

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. NO.260/65/2015

Date of Reserve: 11.09.2019

Date of Order:30.09.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Pravakar Mohanty, aged about 61 years, S/o. Late Harihar Mohanty, a permanent resident of Vill/PO-Kalakad, Via-Sajanagarh, PS-Raj Berhampur, Dist-Balasore – at present removed from the post of SMD/MC, Telpal BO under Balasore Postal Division.

...Applicant

By the Advocate(s)-Mr.T.Rath

-VERSUS-

Union of India represented through:

1. The Secretary-cum-D.G.(Posts), Dak Bhawan, New Delhi-110 001.
2. The Chief PMG, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar GPO-751 001, Dist-Khurda.
3. Superintendent of Post Offices, Balasore Division, At/PO/Dist-Balasore-756 001.
4. Sub Divisional Inspector (Postal), Rajnilagiri Sub Division, PO-Rajnilagiri-6570, Dist-Balasore.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as GDSMD/MC, Telipal BO in account with Sajanagarh SO under Balasore Postal Division, was put under off duty with effect from 06.11.2007 vide A/1 in contemplation of initiation of disciplinary proceedings against him under Rule-12(1) of GDS (Conduct & Employment) Rules, 2001. The applicant submitted an appeal dated 17.12.2007 to the Superintendent of Post Offices, Balasore Division with a request to reinstate him in service pending disciplinary inquiry. However, vide Memo dated 24.06.2008 (A/3), the applicant was issued with a Memorandum of Charge with a direction to submit written statement of defence, if any, within a stipulated time frame. In the fitness of things, the Article of Charge levelled against the applicant is extracted herein below:

"Sri Pravakar Mohanty while working as GDSMD Telipal BO in account with Sajanagarh SO under Balasore HO, shown payment of EXPTL SO-AD-3515 MO No.3692 dated 30.08.07 for Rs.1,000/- (One thousand) only payable to Sri Bishwanath Pradhan of village Gohira, PO-Telipal on 04.09.2007 taking the signature of a person other than the real payee and has also taken the signature of a person other than the real witness on the MO paid voucher in violation of Rule-106 read with note one below Rule-106 of BO Rule (6th Edition 2nd reprint).

By his above act, the said Sri Mohanty failed to maintain absolute integrity and devotion to duty as enjoined in Rule-21 of GDS (Conduct & Employment) Rules, 2001".

2. The applicant having denied the charges, an inquiry was conducted and the Inquiry Officer submitted his report on 04.09.2011 with the following findings.

"In view of discussion made in above paras, all exhibited documents, depositions of SW-1, SW-3 to 8 during oral inquiry, the article of charge against Sri Pravakar Mohanty framed vide IPs Rajnigiri vide memo No.F/Telipal/07 dated 24.6.08 is proved in toto. Sri P.Mohanty (CO) has contravened the provision of Rule-106 read with note one below Rule 106 of BO rules (6th Edition 2nd reprint) in the case showing payment of MO to a person other than real payee. Sri Mohanty the CO was found guilty of the charge framed against him and thereby failed to maintain absolute integrity and devotion to duty as enjoined of him under Rule 21 of GDS (Conduct & Employment) Rules, 2001".

3. The applicant was supplied with a copy of the report of the IO in response to which, he submitted his representation on 3.10.2011. Thereafter, the Inspector of Posts, Rajnilagiri Sub Division in the capacity of Disciplinary Authority vide order dated 14.11.2011 (A/13) imposed punishment on the applicant as under:

"As such I Sri Basanta Kumar Singha Inspector Posts Rajnilagiri do hereby order that Sri Pravakar Mohanty GDSMD Telipal BO i.a.w. Sajanagarh SO under Balasore HO be removed from service with immediate effect. He is not entitled to any financial benefits consequent upon execution of the order of removal from service. I hope and trust that the punishment so imposed on the aforesaid Sri Mohanty will meet the ends of justice".

4. Against the above punishment order, the applicant submitted an appeal dated 8.12.2011 (A/14) to the Superintendent of Post Offices, Balasore Division. The Appellate Authority vide order dated 11.02.2013 (A/15) rejected appeal, thus upholding the punishment as imposed by the Disciplinary Authority.

