

(2024) 10 CAT CK 0017

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00288 Of 2018

Niranjan Swain

APPELLANT

Vs

Union Of India, Represented Through It's Secretary-
Cumdirector General Of Posts, Dak Bhawan, Sansad Marg,
New Delhi- 110116 & Ors.

RESPONDENT

Date of Decision : 30-10-2024

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 248(1)
ED Agents (Conduct And Service) Rules, 1964 — Rule 8, 17

Citation : (2024) 10 CAT CK 0017

Hon'ble Judges : Sudhi Ranjan Mishra, Member (J); Pramod Kumar Das,
Member (A)

Bench : Division Bench

Advocate : Satyajit Behera, Sarbeswar Behera

Final Decision : Dismissed

Judgement

Sudhi Ranjan Mishra, Member (J)

1. As it appears from the record, on the allegation of committing misappropriation of Govt. money by the applicant as EDBPM, Mohaguda BO, he was placed under off duty w.e.f. 10.03.1993 followed by departmental charge sheet under Rule 8 of ED Agents (Conduct and Service) Rules, 1964 containing five article of charges vide memorandum dated 02.11.1994 (A/2) as under:

"ARTICLE-I

Sri Niranjan Swain while working as EDBPM, Mehaguda BO in account with Mujjagada SO during the period from 12.12.72 to 10.03.93 had committed grave misconduct in as much as he failed to account for the RD deposits amounting to Rs.677.50 received by him for deposit in Mohaguda. RD Account No. 85375 on several dates i.e, 02.11.92, 20.11.92, 30.11.92, 31.12.92 & 30.01.93 as detailed in Annexure.II, in violation of Rule 131 (3) of BO Rules (6th Edition) 2nd reprint.

He also failed to show the above transactions in BO RD Journal and BO daily accounts in violation of Rules 174 and 175 of BO Rules *ibid*. Thereby he failed to maintain absolute integrity and devotion to duty required of him under Rule 17 of EDA (Conduct and Service) Rules 1964.

ARTICLE -II

The said Sri Niranjana Swain, while working in the aforesaid post during the aforesaid period committed grave misconduct in as much as he failed to account for Rs. 807/- received by him for deposit in Mohaguda RD Account No. 85426 of Rs. 100/- denomination on several dates i.e. on 04.08.92, 1.7.92, 2.11.92, 20.11.92, 30.11.92, 31.12.92, and 30.1.93 as detailed in Annexure- II in violation of Rule 131 (3) of BO Rules (6 Edition, 2nd reprint) and failed also to show the above transactions in BO RD Journal. Thereby he failed to maintain absolute integrity and devotion to duty as required for him under Rule 17 of EDA (Conduct and Service) Rules 1964.

ARTICLE- III

Said Sri Niranjana Swain while working in the aforesaid post during the aforesaid period had committed grave misconduct in as much as he failed to account for Rs. 500/- received by him during July'91 for deposit in Mehagude SB Account No. 2993275, in violation of Rules 131 (3) of BO Rules (6th Edition) and also failed to show the transaction in SB Journal, BO, account and daily account on the date in violation of Rule 174 and 175 of BO Rules *ibid*. Thereby he failed to maintain absolute integrity and devotion to duty as required of him under Rule-17 of the ED Agents (Conduct and Service) Rules, 1964.

ARTICLE-IV

Said Sri Niranjana Swain while working in the aforesaid post during the aforesaid period had committed grave misconduct in as much as he misappropriated Rs. 163.50/- received by him on different dates for deposit in RD account No. 85170 of Rs. 50/- denomination standing in the name of Sri Laxminarayan Patra. He failed to show the transactions in RD journal, BO Account and BO. daily accounts of the dates in violation of Rule 131 (3) and Rule 174, 175 of BO, Rules (6th Edition). Thereby he failed to maintain absolute integrity and devotion to duty required of him under Rule-17 of ED Agents (Conduct and Service) Rules, 1964.

ARTICLE-V

Said Sri Niranjana Swain while working in the aforesaid capacity during the aforesaid period failed to maintain due post office records like RD journal and SB Journal as required under Rule 131 (3) of the BO Rules. It is therefore alleged that he did not maintain devotion to duty as BPM, Mohaguda as required under Rule 17 of EDA (Conduct and Service) Rules, 1964."

2. Further, as it appears for the record, criminal case under Section 409 of Indian

Penal Code was also registered against him, which was put under trial vide GR case No. 58/1995 (TR No. 676/1997) by the Learned Sub-Divisional Judicial Magistrate, Bhanjanagar on the allegation as under:

"During the period from 12.12.1972 to 10.3.1993 misappropriated the Government money amount to Rs.7120.50 from depositors as follows :-

Rs.677.50 from R.D account No.85375 of Udayanath Padhi of Mohaguda,

Rs.807/- from R.D account No.85426 of Udayanath Padhi, Mahaguda,

Rs.818/- from R.D account No.85351 of Tuni Moharana, W/O:

Sri Sankar Moharana of Mohaguda,

Rs.3600/- from S.B.Account no.2993262 of Gita Kumari Das, D/O: Radhatnohan Das of Mohaguda.

Rs.500/- from S.B.Account No.2993275 of Simanchala Mallik of Barunpur,

Rs.100/- from S.B.Account No.2993303 of Udayanath Padhy of Mohaguda,

Rs.251.50 from R.D account No.85346 of Trinath Bisoyi of Badapathara; and Rs.163.50 from R.D account No.85170 of Laxmi Narayan Pafro of Chitipalli. Total Rs.7120.50.

He further reported that the said accused Niranjana Swain voluntarily credited Rs.7650/- in the Government account on dtd. 11.3.1993. So requested to take proper action regarding criminal act against the accused Niranjana Swain, E.D Branch Post Master, Mahaguda. Basing on his report, Bhanjanagar P.S. Case No.28/95 was registered and S.I G.H. Pradhan took up investigation of this case. During the course of investigation he examined the witnesses including the informant, obtained permission from Collector, Ganjam, to seize the postal documents relating to this case. Accordingly seized the relevant documents and after closure of investigation submitted charge sheet against the accused. Hence this case."

3. Learned Sub-Divisional Judicial Magistrate, Bhanjanagar vide order dated 29.04.2011 held as under:

"7. In the above analysis of the facts and circumstances of the prosecution case, I am driven to a conclusion that the prosecution has miserably failed to bring home the allegations against the accused clearly, cogently and consistently and I hold the accused not guilty of offence U/s 409 of the I.P.C. Act and acquit him therefrom as per provision of Sec. 248(1) Cr.P.C. He be set at liberty forthwith and discharged from his bail bond."

4. The above order is set at rest. In the disciplinary proceedings, the applicant was imposed with the punishment of removal from service vide order dated 28.03.1996 (A/4). But, no appeal was preferred by him under rules against such order of removal imposed in the departmental proceedings. The applicant was

acquitted in GR case No. 58/1995 (TR No. 676/1997) by the Learned Sub-Divisional Judicial Magistrate, Bhanjanagar vide order dated 29.04.2011. As admitted by the applicant, on 19.12.2013, i.e. after a lapse of 15 years, he preferred petition to respondent No.2, inter alia praying for his reinstatement to service based on his acquittal in the criminal case, which was duly considered and rejected vide order dated 21.08.2014 (A/6), which he has challenged in this OA filed on 04.03.2015 and, perhaps after removal of the defects, the same was registered in 2018. The prayer of the applicant in this OA is as under:

"...to quash Annexure-A/2, A/4 & A/7 & direct the respondents to treat the applicant to be in service from the date of removal to till the date of retirement and direct the respondents to release all consequential benefits including back wages."

5. According to the Ld. Counsel for the applicant, applicant was imposed with the punishment of removal of service in violation of the rules and natural justice, inasmuch as, despite repeated requests, he was not provided with any document to enable him to file his defence and contest the inquiry but, the proceeding was concluded holding him guilty thereby imposing punishment of removal. Hence, the order of punishment is not sustainable in the eyes of law. He also stated that the applicant did not commit any misappropriation of Govt. money as alleged and in order to removal the allegation he voluntarily credited Rs. 7650/- on 11.03.1993, i.e. much before the inquiry was made in the departmental proceedings. No subsistence allowance was paid to the applicant during his put off duty period. It is further contended that the allegations in the departmental proceedings were same and similar to that of the allegations made in the criminal case and he having been acquitted in the criminal case, the respondents ought not to have rejected his petition/appeal preferred on 19.12.2013. In order to substantiate his stand that after being acquitted in criminal case, he was entitled to be reinstated, Ld. Counsel for the applicant has placed reliance on the decision of the Hon'ble Apex Court in the case of Ram Lal Vs. State of Rajasthan & Ors., Civil Appeal No. 7935/2023 (Arising out of SLP@ No. 33423 of 2018) dated 04.12.2023 and the decision of the Hon'ble High Court of Orissa in the case of Budhadev Dandia Vs State of Odisha & Ors, WPC (OAC) No. 4832/2011 dated 01.11.2022. According to Ld. Counsel for the applicant rejection of his application for reinstatement without considering the aforesaid facts caused him gross injustice in the decision making process of the matter requiring judicial interference.

6. Respondents filed their counter inter alia contesting the case of the applicant, the sum and substance of the grounds, which have also been highlighted by the Ld. Counsel for the respondents in course of hearing are that due care and caution were taken for complying with the rules and principle of natural justice during the course of the inquiry in disciplinary proceedings. The applicant was allowed to peruse all the documents mentioned in the charge sheet. Therefore, his request for supply the documents was not found necessary. However, it was

admitted by the respondents that the applicant was not paid any subsistence allowance keeping in mind the gravity of allegations. It is contended that the applicant was charge sheeted for violation of the departmental norms in discharging his duties as BPM, which was found correct in course of the disciplinary proceedings and, after considering the matter in its entirety, the applicant was imposed with the punishment of removal vide order dated 28.03.1996. which he allowed to set at rest without filing any appeal as per rules within the stipulated time. The criminal case was initiated against him for misappropriation of money, which was set aside vide order dated 29.04.2011. It is submitted that the allegation in the criminal and the departmental proceedings are, therefore, quite different and distinct. In the circumstances, the application preferred by the applicant after 15 years of the order of removal was examined with reference to rules and law and the same was rejected and the decision was communicated in a well reasoned and speaking order dated 21.08.2014. Ld. Counsel for the respondents has also stated that the decision relied on by the applicant have no application to the case in hand because the facts of those cases are different to the present case. Accordingly, he has prayed for dismissal of this OA.

