

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 616 of 2012

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Raghunath Dash, aged bout 66 years, S.o Late Nrusingha Charan Dash, resident of VIII/PO – Geeta Gram, Via – PTC Angul, Dist. – Angul, Odisha – 759023.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi – 10069.
3. Chief Post Master General, Odisha Circle, At/PO – Bhubaneswar, Dist. – Khurda – 751001.
4. Director of Postal Services, Sambalpur Region, At/PO/Dist- Sambalpur – 768001.
5. Superintendent of Post Office, Dhenkanal Division, At/PO/Dist- Dhenkanal- 759001.
6. Satyabrata Satpathy, Retd. Sr., Superintendent of Post Offices, At/PO/Dist – Balasore.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 30.1.2019 Order on : 6.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

"In view of the facts stated above, it is humbly prayed that Hon'ble Tribunal may be graciously be pleased to quash Annexure A/1 and A/10 and direct the respondents to release all the benefits with interest of 18% and impose exemplary cost and compensation and the same may be recovered from Respondent No.6 by other respondents for unnecessary harassing the applicant.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice."

2. The facts of the case are that the applicant, while working as a Post Master at HSG-I grade, retired from service on 28.2.2003 and after his retirement, he was issued a charge-sheet dated 17.3.2005 (Annexure-1 to the OA) on charge that due to his negligence, a misappropriation to the extent of Rs. 12 lakh by one of his staff, Sri Apoorba Kumar Bisoi, Postal Assistant

working under the applicant during January, 2003. The Inquiry Officer (in short IO) was appointed to inquire into the charges and he submitted the report on 24.11.2005 (Annexure-6 to the OA) to the respondent no. 5 who issued show cause notice to the applicant, supplying a copy of the inquiry report. The applicant submitted his representation, after which, the authorities sent their recommendation to the respondent no. 1, who imposed the punishment of 20% reduction of the applicant's monthly pension for 3 years vide the order dated 30.4.2012 (Annexure-10 to the OA) issued in the name of the President of India.

3. The applicant has challenged the punishment order dated 30.4.2012 in this OA mainly on the following grounds:-

- a. Respondent no. 5, not being the appointing authority, issued the charge-sheet dated 17.5.2005 and he was not competent to issue the charge-sheet against the applicant who was HSG-I Post Master.
- b. There is no loss to the department as it has been recovered from the ex-Postal Assistant who has also been prosecuted by the CBI and has been removed from service.
- c. The respondents have taken about 5 years time to complete the inquiry in violation of the DOPT circular dated 11.11.1998.
- d. Some relevant documents have not been supplied by the respondents.
- e. The impugned punishment order is non-speaking and not sustainable, since it does not examine the points raised by the applicant.

4. The respondents in their Counter have opposed the OA by stating that the charges against the applicant have been proved and procedure as per law has been followed by the respondents. It is stated that the applicant was responsible for issue of cheques in excess of available balance in the account, due to which the department sustained loss to the extent of Rs. 12 lakh and he was also responsible for lack of supervision due to which such misappropriation could take place. The applicant did not follow the instructions by ensuring entry of the particulars of payment before issue of the Cheques. Although Rs. 4 lakh has been recovered from the prime accused, but money suit for recovery of the balance Rs. 8 lakh has been filed. Hence, it is incorrect to say that there was no loss to the department as averred in the OA. Before imposing punishment, UPSC has also been consulted by the respondents in the matter. Regarding competence of the respondent no.5 to issue the charge-sheet, it is stated that as per the rule 51 of the Postal Manual Volume-III (copy at Annexure R/9), the respondent no. 5 is the competent disciplinary authority.

5. Mr. N.R. Routray, learned counsel for the applicant was heard. He submitted that the advice of the UPSC was not supplied to him before passing the impugned punishment order in accordance with the rule 32 of the CCS

(CCA) Rules, 1965 and in support of his argument, he filed a copy of the judgment of Hon'ble Apex Court in the case of **Union of India and others vs. S.K. Kapoor reported in (2011) Supreme Court Cases (L&S) 725**. He also submitted that the respondent no. 5 was not competent to issue the charge-sheet as mentioned in the OA.

6. Mr. D.K. Mallick, learned counsel for the respondents opposed the applicant's case by stating that the respondents have followed the procedure in passing the punishment order. He also reiterated other grounds mentioned in the Counter.

7. We have carefully considered the pleadings as well as the submission by the counsels for rival parties. Two relevant issues to be decided are: (i) whether the respondent no. 5 was competent to issue the charge-sheet; and (ii) whether there is delay in finalizing the disciplinary proceeding at the level of the respondents.