5. Aggrieved with this, the applicant has approached this Tribunal in the present O.A. praying for the following:

- i) To quash the charge sheet under Annexure-A/3, Punishment Order under Annexure-A/13 and the appellate order under Annexure-A/15.
- ii) To direct the Respondents to reinstate the applicant with all service benefits including back wages.
- iii) And pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with costs.

6. The grounds on which the applicant has based his claims are as follows:

- i) One Rameswar Hansdah, who had not been cited as SW in the Charge Memo was examined as SW-8 and despite objection of the applicant in this regard, while the IO recorded his evidence, the IO did not record any reason in allowing the said Hansadh as SW-8. This resulted in debarring the applicant from examining a vital witness, i.e., the GEQD, whose report was used as a trump card by the IO, PO, DA and AA to bring home the charges.
- ii) Introduction and exhibition of the report of GEQD without calling upon the particular incumbent to cross-examination by the applicant is violative of the principles of natural justice as held in the case of Ministry of Finance vs. S.B.Ramesh [1998 SCC(L&S) 865].
- iii) The IO did not allow production of two vital defence documents and two defence witnesses as a result of which the applicant has been prejudiced. In other words, it is the case of the applicant that there were two persons having the same name in village Gohira and he had made payment to one person named Biswanath Pradhan other than the actual Biswanath Pradhan, the complainant. The I.O. did not allow Shri Biswanath Pradhan as DW, who had received the MO and was willing to depose and as such, a prejudice has caused.
- iv) Keeping in view the possibility of wrong payment of Money Order, the Government had enacted Section 47 in Indian Post Office Act, 1898 for recovery of the amount from the wrong payee in case he dies not refund the amount. Further, under Section 48 of the said Act, no suit or other legal proceeding shall be instituted against any officer or the Post Office in respect of any wrong payment of a Money Order.

- v) The applicant had made payment of Money Order to a wrong person due to existence of two persons in the same name and in the same village. Shri P.K.Patri (SW-2) during cross-examination stated that there two persons named Biswanath Pradhan in Gohira village. Besides, Shri Ashok Kumar Das (DW-1) who had signed as witness towards payment of Money Order in his deposition admitted his signature on the MO paid voucher and stated to be witness of payment made to Shri Biswanath Pradhan. Those were not taken into consideration either by the IO or the Disciplinary Authority.
- vi) The request of the applicant made to IO for production of certificate of credit of Rs.1000/- at Balasore HO on 05.05.2009 towards refund of wrongly paid Hyderabad City MO No.3692 dated 30.05.2007 by Shri Biswanath Pradhan, the wrong payee and the photocopy of ACG-67 receipt No.35 dated 5.5.2009 for Rs.1000/- which is completely related to the proceeding was rejected by the IO intentionally.
- vii) Citing the above grounds, the applicant has added that with a mala fide intention, the IO did not allow the vital documents and vital witnesses to be examined and as such, the entire proceedings being vitiated, should be quashed by this Tribunal.

7. Per contra, the respondents have filed their counter. According to respondents, the disciplinary inquiry has been conducted in accordance with the procedure laid down in this regard and the applicant has been afforded reasonable opportunity to defend his case. The Disciplinary Authority having regard to the report of the IO and the representation of the applicant including other materials on record, imposed punishment, which is in order. Similarly, the Appellate Authority with due application of mind has rejected the appeal preferred by the applicant against the orders of punishment. Respondents have pointed out that Sri A.K.Singh, AGEQD, O/o. the GEQD, Kolkata in spite of repeated notice, did not attend inquiry. In the circumstances the PO vide his letter dated 28.05.2010 requisitioned Sri Rameswar Hansdah, Office Assistant, who was dealing with GEQD was taken as additional witnesses on behalf of the prosecution during inquiry. According to respondents, there was no application submitted by the applicant on 13.08.2010 as per Annexure-A/16 objecting to Sri Rameswar Hansdah being cited as an additional witness and had it been so, the same could have been dealt by the IO in his order sheet dated 13.08.2010. Therefore, the plea of the applicant in this regard is an afterthought. It has been contended by the respondents that there was no wrong payment as it was a deliberate one and the charge

against the applicant has been fully established. Respondents have pointed out that the MO was deliberately paid to a person other than the real payee on 04.09.2007 and after a lapse of two years when a complaint was lodged, the applicant credited the amount of Rs.1000/- under UCR at Balasore HO. According to respondents, the applicant having rendered more than 27 years of service must be aware of the inhabitants of the locality in person since the nature of duty is to perform the delivery of the mails/daks to the persons at locality. If there was insufficiency in address of the payee, the applicant could have simply returned the Money Order in question to the remitter with remark "insufficient address, hence returned to remitter". Instead of doing so, the applicant showed the payment of Money Order for his ill intention and pecuniary gain. In order to fortify their stand point, the respondents have placed reliance on the decision of this Tribunal in O.A.No.163/2010 disposed of on 29.02.2012 in which has been held that as follows:

"...It is seen that the charge has been proved and punishment imposed after following due procedure of law. We have also considered the report of the GEOD which confirms forged signature of the payee. We are, there, of the opinion that the quantum of amount i.e., whether Rs.126/- or Re.1/- cannot determine the quantum of punishment. Hence, imposition of punishment of removal from service cannot be said to be in any manner harsh or disproportionate..."

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

9. As regards the delay in approaching this Tribunal, we would like to note that the applicant has filed M.A.No.95 of 2015. The Appellate Authority has passed the order dated 11.02.2013(A/15). In view of Section 21 of the A.T.Act, 1985, the applicant ought to have approached this Tribunal within one year of the order dated 11.02.2013. Instead, he has approached this Tribunal on 02.02.2015 and as such, a delay of about one year and two months. On the point of delay, the applicant has explained that the applicant is semi-literate and is unaware of the procedure of this Tribunal. Secondly, the applicant had approached Shri Bhagirath Das, AGS to help in engaging a lawyer and as such, the applicant had handed over the entire brief to him. The said Bhagiradh Das had approached the Lawyer in

the month of October, 2014, who accepted the brief and instructed for collecting further documents and the same were not readily available in order to file the O.A. Finally, the applicant could collect the entire document and approached his lawyer on 25.12.2014 and immediately, thereafter the present O.A. was filed.

10. We have considered the petition for condonation of delay and the objection raised by the respondents in this regard. Having regard to the facts and circumstances of the case, we condone the delay and accordingly, the O.A. is decided on merit. M.A.No.95/2015 is thus allowed and disposed of.

11. We have heard the learned counsels for both the sides and perused the records. Admittedly, the Money Order to the tune of Rs.1000/- has been paid by the applicant to a person other than the actual payee. However, the fact remains that there being two persons in the same name, i.e., Biswanath Pradhan of the same village, MO paid to one Biswanath Pradhan, who was not the actual payee. The Disciplinary Authority, while dealing with the representation of the applicant to the report of the IO, vide order dated 14.11.2011 (A/13) has mentioned as follows:

"In his defence representation, the C.O. has insisted upon three points, (i) He has tried to establish that there were two Biswanath Pradhans in village Gohira and the MO in question was paid to a wrong payee inadvertently due to confusion in the name of the payee. But the C.O. has never brought home any documentary evidence to substantiate his assertion. Moreover, he has not brought home any corroborating oral evidence to support his assertion. Further the so called second Biswanath Pradhan was never present in the oral inquiry by the C.O. to testify the credibility of his assertion. (ii)The C.O. has tried to substantiate that the MO in question was paid to the real payee in presence of the witness Sri Ashok Kumar Das. But the witness has clearly deposited during the cross examination that he has not inquired whether the MO in question was paid to the real payee. The C.O. has narrated so many extraneous things which are not relevant to the charge. (iii)The C.O. has delineated that the opinion of the GEQD in the oral inquiry has got no evidentiary value as the GEQD Kolkata was not present. But the officer (SW-8) who introduced the opinion of the GEQD through Exhibit-14 has never been challenged by the C.O. in the oral inquiry. In fact the opinion of the GEQD was corroborated by the oral evidence of SW-8. As such, the evidentially value of the opinion of the GEQD is well merited".

12. In the representation dated 24.9.2011 (A/12) made to the Disciplinary Authority against the report of the IO, the applicant had indicated as follows;

- "4. There are provisions in the Departmental Rules that whenever or wherever the value of one M.O. is paid to a person other than the real payee, the value is to be recovered from the wrong recipient and to be credited under U.C.R. and subsequently to be paid to the real payee by sanction of the amount under UCP by the appropriate authority.
5. In the instant case, there are two Biswanath Pradhans in Gohira village which is revealed from the SW-2, Sri Pravash Chandra Patri, GDS BPM, Telipal BO. whose deposition cannot be contradicted by the prosecution, being his own witness.
6. The same fact of two Biswanath Pradhans in Gohira village was also revealed from the deposition of DW-1 Sri Ashok Kumar Das, who admitted in his deposition his own signature on the M.O. paid voucher as witness to payment of the M.O. and also confirmed that the value of the M.O. was paid by this representee in his presence.
7. This representee requisitioned Sri Biswanath Pradh of Gohira to whom he has paid the value of this M.O. and subsequently who has refunded the value under UCR at Balasore H.O. as his defence witness, which the Inquiring Authority disallowed for the reason best known to him".

13. Perusal of representation vis-a-vis the findings of the Disciplinary Authority as quoted above, does not appear that the latter had dealt with the matter in its proper perspective. In other words, the finding recorded by the Disciplinary Authority that the applicant had never brought home any documentary evidence to substantiate that there were two Biswanath Pradhans in village Gohira and the MO in question was paid to a wrong payee inadvertently due to confusion in the same name of the payee, stands disestablished. In this connection, it is to be noted that the deposition of SW-2, Sri Pravash Chandra Patri, GDS BPM, Telipal BO that there are two names by Sri Biswanath Pradh in the village Gohira is the enough testimony for the Disciplinary Authority to consider and take a view. It is not known as to why the Disciplinary Authority while dealing with the representation of the applicant in this particular aspect, did not discuss in the impugned punishment order. It is also not understood as to why the IO did not allow Shri Biswanath Pradhan, the wrong payee to be examined during the course of inquiry. In our considered view, had the wrong payee Shri

Biswanath Pradhan been examined, the true revelation of the motive of the applicant behind such wrong payment would have come to light. Therefore, it cannot be said that by the non-examination of Shri Biswanath Pradhan, the wrong payee, the applicant has not been prejudiced.

14. The charge levelled against the applicant is that he had made payment of MO to the tune of Rs.1000/- payable to Sri Biswanath Pradha, Vill-Gohira, PO-Telipal by taking signature of a person other than the real payee. It is apparent on the record that in the same name and same address two Biswanath Pradhan are there. It is the contention of the applicant that it is a case of wrong payment. In the absence of Shri Biswanath Pradhan, the wrong payee being examined, the presumption that the applicant had made payment of the MO with ill intention in order to pecuniary gain does not stand to reason. Had the Disciplinary Authority taken into consideration the representation of the applicant and other materials on record including the deposition of SW-2, the provisions of rule governing wrong payment under Section-48 of the Indian Postal Act might have been attracted. Therefore, from the facts and circumstances of the case as narrated above, we have no iota of doubt in our mind to hold that the order passed by the Disciplinary Authority imposing punishment of removal on the applicant (A/13) is an outcome of total non-application of mind. Similarly, in the absence of Shri Biswanath Pradhan, the wrong payee of the MO having not been examined, the conclusion drawn by the I.O. holding that the applicant deliberately with an ill intention made payment of the MO by taking the signature of a person other than the real payee is based on conjecture and surmises. In view of this, the report of the IO is perverse and based on no evidence.

15. Before coming to the closure, it is pertinent to note that in a disciplinary proceeding matter, the standard of proof is preponderance of probability and in this connection, the burden of proof lies on the prosecution to prove the same. As already mentioned above, the report of the IO holding that the applicant had deliberately paid MO to a payee other than the real payee is based on no evidence inasmuch, there being two persons of the same

name of the same village, the MO had been paid to one of them, who was not the actual payee. The Disciplinary Authority also left out of consideration this vital aspect of the matter as represented by the applicant. Viewed from this, angle, the entire proceedings stands vitiated and therefore, the same is liable to be quashed and set aside. Consequently, the charge sheet vide A/3 dated 24.06.2008, orders passed by the Disciplinary Authority dated 14.11.2011(A/11) and the orders of the Appellate Authority dated 11.02.2013((A/15) are quashed and set aside. Resultantly, the Respondents are directed to reinstate the applicant in service within a period of sixty days from the date of receipt of this order and in such eventuality, he shall be entitled to all service benefits including the paid back- wages, which should be paid after deducting such amount as has been received by the applicant towards put off duty allowance.

17. 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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