

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.25 of 2011 & 107 of 2012

Date of Reserve: 05.03.2019

Date of Order: 05.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

In O.A.No.25 of 2011

Sri Hrushikesh Sabat, aged 50 years, S/o. late Brundaban Sabat, resident of Vill/Post-Narendrapur, Via-Padmanavapur, Dist-Ganjam, Orissa.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through:

1. The Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, Dist-Khurda-751 001.
2. Senior Superintendent of Post Offices, Berhampur Division, At/PO-Berhampur, Dist-Ganjam, Orissa-760 001.
3. Sub Divisional Inspector (Postal), Digapahandi Dub Division, At/PO-Digapahandi, Dist-Ganjam, Orissa.
4. Director of Postal Services, Berhampur Regional, At/PO-Berhampur, Dist-Ganjam (O)-760 001.

...Respondents

By the Advocate(s)-Mr.A.C.Deo

In O.A.No.107 of 2012

Sri Hrushikesh Sabat, aged 51 years, S/o. late Brundaban Sabat, resident of Vill/Post-Narendrapur, Via-Padmanavapur, Dist-Ganjam, Orissa.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. The Director of Postal Services, Berhampur Regional, At/PO-Berhampur, Dist-Ganjam, Odisha-760 001.
2. Senior Superintendent of Post Offices, Berhampur Division, At/PO-Berhampur, Dist-Ganjam, Orissa-760 001.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Both the above mentioned OAs have been filed by the same applicant.

In O.A.No.25 of 2011, the applicant has prayed for a direction to be issued to the Respondents to pay him the Allowances (TRCA) from 5.4.2005 to 4.9.2008 with due interest and cost. In O.A.No.107 of 2012, he has prayed this Tribunal to quash Annexure-A/9 & A/12 and direct the Respondents to reinstate him in service with all consequential service benefits.

2. On a harmonious reading of the facts as stated in both the OAs, it reveals that the applicant, while working as GDSBPM, Narendrapur B.O., a Memorandum dated 27.08.2008(R/3) proposing to hold an enquiry against him under Rule-10 of GDS(Conduct & Employment) Rules, 2001 in respect of misconduct as per the statement of Articles of Charges vide Annexure-1 attached therewith had been issued to him, whereafter, vide order dated 02.02.2009, he was put under off duty with immediate effect. However, on a corrigendum being issued, the word “with immediate effect” to be read as 5.9.2008, the applicant’s put off duty came to be made effective from 5.9.2008. Article of Charge No.III, as it appears, relates to unauthorized absent of the applicant from duty from 5.5.2005. Since the claim of the applicant in O.A.No.25 of 2011 is regarding grant of TRC from 5.4.2005 to 4.9.2008, in our considered opinion, the out of come of O.A.No.107 of 2012 will be the determining factor of O.A.No.25 of 2011. In the circumstances, O.A.No.107 of 2012 is being taken up for consideration in the first instance.

3. In O.A.No. 107 of 2012, while working as GDSBPM, Narendrapur BO, a Memorandum dated 27.08.2008(R/3) was issued to the applicant proposing

to hold an enquiry under Rule-10 of GDS(Conduct & Employment) Rules, 2001 in respect of the following Articles of Charge:

Article-I

Sri Hrushikesh Sabat while functioning as GDSBPM, Narendrapur BO in account with Padmanabhpur SO during the period from 03.04.93 A/N to 04.04.2005 accepted deposits on the following dates for the amount noted against each from Sri Chittranjan Sahu, F/o. minor depositor Diptirani Sahu to deposit the amount in her SB Passbook Account No.3022045.

Date	Amount
08.07.03	Rs.500/-
05.01.04	Rs.200/-
14.02.04	Rs.1300/-
11.03.04	Rs.1200/-
15.04.04	Rs.820/-
29.04.04	Rs.300/-
31.05.04	Rs.3400/-
11.10.04	Rs.170/-
29.12.04	Rs.45/-

But Sri Sabat neither entered the above deposits in the BO SB Journal nor showed the deposits in the BO daily Account of the respective dates and did not account for a total amount of Rs.7935/- into Govt. account in respect of Narendrapur BO SB Account no.3022045.

Thereby the said Sri Hrushikesh Sabat violated Rule 3, 13193) and 165 of Rules for Branch offices (VIth edition IIInd Print) and failed to maintain absolute integrity and devotion to duty as required under Rule 21 of GDS(Conduct & Employment) Rules, 2001.

Article-II

That the said Sri Hrushikesh Sabat while functioning as GDSBPM in account with Padmanabhur SO during the period from 03.04.93 to 04.04.2005 received Chiplun HO MO No.2728 dated 9.3.2005 for Rs.4000/- payable to Smt.G.Julu Reddy, Narendrapur vide BO Slip dated 15.3.2005 from Padmanavpur SO. He made necessary entry in the BO journal in respect of the above MO on 25.3.2005 and showed the MO paid on 15.3.2005 to Smt.G.Jullu Reddy without actually paying the MO amount to her and accounted for the MO in his BO daily account and BO account on 15.3.2005.

Thereby the said Sri HrushikeshSabat by displaying the aforesaid behaviour violated rule 3, 10, 112(20 and 165 of Rules for Branch offices and failed to maintain absolute integrity and devotion to duty as enjoined in Rule 21 of GDS (Conduct and Employment)Rules, 2001.

Article-III

That Sri Hrushikesh Sabat worked as GDSBPM, Narendrapur BO from 03.04.93 to 04.04.05 and absented from duty unauthorizedly from 05.04.05 which is in excess of 180 dayat a stretch. He has neither applied for not obtained permission of the competent

authority for his absence from duty as required under Rule – 7 of GDS (Conduct and Employment) Rules, 2001 & GD's instructions below and said rule.

Thereby the Said Shri Sabat violated Rule-7 of GDS (Conduct & Employment) Rules, 2001 and failed to maintain absolute integrity and devotion to duty as required under Rule 21 of GDS(Conduct & Employment) Rules, 2001.

5. The applicant having denied the charges vide his representation dated 8.8.2008, the Senior Superintendent of Post Offices, Berhampur Division being the Disciplinary Authority appointed IO and PO to conduct an inquiry into the charges framed against him. Accordingly, the IO conducted the inquiry and submitted its report holding the Articles – I & II as proved beyond doubt and Article-III of the Memorandum of Charge not proved and submitted its report dated 14.02.2010 to the Disciplinary Authority. Copy of the report of the IO was supplied to the applicant requiring him to submit his representation, which he did submit vide his letter dated 13.02.2010. After taking into consideration all the relevant records, report of the IO and the representation of the applicant made thereto, the Disciplinary Authority vide order dated 23.02.2010(A/9) imposed punishment of removal from service on the applicant with immediate effect. The appeal dated 7.4.2010 preferred by the applicant was turned down by the Appellate Authority thereby upholding the punishment of removal from service as imposed by the Disciplinary Authority. Hence, this Original Application.

6. Opposing the prayer of the applicant, the respondents have filed their counter. They have submitted that the proceedings have been conducted against the applicant in accordance with the procedure laid down on the subject and the applicant has been afforded due opportunities. According to them, since the applicant has been held guilty of the Articles of Charge Nos. I & II, the punishment of removal from service is justified inasmuch as by his

proved misbehaviour and misconduct, he has lost his credibility to be retained any longer in the Department of Posts. Therefore, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. Applicant has not filed any rejoinder to the counter.

8. We have heard the learned counsels for the parties and perused the records. Both applicant and respondents have filed their respective written notes of arguments. We have also gone through the same.

9. In the written notes of submission, the applicant has pointed out that the respondents having admitted in their counter that an amount of Rs.10,471/- and Rs.2255/- has been recovered from the applicant and from the subsidiary offenders respectively i.e., Rs.12,723.65 (permanent fraud Rs.11935.00 + usual interest and penal interest Rs.778/-), there was no misconduct existed as on the when Memorandum of Charge was issued. Therefore, there was no need to issue any Memorandum of Charge.

10. Secondly, the applicant has submitted that the punishment order itself is bad in law inasmuch as that the said order itself makes it clear that though the IO had fixed the place of inquiry in the village of the depositors, the depositors did not turn up to substantiate their allegations and while mentioning so, the Disciplinary Authority relying on the evidence taken in the preliminary inquiry, i.e., behind the back of the applicant, has passed the orders of punishment.

11. On the self-same allegation an FIR had been lodged against the applicant in Digapahnandi Police Station which was registered under P.S.Case No.3(B) dated 7.1.2009. Ultimately, vide judgment dated 28.11.2014 of the Judicial Magistrate(1st Class) Digapahandi, the applicant was acquitted with a finding that the prosecution has failed to prove the case against the applicant beyond

all reasonable doubts for which the accused is found not guilty for commission of offence U/S 409 IPC.

