



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/994/2014

With

O.A /350/995/2014

Date of Order: 1/11/19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member

RABINDRANATH MONDAL, son of Late Phani Bhusan Mondal, aged about 61 years, worked as a Postmaster (Officiating), Behrampore (B), HO, Murshidabad, residing at Kandi Mohanbagan Road, P.O Kandi, District - Murshidabad, Pin 742137.

-----Applicant

Versus

1. Union of India, through the Secretary to the Govt. of India, Ministry of communications & IT, Department of Posts, Dak Bhawan, Sansad Marg, new Delhi - 110001.
2. The Chief Post Master General, West Bengal, Yogayog Bhawa, Kolkata 700012.
3. The Director of Postal Services, Kolkata Region, Yogayog Bhawan, C.R. Avenue, Kolkata - 700012.
4. The Superintendent of Post Offices, Murshidabad Division, Behrampore (B), District Murshidabad, Pin 742101.

--Respondents.

For The Applicant(s): Mr. B. Chatterjee, counsel

For The Respondent(s): Mr. B. P. Manna, counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (J):

Both the O.A.Nos. 994 and 995 of 2014 have been filed by the applicant, viz. Rabindra Nath Mondal. In O.A. No. 994/2014, he has sought for the following reliefs:

"8.a) An order quashing and/or setting aside the Memorandum of Charge Sheet dated 24.07.2012 issued by the respondent No.4 and the entire proceeding held thereunder.

b) An order quashing and/or setting aside the order of the Disciplinary Authority and the penalty imposed by the Disciplinary Authority dated 10/13.09.2012 and the order of the Appellate Authority dated 16.01.2013.

- c) An order do issue directing the respondent to refund the amount of Rs.65,000/- which was recovered from Pay & Allowances of the applicant including 18% interest thereof till the date of actual payment.
- d) An order directing the respondents to produce/cause production of all relevant records.
- e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

While, in O.A.No. 995/2014, the applicant has prayed for the following reliefs:

- "8.a) An order quashing and/or setting aside the Memorandum of Charge Sheet dated 07.08.2012 issued by the respondent No.4 and the entire proceeding held thereunder.
- b) An order quashing and/or setting aside the order of the Disciplinary Authority and the penalty imposed by the Disciplinary Authority dated 10/21.09.2012 and the order of the Appellate Authority dated 16.01.2013.
- c) An order do issue directing the respondent to refund the amount of Rs.90,000/- which was recovered from Pay & Allowances of the applicant including 18% interest thereof till the date of actual payment.
- d) An order directing the respondents to produce/cause production of all relevant records.
- e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

Since the reliefs 8(a) and 8(b) in OA 995/2014 are similar to that in 8(a) and 8(b) in O.A 994/2014, such reliefs are treated as not pressed in regard to O.A 995 of 2014.

2. The applicant has alleged that after issuance of the charge-sheet dated 24.04.2012, he had sought for inspection of some documents which was denied without assigning any reason. He was forced to submit his reply against the charge-sheet but without considering the point raised by him in the reply and traversing beyond the imputation on his conduct, he was punished by an order dated 10/13/9/2012 by the Disciplinary Authority by a cryptic order making out an entirely different case and without considering

the fact that the nature of the case warranted a full-fledged enquiry, hence this O.A.

3. Ld. counsels were heard and the materials on record were perused.

4. Ld. counsel for the applicant would vociferously contend that being identified as subsidiary offender, the applicant ought to have been given adequate opportunity to put up his defence. Having denied him inspection of documents the respondents have acted to contrary to law and, therefore, the punishment order, the appellate order of the revision order should be quashed for the end of justice.

5. The records of the case reveal the following facts:

Shri Rabindra Nath Mondal (the applicant herein) entered in the service on 31.07.1974 as Postal Assistant. He worked at different offices under Murshidabad Division till the occurrence of the Bharatpur Fraud Case. He worked at Kandi HO during the period from 29.04.2001 to 14.10.2005. He worked in several branches including as APM, SOSB branch at Kandi HO. The Bharatpur Fraud Case came to light on 02.01.2006, when the then Postmaster Kandi HO informed the then Supdt. of Post Offices, Murshidabad Division over telephone that his office, during date entry posting had noticed some suspected SB fraud on a particular SB A/c no. 1094392, standing in the name of Sri Ram Sevak Sharma, the then offg. SPM Bharatpur SO.

During his incumbency as P.A Bharatpur SO, Sri Sharma opened one SB account no. 1094392 on 10.09.2002 with an amount of Rs. 200/-. Thereafter, he made 4 deposits in the month of September 2002, i.e, on the month of opening of the pass book. Then he withdrew an amount of Rs. 500/- only on 14.09.2002 keeping the balance of the PB to Rs. 50/- only. Subsequently, he was made the officiating Postmaster. Taking advantage of this situation he withdrew 27 times from the said SB A/c., beginning from 01.11.2004 until the last one on 07-12-2005, resulting in

minus balance in this account to the tune of Rs. 1129947.20. Details of transactions taken place in the A/c being as under:

| Date | Withdraw | Balance | Date | Withdraw | Balance |
|----------|----------|------------|----------|----------|-------------|
| 01.11.04 | 10000.00 | -9947.20 | 03.10.05 | 40000.00 | -579947.20 |
| 04.11.04 | 5000.00 | -14947.20 | 13.10.05 | 20000.00 | -599947.20 |
| 08.12.04 | 50000.00 | -64947.20 | 15.10.05 | 30000.00 | -629947.20 |
| 05.04.05 | 25000.00 | -89947.20 | 22.10.05 | 50000.00 | -679947.20 |
| 28.04.05 | 20000.00 | -109947.20 | 26.10.05 | 50000.00 | -729947.20 |
| 24.05.05 | 30000.00 | -139947.20 | 05.11.05 | 50000.00 | -779947.20 |
| 07.06.05 | 50000.00 | -189947.20 | 09.11.05 | 50000.00 | -829947.20 |
| 18.07.05 | 50000.00 | -239947.20 | 11.11.05 | 50000.00 | -879947.20 |
| 06.08.05 | 50000.00 | -289947.20 | 14.11.05 | 50000.00 | -929947.20 |
| 10.08.05 | 50000.00 | -339947.20 | 29.11.05 | 50000.00 | -979947.20 |
| 19.08.05 | 50000.00 | -389947.20 | 01.12.05 | 50000.00 | -1029947.20 |
| 26.08.05 | 50000.00 | -439947.20 | 05.12.05 | 50000.00 | -1079947.20 |
| 05.09.05 | 50000.00 | -489947.20 | 07.12.05 | 50000.00 | -1129947.20 |
| 28.09.05 | 50000.00 | -539947.20 | | | |

From such transactions, it became evident that the official took withdrawals on 01.11.04, 04.11.04 & 08.12.04 and awaited HO ledger posting. Those ledger posting works were completed during the months of April and May 2005. When HO failed to take any action for the minus balance in the said a/c, Sri Sharma rapidly withdraw different amounts on different dates resulting a misappropriation to the tune of Rs. 1129947.20 in the said a/c. Sri Ram Sevak Sharma was identified as the Principal Offender of the case. Sri Ram Sevak Sharma, the then Offg. SPM, Bharatpur SO was Charge Sheeted under Rule 14 on 5/7/06. The disciplinary case was finalized with the punishment order of 'Dismissal from service' vide Superintendent of Post Offices Murshidabad Division memo no F4-111/2006/R.S.Sharma. dtd at Berhampore the 03.06.2009.

Sri Rabindranath Mondal, the present applicant, the then APM Kandi HO was identified as one of the Subsidiary Offenders of the case. From H.O. ledger card in respect of SB a/c No. 1094392 it was found that fake withdrawals from the dates 01.04.04, 04.11.04 & 08.12.04 for the amount Rs 10000/-, Rs 5000/- & Rs 50000/- respectively were done on April-May 2005 under Action Plan. Sri Rabindranath Mondal worked as APM (SB) Kandi HO during the above 3 postings in April-May 2005. It was his responsibility to maintain special error book for the P.B. in question having minus balance to the tune of Rs.64947.20 and to take special effort for obtaining the pass book and to report to Superintendent of Post Offices but nothing was done by him until his posting at Kandi up to Oct. 2005. According to the respondents, due to his negligence, had he taken necessary action in time, the misappropriation of money committed by Sri Sharma in the a/c No 1094392 could

have been restricted within the limit of Rs. 64947.20, i.e Rs 65000.00 (-) Rs 52.80 [interest for the period 02-03 & 03-04].

Thereafter, Sri Mondal was charge sheeted under Rule – 16 of CCS (CCA) Rules 1965 vide memo no. F4-1/1/2006 Dated at Berhampore (B) the 24.07.2012. The Disciplinary case culminated into a memo no F4-1/1/2006 Dated at Berhampore (B) the 10/13.09.2012 with the punishment order of recovery of Rs 65000/- (Rupees Sixty-five thousand) only, to be recovered from the next pay & allowances of Sri Rabindranath Mondal in three instalments i.e. Rs 22000=00, Rs. 22000=00 and Rs. 21000=00 respectively.

He preferred on appeal to the Director of Postal Services, Yogayog Bhaban, Kolkata – 12 against the punishment order. The Director of Postal services, Kolkata Region, West Bengal Circle vide memo no. Vig/Z-40/10/12/ Appeal dated 16.01.2013 disposed off the appeal with the order “Uphold the punishment awarded” and rejected the appeal of Sri Rabindra Nath Mondal, APM (A/Cs), Berhampore HO.

The Appellate order was delivered to Sri Mondal on 21.01.2013. Thereafter Sri Mondal preferred a revision petition before the Chief Postmaster General, West Bengal Circle, Kolkata – 700012. That was rejected vide memo no Vig/Z-80/3/13/Rev. Petition dated 23.09.2013 and the memo was delivered to Sri R.N. Mondal on 28.09.2013.

The respondents have claimed that the “Disciplinary Authority on receipt of his representation dated 14.08.2012 allowed 7 more days to submit his representation vide memo no. F4-1/1/2006/R.N. Mondal dt. 17.08.2012”.

The respondents have further alleged that “being APM i.e. incharge of SO SB Branch, Kandi Ho, Sri Rabindra Nath Mondal clearly violated Rule 92 (2) (ii), 92 (2) (iii), 92 (2) (iv) of Post Savings Bank manual Volume I and hence defended the punitive action taken against him.”

6. We discern from the order passed by the Disciplinary authority on 10/13.09.2012 (Annexure A-7 to the O.A) that the disciplinary authority has recorded the following:

“As Sri Rabindranath Mondal was on leave, the memo of charges was sent through special messenger vide this office letter no. F4-1/1/2006/R.N Mondal Dated at Berhampore (B) the 24.07.2012 and which was received by the Charged Official on 26.07.2012.

The Charge official vide his prayer dated 30.07.2012 requested for examination of the following records:

- i. Kundi HO SB Ledger card of A.C No. 1094392.
- ii. Nominal Roll and attendance register of Kandi HO for the year 2005
- iii. OT/Honorarium register of SO SB branch of Kandi HO in respect of Bharatpur SO dtd 01.11.04, 04.11.04 and 08.12.04.
- iv. List of SB transactions of Bharatpur SO dtd 01.11.04, 04.11.4 and 08.12.04
- v. Error Book of Kandi HO SO SB relating to Bharatpur SO during the period of posting of SB transactions of Bharatpur for the period of Nov-04, December 04, (i.e for the period 2005)
- vi. Special Error Book of Kandi HO SB relating to Bharatpur SO for the period.
- vii. Minus balance register of Kandi HO SO SB relating to Bharatpur for the period
- viii. The book/bill containing correspondences with SPM/Bharatpur from Kandi SO SB containing correspondences dt 27.06.2005 refer to in memo of charges.
- ix. Objection registrar of SO SB branch relating to Bharatpur for the period.
- x. Order book of Kandi HO relating to perform the SO SB honorarium works."

He has recorded that "The Charged Office vide this office letter no. . F4-1/1/2006/R.N Mondal Dated at Berhampore (B), the 03.08.2012 was permitted inspection of records as per Sl. No (1), (2) & (4) of his prayer dtd 30.07.2012 and he was also intimated to attend this office for such inspection at this convenience with prior intimation.

The Charge official attended this office on 13.08.2012 and inspected/examined the records.

The Charged Official vide his prayer dtd 14.08.2012 again prayed to supply or examine rest of documents and also prayed for thirty (30) days more time for submission of his representation from the date of receipt of rest records.

The Charged Official vide this office letter No. . F4-1/1/2006/R.N Mondal Dated at Berhampore (B) the 17.08.2012 was intimated to submit his representation within (7) days from the receipt of this letter, otherwise it will be presumed that he have nothing to defend on his behalf. The said letter was sent through Regd.AD Post and the same was received by the Charged Official on 22.08.2012.

Sri Rabindranath Mondal submitted his representation on 28.08.2012, which was received by this office on 28.08.2012."

7. Further we note that the applicant had in his representation alleged the following:

"I submitted a prayer on 30.07.2012 for supply of ten (10) items of records for my inspection. All those (10) items of records were vital were vital and had relevancy with the charge sheet issued vide your memo cited above. But I was allowed to inspect only three (3) documents.

In the charge sheet it has been mentioned that withdrawals for Rs. 10000/- dtd. 01/11/2004, Rs. 5000/- and Rs. 5000/- dtd 08.12.2004 were found to have been entered in the HO SB ledger in r/o SB A/C No. 10943 and I worked as APM (SB) Kandi HO during the above three posting.

In April to May – 2006. But the exact date on which the above three posting were made in Kandi HO SB ledger against SB A/C No. 1094392 has not been mentioned I actually worked as APM (SB) Kandi HO on that particular date has not also been specifically mentioned in the charge sheet, instead some imaginative period (April-May-2006) has been cited.

In CCS (CCA) Rule it has been clearly mentioned in the chapter "procedure for imposing minor penalties" the charge sheet should be clear, specific and precise, as such the charges levelled me appear to be vague and baseless and not tenable under the law.

On examination of Kandi HO Ledger card in r/o SB a/c no. 1094392 it has been found that there was no signature of the concerned APM Kandi HO against the entry of transaction dated 01.11.04, 04.11.04 and 08.12.2004 for Rs. 10000/-, 5000/- and 50000/- respectively. From this it proves that I did not worked as supervisor (viz APM SB) on the date on which the entries/posting were made on the HO ledger. Had I worked as APM SB, my signature would be there. In the charge sheet it has been mentioned that the pass book account No. 1094392 was called for on 27/06/2005 from the SPM Bharatpur SO under my signature. From the above, I desired to say that I worked as APM SB Kando HO on 27/06/2005 while in the charge sheet it has mentioned that I worked as APM SB Kandi HO during the above three (3) entries in April to May 2006. Therefore, the charge sheet itself is defective and contradictory. Besides that no statement was obtained from me showing the SO-called, call register. Even the call register was not shown to me. In the charge sheet it has been cited that I do not maintain special error book for obtaining the pass book. But the special error was not given to me for inspection. If there would be no entry in the special error book in r/o minus balance against SB A./C no. 1094392 the responsibility would have been fixed against the concerned APM SB. But when I did not work as APM SB during their particular dates of posting of Kandi HO SB ledger, I cannot be held responsible. By not permitting the special error book for inspection, a smell of concealment of the actual fact is found and natural justice had been denied.

On examination of the nominal roll, it is found that during April 2005 and May 2005, I worked as APM (Mails) excepting 25.04.2005 to 30.04.2005. It is a fact that the arrear works of SB in r/o Sub post offices under Kandi HO were pulled up on 70% OTA basis. Several Pas and supervisors were brought on duty. The OTA register day to day performances register showing the dates, name of the offices, names of Pas and supervisor and particulars dates for which arrear work was pulled up was not shown to me before issue of charge sheet, instead, the responsibility was fixed against me by citing and imaginative period. Therefore, violation of rule 92(2) of the PO SB manual volume –I is not applicable to me.

The infringement or rule 92 (2) (iii) PO SB manual Volume-I is not applicable to me. As stated earlier that charge sheet was not issued mentioning the specific dates on which I worked as APM (SB) /Supervisor of SO SB branch in c/w pulling up of arrear work in 70% OTA basis and no record were shown to me before issue of charge sheet and not obtained any statement reflecting the inspection of those records.

As stated earlier also, that the objection register was not shown to me. If the entry in the objection register would left blank and my performance as supervisor/APM (SB) Kandi HO on specific dates would be indentified and the lapses on my part on those specific dates would be marked, then the violation of rule 92 (2) (iii) PO SB manual Volume-I would have been charged upon me. From the above, it is proved that I am not at all responsible for violation of the above rule.

Similarly, I am not responsible for violation of rule 92 (2) (iv) PO SB manual Volume-I due to the reasons narrated in my earlier paragraphs and I will not repeat the same matter again and again.

In view of the fact as stated above, I am to state that I did not violate 92 (2) (ii), 92(2) (iii) and 92 (2) (iv) of PO SB manual Volume-I when the charge sheet has been issued in an imaginative manner and therefore violation of rule 3 (i) (ii) and 3 (i) (iii) of CCS (Conduct) rule 1964 does not arise at all.

I therefore request your kind honour to kindly consider my representation sympathetically and exonerate me from all the charge levelled against me and also save your poor employee at the fag end of service live and for which I shall remain ever grateful to you.

Dated at Berhampore

The 28.08.2012

Yours faithfully

sd/-

(Rabindranath Mondal)
APM (A/Cs)
Berhampore HO"

8. The Disciplinary Authority in his order, having quoted the representation of the applicant, opined as follows:

"I have gone through the representation of Shri Rabindranath Mondal dated 28.08.2012 and realized the fact that Sri Mondal in his defence statement admitted the fact that the arrear works of SB in/r/o Sub Post Office under Kandi HO were pulled up on 70% OTA basis. Therefore these arrear works were to be pulled up observing Departmental Rules and Regulations.

He had also inspected all the permitted documents and signed the said documents in token of having checked. Being a supervisor he cannot shed of his responsibilities and if objection was raised by him on 01.11.04 i.e if he had properly supervised the OTA work and subsequent actions were taken by him, the entire fraud could have been restricted to Rs. 10000/- only.

However, considering all the aspects, his age, length of service and to meet the end of justice, I pass the following order:

ORDER

I, Sri Jagannath Biswas, Supdt. Of Post Offices, Murshidabad Division in exercise of Power conferred upon me under Rule 12 of CCS (CCA) Rules 1965 do hereby punish Sri Rabindranath Mondal, formerly APM, Kandi HO and now APM A/C's, HSG-II Berhampore HO with recovery of Rs. 65000.00 (Rupees Sixty-five thousand) only to be recovered from the next pay and allowances of Sri Rabindranth Mondal in three instalments i.e Rs. 22000.00, Rs. 22000.00 and Rs. 21000.00 respectively."

A bare perusal of the said order would demonstrate and exemplify that the Disciplinary authority has very mechanically dealt with the representation of the applicant. He has failed to give reasons why 3 out of 10 documents were given inspection to the applicant and the rest were denied, whether the rest were not communicated as they had no relation with the allegations levelled or the alleged fraud. He has not mentioned how the apportionment of the share of Rs. 65,000/- as against the applicant was made, and if in fact the applicant was a subsidiary offender, due to whose connivance the fraud was committed, why he should be let off with a recovery of only Rs. 65,000/- and not inflicted with a major penalty.

