

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 148 of 2013

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

Prafulla Kumar Guru, aged about 49 years, S/o Sandhu Guru, At-Jharanda, PO-Sadangi, PS/Via-Gondia, Dist-Dhenkanal, Ex-GDSPM (MD), Sadangi EDSO, Dist-Dhenkanal.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General, Odisha Circle, At/PO-Bhubaneswar, Dist.-Khurda.
3. Postmaster General, Sambalpur Region, At/PO/Dist-Sambalpur.
4. Director of Postal Services, Sambalpur Region, At/PO/Dist-Sambalpur.
5. Superintendent of Post Offices, Dhenkanal Division, At/PO/Dist- Dhenkanal.

.....Respondents.

For the applicant : Mr.S.Pattnaik, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 28.8.2019

Order on : 11.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- “(i) Let it be hold/declared that order of punishment i.e. removal from service (Annexure A/4) dated 16.3.2011 is illegal/inoperative and according liable to be quashed.
- (ii) Let it be hold/declared that the order of dismissal of appeal under Annexure A/5 and Annexure A/6 respectively are illegal and liable to be quashed.
- (iii) Let a direction may kindly be issued to respondents to re-instate the applicant in his service with all consequential benefits accrued therein.
- (iv) And pass such other order/orders, directions as deemed fit and proper to the facts and circumstances of the case to give complete justice to the applicant.”

2. The applicant while working as GDS Sub Postmaster in Sadangi PO under Dhenkanal HO, was placed on put off duty on 10.11.2003 and disciplinary proceeding was started against him. Although his put off duty was revoked on 23.4.2004, the punishment of removal from service on 22.8.2006

was imposed on him, which was challenged by the applicant by filing OA No. 312/2008. Vide order dated 21.4.2010 (Annexure A/1) of this Tribunal in the said OA, the charge sheet as well as disciplinary proceeding were quashed with liberty to the respondents to start fresh proceedings, which was to be completed within a period of 120 days. Accordingly, vide order dated 31.5.2010 (Annexure A/2), fresh charge memo was issued containing 7 charges. The applicant again filed OA No. 667/2010. The respondents filed the MA requesting for extension of time since the proceedings could not be completed within 120 days time as per the order dated 21.4.2010. The MA as well as the OA was disposed of vide order dated 6.1.2011 of this Tribunal (Annexure A/3) by which the OA was dismissed and the respondents were directed to complete the proceedings by 31.3.2011. Accordingly, the respondent No.5 issued the fresh punishment order dated 16.3.2011 (Annexure A/4), removing the applicant from employment with immediate effect. The appeal was filed by the applicant which was rejected vide order dated 1.6.2012 (Annexure A/5) passed by respondent No.4. Revision petition filed by the applicant has been dismissed vide order dated 21.12.2012 (Annexure A/6) passed by respondent No.3.

3. The grounds mentioned in the OA are that the applicant was not given the opportunity of hearing and the order of Appellate Authority dated 1.6.2012 was passed without hearing him and in violation of the principles of natural justice. It is also mentioned that the order of enquiry and appointment of Inquiry Officer (in short IO) are not sustainable since the same suffer from violation of principles of natural justice. It is also stated that due to his removal from employment, grave injustice has been caused to the applicant. It is also stated that the punishment of removal is shockingly disproportionate and not commensurate with the gravity of charges.

4. The counter has been filed by the respondents without disputing the facts and stating in detail the flow of events till the passing of the order dated 21.12.2012 by the respondent No.3. It is stated that there had been no violation of principles of natural justice by the authorities and that the applicant has committed the grave misconduct while working as GDS BPM,

Sadangi BO for which he was charge-sheeted and the procedures as per the rules have been adhered to by the authorities while passing the impugned orders. The put off duty had to be revoked since it could not be ratified in time. It is also stated that reasonable opportunity has been allowed to the applicant to defend himself by the IO.

5. Heard learned counsels for the applicant and the respondents, who broadly reiterated the averments in their respective pleadings. It is submitted by learned counsel for the applicant that the disciplinary proceeding was not completed by the respondents within the time originally allowed by the Tribunal and that the punishment is shockingly disproportionate to the charges as stated in para 1 of the OA. He further submitted that the enquiry was performed in a perfunctory manner in violation of the rules.

6. Learned counsel for the respondents submitted that there were allegations of serious irregularities against the applicant for which charge-sheet at Annexure A/2 has been issued containing 8 charges. He was given due opportunity and the respondents have followed the rules while passing the order of punishment dated 16.3.2011 as per Annexure A/4, removing the applicant from employment. He further submitted that the respondents have completed the disciplinary proceeding within the time as stipulated in the order dated 6.1.2011 by this Tribunal passed in OA No. 667/2010 as well as related MAs.

7. It is noticed that the first OA No. 312/2008 was filed by the applicant challenging the first charge-sheet issued against him in which Sri Sethi, the Assistant Superintendent of Post Offices (in short ASPOs) had acted as disciplinary authority although one of the charge (Article IV) related to misbehaviour of the applicant to the ASPOs. It was observed by the Tribunal vide order dated 21.4.2010 that the disciplinary authority should have reported the matter to his higher authority for appointment of ad hoc disciplinary authority and he should not have acted as disciplinary authority. In this order the Tribunal allowed 120 days time to the respondents to complete the disciplinary proceeding, if it is to be initiated afresh. In pursuance of this order

the respondents issued a fresh charge sheet dated 31.5.2010 (Annexure A/2) containing the same charges which were framed earlier by the ASPOs and which were quashed by the Tribunal.

8. In the charge in Article IV pertaining to the allegation of misbehaviour to the ASPOs, it was mentioned as under :

"That the said Sri P.K.Guru GDSMD Sadangi EDSO while functioning in capacity of GDSSPM, Sasdangi EDSO temporarily during the aforesaid period was examined by Sri Bhagaban Sethi, ASPOs I/C, Dhenkanal Sub Division on 28.8.03 at Sadangi in presence of Sri Kapila Naik, Ex. Driver, Divisional Office, Dhenkanal in connection with his unauthorized absence, retention of excess cash, non disposal of Sadangi RL No. 1756 booked on 25.8.03, managing of office work of Sadangi EDSO by an outsider Sri Jogendra Guru, public complaints against his bigamy, possession of a truck in the name of his wife without the permission from the competent authority, his Secretary ship of a Girl's High School and other irregular works during his incumbency. The said Sri Guru although submitted his written statements to the ASPOs I/C, Dhenkanal in presence of Sri Kapila Naik on that date, he (Guru) snatched away his written statements from the hands of the ASPOs I/C, Dhenkanal forcefully and tore it into pieces and scolded the said ASPOs I/C, Dhenkanal with unparliamentary words. The said Sri Guru also called upon a good number of persons of his locality and threatened the ASPOs I/C, Dhenkanal to assault physically with a sharp weapon called "BHUJALI" in presence of the said driver and two overseers of mail Sri Harihar Das and Sri Hrushikesh Behera. By the above acts the said Sri Guru committed grave misconduct.

It is therefore impugned that the said Sri Guru GDSMD, Sadangi EDSO while working in the temporary capacity of GDSSPM Sadangi EDSO failed to maintain absolute integrity as enjoined in Rule-21 of Gramin Dak Sevak (Conduct and Employment) Rules, 2001."

9. Neither the applicant nor the respondents has filed the copy of the report of the Inquiry Officer. It is seen from the order dated 16.3.2011 (Annexure A/4) of the respondent No.5 that the applicant in his representation on 11.3.2011 to the IO's report had alleged bias of the disciplinary authority (respondent No.5) and the applicant apprehended that the respondent No.5 cannot deliver justice. As noted in the order dated 16.3.2011, it was submitted by the applicant that on 7.3.2011 at 2.45 PM he had gone to the grievance cell of the Divisional Office and the respondent No. 5 (disciplinary authority) had pushed him out of his office and scolded him in unparliamentary language, threatening him of dire consequence like dismissal from service. It is seen from the order dated 16.3.2011 (Annexure A/4) of the respondent No.5 that nothing has been mentioned in the impugned order about such allegation of the applicant against him. If the specific allegation of misbehaviour against the disciplinary authority as stated in the order dated 16.3.2011 is proved to be correct, then the allegation of the applicant of bias would be correct. The disciplinary

authority (respondent No.5) has recorded the following observations in the order dated 16.3.2011 as under :

"In the premises of discussion made above, I find that offences committed by Sri Guru are not of any ordinary measure. Each and every action of Sri Guru has had a hidden criminal intention behind it. Sri Guru is a threat to the security of postal money and postal property. His continuance in office will jeopardize the administration in toto. His presence in office will not only invite series of loss/fraud and court cases but also damage the very credence of the department in the eyes of public. When he himself is a danger to the life of Govt. officers on duty, his service to common and illiterate people in rural area, will remain a far flung reality. His own interest, whim and caprice will rule over the interest of the Department. His dubious conduct has already been screened departmentally. I no longer consider him a fit person to be retained in Govt. service. Accordingly, I Sri Sanjay Kumar Mahapatra, Supdt. Of Post Offices, Dhenkanal Division, Dhenkanal do hereby order that Sri Prafulla Ku. Guru (GDSMD, Sadangi BO while working in the capacity of GDSSPM of the said office and now under deemed put off duty) be removed from employment with immediate effect."

10. Above observations show that the disciplinary authority (respondent No.5) has accepted that the applicant had acted with hidden criminal intention although no such charge has been specifically mentioned in the charge-sheet dated 31.5.2010. No allegation of criminal intention has been made in the said charge sheet. It is also mentioned by the disciplinary authority that the applicant was a threat to Postal money and Postal property although there was no allegation of any misappropriation of postal money or postal property in the charge-sheet framed against the applicant. It is clear from these observations made in the impugned order dated 16.3.2011 (Annexure A/4) that the disciplinary authority had been influenced by the factors which were extraneous to the materials on record. These aspects have not been considered by the Appellate Authority (respondent No.4) although as per the rules, the appellate authority was required to examine whether rules have been followed and whether the penalty imposed was adequate or excessive. Hence, we are of the view that prima facie there are materials available on record to show that the authorities were influenced by the allegations against the applicant which were not included in the charge-sheet dated 31.5.2010 (Annexure A/2), which substantiates the allegations of victimisation and harassment of the applicant as stated in the OA.

11. In the impugned order dated 16.3.2011, the respondent No.5 has come to the following findings in respect of the charge of alleged misbehaviour to Sri Sethi, the ASPOs :-

(d) in pg 48 and marked portion of pg 50-51 of OA

"(d) As regards article IV, he has stated that Sri Bhagaban Sethi, intentionally came during his absence, and took away all the articles of office from his brother Sri Jogendra Guru, further challenging as to why Sri Sethi had not reported the police if he had threatened him with 'Vusali' which is an offence under section 307, and cognizable. (He had not spoken anything as to why he forcibly tore the written statement into pieces and scolded ASPI/C (Sri Sethi) in unparliamentary language).

"Although, IO had concluded the charge in article IV, as proved the CO in his representation dated 14.2.11 and 11.3.11 has not touched any point nor has shown any evidence that he had not snatched away all the official papers/statements from Sri B.Sethi, the enquiry officer but has tried to beat about the bush asking why he (Sri B.Sethi) did not go to Police Station against his action Due to his silent admission of facts, I hold the IO's finding as appropriate."

It appears from above that the disciplinary authority has not analysed the evidence produced in the inquiry and did not bother to examine why the ASPOs did not file any police report for the alleged misbehaviour against the applicant. The disciplinary authority appears to have taken the silence of the applicant on some allegations as admission of guilt while concluding that the charge on Article IV has been proved against him.

12. It is clear from the order dated 16.3.2011 that the findings of the disciplinary authority on the Article IV charge are not based on the evidence on record. The disciplinary authority has taken into account the presumption of criminal intention on the part of the applicant, although no police report or FIR for the allegations in Article IV had been lodged by anyone with the authorities. The charge-sheet also does not mention such allegations.

13. It is further observed in the order dated 16.3.2011 that the preliminary enquiry report of Sri Sethi, based on which the charges were framed had not been supplied to the applicant by stating as under :-

"Further preliminary enquiry report by Sri B.Sethi even if sought for is forbidden from being supplied as it contains many other facts & figures besides the issue on which enquiry is made into....."

From above, it is clear that the preliminary enquiry was conducted by Sri B.Sethi, ASPOs who was a party in this proceeding in view of the charges in

Article IV. The reason for which the copy of the preliminary enquiry to the applicant was denied is not as per the rules. In the interest of justice such report is required to be supplied if it is relied upon by the authorities while considering the disciplinary proceedings. It is not the case of the respondents that such preliminary enquiry report of Sri B.Sethi was not taken into account by the IO or the disciplinary authority while finalizing the inquiry report or the punishment order. The reasons furnished for denial of the preliminary enquiry report are not at all reasonable or these are as per the rules.

14. The following part of the order dated 16.3.2011 (Annexure A/4) of the disciplinary authority also shows that he was influenced by the allegations/facts which were not part of the present disciplinary proceedings. He had referred to non-attendance in the inquiry conducted in 2004 when such proceedings including the first charge-sheet had been quashed by the Tribunal vide order dated 21.4.2010 (Annexure A/1). Further, non-participation of the applicant in the inquiry conducted in the year 2004 was not included in the charge-sheet dated 31.5.2010. It is also observed that the applicant had intended misappropriation although no such allegation was included in the charge-sheet dated 31.5.2010 (Annexure A/4) against the applicant. Following observations in order dated 16.3.2011 are relevant in this regard :-

"To sum up, it may be concluded in nut shell that Sri Guru when he was in short term charge of Sadangi SO as EDSPM from 1.4.2003 to 22.8.2003 left no stone untouched by keeping frequent excess cash in hand without any liabilities and without sending PA-17(a) with ulterior motive to misappropriate them, thanks to the timely investigation in this case by ASPI/C Dhenkanal Sub Division,. This reflects on his damaged integrity. Secondly by utilizing service of one Sri Jogendra Guru an outsider to handle office cash/stamp/valuables when he was absent from duty was not only unbecoming on his part but tells on his sincerity and honesty, when he argues that he needs to be rewarded for the purpose. Thirdly by non attending to the enquiry when called to him by his enquiry authority on 20.1.2004 and 30.1.2004 is not only an example of lack of devotion to duty but also reflects very much on how, he was obedient and dutiful (Article VI refers). Fourthly by attacking the investigating officer on duty with held of 'Bhusali' in presence of his subordinate like O/s mails is nothing but an attitude of criminality and nuisance (Article IV refers). Lastly projecting himself to be a Divisional level Union Secretary by producing bogus resolution dated 28.1.2003 to Divisional Supdt., is nothing but an act of excess misconduct & stupidity. Similar was the case when he refuted his action of double marriage challenging the judgment of Civil Suit No. 132/99 in which there has already been a thread bare analysis of his second marriage and he is already paying a maintenance cost to his 1st wife (Article V & VII refers).

In the premises of discussion made above, I find that offences committed by Sri Guru are not of any ordinary measure. Each and every action of Sri Guru

has had a hidden criminal intention behind it. Sri Guru is a threat to the security of postal money and postal property. His continuance in office will jeopardize the administration in toto. His presence in office will not only invite series of loss/fraud and court cases but also damage the very credence of the department in the eyes of public. When he himself is a danger to the life of govt. officers on duty, his service to common and illiterate people in rural area, will remain a far flung reality. His own interest, whim and caprice will rule over the interest of the Department. His dubious conduct has already been screened departmentally. I no longer consider him a fit person to be retained in Govt. service. Accordingly, I Sri Sanjay Kumar Mohapatra, Supdt. Of Post Offices, Dhenkanal Division, Dhenkanal do hereby order that Sri Prafulla Ku., Guru (GDSMD, Sadangi BO while working in the capacity of GDSSPM of the said office and now under deemed put off duty) be removed from employment with immediate effect."

Hence, it is clear that the disciplinary authority has recorded his findings based on the factors not included in the charge-sheet and without giving an opportunity of hearing on these issues as required under law. Hence, there is violation of the principles of natural justice on the part of the disciplinary authority while passing the impugned order dated 16.3.2011 (Annexure A/4), as alleged by the applicant in the OA.

15. On perusal of the order dated 1.6.2012 (Annexure A/5), we are constrained to observe that the appeal has not been considered in accordance with the GDS (Conduct & Engagement) Rules, 2011. The Rule 18 clearly lays down that the appellate authority shall consider whether the procedure specified in the rules have been complied with, whether the findings are justified and whether the penalty imposed is excessive, adequate or inadequate. We are concerned to see that the appellate authority did not consider or examine all these aspects while passing his order dated 01.06.2012, which are statutorily required to be examined even if these issues are not raised by the applicant in his appeal.

16. In view of the foregoing discussions, we are of the view that the findings and conclusion of the disciplinary authority in the disciplinary proceedings are not based on the evidence on record, but on the basis of presumption of misconducts and allegations against the applicant, which are not included in the charge-sheet dated 31.5.2010 (Annexure A/4). It is a matter of concern that the appellate authority has not considered the appeal of the applicant in accordance with the rules applicable to this proceeding.

17. In such factual circumstances as discussed above, we have no hesitation to hold that the punishment of removal of the applicant from engagement as GDS Sub Postmaster is shockingly disproportionate to the charges against the applicant. Hence, the impugned orders dated 16.3.2011 (Annexure A/4), 1.6.2012 (Annexure A/5) and 21.12.2012 (Annexure A/6) passed by the respondents are set aside and quashed and the matter is remitted to the appellate authority (Respondent No.4) to reconsider the appeal of the applicant in accordance with law and pass an appropriate speaking order by imposing a punishment other than removal or dismissal in case the applicant is held guilty of charges after reconsideration of his appeal. The appellate authority will pass a speaking and reasoned accordingly to dispose of the applicant's appeal and communicate a copy of the order to the applicant within two months from the date of receipt of a copy of this order. Pending reconsideration of the appeal as stated above, the respondents are directed to reinstate the applicant in his previous post within one month from the date of receipt of a copy of this order.

18. The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath