

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/805/2014

Date of Reserve:03.07.2019

Date of Order: 04.09.2019

CORAM:

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

Sri Lokanath Sahani, aged about 63 years, S/o. Late Padmanav Sahani, resident of Jyotivihar, PO-Abhinav Bidanasi, PS-Bidanasi, Dist-Cuttack, Odisha, PIN-753 014.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani  
P.Ku.Samal  
D.P.Mohapatra

-VERSUS-

Union of India represented through:

1. The Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha, PIN-751 001.
3. Director of Accounts (Postal), Mahanadi Vihar, Cuttack, Dist-Cuttack, Odisha, PIN-753 004.

...Respondents

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

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as Superintendent of Post Offices, Cuttack South Division, Cuttack was proceeded against under Rule-16 of CCS(CCA) Rules, 1965 vide Memo dated 27/28.04.2010 (A/1) under the following Articles of Charge:

Article-I

Sri Lokanath Sahani, Superintendet of POs, Cuttack South Division, Cuttack, while working a such, appointed Sri Bamadev Jena, GDS Packer, Chasapara SO as BPM, Bali BO in account with Athagarh HO on 29.09.2009 provisionally for the period from 18.07.2009 to 31.03.2010 vide his office letter No.A-215/PF dated 29.09.2009.

Sri Bamadev Jena has also been allowed to avail leave without allowance from his original post of GDS Packer, Chasapara SO providing substitute to manage the work. Sri Jena has also been granted leave without allowance by Sri Sahani in excess of 180 days in contravention of the instructions of the Directorate. Sri Jena has already availed 274 days of leave at a stretch from 01.07.2009 to 31.03.2010 in clear violation of Directorate's instruction no.5 below Rule-7 of GDS (Conduct & Employment) Rules, 2001 (Swamy's Compilation of Service Rules for Postal Gramin Dak Sevak, 2010). It has been clearly instructed there in that the power of sanction of leave without allowance in excess of 180 days taken to officiate in the leave vacancy of Group D/Postman cadres by GDS can be exercised by the Divisional Heads instead of the Director of Postal Services as at present. Sri Sahani has sanctioned leave to Sri Jena in excess of 180 days in Cuttack South Division file marked A-215/PF, who has not been officiating in any departmental post of Group D or Postman violating the instruction of the department on the matter.

It is, therefore, alleged that by the above action, the said Sri Loka Nath Sahani failed to maintain devotion to duty as enjoined under the provisions of Rule-3 (1)(ii) of CCS(Conduct) Rules, 1964.

#### Article-II

Sri Loka Nath Sahani, Superintendent of POs, Cuttack South Division, Cuttack, while working a such, decided to make provisional appointment to the post of GDS BPM, Barada BO in account with Kisorenagar SO, which fell vacant due to the superannuation of its incumbent. On 01.07.2009, one Sri Bismay Mahima Parida submitted his application for appointment to the aforesaid post. Sri Sahani appointed the said Sri Parida to the post of GDS BPma, Barada BO provisionally for a period of six months from the date of joining or till regular appointment is made, whichever is earlier vide his office letter no.A-354/PF dated 06.07.2009 without going through the normal recruitment procedure. On the strength of this provisional appointment Sri Parida joined as GDS BPM, Barada BO on 09.07.2009. Sri Parida was relieved from the said post of GDS BPM, Barada BO on the forenoon of 27.07.2009 by the O/S Mails under pressure and due to vehement opposition from the local people.

From the facts available in the Divisional Office file marked A-354/PR, it His revealed that all of a sudden an application was received from one Sri Bismay Mahima Parida in spite of the fact that no open notification had

been issued for the purpose or nor any requisition had been placed to the Local Employment Exchange to sponsor the names of candidates for the post. Sri Sahani appointed Sri Parida to the post of GDS BPM, Barada BO provisionally on pick and choose method without any element of selection as there was no other candidate in the fray. The action of Sri Sahani is in gross violation of Directorate's instruction contained in letter no.17-115/2001-GDS dated 21.10.2002 circulated vide CO Letter No.ST-115/2001-GDS dated 23.10.2002, which envisages that where provisional appointment becomes unavoidable, action may be initiated to fill up the post following all the formalities prescribed for regular appointment, but clearly stipulating that the appointment is on a provisional basis. On no account should a provisional appointment be made without following every formality that is prescribed for regular appointment.

Hence, from the facts narrated above, it is imputed that Shri Sahani acted in violation of the instructions of the department and resorted to an irregular provisional appointment to the post of GDSBPM, Barada BO.

It is, therefore, alleged that by the above action, the said Sri Lokanath Sahani failed to maintain devotion to duty as enjoined under the provisions of Rule-3 (1)(ii) of CCS(Conduct) Rules, 1964.

### Article-III

Sri Lokanath Sahani, Superintendent of Pos, Cuttack South Division, Cuttack, while working as such, allowed local purchases of various items without competitive quotations and floating any tender for the purchase.