7. We have considered the submission of the parties and perused the record. Admittedly, applicant was proceeded departmentally on allegation that he failed to account for the RD deposits amounting to Rs.677.50 received by him for deposit in Mohaguda. RD Account No. 85375 on several dates i.e, 02.11.92, 20.11.92, 30.11.92, 31.12.92 & 30.01.93. He failed to account for Rs. 807/- received by him for deposit in Mohaguda RD Account No. 85426 of Rs. 100/- denomination on several dates i.e. on 04.08.92, 1.7.92, 2.11.92, 20.11.92, 30.11.92, 31.12.92, and 30.1.93. He failed to account for Rs. 500/- received by him during July'91 for deposit in Mehagude SB Account No. 2993275. He failed to show the transaction of Rs. 163.50/- in RD journal, BO Account and BO daily accounts of the dates of Sri Laxminarayan Patra. Thus, it was alleged that he failed to maintain absolute integrity and devotion to duty in contravention of Rules 131 (3), 174 & 175 of BO Rules and Rule 17 of EDA (Conduct and Service) Rules, 1964 wherein he was imposed with the punishment of removal from service vide order dated 28.03.1996.

8. In the criminal case, as it reveals from the order of the Learned Sub-Divisional Judicial Magistrate, Bhanjanagar dated 29.04.2011, the allegation was that during the period from 12.12.1972 to 10.3.1993 applicant misappropriated the Government money amounting to Rs. 7120.50. Admittedly, he voluntarily credited Rs. 7650/- in the Government account on dtd. 11.3.1993. Further, it reveals from the order that the Learned Judicial Magistrate held the applicant not guilty under Section 409 of the IPC by recording that "after evaluation of the evidence on record, it is found that the prosecution squarely failed to prove the entrustment as required by the law beyond all reasonable doubt rather the informant has categorically stated that the accused had deposited the amount more than the defalcated amount in the Govt. Account much prior to the

institution of this case, which is corroborated by D.W.1". The applicant submitted application seeking reinstatement after 15 years i.e. on 19.12.2013, which was rejected on 21.08.2014. According to Ld. Counsel for the applicant, applicant ought to have been reinstated after being acquitted on criminal case on selfsame allegation and, having not done so, same is not sustainable in view of the law laid down by the Hon'ble Apex Court in the cases relied on by him.

9. We have examined the decisions relied on by the Ld. Counsel for the applicant with reference to the fact of the matter. In the case of Ram Lal (supra), we find that the applicant therein was a Constable in Rajasthan Armed Constabulary, 9th Battalion, Jodhpur and an FIR was lodged against him under Section 420, 467, 468 and 471 of IPC. Soon thereafter, a charge sheet in departmental inquiry on identical allegation was issued to him. Since, he was acquitted in the criminal case, the Hon'ble Apex Court quashed the order of punishment in the departmental proceeding. Similar was the case before the Hon'ble High Court of Orissa in Budhadev Dandia (supra) wherein upon acquittal in the criminal case, punishment imposed in disciplinary proceedings in identical issue was quashed. Whereas, in the case in hand, we find that the applicant was not placed under off duty due to initiation of criminal case. The criminal case was registered after the initiation of the disciplinary proceedings. The allegation in the criminal case was for misappropriation of money whereas the allegation in the departmental proceedings was for violation of service rules. In the departmental proceedings he was imposed with the punishment of removal from duty vide order dated 28.03.1996 but he did not challenge either making appeal as per rules or before any court of law. In the criminal case, the allegation was for misappropriation of Govt. money and, as it appears from the order, the subsequent deposit of the amount by the applicant weighed much on the Learned Judicial Magistrate to acquit him from the allegation vide order dated 29.04.2011. Thus, the cases cited by the Ld. Counsel for the applicant have no application to the present case.

10. It is not out of place to mention that law is well settled that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority and that the order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge (Ref: Southern Railway Officers' Association v. Union of India, (2009) 9 SCC 24. Therefore, by the order of acquittal dated 29.04.2011 in the criminal case, we are not inclined to interfere in the order of punishment imposed on the applicant vide order dated 28.03.1996 (A/4) in the disciplinary proceedings, which was set at rest having not been questioned by the applicant at the relevant point of time by way of preferring appeal or challenging before appropriate court of law.

11. In view of the discussions made above, we find no merit in this OA, which is accordingly dismissed leaving the parties to bear their own costs.