-sheeted for violation of the same service rules/orders and charges levelled against them were also identical as levelled against the applicant. The charges were found to be proved by the DA, However, the respondents had imposed lesser punishment to the said co-offenders, whereas the applicant was awarded higher punishment for recovery of Rs. 96,000/- from the salary against the total Rs. 3,35,913/- defrauded amount, i.e. 28% amount of total defrauded amount that too without any

justification. Therefore, the applicant has been discriminated by the respondents while imposing penalty on him. In this regard the applicant had relied upon judgment passed by Hon'ble Apex Court in the matter of **State of Uttar Pradesh vs. Rajpal Singh** reported in [2010] 5 SCC 783 and other judgments and orders passed by this Tribunal as stated above and submitted that when charges are same and identical in relation to one and the same incident, then to deal with the delinquent differently in the award of punishment would be discriminatory. Therefore, it is mainly contended that the quantum of punishment is in violation of principle of law laid down by the Hon'ble Apex Court.

19. On examination of punishment order passed by the disciplinary authority in the case of co-offenders, namely, Manoj Kumar, Inspector Posts, who was working as officiating Inspector Posts at Piru Sub Division, Piru from 17.11.2004 to 31.10.2005, it is found that the said Shri Manoj Kumar had inspected Sikraul Fatehpur BO in account with Piru SO during the year 2005 and submitted his report on 23.09.2005. He was also served with identical charges as levelled against the applicant and on completion of the disciplinary proceeding the charges levelled against him was found proved and he was awarded the punishment of recovery of a sum of Rs. 15,000/- only from his pay @ Rs. 5,000/- per month vide order dated 18.11.2014 (Annexure A/8 refers). The other co-offender, namely, Anil Kumar, who while working as Inspector Post, Piru Sub Division under Bhojpur Div., Ara for the period 11.04.2008 to 11.01.2012 had inspected the said BO in the year 2008 and 2009. Subsequently, he had also submitted his inspection remarks/reports on 21.06.2008 and 21.10.2009 respectively. He was also chargesheeted for the same charges as levelled against the applicant. On completion of disciplinary

proceedings, charges were found proved against him and accordingly he was awarded punishment of recovery of Rs. 5,000/- in ten installments of Rs. 500/- each from his monthly pay and also stoppage of his next increment for three months with cumulative effect vide order dated 29.10.2013 (Annexure A-9 refers) .

20. The learned counsel for the respondents justifying their action would submit that there were different departmental inquiries and different disciplinary authorities in the case of co-offenders as also of the applicant and therefore the punishment was imposed differently by the different authorities as per their findings. The said decision cannot be said to be erroneous. As such, there is no violation of principle of natural justice in the case of the applicant. However, the respondents failed to rebut the submission of the applicant with regard to identical charges levelled against the applicant and other co-offenders.

21. It can be seen that applicant was chargesheeted for the identical charges as levelled against the aforesaid two other co-offenders. In the case of applicant the charges were found proved. However, the disciplinary authority had awarded higher punishment in comparison to other co-offenders.

22. At this juncture, it is appropriate to take note of the judgment passed by Hon'ble Apex Court in the matter of **Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) & Anr. Vs. Rajendra Singh** reported in (2013) 12 SCC 372 in which it was held that "If there is a complete parity in the two sets of cases imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of Equality enshrined in Article 14 of the Constitution of India."

23. Judicial review is not an appeal from a decision but a review of the manner in which a decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. In this regard, the judgment passed by Hon'ble Apex Court in the case of **Govt. of U.P. vs. P. Chandramauli** [2009] 13 SCC 272; **Govt. of A.P. vs. Mohd. Nasrullah Khan**, 2006 [2] SCC 373 and **B.C. Chaturvedi vs. UOI**, referred.

24. In the present case it is noticed that admittedly the applicant was awarded higher punishment in comparison to other identical co-offenders as stated hereinabove and no justification for it has been satisfactorily advanced by the respondent authorities. Only the punishment awarded by different disciplinary authorities cannot be said to be sufficient reason to discriminate the applicant-delinquent. The Appellate Authority has not considered the imposition of different punishments in relation to one and the same incident, and to deal with the delinquents differently.

25. In view of above discussion and in the light of principles of law laid down by the Hon'ble Apex Court, the impugned order dated 29.05.2014 (Annexure A/3), corrigendum order dated 30.06.2014 (Annexure A/4) and also the order 10.04.2015 (Annexure A/6) with regard to quantum of punishment are hereby quashed and set aside. The matter is, therefore, remitted to the appellate authority for re-consideration for a fresh decision in the light of discussions made hereinabove and pass appropriate orders disposing of the appeal of the applicant by providing due opportunity to the applicant, within a

period of two months from the date of receipt of a copy of this order. The OA is, accordingly, partly allowed. No order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

mps/srk