

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/25/2017

Date of Reserve: 15.7.2019
Date of Order: 28.08.2019

CORAM:

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

Sri Amresh Patel, aged about 44 years, S/o. Tarachand Patel, At/PO-Raidihi, Via-Sargipali, Dist-Sundargarh – presently working as Postal Master Grade-I, Rourkela-7, S.O., Dist-Sundargarh.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Govt. Of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001.
3. Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur-768 001.
4. Director Postal Services, O/o.Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur-768 001.
5. Senior Superintendent of Post Offices, Sundargarh Division, At/PO/Dist-Sundargarh-770 001.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Post Master, Gr.I, Rourkela S.O. He has approached this Tribunal seeking for the following reliefs:

- i) That the charge sheet dated 28.10.2013 (A/1), the order of punishment 27.12.2016 (A/4) & the order dated 21.12.2016 of the appellate authority (A/7) be quashed.
- ii) And further be pleased to pass any other order/orders as deemed fit and proper.

2. Briefly stated, the facts of the matter are that the applicant was served a charge sheet under Rule-14 of CCS(CCA) Rules, 1965 vide Memo dated 28.10.2013 by the Sr.Superintendent of Post Offices, Dundargarh Division, which reads as follows:

"Sri Amaresh Patel while working as Postmaster (Gr.I), Rourkela – 8 S.O. w.e.f. 16.08.2011 to till date was directed vide Sr.Supt. of Post Offices, Sundargarh Division, Sundargarhletter No.B2 – 368 dated 24.01.2013 to relieve Sri Dinesh Sunani, PA, Rourkela-8 S.O. on office arrangement who had been granted 6 (six) days Earned Leave w.e.f. 28.01.2013. But the said Sri Amaresh Patel vide his e-mail dated 29.01.2013 challenged to the authority of Sr.Supt. of Pot Offices, Sundargarh Division, Sundargarh by refusing to relieve the said Sri Sunani with the plea that the office is running with shortage of 1 (one) PA. The said Sri Amaresh Patel was instructed over phone by ASPOs (HQ), Sundargarh on 29.01.2013 to relieve Sri Sunani as the office can be managed with the help of existing staff strength. But in spite of that the said Sri Amaresh Patel did not relieve the said Sri Dinesh Sunani and thereby deliberately failed to carry out written order of higher authority and exhibited gross negligence in which is subversive of official discipline.

It is therefore imputed that the said Sri Amaresh Patel by his above action failed to maintain devotion to duty and acted in a manner which is unbecoming of a Govt. Servant as required under Rule-3 (1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964".

3. Accordingly, an inquiry was held and the IO submitted his report. The applicant was supplied a copy of the report of the IO asking him to submit representation, in response to which, the applicant submitted his representation on 14.06.2016. Thereafter, vide order dated 27.10.2016 (A/4), the Director of Postal Services, Sambalpur Region passed the following order.

"Therefore, I, R.P.Gupta, Director, postal Services, Sambalpur Region, Sambalpur in exercise of powers conferred under Rule-15(4) of CCS(CC&A) Rules, 1965

award the said Sri Amaresh Patel, Postmaster Grade-I, Rourkela-7 S.O. the punishment of reduction of pay by two wages from the stage of Rs.44,100/- in the pay matrix level 5 and cell 15 to Rs.41,600/- in the pay matrix level 5 cell 13 for a period of three months with immediate effect. Shri Patel will earn increments of pay during the period of such reduction and on expiry of such period, the reduction will not have the effect of postponing the future increments of his pay".

4. Aggrieved with this, the applicant had approached this Tribunal in O.A.NO.832 of 2016 and this Tribunal disposed of the said O.A. vide order dated 23.11.2016 giving liberty to the applicant to prefer an appeal before the appropriate appellate authority and it was directed that if such an appeal is preferred by the applicant within the stipulated time, the same shall be disposed of through a reasoned and speaking order. In obedience to this order, the applicant submitted his appeal on 30.11.2016 (A/6) to the Post Master General, Sambalpur, who vide order dated 21.12.2016 (A/7) rejected the appeal. Hence, this Application with the aforementioned prayer.

5. The grounds on which the applicant has based his claim are that the charge sheet dated 28.10.2013 (A/1) and order dated 27.10.2016 (A/4) imposing punishment of reduction by two stages for a period of three months and the order dated 21.12.2016 (A/7) passed by the appellate authority confirming the order of punishment is bad in law inasmuch as the charge sheet was issued by an incompetent authority, i.e., Senior Superintendent of Post Offices and consequently, the IO and PO appointed by the said authority to impose major penalty is not tenable in the eye of law. According to applicant, the charge levelled against him was that he

did not relieve Sri Dinesh Sunani, PO who had been granted 6 days EL from 28.01.2013 with a plea that the office was running with the shortage of one PA and the applicant was instructed by ASPO Headquarters on 29.1.2013 to relieve said Sunani as the office could be managed with the help of the existing staff whereas the applicant by noting relieving said Sunani failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant under Rule-3(I)(ii) and 3(1)(iii) of CCS(CCA) Rules, 1964. In this connection, the applicant has contended that the IO in his report held that the applicant has not committed any offence by allowing smooth functioning of an office during last week of a month and therefore, the applicant cannot be held guilty under Rule-3(1)(ii) of CCS(Conduct) Rules, 1964. On the other hand, the IO held that the Charge in Article-1 levelled against the applicant with reference to Rule-2(1)(iii) of CCS(Conduct) Rules, 1964 is proved since he did not implement the order dated 24.1.2013 relieving Sri Sunani to proceed on leave with effect from 28.1.2013 on office arrangement.

6. It has been contended by the applicant that out of two additional documents asked for by the prosecution, one document, i.e., delivery slip in respect of SSPOs letter dated 16.4.2012 was not produced during inquiry and therefore, it cannot be held that the letter dated 16.04.2012 had been received by the applicant and thus, non-production of this document stood to his prejudice. Applicant has pointed out that once it is proved that he has maintained devotion to duty, the question of unbecoming on the

part of a Government servant cannot be held. According to him, in the interest of office as well as of public, the order of the higher authority can be ignored. The applicant has laid emphasis on the statement of SW-2(ASP I/C) during cross-examination, who stated that the applicant has not gone against the interest of public service and no loss has caused to the Department – rather the applicant managed the work with existing staff. He has also pointed out that the DW-1(Sri Dinesh Sunani PA who was not relieved) in his cross-examination by the PO stated that "the office work was managed with 1 SPM and one PA hand with shortage of two PA hands and he was SPM I/C of Rourkela-8 SO. Due to heavy pressure of work some customers were avoided and requested to attend Post Office at a later date. Some customers expressed their dissatisfaction due to such request by me". It is the case of the applicant that during last week of the month, the office was under heavy workload and since one PA had been sent for training, it was difficult to manage the office smoothly with integrity and reputation and therefore, it was not possible on the part of the applicant to relieve Sri Sunani, which has been admitted by the said Suani in his deposition before the IO as Defence Witness No.1. Applicant has stated that in view of instructions of Government of India in G.I.O.M.No.11012/2/79-Estt.(A) dated 12.03.1981 and OM No.11012/8/82-Estt.(A) dated 08.12.1981, the applicant ought not have been charge-sheeted under Rule-14 of CCS(CCA)Rules, 1964. Besides, it has been pointed out that the punishment order as well as the orders of the appellate authority are the products of non-application of mind.

7. Respondents have filed their counter opposing the prayer of the applicant. According to respondents, in the inquiry report dated 22.04.2016, the IO did not opine that the applicant is guilty, but he reported that the charge framed against the applicant has been proved. After receipt of the representation of the applicant to the report of the IO, the SSPOs, Sundargarh (Respondent No.5) being the disciplinary authority with regard to minor penalty, examined the case and found that the proceedings warrant major penalty and therefore, he forwarded the case to the Director of Postal Services, Sambalpur Region (Res.No.4) who is the competent authority to finalize the case. Respondents have submitted that the charge sheet dated 28.10.2013, order dated 27.10.2016 and the order of the appellate authority dated 21.12.2016 are in accordance with rules. In the counter, the respondents have cited the judgment dated 18.01.1994 of the Hon'ble Supreme Court in State Bank of India vs. Samarendra Kishore Endow and Another, which reads as follows:

"The Tribunal cannot interfere with the findings of the inquiry officer of competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere

with the penalty if the conclusion of the Inquiry Officer of the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter".

8. The respondents have pointed out that the instructions issued vide OM dated 12.03.1981 and OM dated 08.12.1982 are not applicable to the case of the applicant.

9. With the above, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

10. 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 both the sides. In the written notes of submission the applicant has brought pointed out that in similar matter this Tribunal while disposing of O.A.No.232 of 2010 (Rabindranath swain vs. Union of India) vide order dated 23.2.2015 passed by this Tribunal in O.A.No.232 of 2010 has categorically held that Senior Superintendent of Post Offices is not competent to issue charge sheet under Rule-14 to a BCR cadre employee whose appointing authority is the Director of Postal Services, who can only impose major penalty.

11. In the written notes of submission filed by the respondents, reliance has been placed on the following decisions.

- i) AIR 1993 SC 1321 (P.V.Srinivas Sastri & Ors. Vs. C & AG Ors.)
- ii) 2013 (1) SCC (L&S) 121 (Secretary, Ministry of Defence vs. Prabhash Chandra Mindha)
- iii) AIR SC 1996 sc 2292 (Director General ESI vs. Abdul Razaq)

12. Perusal of order dated 23.2.2015 passed by this Tribunal in O.A.No.232/2010 reveals that the applicant therein while working as Assistant Post Master (BCR) cadre had been proceeded against Rule-14 of CCS(CCA) Rules, 1965 by the Senior Superintendent of Post Offices, Bhubaneswar. This matter was the subject matter of challenge in that O.A. on the ground that the SSPOs was not competent to initiate disciplinary proceedings under Rule-14 of CCS(CCA) Rules, 1965, against the applicant. This Tribunal in Paragraph-20 of the order, held and decided as under:

“20. Perusal of the above decision makes it clear that the basic point to be decided in the instant O.A. has authoritatively been decided by Hon’ble the Apex Court, in Gopinath’s case. Therefore, we are of the view that the disciplinary initiated against the applicant vide Charge Sheet dated 11.07.2005 (Annex.A/2) is without any authority. In other words, the SSPO, Bhubaneswar not being the disciplinary authority, could not have initiated disciplinary proceedings against the applicant under Rule-14 of the CCS(CCA) Rules, 1965 and, therefore the proceedings so initiated are void ab initio. This being the situation, we are not inclined to discuss the other points raised by the applicant in support of his case. In the result, the Charge sheet dated 11.07.2005 (Annex.A/2), the order of the disciplinary authority dated 13.11.2007(Annex.A/6) and the orders of the appellate authority dated 27.12.2009(Annex.A/8) are quashed and set aside. The respondent authorities are however, at liberty to take appropriate action in accordance with law.

21. The O.A. is consequently allowed with no order as to costs”.

13. Since the point to be decided in this O.A. is no more res integra in view of the decision of this Tribunal in O.A.No.232/2010 cited supra, following the ratio decided therein we, quash the charge sheet dated 28.12.2012 (A/1), the order of punishment

dated 27.12.2016 (A/4) and the order dated 21.12.2016 of the appellate authority (A/7). However, the respondent authorities are liberty to take appropriate action in accordance with law.

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

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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