(2022) 11 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00542 Of 2019

Prasanna Kumar Barik & Others APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 05-11-2022

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 16, 168A, 355

Citation : (2022) 11 CAT CK 0006

Hon'ble Judges : Swarup Kumar Mishra, Member (J)

Bench : Single Bench

Advocate : D.K. Mohanty, B.R.Swain

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member J

1. Assailing and challenging the charge sheet dated 07.02.2019 (Annexure-A/5) issued under Rule 16 of the CCS (CCA) Rules, 1965, order of the Disciplinary Authority dated 28.05.2019 (Annexure-A/6) and order of the Appellate Authority dated 11.07.2019 (Annexure-A/9), the applicant has filed this O.A. seeking to quash Annexure-A/5, A/6 and A/9 and to direct the respondents to refund the amount recovered from him, as imposition of punishment of recovery of Rs. 40,000/- from his pay @ Rs. 5000/- per month on the ground of contributory negligence on account of fraud committed by Late Budhadev Pradhan, GDS BPM, Chhamunda BO in account with Jagamohanpur SO, is bad in law as decided by this Tribunal in O.A. No. 634/2009 (Sukomal Bag Vs. UOI & Ors.) disposed of on 11.11.2010, which was upheld by the Hon'ble High Court of Orissa in W.P(C) No. 4343/2011 disposed of on 22.08.2011.

2. Respondents have filed their counter in which it has been stated that during incumbency of the applicant as Over Seer of Mails, Keonjhar (W), Sub-Divn., one Late Budhadev Pradhan, GDS BPM, Chhamunda BO in account with

Jagamohanpur SO, committed fraud to the tune of Rs. 68,858/- during the period 24.12.2013 to 15.04.2015 in various SB/RD/SS accounts and RPLI PR Books. The applicant did not carry out the quarterly visit to Chhamunda BO though he was addressed by the Divisional office on 05.12.2014 to conduct the quarterly visit to B.Os and, due to such laxity in supervision, the fraud committed by the GDS BPM could not be detected in time and that continued up to 15.04.2015. As there was loss of around Rs. 1.05 lakhs of public money sustained to the department, charge sheet under Rule 16 of the CCS (CCA) Rules was initiated against the subsidiary offenders those who were identified in this case including the applicant. The applicant did not submit any reply. The DA vide order dated 28.05.2019 (A/6) held that the applicant is guilty of the charges leveled against him and though deterrent punishment was warranted, the DA took a lenient view and imposed the punishment of recovery of Rs. 40,000/-. The applicant approached this Tribunal in OA 396/2019 without preferring any appeal. The said O.A. was disposed of with liberty to the applicant to file an appeal. The applicant preferred appeal on 21.06.2019. The AA after considering the records and after due application of mind rejected the same and communicated the reasons of rejection in a well reasoned order under Annexure-A/9 dated 11.07.2019 to the applicant. The respondents have further submitted that since there is no illegality or irregularity in the matter of conducting the disciplinary proceedings, there is no scope for this Tribunal to interfere in the matter.

3. The applicant has filed rejoinder more or less reiterating the stand taken in the O.A.

4. Ld. Counsel for the applicant has submitted that the imposition of punishment for the contributory negligence is bad in law and the same is no more res integra and, this being one such case, by applying the decision of this Tribunal, which has been upheld by the Hon'ble High Court of Orissa, the present punishment is not sustainable in the eyes of law.

5. On the other hand, Ld. Counsel for the respondents has submitted that it is not a question of imposition of punishment for contributory negligence requiring interference by this Tribunal but the thing is that for the lack of supervisory duty of the applicant, the incumbent GDS BPM was able to defraud the government, which could have been detected or protected had the applicant discharged his part of supervisory duty timely. Thus, the conduct of the applicant was unbecoming on the part of a government servant, for which, he was issued the charge sheet but he failed to submit any reply. Therefore, the DA after taking into consideration all the facts of the matter and with due application of mind imposed punishment of recovery although deterrent punishment was warranted. The DA also having found no infirmity in conducting the disciplinary proceedings and compliance of the principle of natural justice, with due application of mind upheld the punishment of recovery in a well reasoned order and, therefore, this Tribunal being not the appellate authority over the decision of the department,

there is no scope for this Tribunal to interfere in the matter and the O.A is liable to be dismissed.

6. Learned counsel for the applicant opposing the ground of negligence in supervisory duty submitted that it was not job of Overseer to inspect the records but of Inspector of Posts. He drawing attention to duties of overseers submitted that overseer is primarily responsible for efficient working of the mail line or lines under his charge. He further submitted that inspection of records not being the job of the applicant and no training being given to him for inspection, the applicant can’t be held responsible for the fraud committed and thus cannot be punished as per law. Learned counsel for the respondents objected to the same and drawing attention of this Tribunal to Rule 355 submitted that the Overseer has to maintain a diary where it is mentioned that the overseer should verify the balances in cash and stamps of branch offices and small sub offices situated in his beat and report the result of the check in his diary.

7. This Tribunal does not accept the said stand of the applicant since the post of Overseer is not a promotion post and is opted according to the seniority from Postman Cadre. The applicant was working in the said post for more than 7 years, hence he cannot take the stand that he had no training for the job. It is also seen from record that even though primary job of the Overseer is for efficient working of the mail lines or lines under his charge but he has to maintain a diary known as Overseer’s Diary. In the said diary he is supposed to verify the balances in cash and stamps of branch offices situated in his beat, report the result of the check in his diary, check the used and unused branch office receipts, check the used and unused receipts in the current book of saving bank preliminary receipts to see that they are in consecutive order and that the used ones have been issued in chronological order and that the amounts for which such receipts have been issued since the last visit have been accounted for in the Branch Office account correctly. It is also mentioned that the results of the check should always be noted by the Overseer in his diary and in the order book of the branch office. The results of the checks carried out in accordance with the provisions of rule 168 A should also be noted in the diary. The entries in the diary should be made in duplicate and at the end of each week i.e. on the 1st, 8th, 16th and 24th of each month, the upper of the two leaves forming the diary for the preceding week, should be torn out of the book and dispatched to the Inspector to whom a summary of work in from should be sent with the diary for the last week of the month.

8. The main charge against the applicant as seen from charge memo is that he had not carried out quarterly visits to the BOs especially to Chhamunda BO in account with Jagamohanpur SI thus enabling the fraud to be committed. The applicant does not dispute the said fact that he had not carried out regular visits to Chhamunda BO as provided in rules. His contention that it was not his job but of Inspector of Posts is not acceptable since it was his job to maintain Overseers Diary and report it to Inspector of Posts regularly. Had he carried out his work

and maintained the Diary diligently the said fraud might not have happened. No averment has been made from applicant's side that he had maintained the diary properly and had done his duty diligently and therefore he cannot be blamed.

9. Learned counsel for the applicant relying upon decision of this Tribunal in OA No. 634/2009 (Sukomal Bag versus Union of India) submitted that the applicant could not have been visited with the punishment of recovery as a subsidiary offender. There is no straight jacket formula of quashing every punishment of recovery if it's a case of subsidiary offender. Every case should be dealt with its own merit. It should be verified if the fraud committed has been due to lapses on part of the employee or not and whether the fraud has happened due to act of omission/commission in his duties as supervisor or not. Those conditions should be distinguished in each case and then a conclusion can be arrived. In the present case, the applicant did not carry out regular visit to the said BO and did not perform his duty of maintaining the Overseers Diary diligently. Thus due to his omission of performing the duty as an supervisory officer led to the fraud being committed and loss being caused to public exchequer. Loss to public exchequer should be taken as a serious issue and making good of such loss from those who are responsible either directly or indirectly by the department should be top priority. The Disciplinary Authority after conducting an inquiry where the applicant was given opportunity to defend himself found the charge against the applicant as proved and hence ordered imposition of punishment of recovery of Rs. 40,000/- . The loss to the public exchequer was to the tune of Rs. 1,05,000/- (including interest and penal interest) and recovery from the applicant was done proportionately to his omission.

10. Learned counsel for the applicant submitted that no recovery was done from the principal offender and instead recovery was initiated from him as subsidiary offender which is bad in law. Respondents on the other hand submitted that the principal offender had died during the course of inquiry and the ex-gratia amount received by his widow was meager and on humanitarian ground no recovery was done from the ex-gratia amount. Though as principle every effort should have been made to recover the loss from principal offender but in this case the principal offender had died, thus leaving no options for the respondents to recover from him. The entire amount has also not being recovered from the applicant. A part of the amount i.e. Rs. 40,000/- out of Rs. 1,05,146/- is being recovered from the applicant for his part of lapse in supervisory duty. Therefore this Tribunal finds no illegality on the part of the respondents in recovering the said amount.

11. This Tribunal does not find any illegality on the part of the respondents in conduct of disciplinary proceeding, in the order of disciplinary authority or of the appellate authority. The applicant has been given opportunity to defend himself, thus no violation of principle of natural justice. Hence there is no need for intervention by this Tribunal.

12. The OA being devoid of merit is accordingly dismissed. No costs.

