

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00803/2018

Date of Order: 06.08.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Fanishwar Nath Paswan, son of Late Suraj Paswan, Resident of Village and Post Office- Bagaha Via- Majorganj, District- Sitamarhi (Bihar), PIN- 843332.

.... **Applicant.**

By Advocate: - Mr. Om Prakash Singh

-Versus-

1. The 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, Sansad Marg, Dak Bhawan, New Delhi- 110001.
3. The Member (Personnel), Postal Service Board, Sansad Marg, Dak Bhawan, New Delhi-110001.
4. The Chief Postmaster General, Bihar Circle, Meghdoot Bhawan, Patna- 800001.
5. The Postmaster General, Eastern Region Bhagalpur Camp at Meghdoot Bhawan, Patna- 800001.
6. The Director of Postal Services, Eastern Region, Bhagalpur Camp at Meghdoot Bhawan, Patna- 800001.
7. The Director of Postal Services, Eastern Region, Bhagalpur camp at Meghdoot Bhawan, Patna- 800001.
8. The Senior Superintendent, Railway Mail Service, PT. Dn. Patna-800004.
9. The Superintendent, Railway Mail Service, C. Dn. Gaya, PIN- 823001.

.... **Respondents.**

By Advocate: - Mr. Radhika Raman

O R D E R
[ORAL]

J.V. Bhairavia, J.M:- This OA has been filed for setting aside the order of Disciplinary Authority dated 18.03.2015 (Annexure A/3), order of the Appellate Authority 23.10.2015 (Annexure A/5) and also the order of Revisionary Authority dated 20.08.2018 (Annexure A-7) with direction to

the respondents to pay the consequential arrears of pay and allowances to the applicant.

2. The applicant's case, in brief, is as follows:-

2.1 The applicant while working as ASRM, Patna RMS/1 (and holding Supervisory Post) from 01.06.2010 to 09.06.2010 was chargesheeted under Rule 14 of CCS(CCA) Rules, 1965 vide memo dated 02.12.2011 (Annexure A/1) for having failed to take effective steps for disposal of accumulated mails due to which the public mails suffered undue detention and also did not care the wrong information shown in the transfer register of letter branch of Patna RMS showing transfer of mails nil w.e.f. 31.05.2010 whereas 1324 unopened bags were found lying outside the mail office.

2.2 In response to the said chargesheet, the applicant submitted his written statement of defence on 16.12.2011 (Annexure A/2) admitting the charges and apologized for the very mistake.

2.3 The Disciplinary Authority vide his memo dated 18.03.2015 held the charges fully proved and awarded the punishment of reduction of pay from Rs. 18,370/- to Rs. 17,700/- in the time scale of pay Rs. 9300-34800 for three years without cumulative effect.

2.4 On the applicant's appeal dated 21.05.2015 (Annexure A/4) against the said punishment order of Disciplinary Authority , the Appellate Authority taking a lenient view reduced the punishment to stoppage of next one increment whenever it is due for three years without cumulative effect vide order dated 23.10.2015 (Annexure A/5).

2.5 The applicant then preferred a revision petition dated 06.09.2017 (Anenxure A/6) highlighting the fact that under similar chargesheet four other persons were awarded the lowest penalty of "Censure" and thus the penalty awarded to him is discriminatory. However, the revision petition was dismissed vide order dated 20.08.2018 (Anexure A/7). Hence, the OA.

3. The learned counsel for the applicant has pointed out that in similar cases S/Shri Triveni Singh Yadav , Suresh Prasad, A.N. Verma and Ram Babu Singh were also charged with identical charge of accumulation of mails under Rule 14 of CCS(CCA) Rules, 1965 and all have accepted the charges like the applicant, but all of them were awarded with penalty of "Censure" unlike the applicant who was punished heavily. He has cited a decision of Hon'ble Apex Court in the case of **Lucknow K. Gramin Bank and Another Vs. Rajendra Singh** [(2013) 12 SCC 372] in support of his case in which it was held that " If there is a complete parity in two sets of cases imposing different penalties would not be appropriate as inflicting of any higher penalty in one case would be discriminatory and would amount to infraction of doctrine of equality enshrined in Article 14 of the Constitution of India." It is further submitted argued by the learned counsel for the applicant that the Appellate Authority has not assigned any reason and in that connection Govt. of India decision in OM No. 134/1/81-AVD. I, dated 13.07.1981 has been relied upon. The learned counsel for the applicant also produced a copy of the order dated 21.05.2018 passed in OA/050/00949/2015 by this Tribunal in an identical case in support of his case.

4. The respondents have filed their written statement in which they have denied the claim of the applicant. It is submitted that the competent authority has punished the applicant as per merit of the case after due procedure of disciplinary action. The charges already proved against the applicant were of very serious negligence in his duty. The

respondents have denied parity in punishment of the applicant with the other co-employees in para 13 of their WS as the role and function of duty of the HAS, SA(LSG) cannot be compared with the role and function of applicant of the present.

5. The learned counsel for the respondents justifying their action submits that there were different departmental inquiries and different disciplinary authorities in the case of co-offenders as also of the applicant and therefore the punishment was imposed differently by the different authorities as per their findings. The said decision cannot be said to be erroneous. As such, there is no violation of principle of natural justice in the case of applicant.

6. The applicant has filed his rejoinder and reiterated his submissions as made in OA. It is further submitted that the Appellate Authority did not consider the case properly and allowed discrimination in imposition of penalty. It is additionally submitted that the charges levelled against the applicant and other co-offenders are same. Further, one co-delinquent/offender Shri S.N. Sinha, who was overall in- charge of the RMS, was also chargesheeted by the Disciplinary Authority for identical charges. He had denied the charges and the charges stood proved against him. As such, there was no question of charges not being proved because of alleged accumulation was a fact, but considering the circumstances leading to such accumulation the Disciplinary Authority was pleased to award him with punishment of "Censure" only. It is submitted that the same is also in the case of Head Sorting Assistants. The duty of sorting of mails was identical in

nature which is performed by the applicant as well as other co-delinquents/offenders as named hereinabove and the charges levelled against all the officials was of failure to sort the mails and suffered accumulation for the same period are common in nature. Therefore, the contention of the respondents that charges levelled against the applicant and other co-offenders are different is not correct. In fact, it is a matter of record that influx of mails during the same period had suffered accumulation are common in all the charge memos issued by the respondents.

7. Heard the learned counsel for the parties and perused the materials on record carefully. It can be seen that applicant was chargesheeted for the identical charges as levelled against the aforesaid four other co-offenders. However, the Disciplinary Authority had awarded higher punishment in comparison to other co-offenders. The decision of the Hon'ble Apex Court as mentioned above clearly lays down that if there is a complete parity in the two set of cases, imposing different penalties would be violative of Article 14 of the Constitution of India. In the present case, it is noticed that admittedly the applicant was awarded higher punishment in comparison to other identical co-offenders as stated hereinabove. It is seen that the charges levelled against the applicant-delinquent and other co-offenders are not different. There is no material on record to rebut the said fact. The plea of the respondents with regard to punishment awarded by different disciplinary authorities cannot be said to be sufficient reason to discriminate the applicant-delinquent. The Appellate Authority has also not

considered the imposition of different punishments in relation to one and the same incident and to deal with the delinquently differently.

8. In view of the above discussion and in the light of principles of law laid down by the Hon'ble Supreme Court and order of this Tribunal in OA/050/00949/2015 dated 21.05.2018 in an identically situated case, the impugned orders dated 18.03.2015, 23.10.2015 and 20.08.2018 (Anenxures A/3, A/5 and A/7 respectively) are not tenable and are hereby quashed and set aside. The matter is remitted to the Disciplinary Authority for a fresh decision in the light of the discussions made hereinabove and pass appropriate orders disposing of the defence statement of the applicant by providing due opportunity to him within a period of two months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

Srk.