8. We are unable to accept the argument of learned counsel for applicant about non-supply of a copy of the UPSC's advice at the time of oral submission, since this issue has not been raised in the main pleadings of the applicant as a result of which, the reply of the respondents on such a submission was not received. The issue was raised as a fresh issue at the time of hearing of the case, which cannot be taken into account for deciding the OA.

9. Regarding competence of the respondent no. 5 to issue the charge-sheet, it is seen that the respondents have issued the sanction of the President of India under the rule 9 of the CCS (Pension) Rules, 1972, vide order dated 28.12.2004 (Annexure R/4 to the Counter) and a copy of this order has been marked to the applicant. Further, it is seen that the sanction order dated 28.12.2004 (R/4) states as under:-

"The President further directs that the said departmental proceedings shall be conducted in accordance with the Rules 14 and 15 of the CCS (CCA) Rules, 1965, by the Superintendent of Post Offices, Dhenkanal."

It is seen from above that the respondent no. 5 has been directed by the President of India to conduct the disciplinary proceedings in accordance with the rule 9(2) of the CCS (Pension) Rules, 1972, which states as under:-

"9. Right of President to withhold or withdraw pension
(1).....

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

In view of the above, the objection raised by the applicant about the competence of the respondent no. 5 is not tenable, as he was authorized by the President of India under the rule 9(2) to conduct the disciplinary proceedings against the applicant. Hence, the question at para 7(i) is answered accordingly.

10. Regarding the question at para 7(ii) on the delay in finalizing the proceedings, it is seen that after issue of the charge-sheet on 17.3.2005, the IO submitted his report on 24.11.2005 and the same was forwarded to the P.M.G. Sambalpur region on 29.6.2006 (Annexure-R/5) as stated in para 4 of the Counter. The letter of the UPSC dated 16.4.2012 (Annexure-A/9) referred to the letter dated 20.1.2012 of the respondent no. 1, which implies that the matter was lying with the respondents from 2006 till 20.1.2012 before it could be referred to the UPSC. Clearly, the IO's report was pending with the respondents for more than 5 years before it was sent to the UPSC on 20.1.2012. The impugned punishment order was issued on 30.4.2012 (Annexure-10), after which the pensionary benefits of the applicant were released vide order dated 20.6.2012 (Annexure-R/6 & R/7 to the Counter). This delay from 2006 to 2012 in finalizing the proceedings has not been explained by the respondents in their pleadings and hence, it is attributable to the respondents. The question at para 7(ii) is answered accordingly, against the respondents.

11. We take note of the fact that in the case **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, while examining the scope of judicial review in disciplinary proceedings, has held as under:-

"Judicial review is not an appeal from a decision but a review of the manner in which the 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. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that

evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

From the ratio of the above judgment, this Tribunal can intervene in cases of disciplinary proceedings if there is any violation of statutory rules or violation of the principles of natural justice or the findings of the disciplinary authority are based on no evidence. No such grounds have been brought out in the pleadings of the applicant. Although as per the judgment in the case of S.K. Kapoor (supra) cited by the learned counsel for the applicant, non-supply of UPSC advice before deciding the punishment is essential, but as stated earlier no such ground has been taken in the pleadings of the applicant.

12. As discussed in para 10 of this order, there has been undue delay of more than 5 years after completion of inquiry in concluding the disciplinary proceedings against the applicant, which has not been explained by the respondents. Moreover, the applicant had retired from service on 28.2.2013, but the charge-sheet was issued to him on 17.3.2005 for incident which occurred in January, 2013 and the charges were framed against the applicant after about 2 years after his retirement which has not been explained by the respondents. The charges against the applicant are lack of supervision and negligence in discharge of official work, due to which a subordinate staff got the scope to misappropriate government money. As held by Hon'ble Apex Court in the case of **State Of Andhra Pradesh vs N. Radhakishan reported in (1998) 4 SCC 154**, delay in disposal of the disciplinary proceedings can cause prejudice to the applicant. It has been held in the case as under:-

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in

pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice.

Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

13. In the case of **Prem Nath Bali vs Registrar, High Court Of Delhi & Anr in Civil Appeal No. 958 of 2010**, it is held by Hon'ble Supreme Court as under:-

"31) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32) As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

14. It is also noticed that the circular of the DOPT dated 8.1.1971 [vide Government of India's Decision No. 3 and 3A after the rule 15 of the CCS (CCA) Rules, 1965] specifies the following guidelines for timely disposal of the disciplinary proceeding:-

"(3) Passing of orders by the Disciplinary Authority on the report of Inquiry Officer- Quick disposal of cases :-

The following items sponsored by the Staff Side of the National Council of the Joint Consultative Machinery were discussed in the 9th Ordinary meeting of the National Council held on 25th and 26th September, 1970 :-

"Suitable provisions should be made in Rule 15 of the CCS (CCA) Rules, 1965 to make it obligatory on the part of the Disciplinary Authority to pass orders on the enquiry report within a period of 15 days, to avoid delay".

After some discussion, it was decided that the Official Side might examine the feasibility of prescribing a time-limit of two month within which the disciplinary authority should pass the orders on the report of the inquiry officer, and requiring that authority to submit a report to the next higher authority in cases where the time-limit cannot be adhered to, explaining the reasons therefor.

The suggestion of the Staff Side has accordingly been examined further. It is felt that, while both in the public interest as well as in the interest of employees no avoidable delay should occur in the disposal of disciplinary cases, it is necessary that sufficient time is available to the disciplinary authority to apply its mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. While therefore it has to be ensured that fixing of any time-limit on the disposal of the inquiry report by the disciplinary authority by making a provision in this regard in the C.C.S(C.C.A.)Rules should not lead to any perfunctory disposal of such cases, taking all relevant factors into consideration it is felt that in cases which do not require consultation with the C.V.C. or the U.P.S.C., it should normally be possible for the disciplinary authority to take a final decision on the inquiry report within a period of three months at the most. In cases where the disciplinary authority feels that it is not possible to adhere to this time-limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the C.V.C. and the U.P.S.C. also, every effort should be made to ensure that such cases are disposed of as quickly as possible.

(3A) Delays in passing orders by the Disciplinary Authorities –

In the OM No. 39/43/70-Estt. (A) dated 08.01.1971, it has been envisaged that it should normally be possible for the disciplinary authority to take a final decision on the enquiry report within a period of three months. In cases where it is felt that it is not possible to adhere to this time limit, a report may be submitted to the next higher authority indicating the additional period required and reasons for the same. It should also be ensured that cases involving consultation with the CVC and UPSC are disposed of as quickly as possible.

2. Though no specific time limit has been prescribed in the above OM in respect of cases where consultation with CVC and UPSC is required, it is imperative that the time limit of three months prescribed for other cases should be adhered to in such cases after receipt of the advice of the UPSC.

[Dept. Of Personnel & Training OM No. 11012/21/98-Estt.(A) dated 11th November, 1998]"

15. From above, it is clear that as per the guidelines of the DOPT quoted above, a case requiring advice of the UPSC is required to be disposed of as quickly as possible. In this case, for the proceedings under the rule 9 of the CCS (Pension) Rules, 1972, it was necessary for the respondents to have sent the details to the UPSC after receipt of the inquiry report so that the disciplinary authority would have disposed of the same as quickly as possible. But the respondents, for no explanation, did not send the matter to the UPSC from 29.6.2006 when the inquiry report was forwarded to the P.M.G. Sambalpur region till 20.1.2012 when the matter was forwarded to the UPSC for advice. Although the respondents were required to forward the disciplinary proceedings case to the UPSC as quickly as possible as per the DOPT circular discussed at para 14 of this order, it was delayed by about 5 years for which no reason is mentioned and due to that the disposal of the disciplinary proceedings against the applicant who had retired from service on 28.2.2003 was delayed by about 5 years for which no explanation has been furnished by the respondents for such abnormal delay. Hence, the delay of 5 years cannot be considered to be reasonable time taken for disposal of the disciplinary proceedings against the applicant.

16. In view of the law laid down in the cases discussed earlier and the guidelines of DOPT as discussed in the preceding paragraphs, since no violation of the statutory rules or principles of natural justice has been mentioned in the pleadings of the applicant and the applicant was undisputedly the supervisory officer of the employee who misappropriated the Government money, we are not inclined to interfere with the punishment order imposed by the competent authority on the applicant. However, because of delay in disposal of the proceedings, particularly the delay of more than five years at the stage of sending the proposal to the UPSC after completion of inquiry for which no reason for such delay has been mentioned the disbursement of withheld retiral benefits of the applicant was delayed. The Rule 68 of CCS (Pension) Rules, 1972 provides for payment of interest if the payment of gratuity is delayed due to reasons not attributable to the concerned retired employee.

17. In the facts and circumstances of the case as discussed above, we are unable to allow the reliefs prayed for in the OA except for the interest for delay in releasing the withheld gratuity of the applicants for a period of 5 years beyond the time that should reasonably have been taken for disposal of the disciplinary proceedings. Such interest on delayed payment of the gratuity which was withheld on account of the disciplinary proceedings, is payable to the applicant at the rate of 8% per annum for a period of five years of delay attributable to the respondents as discussed in the preceding paragraphs in accordance with the rule 68 of the CCS (Pension) Rules, 1972. The respondents are accordingly directed to pay the interest as above to the applicant within three months from the date of receipt of a copy of this order. The OA is allowed in part as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath