

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

LIBRARY

AN APPLICATION UNDER SECTION 19 OF THE

ADMINISTRATIVE TRIBUNALS ACT, 1985.

O.A. No. 350/01793 / 2016

In the matter of

Smt. Jharna Guha, wife of Anup
Guha, Postal Assistant, Savings
Bank Control Organisation (PA
SBCO), Midnapore Head Office,
Department of Posts, residing at,
Gaidua, P.O.- Hariatara, P.S.-
Kharagpur, District: West
Midnapore, Pin- 721 304.

... Applicant

-VERSUS-

1. The Union of India, through
the Secretary to the Government
of India, Ministry of
Communication, Department of

Posts, Dak Bhawan, Parliament

Street, New Delhi-110001.

2. The Chief Postmaster

General, West Bengal Circle, P-

36 C.R. Avenue, Yogayog

Bhawan, Kolkata-700012.

3. The Postmaster General,

South Bengal Region, P-36 C.R.

Avenue, Yogayog Bhawan,

Kolkata-700012.

4. The Director of Postal

Services, South Bengal Region ,

P-36 C.R. Avenue, Yogayog

Bhawan, Kolkata-700012.

5. The Senior Superintendent of

Post offices , Midnapore Division ,

Post office -Midnapore , Pin-

721101.

6. The Chief Supervisor, Savings
Bank Control Organisation
Branch, Midnapore Head Post
Office, Pin- 721 101.

7. The Senior Postmaster,
Midnapore Head Post office ,
P.O. - Midnapore, Pin-721 101.

.... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/1793/2016

Heard on : 15.01.2019

Date of Order: 22.1.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Jharna Guha Vs. UOI & Ors.

For the Applicant(s): Mr. P.Adhikari, Counsel

For the Respondent(s): Mr. S.Paul, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred in order to seek the following reliefs:

8.(a) To issue an order setting aside the memorandum of imputations of misconduct dated 23.11.2015 being memo no. FD 4/A-1/9/2010-11.

(b) To issue an order setting aside the order dated 11.11.2016 & 02.11.2016 wherein the concerned respondent authority rejected the appeal & stay application of the applicant.

(c) To issue an order setting aside and/or grant stay on the impugned order of punishment of recovery dated 26.08.2016 being memorandum no. FD 4/A-1/9/2010-11.

(d) Any other order and/or orders as Your Lordships may deem fit and proper."

2. The admitted facts that emerge from the pleadings of the parties are as under:

The applicant was proceeded under Rule 16 of the CCS(CCA) Rules vide a memo dated 23.1.2015 issued by the SSP, Midnapore Division, in connection with Ballichak MIS/RD fraud case as she was identified as one of the subsidiary

offender as per Circle Level Inquiry report conducted by the DPS(SB) Region, Kolkata-12. The prime offender, Sri Biswanath Middya, SAS agent, in connivance with the then SPM Ballichak S.O. and PA Ballichak S.O., committed a fraud by way of irregular premature withdrawal from MIS Accounts standing at Ballichak SO during June, 2006 to May, 2008 due to which department sustained a loss to the tune of Rs. 8,78,466/- as per Circle Inquiry report. Preliminary inquiry revealed the following illegal activities and irregularities committed by the staff:

"6.2 xxx xxx xxx

(b) xxx xxx xxx

(i) On premature closure the MIS money were credited to SB Account of Sri Biswanath Middya, SAS agent, Ballichak S.O instead of making the entries into the account of concerned depositors in violation of Rules 168(12) of Post Office MIS General Rules 1987.

(ii) Payment of premature values exceeding Rs.20,000/- and RD Accounts paid by cash instead of cheque /transfer to the SB account of the concerned depositors.

(iii) Premature closure had been made through withdrawal form (SB-72) instead of account closure (SB-7A) which was in clear violation of Dte's communication No. 111/14-2001-SB dated 25-05-2006 (SB order No. 11/2006).

(iv) The prematured values of RD/MIS had been paid to the SAS agent Sri Biswanath Middya as messenger."

The applicant was alleged to have failed to perform her duties towards creation of MIS account, checking of and verifying premature closure of MIS vouchers and data entry of MIS account at Ballichak SO and checking of MIS transaction, particularly, in respect of those taking place during the period from July 2006 to May, 2008. She was also alleged to have failed to make entry of the irregularities in the objection register, SB-61, and failed to bring it to the notice of Sr. Post Master, Midnapore HO or the Divisional Office. An FIR was lodged against the principal offender Sri Biswanath Middya and his agency was terminated. SPM and PA, Ballichak were proceeded under Rule 14 of CCS(CCA)

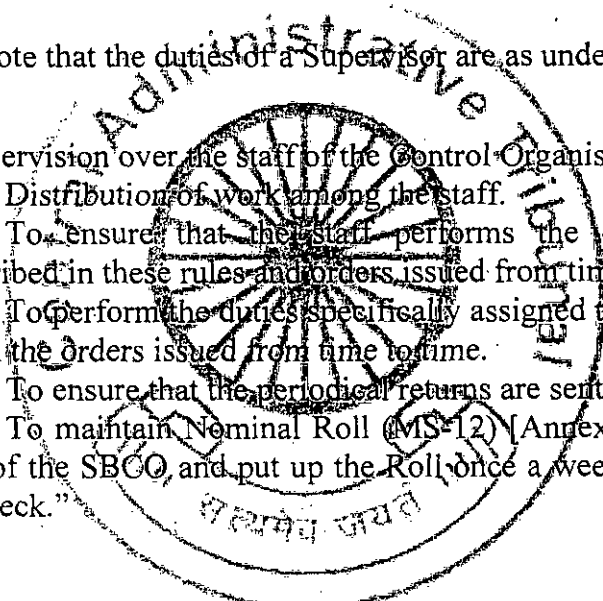
Rules and the applicant, who was identified as one of the subsidiary offenders, was proceeded under Rule 16 and penalized with recovery of Rs. 3,00,000/- from her pay @ 7500/- in 40 equal instalments vide SSP, Midnapore Division dated 26.08.2016. She preferred an appeal against the said penalty on 15.06.2016, which was rejected by the Appellate Authority on 11.11.2016. She preferred O.A.No. 1442/16, which when dismissed, the applicant approached the Hon'ble High Court wherein by an order dated 04.10.2016 the Hon'ble High Court, while not interfering with the order dated 26.09.2016 passed by this Tribunal, directed the Appellate Authority to decide the application for stay within one week and to dispose of the appeal by 15th November. The application for stay dated 05.10.2016 was disposed of by the Appellate Authority on 02.11.2016 rejecting the same and, therefore, the applicant has preferred the present O.A. in order to challenge the entire proceeding and the imposition of the penalty order as well as the appellate order. Ld. Counsel, at herein, vociferously submits that applicant was never entrusted with the duties, violation thereof has been alleged. Ld. Counsel would harp on the contention that the applicant was supposed to act as a staff of Head Office but was not manned to look into the accounts in regard to Ballichak, however, she could not bring out any convincing material to establish the fact that the applicant was not required to create MIS account or check and verify premature closure of MIS vouchers and data entry of MIS account on Ballichak SO for that the said duty was performed by some other postal staff. We noted that not only the applicant but also other staffs have been punished, therefore, only because some of the staffs have not been booked against the alleged offence, the applicant is not absolved of her responsibilities that she is expected to discharge as a P.A. in SBCO, Midnapore. Ld. Counsel would place the regulations in regard to the Post Office Small Savings Schemes (Procedure Rules for S.B. Control Pairing and

ICOSF and Other General Matters) as contained in Postal Manual of SB Control Procedure.

Drawing our attention to the duties of Supervisor, Ld. Counsel would submit that it was the duty of the Supervisor to supervise the staff of the Control Organization, distribute work among the staff, to ensure that the staff performed their duties properly, as assigned to them, as prescribed in the rules, to ensure that periodical returns are sent in due dates and to maintain Nominal Roll, MS 12, etc.

