

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00756/2018

Date of Order:- 07.08. 2019

C O R A M

Hon'ble Shri J. V. Bhairavia, Member [J]

Niraj, son of Shri ChidaNand Singh, resident of Quarter No. P/5, Campus of Senior Superintendent of Post Offices, Gaya Dn. Gaya, A.P. Colony, Gaya – PIN – 823001.

....Applicant s

By Advocate : Mr. Om Prakash Singh
Vs.

1. Union of India, through the Secretary, Department of Posts, Government of India, Sansad Marg, Dak Bhawan, New Delhi – 110001.
2. The Director General, Department of Posts, Government of India, Sansad Marg, DakBhawan, New Delhi – 110001.
3. The Chief Postmaster General, Bihar Circle, Meghdoott Bhawan, Patna – 800001.
4. The Postmaster General, Eastern Region Bhagalpur Campus at Meghdoott Bhawan, Patna PIN 800001.
5. The Director of Postal Services, Eastern Region, Bhagalpur Campus at Meghdoott Bhawan, Patna – PIN – 800001.
6. The Senior Superintendent of Post Offices, Gaya Dn., Gaya.

..... Respondents.

By Advocate : Mr. Rabindra Kumar Choubey

O R D E R (ORAL)

Per J.V. Bhairavia, M [J] :- In the instant OA, the applicant has prayed for the following reliefs : -

"8[1] Your Lordships may graciously be pleased to set aside/quash the penalty imposed upon applicant by SSPOs Gaya Memo No.PF/B2-1/Stock/Misc/16 dated 02.01.2018 [Annexure-4] and corrigendum issued by SSPOs Gaya under memo No.P.F./B32-1/Stock/Misc./16 dated 02.01.2018 [Annexure-A/5].

8[2] Your Lordships may graciously be pleased to set aside/quash the order of Appellate Authority passed under O/o CPMG Bihar memo No. Staff/RP-

03/Appeal/Neeraj/2018 dated 01.05.,2018 [Annexure-A/7].

8[3] Your Lordship may graciously be pleased to quash the memorandum of charges issued by SSPOs Gaya under memo No.P.F./B2-1/Stock/Misc/16 dated 16.11.2017 [Annexure-A/1].

8[4] Your Lordships may graciously be pleased to order to return the deducted amount from salary of the applicant with interest.

8[5] Any other relief/reliefs as your Lordships may deem fit and proper.

8[6] Cost of the case may please be awarded to the applicant for unnecessary expenditure incurred in litigation, mental agony and financial harassment."

2. In the present case, the applicant while working as P.A. in Buniadganj SO in Gaya HO was served with a memorandum dated 16.11.2017 [Annexure-A/1] under Rule 16 of CCS [CCA] Rules, 1965 for violation of Rule 3[1][ii][iii][vi] & [ix] of CCS [Conduct] Rules, 1964. The statement of imputation of misconduct or misbehavior on which action is proposed to be taken for the period from 01.02.2014 to 28.04.2016 is reproduced as follows :-

"Sri Niraj while working as O.A. Stock Branch, Divisional Office during the period from 01.02.2014 to 28.04.2016, misappropriated the Govt. money to the tune of Rs.6,70,494/- in purchase of stationeries and computer items for use in Post Offices. The computer and stationeries items were purchased by the said Sri Niraj on inflated rates of actual market rates. The said Sri Niraj used to obtain cash/bill voucher of the amount more than the actual market rate and got the same sanctioned [photocopy of the inquiry report is enclosed]. In Stock Register he also used to manipulate the figure of items supplied to take undue benefit in next purchase.

All the above acts of mission were done by him, by keeping the local administration in to dark and for his own interest as statement given by ex-officers. The said Sri Niraj in his written statement clearly accepted that all these irregularities done by him.

Thus, the said Sri Niraj is alleged to have violated the following rules : - Rule [3][I][i][iii][vi]&[ix] of CCS [Conduct] Rules, 1964."

