

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00243/2016

Date of order reserved : 27.08.2019

Dated of order : 13th Sept., 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

Binod Kumar, S/o Late Krishnand Sahay, resident of Mohalla – Chiriatand Devi Asthan, West Lane, PO – Patna GPO, P.S. Jakkanpur, District – Patna.

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Applicant.

By Advocate : Shri J.K.Karn.

Vs.

1. The Union of India through the D.G.-cum-Secretary, Department of Posts, DakBhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director Postal Service [HQ], O/o the C.P.M.G., Patna.
4. The Superintendent of Post Offices, Vaishali Division, Hajipur.
5. The Inspector of Posts, West Sub Division, Hajipur.

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Respondents.

By Advocate : Shri Radhika Raman

ORDER

Per Jayesh V. Bhairavia , Member [J] : The applicant has filed the instant OA seeking the following reliefs : -

“8[A] Memo No. F2-MO/07-08 dated at Hajipur, the 10/02/2015 issued by the Superintendent of Post Offices, Vaishali Division, Hajipur as contained in Annexure-A/7, may be quashed and set aside.

8[B] The Superintendent of Post Offices, Vaishali Division, Hajipur, may be directed to reinstate the applicant on his post of GDSBPM at Pachdamiya Branch Post Office in account with Ghatoro Sub Post Office, in Vaishali Postal Division, Hajipur with all consequential benefits.

8[C] Any other relief/reliefs, as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice.”

2. It is noticed that this is the second round of litigation. Earlier the present applicant had filed OA No.87/2012, by which the applicant had sought relief for quashing and setting aside the punishment order of removal of his service dated 04.06.2010 and also the order dated 21.07.2010 passed by the Appellate Authority upholding the said punishment.

3. This Tribunal, vide its order dated 07.10.2013 [Annexure-A/4] quashed the punishment order dated 04.06.2010 passed by the Disciplinary Authority as well as the order dated 21.07.2010 passed by the Appellate Authority and disposed of the said OA with the following directions : -

“10. From perusal of the documents and aforementioned facts, we find that while passing the order on the objections raised by the applicant has not been properly dealt with, whereas the disciplinary authority has imposed the punishment on the basis of the statement made by SW-1 and SW-02 as well as written statement recorded at the time of preliminary enquiry which has even not been corroborated during the regular enquiry. The appellate authority while passing his appellate order has not considered the points raised by the applicant in his representation and come to the conclusion on the basis of the admission made at the time of preliminary enquiry without any corroborating evidence, i.e. on surmise and conjectures.

11. It is settled law that any statement recorded in preliminary enquiry or its report loses significance and importance once the regular enquiry is initiated by issuing the charge sheet to the delinquent as has been further affirmed by the Hon’ble Apex Court in a recent case

reported in 2013 [2] SCC L&S 270, Normala J. Jhalja vs. State of Gujarat and Another. A Constitutional Bench of the Hon'ble Apex Court in Amalendu Ghosh vs. North Eastern Railway reported in AIR 1960 SC 992 has held that for the purpose of holding preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be imposed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held or not.

12. In the instant case also, one of the grounds for imposing the punishment is the statement made during the preliminary enquiry which has not been corroborated during the regular inquiry. Moreover, the different objections raised by the applicant was also not properly dealt with which is clear violation of natural justice. Thus, the impugned order passed by the disciplinary authority as well as the appellate authority is non-speaking and perverse and is liable to be quashed. Accordingly, the order dated 04.06.2010 [Annexure-A/5] passed by the disciplinary authority and order dated 21.07.2010 passed by the appellate authority are quashed and set aside and the matter is remitted back to the disciplinary authority with a direction to afford reasonable opportunity to the applicant to defend his case after taking into consideration the objections raised by the applicant including the above observations as mentioned above and thereafter to pass a reasoned and speaking order within a period of three months from the date of receipt of this order. The OA is, accordingly, disposed of. No order as to costs."

4. On receipt of order of this Tribunal dated 07.10.2013 passed in OA 87/2012, the Disciplinary Authority with a view to afford reasonable opportunity to the applicant, ordered a fresh enquiry under Rule 10 of Gramin DakSevak [Conduct and Employment] Rules, 2001, vide order dated 28.07.2014 [Annexure-A/6] against Shri Binod Kumar, the applicant herein on

very allegations which led to his removal from service, vide office order/letter dated 10.02.2014 and one Shri Rajiv Kumar, ASP, East Sub Division, Hajipur was appointed as Inquiry Authority to enquire into the case and one ShriSanjivSumanJha, SDI, West Sub Division Sarai was appointed as Presenting Officer. The applicant, CO was also intimated about the same with a direction to him to appear before the Enquiry Officer. The applicant has been considered deemed to have been placed under put off duty vide order dated 21.02.2014 and ex gratia compensation for the put off duty was allowed by the respondents.

5. The applicant was served with notice dated 09.06.2014 with a direction to remain present before the Enquiry Officer. In response thereto, the applicant had submitted his representation dated 18.06.2014 before the newly appointed Enquiry Officer and objected initiation of fresh enquiry contending therein that time limit of three months as granted by the Tribunal, vide order dated 07.10.2013 to pass reasoned and speaking order stood lapsed since no extension of time has been sought by the department from the Patna Bench of the Tribunal, hence the time limit of three months as granted by CAT Patna Bench cannot be extended by the department on its own. Therefore, the procedure adopted by the IO is contemptuous. The applicant further requested to remit the case before the Disciplinary Authority, vide Annexure-A/5.

6. The applicant submitted that in spite of his submission and request, the Enquiry Officer continued with the fresh enquiry and submitted his report on 28.07.2014 before the Disciplinary Authority [Annexure-A/6].

7. The Enquiry Officer recorded his findings that the charges leveled against the applicant is proved. It is further contended that on receipt of the said report of Enquiry Officer dated 28.04.2014, the Disciplinary Authority passed the impugned order dated 10.02.2015 whereby the findings of the report of Enquiry Officer has been accepted by the Disciplinary Authority and the punishment of removal from service [from engagement of the applicant as GDSBPM] has been passed. Being aggrieved by the said removal order dated 10.02.2015 [Annexure-A/7], the applicant has filed the present OA on the ground that there is no alternative remedy available to him but to file the present OA.

8. The Id. Counsel for the applicant mainly submitted that since the Tribunal had set aside and quashed the order dated 04.06.2010 passed by the Disciplinary Authority and the order dated 21.07.2010 passed by the Appellate Authority and remitted the matter back to the Disciplinary Authority with a direction to afford reasonable opportunity to the applicant to defend his case after taking into consideration the objections raised by him, and thereafter to pass reasoned and speaking order within three months, which has not been complied with its true spirit.

9. The applicant submitted that he was required to be reinstated in service by the respondents but the Enquiry Officer and Presenting Officer were appointed afresh by the Disciplinary Authority and the matter was delayed beyond the time limit as prescribed by the Tribunal.

The Enquiry Officer as well as Disciplinary Authority were biased to the extent that the newly appointed Enquiry Officer had concluded the enquiry in absence of the applicant, that too incorrectly showing him absent during the course of enquiry.

10. The applicant was not reinstated with the sole intention to again remove him from service. The said action of the respondents is in violation of the directions given by this Tribunal. The newly appointed Enquiry Officer conducted the enquiry haphazardly and held that the charges leveled against the applicant is proved in an irregular manner on the basis of an earlier enquiry report despite the fact that neither the witnesses appeared in the enquiry nor the applicant was provided opportunity to defend himself. Therefore, the impugned order is bad in law.

11. It is further contended by the applicant that the respondents have again repeated the same exercise relying upon the statement recorded during the preliminary enquiry, which was earlier disproved by this Tribunal. The impugned order of punishment is passed on the basis of new enquiry report, wherein the Enquiry Officer has erroneously recorded its findings

against the applicant, though there was no corroborating evidence to sustain the charge leveled against him. Again the Disciplinary Authority has accepted the report of the Enquiry Officer, which is solely based on statement recorded during the course of preliminary enquiry. No independent documents or evidence came in surface during the course of enquiry. This Tribunal in its earlier order has disproved such action of the respondents. Therefore, the present impugned order is bad in law.

12. The Id. Counsel for the applicant submitted that it is not opened for the Disciplinary Authority to initiate a fresh enquiry, i.e. de novo enquiry, vide order dated 10.02.2014. The said action of the respondents is in violation of the law laid down by Hon'ble Apex Court in the case of K.R. Dev vs. Collector of Central Excise Shillong, reported in 1971 [2] SCC 102 and the judgment passed by Hon'ble Apex Court in the case of Kameshwar Prasad vs. State of Bihar & Ors. Reported in 2008 [2] PLJR page 456. Hence, the impugned order is required to be quashed and set aside and the respondents are required to be directed to reinstate the applicant.

