

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 99/2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Purusottam Naik, aged about 42 years, S/o Shri Chaturbhuja Naik, a permanent resident of Vill/PO-Baghuasole, Via/PS-chandua Ashram, Dist. – Mayurbhanj, at present removed from the post of GDSBPM, Baghuasole BO under Mayurbhanj Postal Division.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-DG (Posts), Dak Bhawan, New Delhi- 110001.
2. Chief PMG, Odisha Circle, At/PO-Bhubaneswar GPO – 753001, Dist. – Khurda.
3. Director of Postal Services (HQ), O/o the CPMG, Odisha Circle, At-Bhubaneswar, PO – Bhubaneswar GPO-751001, Dist. – Khurdha.
4. Supdt. Of Post Offices, Mayurbhanj Division, At/PO-Baripad-757001, Dist. – Mayurbhanj.

.....Respondents.

For the applicant : Mr.T.Rath, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 1.5.2019

Order on : 3.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant was appointed as a Gramin Dak Sevak Branch Post Master (in short GDSBPM) Baghuasole on regular basis after due selection. He was placed on put-off duty and was proceeded against under the rule 10 of the GDS (Conduct and Engagement) Rules, 2001 (referred hereinafter as 'Rules, 2001') vide the charge-memo dated 17.12.2009 (Annexure-A/4). After inquiry, the Inquiry Officer (in short IO) vide his report dated 15.3.2011 (Annexure-A/6) has submitted his report that the charges against the applicant were not proved except for the charge of erroneous entries in the records. The respondent no.4, who is the disciplinary authority (in short DA) in this case, passed the order dated 30.5.2011 (Annexure-A/7) imposing the penalty of debarring the applicant from appearing in the examination for the post of postman for a period of two years.

2. When the matter stood thus, the respondent no.3 reviewed the matter and passed the order dated 28.11.2011 (Annexure-A/8) directing the DA to conduct the inquiry afresh as extracted under:-

"Whereas Sri Purusottam Naik, GDS BPM, Baghuasole BOP in account with Chandua Ashram SO under Mayurbhanj Division was proceeded under Rule 10 of GDS (Conduct & Engagement) Rules, 2011 vide SPOs, Mayurbhanj Division vide memo No.F/4-3/04/09-10 dated 17.12.2009.

And whereas on receipt of IO report SPOs, Mayurbhanj Division who is the Disciplinary Authority has passed a punishment order of debarring the Charged GDS from appearing in the recruitment examination for the Postman for two years vide memo No. F/4-3/04/09-10 dated 30.5.2011 without mentioning the reasons of disagreement although the IO has disproved all the charges.

And whereas the undersigned has reviewed the case as per Rule 19(1)(ii) of GDS (Conduct & Engagement) Rules, 201 and found that the IO has not correctly conducted the inquiry despite clear documentary evidences available in support of the charges. Also the Disc. Authority has taken a very lenient view while deciding the case and imposed the punishment which is not commensurate to the offence committed by the charged GDS.

Therefore the undersigned has now directed the Disciplinary Authority to hold the inquiry afresh and complete it within six months."

3. The DA, in pursuance of the order dated 28.11.2011, issued order dated 23.10.2012 (Annexure-A/10) issuing fresh charges which were almost identical as the charges issued earlier vide order dated 17.12.2009 (Annexure-A/4). Then a fresh inquiry was ordered through another IO to inquire into the charges now framed against the applicant. The IO submitted fresh report dated 30.6.2014 (Annexure-A/14) concluding that all charges against the applicant have been proved. The applicant was supplied a copy of the IO's report for submitting his representation, which was submitted by him. The DA passed the order dated 22.8.2014 (Annexure-A/19) removing the applicant from service. Appeal dated 14.9.2014 (Annexure-A/20) was submitted before the respondent no.3 as the appellate authority (in short AA, who considered the rejected the same vide order dated 6.8.2015 (Annexure-A/23).

4. Being aggrieved by the orders dated 28.11.2011 (A/8) and subsequent orders issuing a fresh charge memo and penalty order of removal from service, the applicant has filed the present OA, seeking the following reliefs:-

"Under the facts and circumstances stated above, this Hon'ble Court may kindly be pleased to issue notice to the respondents and upon hearing the counsel for the respondents, pass the following reliefs :

- (a) Quash the order dated 28.11.2011 (Annexure A/8) of the DPS(HQ) being illegal and without any authority.

- (b) Quash the charge sheet under Annexure A/10, report of the IO under Annexure A/14 and the order of removal from service under Annexure A/19 and appellate order under Annexure A/23.
- (c) Direct the respondents to reinstate the applicant in his post with full back wages and service benefits.
- (d) To pass appropriate order/orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with costs."

5. The following grounds have been advanced in the OA:-

- (i) Order dated 28.11.2011 was passed after 6 months of the order dated 30.5.2011 by the DA finalizing the disciplinary proceedings. Hence, it is illegal.
- (ii) While ordering fresh inquiry, the penalty order dated 30.5.2011 was not set aside and the same was implemented. Hence, the respondent no.3 does not have jurisdiction to pass the order dated 28.11.2011 for fresh inquiry.
- (iii) In the order dated 28.11.2011 (A/8), it is wrongly stated that the applicant has been proceeded against as per the Rules, 2011, where as the applicant was proceeded against as per the Rules, 2001 as stated in the charge-sheet. Further, the charges referred to violation of the rule 21 of the Rules, 2001 which does not exist.
- (iv) The rules 131, 171 and 175 referred in the charge- memo dated 23.10.2012 have not been supplied to the applicant and these rules are not valid as on date.
- (v) The IO conducted the inquiry in manner violating the rules and the DA has not applied his mind while passing the impugned order of removal from service.
- (vi) The AA did not consider the submissions of the applicant in the appeal dated 3.11.2014 and hence, the order of the AA is liable to be quashed.

6. The respondents have opposed the OA by filing the Counter, attaching copy of the RD accounts passbooks in support of the charge that the applicant failed to maintain the passbooks as per the existing rules. It is also stated that as per the rule 12 and the instructions issued by the DG Posts, the Inspector of Posts is empowered to place a GDSBPM on put-off duty subject to confirmation by the Superintendent of Post Offices within 15 days. In reply to the contentions in para 5.1, 5.2 and 5.3 of the OA that the AA's order dated 28.11.2011 (A/8) was illegal and without authority as the applicant had already undergone the penalty imposed by the DA, it is stated that the respondent no.3 has the authority under the rule 19 to reopen the case and after making inquiry, it may confirm or modify or set aside the order imposed by the disciplinary authority and that the punishment imposed by the DA was not commensurate with the offences committed by the applicant, as stated in para 25, 26 and 27 of the Counter.

7. The applicant has filed Rejoinder, stating that the averments made in para 5.2 and 5.3 of the OA have not been countered by the respondents, besides denying the contentions made in the Counter.

8. We have heard learned counsel for both the parties and perused the materials placed before us in the pleadings of both the parties. The relevant

issue to be decided in this case is whether the order dated 28.11.2011 (Annexure-A/8) by which the AA, in exercise of his power under the rule 19 ordered for re-inquiry of the matter, is legally sustainable in view of the averments made in the OA, particularly in para 5.2 and 5.3 of the OA.

9. The applicant's averment is that the respondent No. 3 did not set aside the punishment imposed by the respondent No. 4 as disciplinary authority while passing the order dated 28.11.2011 for fresh inquiry into the matter, for which, the applicant had undergone the penalty imposed by the respondent No. 4 in addition to the punishment of removal from service imposed by the respondent No. 4 after passing of the order dated 28.11.2011 by the appellate authority (respondent no. 3). The respondent in their Counter have simply stated that the respondent No. 3 has the authority under the rule 19(1)(ii) of the GDS (Conduct & Engagement) Rules, 2011. The said rule 19 states as under:-

"19. Revision

(1) Notwithstanding anything contained in these rules-

- (i) Regional PMG for those Gramin Dak Sevak who work in region headed by PMG: and in the rest of the cases by the Head of the Circle (Chief Postmaster General),
 - (ii) Any other authority immediately superior to the authority passing the orders; or
 - (iii) Any other authority specified in this behalf by the Government by general or special order and within such time as may be specified in that general or special order:
- may, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise an order made under these rules, reopen the case and after making such enquiry as it considers necessary, may
- (a) confirm, modify or set aside the order, or
 - (b) pass such orders as it deems fit.

Provided that no such case shall be reopened under this rule after the expiry of six months from the date of the order to be revised except by the Government or by the Head of Circle or by the Postmaster-General (Region) and also before the expiry of the time limit of three months specified for preferring an appeal under Rule 14:

Provided further that no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the Sevak concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) and (vi) of Rule 9 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed except after the enquiry in the manner laid down in Rule 10, in case no such enquiry has already been held.

(2) No application to revise an order made on an application for a revision or order passed or made on a revision shall be entertained."

10. From the rule 19 as quoted above, it is clear that the respondent no. 3 being the next higher authority to the respondent no. 4, can revise the order dated 30.5.2011 (Annexure-A/7) under the rule 19. Since after revision of the order dated 30.5.2011 it was decided by the respondent no. 3 to order a fresh inquiry for the reasons as mentioned in the order dated 28.11.2011 (A/8), it

was necessary to set aside the order of punishment dated 30.5.2011 imposed by the respondent no. 4. The applicant in para 5.3 of the OA has averred that the punishment as per the order dated 30.5.2011 has been already undergone by the applicant, for which the order dated 28.11.2011 passed by the respondent no. 3 to order re-inquiry of the charges de-novo has been impugned in this OA. By order dated 30.5.2011 (A/7), the respondent no. 4 had debarred the applicant from appearing in the recruitment examination for the post of postman cadre for a period of two years. This order was not set aside while order for fresh inquiry was passed vide order dated 28.11.2011 (Annexure-A/8). As a result, the order dated 30.5.2011 remained valid while de-novo inquiry was ordered by the respondent no. 4 in pursuance of the order dated 28.11.2011. and after such de-novo inquiry, the applicant was imposed an enhanced punishment of removal from service vide order dated 22.8.2014 (Annexure-A/19) passed by the respondent no. 4 after de-novo inquiry. The order dated 22.8.2014 was passed after more than two years of the order dated 30.5.2011, which debarred the applicant from appearing in the examination for postman for two years. Hence, it is clear that by the time the fresh punishment order dated 22.8.2014 was passed, the applicant had already undergone the punishment imposed vide order dated 30.5.2011 which had been fully implemented. There is no averment of the respondents in their pleadings to the contrary and there is nothing on record to show that the punishment imposed vide order dated 30.5.2011 by the respondent no. 4 was set aside or kept in abeyance while conducting fresh inquiry.

11. It is noted that although the respondent no. 3 had ordered for fresh inquiry vide order dated 28.11.2011 (A/8), but the respondent no. 4 issued an identical charge-sheet to the charge-sheet issued earlier was enclosed by the respondent no. 4 with his order dated 23.10.2012 appointing another Inquiry Officer for de-novo inquiry in compliance of the order dated 28.11.2011, by which the respondent no. 4 was directed to complete the fresh inquiry within a period of six month. However, the order for fresh inquiry was issued on 23.10.2012 after about 11 months from the order dated 28.11.2011. The IO submitted the report on 7.3.2014 (Annexure-A/11) which is after about 27 months from the order dated 28.11.2011 which had directed the disciplinary authority to complete the fresh inquiry within six months. The reasons for delay in appointing the IO and completing fresh inquiry beyond the period of six months stipulated in order dated 28.11.2011 have not been explained in the pleadings of the respondents. However, although the applicant in his OA has not raised this ground of delay in completing the fresh inquiry beyond six months in the OA, but he had raised this ground in his appeal dated 14.9.2014. But the appellate authority in the impugned order dated 6.8.2015

(Annexure-A/23) has not considered this ground of delay taken in the appeal dated 14.9.2015 and did not indicate any reason for failure on the part of the respondent no. 4 in conducting the fresh inquiry within the time of six months stipulated vide the order dated 28.11.2011 (A/8).

12. On the question of delay in completing the disciplinary proceedings, Hon'ble Apex Court in the case of **Prem Nath Bali vs. Registrar High Court of Delhi & Anr. in Civil Appeal No. 958 of 2010** has observed that the employers are to take steps to conclude the disciplinary proceedings within the shortest possible time. Hon'ble Apex Court in that case has held as under:-

"31) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32) As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

13. Applying the principles laid down by Hon'ble Apex Court in the above cited judgment to the present case, it is seen that the order dated 28.11.2011 stipulated that the fresh inquiry is to be completed within six months. Hence, it was necessary for the disciplinary authority who is to take steps for conducting fresh inquiry, to strictly adhere to the time limit fixed by the superior authority in completing the fresh inquiry as per the judgment cited above. In case it was not possible for the respondent no. 4 to complete fresh inquiry within six months, then he could have moved the respondent no. 3 to allow some more time. But in this case, the respondent no. 4 did not take any step even to appoint new Inquiry Officer to conduct fresh inquiry within six months and no reason for appointing the IO much after six months from the order dated 28.11.2011 has been indicated. Although the ground of delay beyond the time stipulated in order dated 28.11.2011 was taken by the applicant in his appeal dated 14.9.2014 (A/20), but the same was not considered by the appellate authority. Hence, the order dated 22.8.2014 (Annexure-A/19) imposing the

fresh punishment of removal from engagement is not sustainable on the ground of delay in completing the inquiry within the time stipulated by the order dated 28.11.2011.

14. In the facts and circumstances of the case and for the reasons discussed in paragraph 10 of this order, the order dated 28.11.2011 (Annexure-A/8) directing the disciplinary authority for conducting fresh inquiry into charges without setting aside the order of punishment already imposed by the disciplinary authority vide order dated 30.5.2011 (Annexure-A/7) is legally not sustainable, since it has resulted in imposition of two punishments on the applicant for the charges framed against him vide the order dated 30.5.2011 (A/7) and order dated 22.8.2014 (A/19). The question framed in paragraph 8 of this order is answered accordingly in favour of the applicant.

15. The order dated 23.10.2012 of the respondent no.4 appointing another IO for fresh inquiry and the report of the inquiry officer dated 30.6.2014 at Annexure-A/14 submitted in pursuance to the order dated 23.10.2012, are not sustainable in the eyes of law as the fresh inquiry was completed after the time of six months stipulated in the order dated 28.11.2011 and beyond the stipulated time, the respondent no. 4 had no authority as per the order dated 28.11.2011 to pass the order dated 23.10.2012 without extension of the time duly approved by the competent authority. Similarly the order dated 22.8.2014 (A/19) and order dated 6.8.2015 (A/23) are not sustainable in the eyes of law as the applicant by the time these orders were passed, had already undergone the punishment imposed earlier vide order dated 30.5.2011 (A/7), which was not set aside or kept in abeyance by the competent authority and there is no provision in the Rule, 2001 or 2011 providing for imposition of more than one penalty specified under the rule 9 of the GDS (Conduct and Engagement) Rules, 2011 after the applicant has already undergone the first penalty imposed on him. Further, these orders were also passed based on the inquiry report, which was conducted beyond the time stipulated in the order dated 28.11.2011 without getting the time for fresh inquiry extended with due approval of the competent authority and hence, these orders are not sustainable under law for this reason also.

16. In view of the discussions above, the impugned orders at Annexure A/8, A/10, the report of the IO at Annexure-A/14, the fresh order of punishment dated 22.8.2014 (Annexure-A/19) and order of the appellate authority rejecting the appeal dated 14.9.2014 of the applicant against the order dated 22.8.2014 are quashed. The respondents are directed to continue to engage the applicant as GDSBPM at the Post Office he was working prior to the order dated 22.8.2014 , treating the order dated 30.5.2011 as the final order of punishment

passed in the disciplinary proceeding against the applicant. It is made clear that the applicant is entitled all consequential benefits of engagement ignoring the order dated 22.8.2014 removing him from engagement. The respondents are directed to comply this order within three months from the date of receipt of a copy of this order.

17. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath