

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/992/2013

Date of Reserve:04.09.2019
Date of Order: 30.09.2019

CORAM:

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

Brushava Harijan, aged about 45 years,S/o. Late Danara Harijan, resident of Village-Rupra,
PS-Kesinga, Dist-Kalahandi.

...Applicant

By the Advocate(s)-M/s.B.Mohapatra
S.K.Sahoo

-VERSUS-

Union of India represented through:

1. The Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda.
2. Director, Postal Services, Berhampur Region, At/PO-Berhampur, Dist-Ganjam.
3. Superintendent of Post Offices, Kalahandi Division, At/PO-Bhawanipatna, Dist-Kalahandi.
4. Director General of Posts, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.110 001.

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the impugned order under Annexure-A/1, Annexure-A/4 and Annexure-A/6 and further direct the respondents to reinstate the applicant in service withal consequential benefits including arrear salary for the period during which the applicant was kept out of employment, within a time limit that may be stipulated by this Hon'ble Tribunal in that behalf.
- ii) To grant such other/further relief(s) as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.

2. Shorn of unnecessary details, it would suffice to note that the applicant while working as Sub Post Master of Dharamgarh Market Sub Post Office, was issued with a

Memorandum dated 27.02.2003 containing the Articles of Charge to the effect that during the period from 28.09.2002 to 21.11.2002, he had received several amounts from different persons towards money order, savings bank deposit, monthly instalments in R.D. Accounts, monthly premium for PLI and payment of telephone bill, but did not reflect those receipts in the relevant books and registers maintained in the Sub Post Office and thereby, he failed to maintain absolute integrity and devotion to duty and thus, acted in a manner unbecoming of a Government servant. The applicant although had been called upon to explain his defence either denying or admitting the allegations, he did not choose to prefer the same. Vide Memorandum dated 01.04.2003, an Inquiry Officer was appointed to enquire into the matter. In the meantime, an FIR was lodged against the applicant on 19.05.2003 relating to the self-same charges of misconduct as in the disciplinary proceedings. The Inquiry Officer submitted his report on 27.06.2003(R/5) by recording the findings as follows:

- I. Sri Harijan (CO) did not submit his written statement of defence on receipt of the memo containing the Articles of Charge and statement of imputation on 15.03.2003. He did not nominate any person to act as his defence assistant. He was also not willing to give his defence statement and to cite any witness/document for his defence purpose and declined for his self-examination. On question by the I.O., he admitted to have received the amount of S.B/RD deposits, T.R.C. & PLI collections during the period while working as S.P.M., Dharamagarh Market S.O. and not credited t in the Post Office account as mentioned in the Articles of Charge, due to his suffering from Malaria fever causing Brain failure. As regards his admission statements given to the S.D.I.P. in EX-S-7, he repeated the same reason for giving such admission statements.
- II. The Presenting Officer submitted his written brief on 26.05.2003 which was received by the C.O. on 31.05.2003. The Charged Officer was asked to submit his written brief so as to reach the undersigned positively by 15.06.2003 in the order sheet No.5 dt. 23.05.2003 & in the letter No.INQ-01/03 dt. 03.06.2003. But he did not submit the same and remained silent even though sufficient period was given for the purpose. As such the inquiry report is submitted presuming that there is no point for his defence and he is avoiding to submit his written brief.
- III. The plea taken by the charged officer while replying to the question of the I.O. is absurd and cannot be admitted as his sickness was not raised/proved during oral inquiry. He also failed to defend his case even though he was present in all the sittings of inquiry. His plea of

non credit of the amount due to his suffering from Malaria and Brain failure is also considered to be baseless as he could not receive the amount, make necessary entry in the SB/RD pass books and grant receipts in such so called health condition. Moreover, he has given admission statements written in his own handwriting and the facts mentioned therein have not been refuted subsequently.

- IV. In view of the oral and documentary evidence adduced in course of inquiry and the assessment of the evidence discussed in Para-5 above, I find Sri Harijan guilty of the charges "that he accepted the amount but failed to credit into government account and thereby misappropriated the amount". Thus the charges framed against Sri Harijan in the S.Pos, Kahahandi Division memo No.F.6-2/02(sub) dt. 27.02.2003 stand proved".