13. The respondents have filed their written statement and denied the contentions of the applicant. The respondents mainly submitted that while the applicant was working as GDSBPM, Pachdamia BO in account with Ghataro SO, he was proceeded under Rule 10 of the Department of Posts, Gramin Dak Sewak

[Conduct and Employment] Rules, 2001, vide order dated 02.05.2008. The charges leveled in charge memo are that -

“on the allegations that the applicant while functioning as GDSBPM, Pachdamina BO received [i] Karampura PO MO No.A-3540 dated 23.07.2007 for Rs. 2000/- only P/T Smt. Ram Sanehi Devi, W/o Parmeshwar Thakur, Village – Chandwara, PO Pachdamia, Via – Ghataro, District Vaishaali and [ii] Kotmit Shih PO MO No.3433 dated 16.07.2007 for Rs. 4500/- only P/T Smt. MintuDevi, W/o Naumi Ray of the same village on 01.08.2007 and 19.07.2007 respectively duly entered in BO slip but Sri Binod Kumar, GDS BPM, Pachdamia BO showed both the M.O’s paid and charged the amount in daily account of Pachdamia BO on 02.08.2007 by taking/putting forged LTI of the payees and kept the amount of M.O’s paid with him. He did not pay the value of M.O’s to the real payee’s and credited the said amount to Government account, vide Ghataro ACG-67 receipt No.053 dated 08.08.2007 and thus misappropriated a sum of Rs. 6500/- only for the same period from 02.08.2007 to 07.08.2007.

Therefore, Shri Binod Kumar has violated the provisions of the following Rules :-

- [I] Rule 10[I] of B.O. Rules corrected upto 01.08.1977;
- [II] Note-1 below Rule 106 of B.O. Rules Corrected upto 01.08.1977.
- [III] Rule 21 of GDS [Conduct and Employment] Rules, 2001.”

14. The respondents also submitted that after the punishment order, the applicant preferred an appeal dated 21.07.2010 which was rejected by the Director of Postal Services. The applicant earlier had challenged the said order before this Tribunal in OA 87/2012, whereby this Tribunal, vide its order dated 07.10.2013 set aside the order of punishment of removal from service mainly on the ground that the applicant was not granted due opportunity to defend his case during the enquiry and his

objection was not properly considered by the disciplinary authority. This Tribunal further directed the to afford the applicant a reasonable opportunity to defend his case after taking into consideration the objections raised by the applicant including the observations of the Hon'ble Tribunal and pass reasoned and speaking order.

In the light of said directions issued by this Tribunal, the Disciplinary Authority set aside the order of removal from service and ordered a fresh enquiry under Rule 10 of GDS [Conduct and Employment] Rules, 2001 against the applicant, vide order dated 10.02.2014. The applicant was considered to have been placed under put off duty w.e.f. the date of removal from service until further order, i.e. vide order dated 10.02.2014. Ex gratia compensation for the period of put off duty was also granted to the applicant vide order dated 21.02.2014.

The said procedure adopted by the Disciplinary Authority is in consonance with the provisions of Rule 12 of GDS [Conduct & Employment] Rules, 2001.

15. It is further contended that the copy of memo dated 10.02.2014 and 21.02.2014 have been served upon the applicant.

16. The counsel for the respondents vehemently submitted that it can be seen from the enquiry report dated 28.07.2014 [Annexure-A/6] that the applicant had appeared before the newly appointed Enquiry Officer on 15.04.2014, 22.04.2014 and 28.04.2014. However, he failed to nominate his Defense Assistant

though due opportunity was granted by the Enquiry Officer. The CO, the applicant herein had inspected the documents listed in Annexure-III of the memo of charge. The photocopy of each documents were supplied to the C.O. by the Presenting Officer. The C.O. was directed to make requisition for additional documents if needs for his defense and name the defense witness within five days, but the charged official [CO] refused to sign the daily order-sheet nor he has submitted any requisition. The next date was fixed on 06.05.2014. However, on 30.04.2014, the applicant sent his application dated 28.04.2014.. In the said application, the C.O. has mentioned the operative portion of the order of CAT, Patna Bench passed in OA 87/2012 and alleged that instead of complying with the order, the Disciplinary Authority is handling his case and he was being directed to nominate his Defense Assistant, whereas there is no such order passed by the Tribunal. Thereafter, the Disciplinary Authority considered the objections raised by the C.O. in his application dated 28.04.2014 and found his objection devoid of merit.

17. As notified earlier, the regular hearing of the case held on 06.05.2014 at Ghataro SO, the Presenting Officer as well as the C.O. appeared. The P.O. produced one state witness Shri Dharmendra Singh, the then Inspector Post, West Sub Division, Hajipur and at present Assistant Supdt. Posts [Vig.]O/o the Chief Postmaster General, Bihar Circle, Patna. He has been examined as SW-1 in this enquiry. He was examined in chief by the PO. He

deposed that on receipt of telephonic message from SPM, Ghataro SO about wrong payment of MOs by the GDSBPM, Pachdamia BO, he visited Ghataro SO/Pachdamia BO on 07.08.2007 and found that amount of Karampura MO No. 3540 dated 23.07.2007 for Rs. 2000/- payable to Smt. Ram Sanehi Devi and Kotmit Shih MO No.3433 dated 16.07.2007 for Rs. 4500/- payable to Smt. Manju Devi were taken by the applicant himself by obtaining forged signature on these MOs. He received the statement of Smt. Ram Snehi on these MOs. He recorded the statement of Smt. Ram Snehi Devi and Smt. Mintu Devi, which has been confirmed by him and was marked Ext. –S1 and Ext.-S2 respectively. Both the payee had denied the receipt of the amount of MO and their LTI on the MOs concerned. Smt. Ram Snehi Devi had stated that she used to receive payment after signing the same whereas on MO forged LTI was put by somebody else. She had not received the payment of the said amount till 07.08.2007. Smt. Mintu Devi had also denied her LTI on the MOs when shown to her by SW-1 and also denied receipt of payment till 07.08.2007.

18. It is further submitted that the IO has also recorded the findings that the said SW-1 had also recorded the statement of CO, Shri Binod Kumar, the applicant herein which is Ext. S-3 in the enquiry wherein it is categorically recorded that the applicant had accepted that he had shown payment of both the MOs for amount of Rs. 4500/- and for Rs. 2000/- were shown paid by him

on 02.08.2007 in the account of Pachdamia BO. But actually the amount of both MOs was not paid to the real payee. He also admitted that on MO from the LTI was not of real payee. The CO had credited the amount of both the MOs in Govt. account by his own on 08.08.2007 Ext. S-8. The said deposition of SW-1, Dharmendra Singh was recorded in presence of the C.O. but he did not cross examine him though due opportunity was granted to him.

19. It is further recorded in the enquiry report that other two witnesses, i.e. Smt. Ram Snehi Devi and Smt. Mintu Devi did not appear despite notice upon them. On 18.06.2014, only PO and CO attended the enquiry hearing, however the witnesses did not attend since the PO did not explain the cause of non attendance of the state witnesses, the case on behalf of the disciplinary authority was treated as closed.

20. The CO was present in the enquiry who was asked to state his defense, however he declined to give any defense. He also declined to be examined himself. The CO refused to sign the daily order-sheet. However, he submitted his application dated 18.06.2014 in which he accepted his presence in the enquiry but challenged the continuation of the enquiry as more than three months have elapsed. Since the petition of the applicant had no merit, the same was not considered to pass any order thereon as also the CO did not agree to be questioned by the enquiry officer. Under the circumstances, the enquiry was treated as closed. A

copy of the order-sheet was sent to the CO under registered cover on the same date. The PO was directed to submit his written brief within seven days with a copy to the CO and the CO was directed to submit his written brief, he if so desires, within seven days after receipt of the brief of the PO. In response to it, the PO submitted his brief on 08.07.2014 with a copy to the CO. However, the CO did not submit his brief.

21. Subsequently based on the materials on record the IO has submitted his report, whereby he has recorded his findings that the charged leveled against the applicant has been proved. The said report was sent to the applicant. However, no representation on it has been received respondents till 18.07.2014. Even thereafter, by special messenger the report of IO was sent to the applicant and through registered letter dated 29.12.2014. However, the CO has not submitted any reply to it and thereafter, the disciplinary authority considered the enquiry report and accepted the same. Resultantly, in exercise of power conferred under the rules awarded the punishment of removal of the applicant vide order dated 10.02.2015. The said order is just and proper. The respondents have not committed any error in passing the same decision as the due opportunity has been granted to the applicant. It is further submitted that this OA is not maintainable for the reason that the applicant has not exhausted the alternative remedy provided under the provision of Rule 13 of GDS [Conduct & Engagement] Rules, 2011.

22. Heard the learned counsel for the parties and perused the materials on record.

23. It reveals from record that the applicant was served with the charge memorandum dated 02.05.2008 under Rule 10 of GDS [Conduct and Employment] Rules, 2001. After conclusion of the regular enquiry the Disciplinary Authority vide order dated 04.06.2010 awarded punishment of removal from service and appeal filed by the applicant was also rejected. Aggrieved by it, he had filed OA 87/2012 which was decided on 07.10.2013 wherein this Tribunal observed that statement recorded in preliminary enquiry or its report loses significance and importance once the regular enquiry is initiated by issuing the charge to the delinquent as held by Hon'ble Apex Court in the case of *Nirmala J. Jhala vs. State of Gujarat*, reported in 2013 [2] SCC L&S 270. In the case of the applicant one of the ground for imposing the punishment is the statement made during the course of preliminary enquiry which was not corroborated during the course of regular enquiry. Moreover, the different objections, raised by the applicant were also not properly dealt with, which clear violation of natural justice. Thus the impugned orders passed by the Disciplinary Authority as well as the appellate authority are not non-speaking and perverse. Accordingly, the said order dated 04.06.2010 and 21.07.2010 were quashed and set aside and remitted back to the Disciplinary Authority with a direction to afford reasonable opportunity to the applicant to

defend his case. After taking into consideration the objections raised by the applicant including the above observations as mentioned above and thereafter to pass a reasoned and reasoned orders within a period of three months from the date of receipt of a copy of this order.

24. In pursuance to aforesaid order dated 07th October, 2013, since the applicant was not provided due opportunity to defend his case, as held by this Tribunal, therefore, therefore, the Disciplinary Authority, vide order dated 10.02.2014 ordered a fresh enquiry under Rule 10 of GDS [Conduct & Employment] Rules, 2001 against the applicant on the very allegation leveled in charge memorandum dated 02.05.2008 and appointed new enquiry officer as well as PO. Copy of the said order dated 10.02.104 was also served upon the C.O., the applicant herein.

25. It is noticed that the applicant has participated in the said fresh enquiry. However, he has not submitted his any defense.

26. It is noticed that the applicant has not rebutted the contention of the respondents that on various dates of hearing of fresh enquiry, the applicant remained present along with PO before the enquiry officer. Even he was present during the deposition of state witness SW-1. However, he has not availed the opportunity of cross examination.

27. At this juncture, it is apt to note that during said fresh enquiry the applicant in the month of June, 2014 submitted his application against continuation of a fresh enquiry. However, the

same was rejected by the enquiry officer. Even thereafter, he remained present during the course of enquiry. He did not challenge the order of Disciplinary Authority ordering fresh enquiry dated 21.02.2014 and waited for conclusion of the enquiry and final decision of the Disciplinary Authority dated 10.02.2015, whereby the Disciplinary Authority has accepted the findings of the report of the Enquiry Officer dated 28.07.2014 and awarded punishment of removal since the charges leveled against the applicant were found proved. It is noticed that in the impugned decision dated 10.02.2015 [Annexure-A/7] cogent reason has been stated by the Disciplinary Authority for initiation of fresh enquiry and grant of due opportunity to the applicant to defend his case with respect to charge leveled against the applicant under the charge memorandum.

28. In our considered view, the Disciplinary Authority has provided ample opportunity to defend his case during the enquiry. However, he failed to avail it. The judgments relied upon by the applicant; there is no dispute with respect to proposition of law settled in the said judgment. However, in the facts and circumstances of the present case, the same is not applicable.

29. It is seen that the Disciplinary Authority has ordered for put off duty of the applicant, vide order dated 21.02.2014 by granting ex gratia compensation under the provision of Rule 12 of GDS Rules. The applicant has not rebutted it as also not challenged the said order dated 21.02.2014.

30. It is further noticed that the applicant has not exhausted the statutory remedy available under Rule 13 of GDS [Conduct & Engagement] Rules, 2011 against the punishment awarded under Rule 9/10 of the said GDS Rules. Therefore, at this stage, we direct the applicant to file an appeal before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order, which the appellate authority shall decide considering the merit of the case and the materials on record as also grounds stated by the applicant and pass appropriate order within ninety days thereafter. We made it clear that we have not expressed any opinion on the validity and legality of the observations and findings of the Disciplinary Authority in awarding the punishment of removal from service.

31. In view of the above discussions and direction, this OA stands disposed of. No costs.

Sd/-
[Dinesh Sharma]M[A]

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

mps.