12. Finally, it has been submitted that since there was no misappropriation as such, the proceedings initiated against the applicant is liable to be quashed and set aside.

13. On the other hand, in the written notes of submission, the respondents have more or less taken the same stand as in the counter. However, in pursuance of the direction of this Tribunal, they have annexed thereto the report of the IO for perusal by the Tribunal.

14. We have considered the rival submissions threadbare. The scope of interference by the Tribunal in the matter of disciplinary proceedings is very limited as laid down by the Hon'ble Supreme Court in a catena of decisions. We have gone through the report of the IO and found that the same is detailed and exhaustive. The I.O. has taken into account the pros and cons of the matter. However, the points on which the applicant has come up in the written notes of submission are that after the defrauded amount being recovered, there was no need to initiate disciplinary proceedings against him and that the Disciplinary Authority based on the evidence led during preliminary inquiry, i.e. behind the back of the delinquent, has passed the orders of punishment. In this connection, we would like to note that it was incumbent on the part of the applicant to bring this fact to the notice of the Disciplinary Authority while making his representation to the report of the IO. Similarly, he should have also assailed the action of the IO before the Disciplinary Authority that although the date of inquiry had been fixed for the depositors to give evidence in the village, they did not turn up and as such, a prejudice has been caused to him when the IO went ahead ex parte. It is not

the case of the applicant in the present O.A. that those points were not considered by the Disciplinary Authority although raised by him. In view of this, we are not inclined to sit in judicial review of the points which were not at all agitated by the applicant before the Disciplinary Authority.

15. As regards the acquittal of the applicant by the Judicial Magistrate (1st Class) Digapahandi vide judgment dated 28.11.2014 in G.R.No.7/09, we would like to note that law is well settled that there is no bar for conducting disciplinary proceedings and criminal case concurrently. However, the submission of the applicant that on the self-same charges which were the subject matter of disciplinary proceedings, he had been acquitted in G.R.No.7/09, does not persuade us to tilt our decision in favour of the applicant in view of the fact that this point was not the subject matter of consideration either by the Disciplinary Authority or the Appellate Authority during the course of the disciplinary proceedings. Taking into consideration the background and the circumstances and the materials on record, this Tribunal is of the opinion that the acquittal of the applicant in the criminal case by itself is not a bar for initiation of the disciplinary proceedings against him since the standard of proof and the materials adduced in both the cases are different.

16. In O.A.No.25 of 2011, the prayer of the applicant to grant him TRCA for the period from 5.4.2005 to 4.9.2008. It reveals from the communication dated 30.09.2010(A/9) made with reference to representation dated 13.09.2010 that the Senior Superintendent of Post Offices, Berhampur Region has declined to grant TRCA on the ground that the applicant had remained unauthorized absent from duty with effect from 5.4.2005 to 5.9.2008 without prior approval of the competent authority and hence, he had neither

performed his duties nor the substitute arrangement approved by the competent authority. Besides, they have also pointed out the relevant provisions on Unauthorized leave/absence as laid down in DG P & T, ND, No.40-58/78-Pen. Dated the 25th April, 1981, which speaks "Unauthorized absence/leave, on the other hand, is a period, during which an EDA himself does not perform his duties personally but entrusts them to some other person without the approval of the appointing authority (vide Directorate's letter No.43/48/64-Pen. Dated 21.4.1969). Unauthorized leave/absence even for one day will constitute break in service of an EDA, unless regularized as authorized leave, or the break in service on that account is condoned".

17. Admittedly, the Article of Charge III regarding applicant's unauthorized absence from 05.04.05 which is in excess of 180 days at a stretch has not been proved by the I.O. The letter dated 30.09.2010(A/9) declining to grant TRCA for the period in question had been issued during the course of disciplinary proceedings. Instructions issued by the DGP&T as quoted above, does not stand repugnance to regularization of unauthorized leave. In view of this, liberty is granted to the applicant to make a detailed representation to the Senior Superintendent of Post Offices, Berhampur Region seeking regularization of the period in question for the purpose of grant of TRCA within a period of one month from the date of receipt of this order. In case any such representation is received, the Senior Superintendent of Post Offices, Berhampur Region shall consider the same and pass appropriate orders, keeping in view that the charge levelled against the applicant for his unauthorized absence from duty from 05.04.2005 has not been established by the IO, within a period of 45 days from the date of receipt of such representation.

18. In the result, while we allow O.A.No. 25 of 2011 to the extent indicated in this common order, we dismiss O.A.No.107 of 2012 being devoid of merit.

No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS