

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 810 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Udayakar Sahoo, aged about 46 years, S/o Uopendra Sahoo, At-Bisol, PO-Kulana, PS-Bhandaripokhari, Dist-Bhadrak, at present working as Asst. Supdt. Of Posts, Bhubaneswar RMS.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General (Posts), Dak Bhawan, New Delhi-110001.
2. The Chief PMG, Odisha Circle, At/PO-Bhubaneswar GPO-761001, Dist-Khurda.
3. The Director Postal Services (HQ), O/o CPMG Odisha Circle, At/PO-Bhubaneswar GPO-761001, Dist-Khurda.
4. The Superintendent of Post, Mayurbhanj Division, At/Po-Baripada, Dist-Mayurbhanj.

.....Respondents

For the applicant : Mr.T.Rath, counsel

For the respondents: Mr.A.K.Mahapatra, counsel

Heard & reserved on : 6.9.2019

Order on : 17.9.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

- “(a) to quash the memorandum of Charges No. Inv/7-100/2005 dated 5.1.2015 containing vague charges under Annexure A/12, order of punishment No.Inv/7-100/2005 dated 6.2.2015 under Annexure A/18 and order on appeal No.ST/54-1/2015 dated 19.6.2015 under Annexure A/21, respectively;
- (b) to refund the deducted recoveries with interest there on at the rate of interest on GPF and allow the OA with cost;
- (c) and pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case.”

2. The applicant, while working as Inspector of Posts, was issued a charge-sheet dated 5.1.2015 (Annexure-A/12) after he was found to have been involved after a preliminary inquiry, in the alleged violation of the rules, resulting in the loss of Rs. 23016.75. It is stated in the OA that the disciplinary authority (in short DA) did not allow inspection of records for submitting the reply of the applicant on the charges. He submitted his reply on 21.1.2015 (Annexure-A/16), pleading for a detailed inquiry into the charges. It is alleged that the DA, instead of evaluating the submissions of the applicant for an inquiry and without giving any further opportunity to him, passed the

impugned order dated 6.2.2015 (Annexure-A/18) imposing the penalty of recovery of Rs. 23016.75 for the applicant in four monthly instalments. Appeal was filed before the respondent no. 2, which was rejected vide order dated 19.6.2015 (Annexure-A/21).

3. It is stated that as per the guidelines of the DG Posts dated 25.9.1992 (Annexure-A/1), the monetary limit of fraud for investigation by the Inspector was Rs. 10000/- and since the alleged fraud by the then GDSBPM Gandipani was more than this amount, it was necessary for the Superintendent, Mayurbhanj Division (respondent no.4) to have conducted investigation, with the review being done by the APMG (Inv) in the office of the respondent no.2. It is stated that two of the sub-offenders were allowed to retire without any action by the respondent no.4. The DA rejected the request of the applicant to verify two documents before submitting his reply. It is also stated that the charges are vague and he requested for an inquiry under the rules and as per the Government of India's decision (in short GID) after the rule 16 of the CCS (CCA) Rules, 1965 (in short 'Rules'). But the same was not accepted. The applicant also wanted to be informed the rules mentioned in the charge-sheet (A/12), but it could not be shown to him. No specific rule, which was violated, has been mentioned in the charge-sheet. It is also stated that the order of the appellate authority went beyond the appeal and the charges and rejected the appeal without application of mind.

4. Counter has been filed by the respondents stating that the applicant after investigation of fraud by him against the then GDSBPM did not report to Police about the fraud, although he was severally reminded by the respondent No.4. It is stated that the respondent no.4 has to take the help of the applicant for conducting the investigation of the fraud and the rule 163 of the Postal Manual has stipulated that the Sub-divisional head would assist the divisional head. It is stated that if the applicant would have promptly given his report, the higher authorities would have investigated or reviewed the matter as per the guidelines of the DG. It is stated that the applicant did not respond to the series of reminders from the respondent no.

5. With regard to the averment in the OA about the rules mentioned in the charge-sheet, it is stated in the Counter that his report lacked the details about the accountability of the subsidiary offenders, without which it was half complete. It is stated in the Counter that no specific rules other than the best principles, are to be followed in the case.

6. Rejoinder has been filed by the applicant countering the averments in the Counter with reference to the judgments in the following cases:-

- i) The Govt. of Andhra Pradesh –vs- A.Venkata Rayudu [CA No. 2302 of 2005 decided on 31.10.2006]
- ii) Manas Ram –vs- General Manger, Telecom [(1980 3 SLR 520 (J&K)]
- iii) Arjun Choubey –vs- Union of India [Air 1984 SC 1356]
- iv) Swaran Singh –vs- Punjab State Electricity Board [CA No. 3298 of 2009 disposed of on 6.5.2009]
- v) M.L.Gera –vs- Chief Engineer [SLR (1973) 1 Pb & Hr.1076]

6. It is stated that the DA was required to mention specific Govt. orders which were violated by the charged officer. It is stated that due to the limit of the DG, he submitted the report dated 9.8.2005 to the respondent No.4 for further course of action. It is stated that he was not informed by the respondent No.4 about inadequacy of his report during the applicant's tenure in Bangiriposi. It is further stated that the DA did not mention any reason for not allowing the inquiry. It is also stated that the charge-sheet is false and the respondent No.3 tried to make the applicant scapegoat in this case. The applicant referred to the rule 93 of the Postal Manual to state that the respondent No.4 cannot delegate his responsibility to the subordinate authority.

7. Learned counsel for the applicant at the time of hearing submitted that there was a delay of about 10 years in initiating the charge-sheet and that the loss of Rs. 23016.75 is being recovered from the applicant, who is not an offender. He also submitted that both the subsidiary offenders were allowed to retire. He also submitted that no specific rule has been cited in the Article-I of the charge-sheet and that the applicant is being blamed for non-filing of the FIR, which should have been done by the respondents. Learned counsel for the applicant filed a copy of the order dated 25.4.2017 of this Tribunal in OA No. 106/2016, stating that the applicant's case is covered by this order.

8. Learned counsel for the respondents was heard. He submitted that the applicant failed to comply the instructions for timely investigation into the fraud and as explained in the Counter, his misconduct is established. Regarding the inquiry, it was stated that the disciplinary authority has explained in his order the reason for not accepting the request for inquiry. It was also submitted that the applicant was shown the documents as requested by him vide the letter at Annexure-A/10 of the OA.

9. Having regard to the submissions as well as the pleadings by both the parties, the question to be decided in this case is whether the charge-sheet and the punishment orders issued to the applicant are sustainable in view of

the grounds taken in the OA and the judgment of this Tribunal dated 25.4.2017 in OA No. 106/15.

10. The applicant has taken a ground that the DA should have accepted his request for holding an inquiry and cites the instructions of Govt. of India in support of such averment. The instruction at Annexure-A/17 of the OA states that if a request for an inquiry is made by the charged officer, then the DA has to apply his mind to the facts and circumstances of the case and decide if such request is to be accepted. It is seen from the impugned order dated 6.2.2015 (Annexure-A/18) that the DA has discussed the grounds taken by the applicant regarding his responsibility to investigate. It is stated that in a divisional level fraud investigation case, the Supt. of Post Offices (in short SPO) can depute his sub-divisional inspector to conduct a prompt inquiry and submit a report to the SPO. If the SPO's order is not complied by subordinate officer, it will amount to violation of conduct rules. It is also stated as under:-

"Lastly in view of the foregoing, there is no need to hold a separate enquiry simply because he had asked for the same....."

11. The appeal filed by the applicant was examined by the respondent No.2 in his order dated 19.6.2015 (Annexure-A/21) and stated as under:-

" (i) As Inspector, he was supposed to know various rules/instructions/circulars including contents of Postal manuals, instead of waiting for them to receive and act thereafter. Hence, the argument of the appellant is speculative in nature.

.....
(xiv) The language used by the appellant is derogative of his own position and power. As a Sub-Divisional Inspector he should know that all orders received from his SPOs are necessary and legitimate. He is in no way connected to point out the illegality of this order, except reflecting the same in a polite manner when submitting his report to SPOs....."

12. The charge in Article I related to the failure of the applicant to promptly investigate into the fraud as per the instruction of the SPO. The applicant's plea is that as per the DG, Posts letter dated 25.9.1992 (Annexure-A/1), the applicant was competent to investigate the frauds up to Rs. 10000/- and since the fraud in question involved more than Rs. 10000/-, he was not competent to take up investigation. The instruction of the SPO to the applicant to investigate was therefore not as per the DG's circular dated 25.9.1992. It is surprising that such a fraud investigation could not be done promptly apparently due to difference of opinion between the SPO and the applicant. It is not surprising that two subsidiary offenders could escape responsibility in this case due to faulty approach of the senior officers of the department. Regarding disobedience of the order of the SPO by the applicant, it is seen that there is no charge of such disobedience framed against the applicant. Without framing such a charge, it was unfair on the part of the respondent-authorities to hold him guilty primarily for this purpose.

13. Regarding the ground of delay of 10 years to initiate the proceedings, no rule has been cited to show that delayed charge-sheet is unsustainable. It is a settled principle that whether the delay vitiates the proceeding, is to be decided with reference to facts and circumstances of the case. The issue here prompt action by the officers to investigate fraud of public money and fix responsibility as per the provisions of law. The case amply demonstrates how two senior officers can take rigid stand even in case of allegation of fraud, which was required to be investigated by the officers and it was not investigated properly because of the dispute as to who should investigate it. The applicant states that his superior officer was responsible for the lapse, where as the higher authorities are of the view that the applicant should have complied with the order of the SPOs. The DA, in his order dated 6.2.2015 (A/18), has stated that in the divisional investigation, the Inspector may be asked by the SPOs to investigate. But the letter of the DG dated 25.9.1992 (A/1) clearly stated that for fraud of more than Rs. 10000/-, the Inspector is not the authority to investigate such fraud. The respondent No. 2, in his order dated 15.6.2015, has stated that "all orders received from his SPOs are necessary and legitimate." It is clear that the point raised by the applicant that he was not competent to investigate the fraud of more than Rs. 10000/- as per the instructions of the DG, Posts has not been examined in the order of the DA although such specific plea was taken by the applicant in his written reply dated 21.1.2015 (Annexure-A/16) in reply to charge-sheet.

14. If the reasoning given in the impugned order of the DA regarding non-compliance of the order of the SPOs is not considered appropriate in view of the DG's letter dated 25.9.1992, then no other valid reason is there in the impugned order of the DA disallowing the inquiry requested by the applicant and to impose the punishment without such inquiry.

15. Learned applicant's counsel cited the order dated 25.4.2017 in OA No. 106/15, in which the applicant was the SPM/PA, who did not have the responsibility of investigation of the fraud as per the DG's instructions. In the present OA, the allegation is failure to conduct prompt investigation of the fraud, for which, the responsibility could not be fixed on two subsidiary offenders, for fraud resulting in loss to the Government. Hence, the cited case is factually distinguishable from the present OA and the order in OA No. 106/2015 will not be of any help to the applicant's case.

16. In view of the discussions above, I am of the view that the order of the disciplinary authority dated 6.2.2015 (Annexure-A/18) is not legally sustainable and hence, the order dated 15.6.2015 (Annexure-A/21) of the appellate authority is also not sustainable and the question in para 9 of this

order is answered accordingly. Therefore, both the impugned punishment orders dated 6.2.2015 and 15.6.2015 are set aside and the matter is remitted to the disciplinary authority (respondent no.3) to reconsider the reply of the applicant vide letter dated 21.1.2015 (Annexure-A/16) keeping in mind the DG's circular dated 25.9.1992 (Annexure-A/1) and the discussions in this order and pass a fresh order under the rule 16 of the CCS (CCA) Rules, 1965 on the charge-sheet dated 15.1.2015 (Annexure-A/15) in accordance with law, communicating a copy of such order to the applicant within three months from the date of receipt of a copy of this order.

17. The OA is allowed in part as above with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath