

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 938 of 2015

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

Shri Prahallad Nayak, 48 years, S/o. Basudev Nayak, At/PO-Badanaukana, Via-Rajanagar, Dist-Kendrapara.

.....Applicant.

VERSUS

1. Union of India, represented through the Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Director of Postal Services (Hqrs), O/o. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda-751001.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack-753001.

.....Respondents.

For the applicant : Mr. N. R. Routray, counsel

For the respondents: Mr. D. K. Mallick, counsel

Heard & reserved on : 14.10.2019

Order on : 28.10.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

“(i) To quash Annexure-A/5 and A/7 and direct the respondents to reinstate the applicant in service with all consequential benefits

And any other order(S) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain ever pray."

2. The facts of the case are that the applicant was appointed as Gramin Dak Sevak Branch Post Master (In short GDSBPM), Badanaukana Branch Post Office on 21.05.1992 and while working as such, he was placed under put off duty on 30.04.2011, with the order of the Inspector of Posts Office, Pattamundai. He was also served the charge sheet dated 08.2.2012(Annexure-

A/2), alleging misconduct of non-accounting of the deposits in the accounts of some of the depositors, while reflecting the same in the pass book of the depositors. The Disciplinary Authority i.e. Respondent No.3 (Superintendent of Post Offices, Cuttack North-Division, Cuttack) appointed the Inquiry Officer (I.O.) and Presiding Officer (PO) for inquiry into the charges. It is stated in the OA that the Inspector of Post Offices during inspection of the applicant's office detected some discrepancies and asked the applicant to credit the alleged short fall amount. It is also stated in the OA that the inquiry undertaken by the I.O suffers from procedural irregularities since the alleged amount was deposited by the applicant under duress. In the course of inquiry the applicant sought for only one additional document, i.e. the report of the preliminary inquiry conducted by the Inspector of Post Offices who had conducted the inquiry and recorded the statements of the depositors who were also listed as prosecution witness in the inquiry. But the same document was not supplied on the ground of irrelevancy. A letter dated 16.03.2013(Annexure-A/3) was submitted by the applicant for supply of this preliminary inquiry report by Sri Md. Noman based on whose report, the charge sheet against the applicant was issued.

3. It is further stated in the OA that the depositors had denied any irregularity and stated that they had given the statement at the instance of Postal officials. The statements obtained in course of preliminary inquiry were therefore contradictory, when the depositors have disowned their own statements given to the Inspector. But the I.O has held all the charges to be proved, without considering these aspects. It was further stated that non-supply of preliminary inquiry report to the applicant has caused serious prejudice to the applicant. It is further stated that the report of I.O was in handwriting and illegible and his request for a typed copy of the inquiry report was not accepted. It is further averred in the OA that the Disciplinary Authority i.e. Respondent No.3 without applying his mind, simply accepted the report of I.O and did not consider the facts as required under Rule 15 of CCS(CC&A) rules, 1965. It is further stated that the one of the important depositors had not turned up to give his statements before the I.O. The impugned order of removal from service vide order dated 24.09.2014 (Annexure-A/5), was passed by the disciplinary authority. The applicant filed an appeal before the respondent No.2 which was also rejected. It is stated that in some of other cases with similar misconduct the authorities have taken lenient view to impose the less punishment. The impugned order of appellate authority dated 29.04.2015 is at Annexure-A/7.

4. Counter has been filed by the respondents. It is stated that the applicant had exhibited the dishonest motive by not depositing the depositors'

money on Govt. account and that the applicant did not deposit the amount in question in respect of the Pass Book account of the depositors on the date of deposit of the same and it has deposited subsequently on Govt. account under the head Unclassified Receipt. Regarding supply of additional documents as requested by the applicant, it is stated that it was the discretion of the I.O to consider the matter and the request was rejected on the ground of irrelevancy to the charges levelled against the applicant. It is further stated in the counter that as per the provisions of law, the Tribunal cannot interfere with the findings of the I.O or the competent authority, where there are not arbitrary or utterly perverse and that the Tribunal cannot interfere with the penalty if the conclusions of the authority are based on evidence. The judgment of Hon'ble Apex Court in the case of Sri Parma Nanda Vs State of Haryana reported in 1989(2) SCC 177 has been cited in support of the averments in the counter.

5. No Rejoinder has been filed by the applicant in response to the averments in the Counter.

6. We have heard learned counsel for the applicant, who also filed the written notes of submissions. His first argument is that the applicant had deposited the amount alleged in the charge-sheet in the government account as admitted in the Counter and hence, the charges framed against the applicant are vague and not sustainable. His second argument is that the disciplinary authority has mechanically accepted the report of the IO without application of his mind and without considering the points raised by the applicant in his defence. His third argument is that the appellate authority did not consider the points raised by him in his appeal while rejecting his appeal. The fourth argument is that since the punishment of removal from service is shockingly disproportionate to the charges, it is not sustainable in the eye of law.

7. Learned counsel for the respondent nos. 1 to 3 was heard and he also filed his written note of arguments, broadly reiterating the stand taken in the Counter. It is stated that the order for put off duty passed by the Inspector was confirmed by the respondent no. 3 subsequently. It is further submitted that the applicant has admitted that he had not credited the amounts in question in the respective accounts of the depositors, but the same was credited to government account subsequently under the head unclassified report. It was argued that there were no procedural irregularities in disposal of the disciplinary proceedings and the punishment order has been passed after considering all the aspects of the case. It is also submitted that as per the existing settled law, the Tribunal cannot interfere with the findings of the IO as well as the penalty imposed.

8. With regard to the pleadings as well as submissions by both the parties, one of the grounds mentioned in the Para 4.4 of the OA is that the applicant had sought for inquiry report of the Inspector of Post Offices who had conducted the inquiry based on which charge-sheet was issued. In reply to the averments of Para 4.4, the respondents in their counter has stated that the supply of additional documents by the applicant, is up to the discretion of IO and it was rejected by the IO on the ground of irrelevancy to the charges framed against the applicant. It has not been explained by the respondents as to how the said report of Inspector of Post Offices who conducted the preliminary inquiry in 2011 by recording the statements of the depositors and the applicant is not irrelevant to the charges. On perusal of the charge sheet dated 08.02.2012(Annexure-A/2), it is seen from the Annexure-III of the charge sheet the written submission of the applicant recorded on 30.04.2011 and 02.05.2011 in respect of different accounts have been cited as the relevant documents to prove the charges. List of documents at Sl. Nos.4, 5, 8 and 11 the list of documents in Annexure-III of the charge-sheet consisted of the written statements recorded in the preliminary inquiry by Inspector of Post offices. Perusal of the charge sheet reveals clearly that the charges are based on report of the Inspector of Post Offices, who conducted the preliminary inquiry by recording the written statements cited as relevant documents to prove the charges.

9. Perusal of the impugned order dated 24.09.2014 (Annexure-A/5) of the disciplinary authority, shows that the statements recorded by the depositors Sri Sanatan Swain and Sri Trilochan Raut on 2.5.2011 have been relied upon by the disciplinary authority, while passing the impugned punishment order of removal from service as stated in para-7 sub para (ii) and (iii) of the impugned order dated 24.09.2014. It is also seen from order of appellate authority dated 29.04.2015 (Annexure-A/7), that the appellate authority has also relied upon above statements of the depositors on 2.5.2011, recorded by the Inspector of Post Office who conducted the preliminary inquiry.

10. In view of the above, we are unable to accept the contention of the respondents that preliminary inquiry report of the Inspector of Post Offices was not relevant to the charges since on the basis of this report the charge sheet was framed and since the statements recorded during the inquiry were considered while passing the impugned punishment orders at Annexure A/5 and A/7. On the basis of such report, the Inspector had concluded that the applicant was *prima facie* responsible for the misconduct. By not supplying the document, reasonable opportunity has not been provided to the applicant to

defend the charges which is a requirement of under the rule 10 of the GDS (Conduct and Engagement) Rules, 2011, which states as under:-

“10. Procedure for imposing a penalty.-

(1) No order imposing a penalty shall be passed except after -
 (a) the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make: and
 (b) such representation, if any, is taken into consideration by the Recruiting Authority:

Provided that the penalty of dismissal or removal from engagement shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of the charges:

Provided further that where it is proposed after such enquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry.....”

The authorities have considered the statements recorded during preliminary inquiry without furnishing the report of such inquiry, which was specifically requested by the applicant. The explanation of the respondents in the Counter that the supply of such document as requisitioned by the applicant depends on the discretion of the IO and the IO has rejected it on the ground of irrelevancy, is not at all acceptable in view of the provisions in the rule 10 above.

11. The respondents in the counter have pointed out the limited jurisdiction of the Tribunal in matter relating to proceedings and have cited the judgment of Hon'ble Apex Court in the case of Sri Parma Nanda -vs- State of Haryana and Others [1989 (2) SCC 177]. In this case, it was held that the Tribunal can exercise the power of judicial review in respect of the disciplinary proceedings and can interfere if there is any violation of the rules governing the disciplinary proceeding. Applying the ratio of this judgment, it is clear that Tribunal to interfere if it is found that the authorities have violated the statutory rules applicable for the disciplinary proceedings. As discussed above, there has been violation of the rules in this case as reasonable opportunity has not been given to the applicant by refusing to supply a copy of the preliminary inquiry of the Inspector of Post Offices, who had conducted the preliminary inquiry based on which the charge sheet dated 8.2.2012 was drawn up against the applicant.

12. The applicant has also submitted that the Appellate Authority has not passed the impugned order dated 29.04.2015 (Annexure-A/7) and rejected his appeal without application of mind. The Appellate Authority is required to see whether the provisions of rule have been adhered to by the authorities while disposing of the proceedings and whether the punishment imposed is adequate, inadequate or excessive. On perusal of the appeal it is seen that the ground of non-supply of the inquiry report of the Inspector has been mentioned

as one of the grounds. But this ground has not been considered by the appellate authority in the order at Annexure A/7. The adequacy or excessiveness of the punishment imposed has also not been considered by the appellate authority. Hence, the impugned order dated 29.04.2015 (Annexure A/7) passed by the appellate authority is not sustainable in the eyes of law.

13. In the case of Union of India Vs. P. Gunasekaran 2015 (2) SCC page 610, Hon'ble Supreme Court has laid down the following factors based on which the Tribunal can interfere in a disciplinary proceeding :-

“.....In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.”

14. In view of the above discussions, the impugned order of punishment at Annexure-A/5 and order of the appellate authority at Annexure A/7 are not sustainable under law and hence, there are set aside. The matter is remitted to the disciplinary authority (respondent no.3) to reconsider the matter in accordance with the rules, keeping in mind the observations in this order and with liberty to conduct fresh inquiry into the charges after supplying the report of the preliminary inquiry along with statement recorded by the Inspector of Post Offices, Pattamundai, based on which charge sheet dated 08.02.2012 has been framed. It is made clear that the applicant will be entitled for the consequential benefits in terms of the sub rule 4 of the rule 12 of the GDS (Conduct & Engagement) Rules, 2011.

15. The OA is allowed to the extent as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