Further we would note that the applicant in his appeal, highlighted the following points, as mentioned in the appellate order itself (Annexure A9) that

"1. For submission of his defence against the charge sheet, the Disc. Authority allowed him inspection of only three documents out of 10 requisite documents.

2. For the defrauded transactions on earlier dates i.e. 1.11.2004, 4.11.2004 and 8.12.2004, the appellant as supervisor at HO may not be held responsible as because posting of those transactions was done much later in April-May, 2005.

3. The Disc. Authority's observation is not correct that the fraud could be restricted to Rs. 10,000/- had the appellant raised objection for the transaction dt. 1.11.2004 and supervised the OTA work because he was not the APM(SB) at the material time of transaction and the posting was not done in normal course."

The said allegations were not appropriately addressed by the Appellate Authority while issuing his order (Annexure A9). He simply rejected his appeal in the following words:

"The case has been examined and it revealed that during the period from 1.11.2004 to 8.12.2004, the official worked as APM(SB) of Kandi HO. Bhratpur SO is in a/c with Kandi HO and therefore, the list of transactions are supposed to be received, at Kandi HO. Despite that Sri Mondal failed to get the transactions posted in HO ledger as a result minus balance occurred and subsequent fraud occurred. Therefore, Sri Mondal cannot evade responsibility for not doing the

posting work at HO level. In his written statement dt. 1.6.2012, Sri Mondal confessed that he had performed the said OTA work and did not maintain OTA register etc. and posting in respect of several SB A/cs including SB A/C No. 1094392 for which he was charge sheeted. Therefore, the APM(SB) i.e. Sri Mondal cannot shirk his responsibility for non-posting of work as well as for non-calling the passbook when the balance falls with negative balance to prevent subsequent frauds.

I have gone through the instant case with relevant records and observed that punishment awarded by disciplinary authority is quite justified."

Even the Chief Postmaster General, W. B. Circle, while disposing of the revision petition dated 23.09.2013 opined as under:

"The petitioner had worked as the supervisor of arrear posting of ledger work and failed to detect the minus balance in respect of the account number 1094392 standing at Bharatpur SO on objective assessment of the lapses I found that the charges against the official has been established and the punishment awarded to the petitioner is appropriate, commensurate with the gravity of offence and pass the following orders:-

ORDER

I, J. Panda, Chief Postmaster General, West Bengal Circle, Kolkata - 700 012 in exercise of powers of Revising Authority conferred upon me vide Rule. - 29 of CCS(CCA) Rules, 1965, hereby uphold the orders of Disciplinary and Appellate Authority and reject the petition of Sri Rabindra Nath Mondal, formerly APM(A/Cs), Berhampore HO(now retired) dated 25.02.2013."

Therefore, none of the officials have indicated why the applicant was not entitled to a full fledged enquiry and inspection of the document to put up his defense or at least satisfactory reply to the issues raised by him.

In O.K. Bhardwaj vs. Union of India reported in (2001)9 SCC 180, Hon'ble Supreme Court has succinctly held as under:

"3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the 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 is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

(emphasis added)

9. Therefore, having considered the entire gamut of the case and having noted that the applicant was denied a full-fledged enquiry although he disputed the facts and allegations and was denied even inspection of records which may have prejudiced him in putting up his defence appropriately, we quash the order passed by C.P.M.G and remand the matter back to the said authority to consider the matter afresh issue a reasoned and speaking order on the revision petition after delving into the allegations made in the revision petition and dispose it of within 2 months from the date of receipt of this order, which shall accordingly govern the fate of the applicant in regard to refund of the recovered amount and of any further enquiry.

In the event the authority is of the opinion that an open enquiry ought to be held, an appropriate order shall be issued within the said period to grant the applicant inspection of relevant documents, opportunity of preferring effective representation and an oral hearing and a fresh order recalling the earlier penalty order.

10. Consequently, both the O.As are disposed of accordingly. No costs.

(Bidisha Bānerjee)
Member (J)