3. While the matter stood as such, the applicant, consequent upon the FIR lodged against him, was remanded to judicial custody on 19.07.2003 in connection with G.R. Case No.124/2003. He received copy of the report of the IO on 01.08.2003 requiring him to submit his defence representation, when he was in judicial custody and therefore, he submitted a representation dated 18.03.2003 to the Superintendent of Post Offices, Kalahandi Division requesting him for grant of 15 days time for submission of defence representation. However, the Disciplinary Authority, vide Memo dated 30.09.2003 imposed punishment of removal from service of the applicant and accordingly, copy of this order was served on the applicant on 30.10.2003 at the time when he was in judicial custody at Dharamgarh. The applicant was released on bail on 03.12.2003. Vide judgment dated 30.04.2005 of the S.D.J.M., Dharamgarh, the applicant was acquitted of the charge under Section 409 IPC. Thereafter, the applicant preferred an appeal on 31.10.2005 against the order of punishment imposed by the Disciplinary Authority. The Appellate Authority, i.e., Director of Postal Service vide Memo No.ST/6-01/2006 dated 31.07.2006 held the appeal as time barred. The relevant part of the order of the Appellate Authority reads as follows:

"The I.O. sent inquiry report to the Supdt. Of Post Offices, Kalahandi Division with findings that all the articles of charge were proved against the appellant. Copy of I.O's report was sent to the appellant which was received by him on 01.09.2003. In response to the inquiry report, the appellant submitted representation dated 18.02.2003. The Supdt. Of Post Offices, Kalahandi Division finalised the proceedings vide memo

No.F/6-2/02(Sub) dated 30.09.2003 imposing the penalty "Removal from service" on the appellant. Copy of the punishment order meant for the charged official was served on him on 30.10.2003 while the appellant was in sub jail, Dharamgarh.

No appeal was received from Shri Harijan against the order of punishment till 30.10.2003. After a gap of two years, Shri Brushava Harijan preferred appeal to the Director of Postal Services, Berhampur Region (without putting date in the appeal) against the order of punishment which was received in the office of the Supdt. Of Post Offices, Kalahandi Division, Bhawanipatna on 31.10.2005. In the appeal Shri Harijan has mentioned that as he was in jail he could not submit any appeal against the order.

The appellant could sent a copy of the Court Judgment dated 30.04.2005 to the Supdt. Of Post Offices, Kalahandi Division but failed to prefer appeal. He has also not furnished the period during which he was in jail. The plea taken by the appellant for his failure to appeal within a reasonable time is found not convincing. Accordingly the appeal is considered as time barred".

4. Thereafter, the applicant submitted a petition dated 05.12.2011(A/5) to the Chief Post Master General, Odisha Circle, who, in consideration of the same, vide order dated 14.01.2013 (A/6) rejected the same, thereby upholding the views taken by the Disciplinary Authority and the Appellate Authority. Hence, this Application.

5. Opposing the prayer of the applicant, respondents have filed a detailed counter and they have submitted that the O.A. being devoid of merit is liable to be dismissed both on merit and on the ground of limitation.

6. None had appeared for the applicant and therefore, after hearing the learned counsel for the respondents, orders were reserved on 04.09.2019. In the order dated 14.01.2013 (A/6) passed by the CPMG, Odisha Circle, it has been observed as follows:

"The petitioner was therefore charge sheeted under Rule-14 of the CCS(CCA) Rules, 1965 for negligence in duty & violations of Rule 3(1)(ii)(iii) of CCS Conduct Rules, 1964 vide SPOs Kalahandi Dn. Order dated 27.02.2003. The IO & PO were appointed by the disciplinary authority to enquire into the charges. The IO after conducting the inquiry submitted his report holding all the articles of charges as proved. A copy of the IO's report was sent to the petitioner on 24.07.2003 to submit his written statement of defence. The petitioner received the copy of the IO's report on 1.08.2003 but did not submit any representation during the stipulated period. Rather the

petitioner submitted another representation dated 18.08.2003 requesting more time to submit the defence representation, but did not submit the same till 30.09.2003. Wanting till 30.09.2003, the disciplinary authority, i.e., the SPOs Kalahandi Dn, finalized the disciplinary proceedings against the petitioner by awarding penalty of removal from service with immediate effect vide punishment order dated 30.09.2003".

7. From the narration of above facts, it is an admitted position that when the applicant received copy of the report of IO, he was in judicial custody and this being the situation, the applicant submitted a representation dated 18.08.2003 requesting the Disciplinary Authority to grant him 15 days time, as is evident from Annexure-R/5 to the counter so as to enable him to submit his defence representation to the report of the I.O. Despite this, the Disciplinary Authority passed orders imposing punishment of removal from service vide order dated 30.09.2003, which, admittedly, was served on the applicant on 30.10.2013 when the applicant was also in the judicial custody. Thus, it is quite obvious that it is not a case where the applicant wilfully or deliberately refrained himself from preferring defence representation to the report of the IO or appeal against the orders of punishment, as the case may be. Instead of considering this aspect, the Appellate Authority in his order dated 31.07.2006 noted that "The appellant could send a copy of the Court Judgment dated 30.04.2005 to the Superintendent of Post Offices, Kalahandi Division, but failed to prefer appeal. He has also not furnished the period during which he was in jail. The plea taken by the appellant for his failure to appeal within a reasonable time is found not convincing. Accordingly the appeal is considered as time barred".

8. It is the settled principle of law that no one can be punished without following the due procedure of law. In the instant case, the version of the authorities differs from each other. While the CPMG is of the opinion that the punishment order dated 30.09.2003 was served on the applicant on 30.10.2013 when he was in judicial custody, the Director of Postal Services, i.e., the Appellate Authority is not aware the period during which the applicant in jail. At the same time, while the Appellate Authority in his order has mentioned that in

response to the inquiry report, the appellant submitted representation dated 18.03.2013 to the report of the IO, the CPMG has maintained that the applicant had submitted a representation requesting for more time to file written representation of defence to the report of the I.O. Therefore, there is no resemblance in the orders passed by both the authorities. Even the Disciplinary Authority, while passing order dated 30.09.2003 has although recorded that the applicant received the report of the IO on 01.08.2003, but he did not submit his representation within the stipulated time of fifteen days and on 18.08.2003, he submitted representation requesting for fifteen days time for submission of defence representation and he did not submit any defence representation till date, i.e., 30.09.2003, he did not consider the circumstances which prevented the applicant from preferring such a defence representation. Be it noted that the applicant was released on bail 03.12.2003, by which time the Disciplinary Authority had already passed orders imposing punishment. Therefore, it was but natural for the applicant to await for the decision in G.R.Cse No.124 of 2003 pending before the SDJM, Dharamgarh and to take further follow up action. At this juncture, we would like to note that since the applicant had participated in the inquiry proceedings and there has been no procedural violation alleged to have been complained of during the course of inquiry, we are not inclined to pass any remarks on the outcome or conclusion arrived at by the I.O. in his report. However, since there has been a palpable irregularity from the stage of preferring defence representation to the report of the I.O. inasmuch as the applicant was in judicial custody, the order as passed by the Disciplinary Authority, warrants interference by this Tribunal being violative of the principles of natural justice. In view of this, while quashing the orders 31.07.2006 (A/4) and dated 14.01.2013 (A/6) passed by the Appellate Authority and the Reviewing Authority, i.e., CPMG, Odisha Circle, respectively, we remit the matter to the Superintendent of Post Offices, Kalahandi Division (Respondent No.3) i.e., the Disciplinary Authority for consideration of the defence representation to be preferred by the applicant against the report of the I.O. Accordingly, this Tribunal directs the applicant to submit defence representation, if any, against the report

of the I.O. to the Disciplinary Authority, i.e., Superintendent of Post Offices, Kalahandi Division within a period of three weeks from the date of receipt of this order and in case any such representation is received, the latter shall consider and dispose of the same as per the extant rules and instructions on the subject within a period of two weeks from the date of receipt of such representation. In case the applicant feels aggrieved with the order to be passed by the Disciplinary Authority, he will be at liberty to avail the statutory remedy of appeal within the time as stipulated under the rules. We make it clear that, even though under a peculiar facts and circumstances, we have held that the orders passed by the Disciplinary Authority is violative of the principles of natural justice, it is made clear that the order to be passed by the Disciplinary Authority as per our above direction, will be in supercession of the orders dated 30.09.2003 (A/1). Ordered accordingly.

9. In the result, the O.A. is allowed as above, with no order as to costs.

10. Registry is directed to send a copy of this order to the applicant in the given address by Speed Post forthwith.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

