

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/56/2015

Date of Reserve: 09.04.2019

Date of Order: 14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Udayanath Sahoo, aged about 50 years, S/o. Late Panchanan Sahoo, permanent resident of At-Bauti Bana, PO-Kaimati, Via-Govindpur, Dist-Dhenkanal, Ex Postal Assistant, Dhenkanal Head Quarter, At/PO/Dist-Dhenkanal.

...Applicant

By the Advocate(s)-M/s.S.Patnaik
S.K.Nayak
B.R.Kar

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Communication, At-Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda.
3. Post Master 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, Dhenkanal, At/PO/Dist-Dhenkanal.

...Respondents

By the Advocate(s)-Mr.S.Behera
ORDER

PER MR.GOKUL CHANDRA PATI, MEMBER(A):

This O.A. is filed seeking the following reliefs:

- i) To admit the Original Application and issue notice to the respondents.

- ii) To call for the relevant records after being heard from the both sides allow the original application to the extent that
 - i) To hold/declare that order of punishment i.e., compulsory retirement from service w.e.f. 1.4.2014 vide order dated 31.3.2014 under Annexure-A/3 passed by the Respondent No.5 is bad in law and in operative accordingly may be quashed.
 - ii) To quash the order of appellate authority dtd. 17.11.2014 under A/4.
 - iii) And pass such other order/direction as deem fit and proper to the facts and circumstances of the case to give complete relief to the applicant.

2. The applicant had joined as Postal Assistant on 31.08.1982. On 9.8.2005, he was posted as SPM, M.S.Nagar. He was proceeded against vide charge memo dated 10.12.2012 (Annexure-A/1) for causing loss to Government, lack of integrity and devotion to duty etc. Inquiry was conducted into the charges and the report of the inquiry was sent to the applicant. The applicant submitted his defence statement vide letter dated 27.3.2014 (Annexure-A/2) after receiving the report of the Inquiry Officer.

3. It is alleged by the applicant in the O.A. that the disciplinary authority (Respondent No.5) without application of mind passed the order of punishment dated 31.3.2014 (Annexure-A/3) imposing the major punishment of compulsory retirement from service. The applicant filed the appeal dated 19.4.2014 (Annexure-A/4) before the appellate authority (in short A.A.), who vide order dated 17.11.2014 (Annexure-A/5) rejected the appeal.

4. It is stated in the O.A. that DG's letter dated 15.1.1988 provides for verification of past work within three months which was not done in this case. The respondents took two years for past work verification, violating the DG's letter dated 15.1.1988. Hence, it is stated in the OA that the charge memo is bad in law for this reason only. The preliminary investigation was conducted on 26.5.2011, but the authorities took about 17 months to issue the charge memo which is violative of DOP&T OM dated 29.11.2012. It

is also stated that the alleged incident occurred in 2007 and the charge memo was issued in 2012, after 5 years of the alleged incident. The proceedings were also vitiated since 4 numbers of IOs were entrusted to conduct the inquiry without any reasonable reasons for the same. It is stated that the applicant is seriously prejudiced due to inordinate delay in issuing the charge memo. It is further mentioned in the OA that the applicant was never suspended although a major penalty proceeding was initiated.

5. It is also stated that the proceedings are vitiated due to non-supply of material documents including statements of witnesses, in violation of DOP&T OM dated 2.5.1985. The Respondent No.5 did not appoint IO and PO simultaneously as required under DOP&T OM dated 29.11.2012. After receipt of IO's report, the disciplinary authority should have issued disagreement note within 15 days, but it was issued after 23 days, which is a deviation from CVC's circular and DOP&T OM dated 26.6.1996.

6. The respondents filed counter submitting that the Inspector of Posts on receipt of a complaint on 20.8.2009, proceeded to inquire into the matter and found the irregularities in 3 Savings Bank Accounts as alleged in the charge memo and a preliminary inquiry was conducted and the statements of the account holders were recorded. Rule 33(1) and 33(2) of POSB Manual, Volume-I prohibit any transaction in an account in absence of the Pass Book. In this case, it was found that the alleged transactions in the charge memo were not entered in the Pass Book and were done by the applicant without knowledge of the account holders. It is further stated that the authorities have passed orders with due application of mind through reasoned order. In the proceeding, the applicant was given due opportunity and there is no violation of the principles of natural justice. According to the respondents since the charges against the applicant involved grave misconduct of misappropriation of Government money, the punishment is justified. It is further stated that the provisions of the rules have been followed in the disciplinary proceeding. It is further stated that

the IO and PO were appointed on 15.1.2013 (vide Annexure-R/7) and copies of listed documents have been supplied to the applicant. It is stated that investigation started after detection of case in August, 2009 and past work verification was completed in October, 2012. Charge Memo was issued on 10.12.2012, inquiry was conducted on 29.11.2013 and hence, there is no delay.

7. The applicant filed rejoinder reiterating his claim that the entire procedure adopted for imposition of penalty is flawed from issue of charge memo to rejection of appeal. The issue of delay from the preliminary inquiry in 2009 till issue of the charge memo in 2012. The A.A. has failed to follow the rules and the procedure as laid down under the Rule 27(2) of CCS(CCA) Rules, 1965. There is deviation of the guidelines of D.G.Posts, as well as the DOP&T OM dated 29.1.2012 and dated 20.4.2001. It is stated in Para 19 of the Rejoinder that all the documents relied upon by the respondents have not been supplied to the applicant. A new ground has been taken by the applicant in the rejoinder, alleging that the Respondent No.5 is not the competent authority to impose major penalty under Rule 14 as the applicant who after 16 years of service has the Grade pay of Rs.2800/- w.e.f. 31.8.1998 and in the Grade Pay of Rs.4200/- w.e.f. 1.1.2009 vide order dated 20.4.2009. The applicant was given the benefit of third MACP raising his Grade Pay to Rs.4800/- vide order dated 12.3.2013. When the punishment was imposed, the applicant was on the Grade Pay of Rs.4800/-. It is further stated that for the applicant with Grade Pay of Rs.4600/- the DPS is the competent disciplinary authority, not the Respondent No.5.

8. The applicant in his pleadings has referred to the following orders of the Tribunal in support of his contentions:

(i) Order dated 23.8.2005 in Smt. Roop Devi vs. UOI, Secretary Defence in O.A.No.119/2003.

(ii) Order dated 5.5.2010 in Manoj Kumar Barman vs. General Manager, NF Railway in O.A.No.182/2009.

- (iii) Order dated 8.8.2003 in P.Y.Baby vs. Commandant ASC Centre in O.A.No.1038/2002.

Besides, the applicant has also referred to the DG Posts letters dated 15.1.1988, dated 19.2.1975 and DOP&T OMs dated 29.1.2012, 29.11.2012 and 20.4.2001. But copy of none of the orders and none of the circulars/OMs cited by the applicant has been enclosed with his pleadings nor placed before us at the time of hearing.

9. Learned counsels for the applicant as well as the respondents were heard and the pleadings as well as the documents placed on record before us. The applicant has advanced four main grounds as under:

- (i) The charge memo was issued after a long delay from the alleged incident or from the preliminary inquiry.
- (ii) Relevant documents were not supplied (without specifying which relevant document was not supplied).
- (iii) Respondent No.5 is not the competent disciplinary authority for the applicant for imposing a major penalty.
- (iv) Punishment is disproportionate not commensurate with the gravity of the charges (Para 4.9 of the OA).

10. It is noticed that one of the main ground of lack of competency of the respondent no.5 to impose the impugned penalty, has not been mentioned in the appeal dated 19.4.2019 (Annexure-A/4) filed by the applicant. No document has been furnished by the applicant in support of this contention. Regarding non-supply of the documents, no details of the documents, not supplied to him and

how it has prejudiced him, has not been explained in the pleadings of the applicant. The applicant's appeal dated 19.4.2014 has mentioned the ground of DOP&T OM dated 3.6.1995, which stress on adherence to the procedure as specified in the CCS(CCA) Rule, 1965. It is also mentioned about the order being not a reasoned and speaking order. It also raises the ground of using the evidence taken during preliminary inquiry. It is also mentioned that penalty imposed was harsh although the misconduct was not grave. Further, the question of non-reference of the matter to GEDQ and the applicant's past record of service have been raised in the appeal. The ground of delay has been raised by the applicant in his representation dated 27.3.2014 submitted in reply to report of the Inquiry Officer as well as in his appeal.

11. The appellate authority is required to examine the appeal under rule 27(2) of CCS(CCA) Rules, 1965 which states as under:

"(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

12. From the above, it is mandatory for the appellate authority to examine whether the disciplinary authority has followed the procedure prescribed under the rules and whether the punishment imposed is adequate or excessive. It is seen from the impugned

order dated 17.11.2014 (Annexure-A/5) of the appellate authority that he has examined the acceptability of evidence and noted that the irregularities committed by the applicant are grave in nature, which justifies the penalty that has been imposed.

13. The applicant has stressed on the issue of delay in initiating the disciplinary proceedings. The applicant has not mentioned anything in his pleadings about the circumstances under which the amounts as alleged in the charge memo were withdrawn and deposited subsequently without knowledge of the account holders. Although there is no loss to the Government, but such irregularities on the part of the applicant amount to temporary misappropriation. The account holders deposit their money in the Post Office Savings Bank Account trusting the departmental officers. Such misconduct cannot be accepted as it adversely affects confidence of people on an important Institution like the Post Office. Regarding non-reference to GEQD, it is noted that the charge of allowing transactions in absence of the Pass Book has not been refuted by the applicant although non-reference to GEQD will imply that the charge of forged signature or forged document is not established conclusively.

14. Regarding the applicant's contention that the respondent No.5 is not competent to impose the penalty, neither such a ground has been taken in the appeal nor any proof has been furnished along with the pleadings of the applicant in support of such contention, which is, therefore, not tenable.

15. Regarding the ground of delay in initiation of the disciplinary proceedings, it is noted that in the case of Shri Anant R. Kulkarni Vs. Y.P. Education Society & Ors. in the Civil Appeal No. 3935 of 2013, Hon'ble Supreme Court has held on the issue of belated initiation of the disciplinary proceedings, as under:-

"Enquiry at belated stage:

8. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings,

as such a power is *de hors* the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250; and Chairman, LIC of India & Ors. v. A. Masilamani, JT (2012) 11 SC 533)."

It is seen from above judgment that the ground of delay cannot be the sole ground to interfere in a disciplinary proceeding. All relevant facts of the case and circumstances of the case have to be examined while taking a decision. As noted earlier, the charges are serious in nature and the applicant has not been able to furnish adequate justifications for this Tribunal to interfere in this matter. Hence, we are of the view that in this case, delay in initiation of the charges cannot be the sole ground to call for any interference in the matter.

16. In view of the facts and circumstances discussed above, we are not inclined to interfere in the matter. Hence, the OA being devoid of merit is liable to be dismissed and hence, it is dismissed. There will be no order as to costs.