3. Against the aforesaid allegations, the applicant submitted his representation dated 23rd November, 2017 [Annexure-A/2] whereby he denied the charges leveled against him. He also submitted that he has not received the enquiry report [preliminary] along with the charge memorandum and other documents relied upon by him, therefore, he requested the authorities concerned to supply the documents as demanded by him. On 11.12.2017 [Annexure-A/3] he represented the Sr. Superintendent of Post Offices, Gaya Division requesting him that the detailed inquiry as requested may kindly be ordered and conducted for the sake of natural justice.

It is submitted that without conducting departmental enquiry/detailed enquiry under Rule 16[1-A] of CCS [CCA] Rules, 1965, the respondents have issued the impugned order dated 02.01.2018 [Annexure-A/4] and imposed punishment of recovery of Rs. 3,66,494/- in one time payment or thirty six installments of Rs. 10,000/- per month and last instalment will be Rs. 16,494/- towards the recovery of loss occurred with penal interest. The applicant further submitted that by exercising powers conferred

under Rule 12 of CCS [CCA] Rules, 1965, the respondents have imposed punishment of reduction of pay by one stage from Rs. 52000/- to Rs. 47,600/- in the pay band of Rs. 9300-34800 with grade pay of Rs. 4200/- Pay Matrix level 6 for a period of three years w.e.f. 01.01.2018 and it is further directed that the applicant, Niraj will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increment of pay, vide Annexure-A/4.

Vide Annexure-A/5 dated 02.01.2018, the respondents have issued a corrigendum whereby the office memo of even no. dated 03.01.2018 was modified to the extent that – “Read Rs. 52000/- to Rs. 50500/- instead of Rs. 52000 to 47600/- in sixth line of order portion. All terms and condition remains holds good”.

4. The respondents have filed their written statement and denied the contentions of the applicant. According to them, the applicant while working as O.A. Stock Branch, Divisional Office during the period from 01.02.2014 to 28.04.2016 misappropriated the govt. money to the tune of Rs. 6,70,949 in purchase of stationeries and other computer items for the use in Post Offices under Gaya Postal Division. The computer and stationeries items were purchased by the applicant on inflated rate of actual market rates. In Stock Register, he also used to manipulate the figure of items

supplied to take undue benefit in next purchase. In the preliminary enquiry as well as in initial calculation regarding purchase of computer papers has roughly estimated the amount of misappropriation is Rs. 307480/-. When the applicant was asked to deposit the aforesaid amount in Govt. account, firstly he refused to credit the said amount but later on he agreed to give the money to the stationer namely Natraj Stationers, A.P. Colony, Gaya. It is submitted that subsequently the said stationer supplied the stationery items after realizing the said money from the applicant. Keeping in view the above irregularities and seriousness of the case, it was decided to conduct a preliminary enquiry and past work verification of all the purchase done by the applicant during his tenure as Stock Assistant in divisional office. A team comprising of three IPs was constituted for thorough enquiry. After verification and detailed enquiry, it was revealed that the amount of Rs. 6,70,494/- has been misappropriated by the applicant. During the said preliminary enquiry, the applicant had submitted his reply that he received the oral order for such purchase from the sanctioning authority and admitted the alleged irregularities. Therefore, the respondents submitted that the applicant has accordingly violated Rule [3][1][ii][iii][vi] & [ix] of CCS [Conduct] Rules, 1964 [Annexure-R/1].

5. The respondents further submitted that the applicant was proceeded under Rule 16 of CCS [CCA]

Rules, 1965, vide office memo dated 16.11.2017. He was given ten days time to submit his representation, which he filed on 28.11.2017. In his representation, he demanded some records relating to the matter. Further, vide letter dated 29.11.2017, he was asked to inspect all the documents as stated in his representation dated 28.11.2017. The applicant attended the office on 04.12.2017 and inspected all the related documents in the matter. The respondents submitted that the applicant requested for detailed enquiry under Rule 16[1-A] of the CCS [CCA] Rules, 1965 as stipulated in Govt. of India OM dated 28.10.1985. The respondents submitted that the applicant also tried to take defence referring an order dated 23.10.2010 passed by CAT, Patna Bench in the case of Anjani Kumar Sinha vs. Secretary, Deptt of Posts and Others. However, the Disciplinary Authority did not find it appropriate to accept the request of the applicant for initiation of regular departmental enquiry as demanded by him under the provision of Rule 16 [1-A] of CCS [CCA] Rules, 1965, since a fair time and opportunity was given to him to defend himself, as also a detailed and fair enquiry was conducted by a three member committee of three Inspectors of Gaya Division and the same is found it a due compliance of Rule 16 [1-A] of CCS [CCA] Rules, 1965. It is submitted that finding a report of the said committee, quantum of loss and the misconduct of the applicant was determined by the disciplinary authority. Accordingly, punishment order was issued.

6. The applicant has files his rejoinder and additionally submitted that the applicant has never accepted the alleged financial irregularities during the so called preliminary enquiry. It is further submitted that the applicant has denied the writings of the bill voucher [Cash Memo, more particularly the date written on it] and stated that the date on vouchers has been written by the stationer/shop keeper in his answer no.7. Further it is submitted that in answer no.9 and 10 he has categorically stated that after sanction and approval of the sanctioning authority by verbal order the purchase was made. Therefore, it is not correct on the part of the respondents to state that the applicant has admitted the alleged charges. If the Disciplinary Authority have granted fair opportunity to examine the correctness of writings on the vouchers by way of cross examination of shop-keeper/stationer and also the concerned higher officer who has approved and sanctioned the alleged purchase of stationery, then only the fact could have come on record. In absence of it, any finding is vitiated for want of fair opportunity as also deprived the applicant delinquent to defend himself in a fair manner. Therefore, the entire proceeding initiated against the applicant and the conclusion arrived by the disciplinary authority as well as appellate authority is contrary to statutory provision of Rule 16 [1-A] of CCS [CCA] Rules as also against the principles of natural justice.

The Id. Counsel for the applicant further submitted that the respondents have not considered the repeated request of the applicant for conducting detailed regular enquiry under the provision of Rule 16[1-A] and failed to intimate the applicant delinquent for not accepting the said request of the applicant and ex parte enquiry impugned decision has been taken for imposition of punishment upon the applicant. Therefore, the impugned orders are required to be quashed and set aside. The Id. Counsel for the applicant has placed reliance on the order passed by CAT Jabalpur Bench in the case of Rajendra Prasad Pandey vs. Union of India decided on 20.07.2015 reported in 2016 [2] CAT SLJ 254 and submitted that not providing reason or reason for refusal with regard to application under Rule 16 [1-A], the said action of the disciplinary authority is in violation of provision of Rule 16 [1-A]. He has further placed reliance on the judgment passed by Hon'ble Supreme Court in the case of O.K.Bhardwaj vs. Union of India and Ors. reported in [2001] 9 SCC 180 wherein it is held that "even in case of minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This minimum requirement of the principle of natural justice and the same requirement cannot be dispensed with. Further, as per the GOI OM dated 28th October, 1985, the disciplinary authority

ought to have intimated the delinquent applicant in writing indicating its reasons for not holding enquiry under the rules instead of rejecting the said request. Such an action has been declared under the said OM as denial of natural justice.

7. Heard the learned counsel for the parties and gone through the records.

8. The Tribunal noticed that the respondents have issued charge memorandum dated 16.11.2017 for the under Rule 16 of CCS [CCA] Rules, 1965. As per the statement of imputation, "the applicant while working as Office Assistant, Stock Branch, Divisional Office during the period from 01.02.2014 to 28.04.2016 misappropriated the Govt. money of Rs. 6,17,494/- in purchase of computer items for the use in Post Office. The said purchase made by the applicant was on inflated rates of actual market rates. He used to obtain cashless bill vouchers of the amount more than the market rates and got the same sanctioned. In Stock Register, he also used to manipulate the figure of items supplied to take undue benefit in next purchase. All this acts of mission were done by him, by keeping the local administration into dark for his own interest as statement given by ex officers. The said Sri Niraj [applicant herein] in his written statement clearly accepted that all these irregularities has been done by him. Thus, the applicant has been alleged to have violated Rule [3][I][ii][iii][vi] and [ix] of CCS [Conduct] Rules, 1964."

With the aforesaid statement of imputation, the Disciplinary Authority granted ten days time to submit his reply. It is noticed that in response to it, the applicant had submitted his representation and denied the allegation as also he demanded documents to enable him to file a detailed explanation. Moreover, it is noticed that the delinquent applicant had requested vide his application dated 18.11.2017 and 11.12.2017 that in pursuance to the charge memorandum dated 16.11.2017 a detailed enquiry under Rule 16 [1-A] of the CCS [CCA] Rules, 1965 as stipulated vide GOI OM dated 28.10.1985 has been requested by him. However, without considering the said application of the applicant or providing any reason for not accepting the same, the disciplinary authority passed the impugned orders of punishment. It is noticed that the finding recorded by the disciplinary authority solely based on report of the preliminary enquiry and statement of defence submitted by the applicant in response to the charge memorandum only. It is noticed that the disciplinary authority vide its order dated 02.01.2018 [Annexure-A/4] awarded punishment upon the applicant under Rule 16 of CCS [CCA] Rules, 1965, and imposed punishment of recovery of Rs. 3,66,494/- in one time payment or thirty six installments of Rs. 10,000/- per month and last instalment will be Rs. 16,494/- towards the recovery of loss occurred with penal interest. It is further noticed that by exercising powers conferred under Rule 12 of CCS [CCA] Rules, 1965, the respondents

have imposed punishment of reduction of pay by one stage from Rs. 52000/- to Rs. 47,600/- in the pay band of Rs. 9300-34800 with grade pay of Rs. 4200/- Pay Matrix level 6 for a period of three years w.e.f. 01.01.2018 and it is further directed that the applicant, Niraj will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increment of pay, vide Annexure-A/4. However, vide Annexure-A/5 dated 02.01.2018, the respondents have issued a corrigendum whereby the office memo of even no. dated 03.01.2018 was modified to the extent that – "Read Rs. 52000/- to Rs. 50500/- instead of Rs. 52000 to 47600/- in sixth line of order portion. All terms and condition remains holds good".

The Tribunal further noticed that the respondents neither conducted a regular enquiry nor a detailed enquiry proceeding, though the applicant himself requested the authorities concerned for a detailed enquiry under Rule 16[1-A] of the CCS [CCA] Rules, 1965. The said application/request of the applicant has not been considered by the respondents in terms of provision of Rule 16 [1-A] nor any reason in writing has been given by the disciplinary authority for refusal of such request. Holding enquiry summarily without any indication of refusal of request of the applicant delinquent for conducting detailed enquiry and imposed punishment upon the charged official, the said action of the disciplinary authority in the present case is contrary

to the instructions issued under OM dated 28th October, 1985 as stipulated below the Rule 16 of CCS [CCA] Rules, 1965 and as per the said provision such action of the disciplinary authority is admittedly a denial of natural justice to the applicant delinquent herein. The submission of the respondents that the applicant was granted due opportunity to submit his defence statement and allowed him to examine the relevant document and thereby he was granted complete opportunity to defend himself is not acceptable in view of the aforesaid discussion. At this juncture it is apt to note that the applicant had not admitted the alleged charge leveled against him and he had offered his answer during the preliminary enquiry that after due sanction/approval [orally] from the sanctioning authority the purchase was made from the stationers. He had also denied writings on the bill. Under these circumstances, it cannot be said that the applicant had admitted the charges. The reason stated by the disciplinary authority in the punishment order for not conducting the regular detailed enquiry under Rule 16 is not sustainable in view of violation of principle of natural justice as well as provision of Rule 16 [1-A] read with GOI OM referred hereinabove. It is noticed that the appellate authority has not considered grounds taken by the applicant delinquent. Therefore, the said order is also not tenable.

9. In view of the aforesaid discussions, the OA is partly allowed. The impugned orders dated 02.01.2018 [Annexure-A/5], the memo dated 01.05.2018 [Annexure-A/7] and the memorandum of charge dated 16.11.2017 [Annexure-A/1] are quashed and set aside, in view of Govt. of India's decision for holding of an inquiry when requested by the delinquent [GI., Dept. of Per. & Trg., OM No. 11012/18/18/85-Estt.(A) dated the 28th October, 1985]. The respondents are directed to hold a fresh enquiry against the applicant by giving him proper opportunity under Rule 16[1-A] of the CCS [CCA] Rules, 1965. No costs.

Sd/-
[**Jayesh V. Bhairavia**]M[J]

mps