3. We heard Ld. Counsel for both the parties and perused the materials on record.

4. We would note that the duties of a Supervisor are as under:

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- "1. Supervision over the staff of the Control Organisation.
 2. Distribution of work among the staff.
 3. To ensure that the staff performs the duties properly as prescribed in these rules and orders issued from time to time.
 4. To perform the duties specifically assigned to him in these rules and in the orders issued from time to time.
 5. To ensure that the periodical returns are sent by due dates.
 6. To maintain Nominal Roll (MS-12) [Annexure I] in respect of staff of the SBCO, and put up the Roll once a week to the Postmaster for check."

We would further note that the duties of a PA are as under:

- "1. Examination of the lists of transactions.
2. Maintenance of register SB-62, SB62(a) and SB-63.
3. Preparation of the list of binder balances for verification.
4. General check of vouchers.
5. Checking of H.O. and S.O. transactions.
6. Checking of non-cash transactions and entries in the register SB-62.
7. Verification of binder balances.
8. Making entries in the consolidated journal (SB-72) and checking the daily and progressive totals of different columns.
9. Any other work which may be entrusted to him by the Supervisor and also in the orders issued from time to time.

The P.A. will maintain various registers as prescribed from time to time for the above mentioned items of work. In respect of objections

raised by him he should ensure that the wanting information is furnished and satisfactory replies are given by the S.B. branch in time."

Such, as supra, being the duties of PA and the applicant having failed to show or demonstrate that he was not manned to perform such duties or to report any discrepancy noted in the objection register or to bring it to the notice of the Post Master, it can be said that the applicant has failed to perform her duties which paved a way for the miscreants to make irregular premature withdrawal due to which the department sustained a loss.

We would further note that the following procedural rules were required to be followed by a P.A. :

"Checking of Lists of Transactions (SB-60)

4.(1) The Postal Assistant entrusted with the work of writing up of the Register SB-62 will exercise the following checks:-

(iv) Arrear interest has been correctly calculated.

(v) The balance and the amount of interest has been correctly entered in the SB-62(a) register.

The clerk of the Control Organisation will put his dated initials in the remarks column of the register of silent accounts revived in token of having carried out the above mentioned checks."

(4) Correction to ledger balances:

Whenever a correction to the ledger balance is made by the S.B. Branch on receipt of an authority from the Postal Accounts Office, necessary entry will be made by the Post Office in the Register of O.B. corrections in the form given at Annexure 9. One or two pages should be allotted for each ledger/binder. The register will contain all the corrections made in each ledger/binder after the introduction of the control organisation. It will be handed over on the same day to the C.O. for making adjustment in their SB-62 register. The Control Organisation will ensure that the corrections made are genuine by referring to the authority of the Postal Accounts Office. It may be ensured that the corrections in the balance relating to the period prior to the introduction of the Control Scheme are only entered in this register. The corrections relating to misposting in the ledger/ledger cards after the introduction of control scheme will not find place in this register but will be adjusted directly in SB-62 register. The official incharge of the Control Organisation will also put his dated initials against the relevant entry in the register in token of adjusting the amount in SB-62 register.

[Para 12 of Manual of SB Control Procedure]

Objection Register

13.(I)(i) Any irregularity noticed will be entered in clear and concise words in the objection register (SB-61) unless it has already been noticed by the Head Office. If the irregularity relating to a transaction is such as would affect its validity e.g., if there is erasure or overwriting or the depositor's acquittance is wanting, the amount involved should be placed under objection. Vouchers once received by the Control Organisation should not be given back to the Head Office. Every irregularity should be brought to the notice of the Postmaster for necessary action. It is the personal responsibility of the Postmaster and the Ledger Clerk to ensure that objections raised by the Control Organisation are got settled by supplying the wanting information and particulars. The Postmaster should also see that the same type of irregularities are not repeated by the sub and branch offices and if any office continues the same mistake the facts should be reported to the Supdt. of Post Offices/Head of the Circle, as the case may be, and to the Accounts Officer, Internal Check (SB) for appropriate action: (See Annexure 10 for form SB-61)

(ii) Separate Objection Register shall be maintained for each of the ledger clerks. The number and name of the ledger clerk as also the date from which he works will be written on the cover page of the register. Whenever a ledger clerk is changed the date upto which the clerk worked and the name of the new clerk as also the date from which he is posted will be entered. Entries in each of the objection registers will be numbered serially starting from I on the first April each year.

The applicant failed to point out that she was not required to note his objection in the register, or that she had pointed out any discrepancy as such.

5. Ld. Counsel for the applicant would, at this juncture, draw our attention to a communication received through RTI, which would reveal that the loss was finally assessed at Rs. 12,53,175/- against which an amount to the tune of Rs. 10,00,000/- have already been recovered from one Chandi Charan Dolai and Rs. 3,00,000/- from Sukumar Paul and, therefore, Ld. Counsel would strenuously urge that there was no point in saddling the applicant with any further recovery, to which, Ld. Counsel for the Respondents would respond contending that Chandi Charan Dolai had voluntarily deposited Rs. 10,00,000/- without being punished with any recovery and, therefore, the recovered amount against the loss of Rs. 12 lakhs and

odds was only Rs. 3,37,500/- and the applicant has suffered a recovery to the tune of Rs. 37,500/- till date in view of the stay of recovery granted by this Tribunal and therefore yet to suffer her punishment for her negligence. Ld. Counsel for the applicant would also take up through the rejoinder wherefrom it would appear that the present applicant, viz. Jharna Guha, PA, TBOP (SBCO), in terms of the individual performance report of the staff of SBCO, Midnapore HO for the month of July, 2006 was supposed to perform the following actions:

- i) Maintenance of SB-72 (consolidation journal) and its agreed with HO cash book in r/o SB dtd 29.7.06 to 29.08.06.
- ii) All column agreement of SB 85 with SB 72 (consolidation journal) and SB 62 (a) register in r/o SB & for the month of 7/06.
- iii) Posting in SB-63 register from SB 72 from 29.07.06 to 29.08.06 in r/o SB A/cs and RD A/cs dtd 29.07.06 to 25.08.06.
- iv) Grouping marking and posting of HO SB from 29.7.06 to 31.7.06 and totalling & all columnwise agreement between SB 62 & SB 63 of HO for the month of 7/06.

Therefore, any discrepancy or irregularity noticed while performing her task ought to have been reflected in the objection register as per rules, which the applicant, admittedly, neglected to perform and, therefore, even if not a principal offender, who had defrauded the postal department, she deserved to be held responsible for her own negligence in performance of her duties as rightly alleged vide the charge memo.

6. We further noticed that the applicant had never sought for a detailed inquiry but she was allowed inspection of the documents as she had sought for. Therefore, she was afforded all the opportunities to put up an effective defence against the allegation levelled against her. She had alleged as under:

"That Sir, most humbly and respectfully, I beg to state that while I was working as PA SBCO, Midnapore H.O., during the period mentioned above, I as it transpires from the MPR, was not at all entrusted with any job like that as mentioned in the 'statement of imputation of misconduct' viz (i) Checking of MIS transaction of Ballichak S.O., (ii) Creation of MIS accounts along with data entry in

r/o the accounts standing open at Ballichak S.O., (iii) Checking of withdrawal vouchers relating to the premature or matured closures of MIS a/c of Ballichak S.O. and hence the question of failing to discharge my duty properly towards detecting the fraud of the concerned MIS Account, as has been alleged in the 'statement of imputation of misconduct' does not arise."

To which the disciplinary authority recorded its findings as under:

"It is seen that Smt. Guha did not follow the procedure of checking the MIS a/c of Ballichak S.O. She failed to pay due importance being a responsible and senior most official to check & verify the Ballichak S.O. MIS premature closer vouchers though as per rule all vouchers of premature and final closures should be checked at SBCO level and she cannot evade her responsibility over the issue. For such serious type of lapses on the part of Smt. Guha, MIS fraud of Ballichak S.O. has been continued and SAS Agent of Ballichak S.O. misappropriate the Govt. money in connivance with the officials of Ballichak S.O. as a result the department sustained a loss of Rs. 8,78,466/- which is clearly proved her negligence of duty and thereby the C.O. failed to maintain devotion to duty as required under Rule-3(1)(ii) of CCS(Conduct) Rules, 1964."

Therefore, the order of the disciplinary authority was a reasoned one.

7. Ld. Counsel for the applicant would vociferously submit that being never required to inspect MIS, Ballichak accounts, the applicant was in no way involved in the fraud. We noted that the Appellate Authority having duly considered such submission found as under:

"(i) As regards her arguments that she was not assigned with the work of creation of MIS accounts, checking of MIS Vouchers, and data entry of MIS accounts of Ballichak S.O and, it may be mentioned that on going through the Monthly Performance Report as well the letter of Chief Supervisor Midnapore letter no. SBCO/MNP/R-Q/2012-13 dated 11.09.2013 it transpires that she was entrusted with the duty of Account Creation, checking and verifying premature closure vouchers in respect of MIS accounts of Ballichak S.O., but the said work was not performed by her, during the material period. So, the appellant's contention that she was not entrusted the said duty is not based on fact.

(ii) Regarding her argument that the basic principles of disciplinary proceedings have not been followed by the disciplinary authority while issuing the punishment order dated 26.08.2016 by not appointing Inquiry Officer to into the charges made against her, it is

seen that Smt. Guha did not request for holding an inquiry in the manner laid down in sub-rule(3) to (23) of Rule 14 of CCS(CCA), Rules, 1965 as per the provision of Rule 16 (1)(b) *ibid*. The question of Examination or Cross Examination of the Chief Supervisor SBCO would arise only if an Inquiry in the manner laid down in sub-rule(3) to (23) of Rule 14 of CCS(CCA), Rules, 1965 would take place. Moreover, the appellant, in her letter dated 15.12.2016, which was written on receipt of the chargesheet dated 23.11.2015, requested to be supplied a copy of the MPR relating to the period in question and no other document except the MPR was requested for supply. So, the contention of Smt Guha is not tenable.

(iii) As to her argument that before imposition of the punishment order, no Second show-cause notice was served upon her, and hence the order of punishment is illegal, it is mentioned that there is no provision in the CCS(CCA) Rules 1965 for issuance of the second show-cause notice before imposition of the punishment.

(iv) Regarding her argument that the punishment of recovery should be made from the erring officials of Ballichak S.O. and not from her, it may be noted the appellant was awarded punishment for the contributory lapses on her part, which paved the way for continuation of the fraud at Ballichak S.O. and the Department had to sustain loss of Rs. 8,78,466/-. Disciplinary action was also initiated against other officials having contributory lapses in the case."

8. We further noted that the applicant never demanded for a full fledged inquiry in the manner as it is done in the case of major penalty proceeding. Therefore, her allegation about violation of procedure while conducting the inquiry or requirement of holding a full fledged inquiry as mandated in **O.K.Bhardwaj Vs. UOI**, would get diluted.

9. Since rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula, requirement of natural justice must depend on circumstances of the case, the nature of inquiry, the rules under which the authorities are acting, the subject matter that is being dealt with and so on. We have noted that the scope of interference in a departmental proceeding and the punishment imposed is very limited. In the case of **B.C. Chaturvedi vs. Union of India & Others**, (1995) 6 SCC 749, the Hon'ble Apex Court on the scope of judicial review 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."

10. Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a Competent Authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."

11. In **Ranjit Thakur v. Union of India & Others**, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

12. Having considered the implications of the decisions (cited supra) and having noted that the applicant has failed to show that she was not required to discharge the duties, violations whereof have been alleged in the charge memo, which has been viewed as her negligence in the performance of her duties in absence of any extenuating circumstances such violations could not be ignored or brushed aside. If she had been negligent in performing her duties, which paved way for someone to commit a fraud and to cause a department to sustain a loss, she should be punished. However, since the Respondents have already got back more than 13 lakhs as against the sustained loss of Rs. 12,53,175/-, we remand the matter back to Appellate Authority to reconsider the imposition of recovery to the tune of Rs. 3,00,000/- and to reduce the same in an appropriate manner to an appropriate amount and with an appropriate order within a period of eight weeks from the date of communication of this order justifying why the applicant would still be required to satiate such proportion of the loss, vide appropriate order to be issued within the time frame.

13. We noted that no decisions have been placed before this Tribunal which would support the applicant's contention that a subsidiary offender was not required to make good a loss suffered by a department for his/her negligence.

Accordingly, the present O.A. would stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member(J)

RK/PS