It is seen from the files marked J/3-1/Ch IX/2009-10, LG.3-283/08/Ch II and LG.3-283/Ch-III(Sub) of Cuttack South Division that there is no element of competition in procurement of various goods for office use. It has been clearly enumerated in the provisions of Rules-21, 137 and 160 of General Financial Rules, 2005 that every officer incurring or authorising expenditure from public money should be guided by high standards of financial propriety. The authority delegated with the financial powers of procuring goods in public interest shall have the responsibility of and accountability to bring efficiency, economy, transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement. All government purchases should be made in transparent, competitive and fair manner to secure best value for money. Rule-145 ibid says that purchase of goods up to the value of Rs.15,000/- (Rupees Fifteen

Thousand) only on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority. Sri Sahani has neither obtained any competitive quotations nor furnished any certificate as prescribed for purchase of goods upto the value of Rs.15,000/- (Rupees Fifteen Thousand) only. Hence it is observed that Sri Sahani did not observe proper procedure in local purchase of various items required for the division.

It is, therefore, alleged that by the above action, the said Sri Lokanath Sahani failed to maintain devotion to duty as enjoined in Rule-3(1)(ii) of CCS(Conduct) Rules, 1964".

2. In response to this, the applicant submitted his defence statement. In consideration of the materials on record, the CPMG, Odisha Circle came to a conclusion that the applicant had not followed the rules and instructions of the Department issued from time to time and accordingly, held him guilty. In view of this, the CPMG, Odisha Circle vide Memo dated 29.7.2010(A/7) imposed punishment of withholding of one increment of pay for a period of six months when it falls due without cumulative effect, on the applicant. Since the above punishment order was inoperative and in violation of Rule 102 of Postal Manual, Vol.III and DG P&T Order No.6 below Rule-11 of CCS(CCA) Rules, 1965, inasmuch as the penalty could not have taken force retrospectively, the applicant submitted a representation and in consideration of the same, the CPMG, Odisha Circle was directed vide Postal Directorate's letter dated 13/17/06.2014 (A/12) to issue the revised punishment order. Accordingly, vide Memo No.Vig/5-7(3)/2012 dated 08.07.2012 (A/13), the CPMG, Odisha Circle imposed the revised punishment on the applicant, which reads as follows:

"...reduction to a lower stage in the time scale of pay by one stage from pay in pay band Rs.22120 with GP Rs.5400/- to pay in pay band of Rs.21310 with GP Rs.5400/- for a period of six (6) months with effect from 01.08.2010 without cumulative effect and not adversely affecting his pension".

3. Grievance of the applicant is that the modified penalty order at A/13 is void *ab initio* inasmuch as wrong pay band has been mentioned in the said order. According to him, his PB was Rs.22660/- and not Rs.22120/- as on 01.08.2010 and before the last increment, i.e., on 30.6.2010 the stage was at Rs.21840/- and not Rs.21310/-, whereas in the modified order, it has been mentioned at Rs.22120/- and Rs.21310/- against the actual stage Rs.22660/- and Rs.21840, respectively. It has been contended by the applicant that revision of punishment is not permissible under Rule-130 of the Postal Manual by the same authority. It has been pointed out that after the retirement of the applicant on 30.11.2011, Respondent Nos. 1 and 2 are not empowered to revise the impugned punishment order issued earlier since the applicant was a Group A officer. Hence, in this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

"...to quash the impugned orders made vide Memo No.Vig/5-7(3)/2009 dated 29.07.2010 and Memo No.Vig/5-7(3)/2012 dated 08.07.2014 and further to direct the respondents to refund the amount towards irregular withholding of increment with interest".

4. Opposing the prayer of the applicant the respondents have filed a detailed counter. According to respondents, against the

modified punishment order dated 08.07.2014, the applicant preferred a representation dated 26.07.2014 to the Director General (Posts), New Delhi. This representation was disposed of vide Directorate's Order No.32-3/OR/2012-Vig. Dated 04.12.2014 (R/1) and delivered to the applicant in person on 16.12.2014. In this connection, the relevant part of the order dated 04.12.2014 is quoted hereunder:

"6. The said Shri Loknath Sahani has raised extraneous and procedural issues in his representation without saying anything of substance with reference to irregularities on his part. I find the procedural lapses committed by the said Shri Loknath Sahani in appointing Shri Bamdev Jena as GDS BPM Bali BO and Shri Bismay Mahima as BPM, Barada, grant of excess leave than 180 days to Shri Bamdev Jena and purchase of stock items without following the rules and procedure, to be grave enough to warrant imposition of a minor penalty.

The penalty imposed by the CPMG, Odisha Circle vide letter dated 08.07.2014 appears to be commensurate to the misconduct on the part of said Shri Loknath Sahani. In view of the above, there is nothing in the representation of the said Shri Loknath Sahani which could dilute the gravity of misconduct on his part. Therefore, the appeal of said Shri Loknath Sahani is hereby rejected and I confirm the penalty awarded to him vide CPMG, Odisha Circle Memo No.Vig/5-7(3)/2012 dated 08<sup>th</sup> July, 2014".

5. Respondents have pointed out that before receipt of the above said decision, the applicant has approached this Tribunal in the instant O.A. According to respondents, the order of punishment imposed earlier was not void, but inoperative. Under the provisions of Rule 130 of Postal Manual Vol.III, an inoperative order of

Disciplinary Authority needs to be made operative only by the same authority. This is also permitted by the clarification issued by Directorate's letter No.32-03/OR/2012-Vig. dated 13.06.2014/17.06.2014 (A/12). Therefore, the respondents while justifying their action, have prayed that the O.A. being devoid of merit is liable to be dismissed.

6. Applicant has filed a rejoinder to the counter in which it has been pointed out that he being a Group-A officer retired from service on 30.11.2011. Therefore, after his retirement, CPMG (Respondent No.2) is not the disciplinary authority and hence, could not have imposed modified punishment.

7. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by the applicant. At the outset, it is to be noted that the applicant having come to know about the Directorate's order dated 04.12.2014 (R/1) did not choose to amend the O.A. challenging its legality. Be that as it may, the applicant in consequence of disciplinary proceedings initiated against him was imposed penalty of withholding of one increment of pay for a period of six months when it falls due without cumulative effect vide Memo No.Vig/5-7(3)/2009 dated 29.07.2010 (A/7) of the CPMG, Odisha Circle. On the basis of representation submitted by the applicant to the said CPMG, Orissa Circle, the matter was referred to Member(Personnel), Postal Services Board, New Delhi, seeking decision of the Postal Directorate, inter alia, on the ground that as the order of punishment issued by the previous Chief PMG, Odisha

could not be set aside by the present Chief PMG, Odisha being the same authority under Rule-103 of P&T Manual, Volume-III. It was also pointed out as follows:

"Now, the said Shri Sahani has come up with a representation requesting to quash the said order of punishment and to refund the withheld amount of the increment under the ground that the punishment order is inoperative/invalid in view of the Rules-102 of P&T Manual, Volume-III. He has pointed out the irregularities in implementation of the order of the punishment. Rule-102 of Postal manual Volume-III says "the penalty of withholding of increment takes effect from the date of increment accruing to the officer after the issue of the punishment order. It cannot affect the increment which was due prior to the issue of the punishment order even though it may not have actually been drawn due to the officer being on the leave or other administrative reasons". In the instant case, the punishment order was issued on 29.07.2010 but ordered to give effect from 01.07.2010 which is prior to the date of issue of the order. As the officer was due to retire on 30.11.2011 on superannuation which is less than 06(six) months from July, 2011 and with a view to implement the order of punishment, the specific direction was given in the order of punishment to withhold the increment from July, 2010 for the specified period, But, it is not proper under Rule-102 of P & T Manual, Volume-III".

8. In the above backdrop, modified/revised punishment was issued vide order dated 8.7.2014 (A/13) by the CPMG, Odisha Circle as under:

"...reduction to a lower stage in the time-scale of pay by one stage from pay in pay-band Rs.22120 with GP Rs.5400/- to pay in pay -band Rs.21301/- with GP Rs.5400/- for a period of six (6) months with effect from 01.08.2010 without cumulative effect and not adversely affecting his pension".

9. From the above a question arises as to whether the applicant having retired from service on superannuation with effect from

30.11.2011, modified punishment as imposed vide order dated 8.7.2014 could be made effective from 01.08.2010. Since the final order was not passed on the disciplinary proceedings initiated against the applicant prior to his retirement on 30.11.2011, it should be deemed that the proceedings so initiated remained inconclusive and the punishment as imposed vide order dated 29.07.2010 becomes inoperative. Therefore, the proceedings ought to have been converted under the relevant provisions of Pension Rules, the President of India being the Disciplinary Authority to impose punishment on a retired Government employee. This procedure has not been followed in the instant case. Besides, in paragraph-5.9 of the O.A., the applicant has averred as follows:

"5.9. That the order of modified penalty made at Annexure-A/13 is also invalid and ineffective ab initio. Because the wrong stage of pay band has been mentioned in the modified order, which multiplies the irregularities. The PB of the applicant was Rs.22660/- and not Rs.22120/- as on 01.08.2010 and the stage before the last increment, i.e., on 30.06.2010 was Rs.21840/- and not Rs.21310/-. But in the modified order the stage have been shown as Rs.22120/- and Rs.21310/- against the actual stage Rs.22660/- and Rs.21840/- respectively".

10. This averment of the applicant has not been effectively answered by the Respondents in their counter. In view of this, and keeping in view the fact that the applicant has not challenged the Directorate's order dated 4.12.2014 in this O.A., to meet the ends of justice, we remit this matter back to Respondent No.1, the Secretary-cum-Director General of Posts, Dak Bhawan, New Delhi

to reconsider the matter having regard to the observations made by this Tribunal in the preceding paragraphs and pass an appropriate orders within a period of sixty days from the date of receipt of this order under intimation to the applicant.

11. With the above observation and direction, this O.A. is disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

*BKS*

