(2022) 09 CAT CK 0027

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00222 Of 2020

Ramakanta Mishra APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 16

Citation : (2022) 09 CAT CK 0027

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

Bench : Single Bench

Advocate : T. Rath, B.P. Nayak

Final Decision : Allowed

Judgement

Swarup Kumar Mishra, Member (J)

1. As it reveals from the record, the applicant in the capacity of Superintendent of Post Offices, Kalahandi Division, allowed Sri Aditya Kumar Majhi, Sub Postmaster, Joypatna SO, to work as Sub Postmaster, Bhawanipatna Stadium SO on deputation without TA/TP from 18.08.2013 to 16.07.2015 vide SPO's Kalahandi Division Memo No. B-629 dated12.08.2015 in violation of the instruction contained in Para-4(v)(ii) of Directorates Memo No. 141-141/2013-SPM-11 dated 31.01.2014 which resulted committing fraud by Sri Aditya Kumar Majhi during the period of his deputation, charge sheet under Rule 16 of CCS (CCA) Rules, 1965 was issued to the applicant vide memorandum dated 20.02.2019. On 05.08.2019, applicant submitted written statement of defence denying the allegation made in the charge sheet in toto. The Disciplinary Authority (DA in short) vide order dated 24.10.2019 imposed the punishment of recovery of Rs. 2,00,000/- on the applicant due to his contributory lapses. Appeal preferred by the applicant on 25.11.2019 having not been considered, he had approached this Tribunal in OA 821/2019, which was disposed of on 24.12.2019. In compliance of the order of this Tribunal, respondents considered the appeal of the applicant but rejected the same and the reason of rejection was

duly communicated to him vide order dated 09.04.2020. Being aggrieved, the applicant has preferred this O.A. inter alia praying for a direction to the respondents to refund the amount illegally recovered from him after quashing the charge memo, order of DA and order of the AA.

2. Respondents have filed counter inter alia stating therein that the applicant allowed Sri Aditya Kumar Majhi, Sub Postmaster, Joypatna SO, to work as Sub Postmaster, Bhawanipatna Stadium SO on deputation without TA/TP from 18.08.2013 to 16.07.2015 in clear violation of the instruction contained in Para-4(v)(ii) of Directorates Memo No. 141-141/2013-SPM-11 dated 31.01.2014, which facilitated Sri Majhi for committing fraud and, therefore, as a subsidiary offender and not principal offender who contributed the lapses furthering cause of loss of government money by his wrong action, the applicant was chargesheeted under Rule 16 of the CCS(CCA) Rules, 1965. Allowing Sri Majhi to continue beyond tenure defeated the very purpose of tenure of transfer. Therefore, the applicant was found responsible for the huge fraud committed by Sri Majhi and substantial amount of loss caused for the department for his contributory negligence although deserves severe punishment but taking into consideration that the fraud was committed by another person, in order to make good of the loss, punishment of recovery of Rs. 2,00,000/- from the applicant was ordered. The applicant was also identified as subsidiary offender for his contributory negligence in another fraud case of Bhawanipatna H.O. and was imposed with penalty of recovery of Rs. 5,00,000/- vide order dated 10.07.2019. He was a habitual offender for his contributory lapses. The applicant on receipt of the charge memo had sought for documents and more time to submit his reply, which was allowed to him and, after considering all facts and materials on record so also the defence submitted by the applicant, he was imposed with the punishment in a well reasoned order. The appeal preferred by the applicant was also duly considered but the AA did not find any irregularity or illegality in the order of the DA and rejected the appeal of the applicant in a well reasoned order. Therefore, judicial interference in the matter is not warranted.

3. The applicant has filed rejoinder stating therein that the Circle level investigation was conducted on 26.09.2017 by the Postmaster General, Berhampur Region, on the allegation of commission of fraud committed by Sri Majhi in Bhawanipatna HO and the commission of fraud came to surface only after the report of the committee. There is no violation of the Directorate instruction relating to the posting of Sri Majhi on deputation basis. He was posted there on consideration of his request and the requirement of an experienced hand to manage the work of Bhawanipatna HO. The posting of Sri Majhi is in no manner contrary to the Directorate instruction referred to above rather it is opposed to rule and law to the extent that the recovery like the present case ought to have been made from concerned employee who committed fraud and certainly not from the applicant. But, the respondents department without applying the rule in its proper perspective imposed the punishment of recovery, which is bad in law.

4. At a first glance, Ld. Counsel for the applicant has submitted that recovery for contributory negligence came up for consideration before this Tribunal and this Tribunal after taking into consideration the earlier order and by applying the principle of doctrine of precedence have quashed the order of punishment in OA No. 105/2015 disposed of 28.06.2017 in the case of Khageswar Mohanta Vs. UOI, and in OA No. 364/2016 disposed of on 23.02.2018 in the case of Abhaya Kumar Jena Vs. Secretary cum Director & Ors., and both the orders were upheld by the Hon'ble High Court of Orissa. Further, it has been contended that the respondents imposed the punishment without following the provision provided under Rule 69 of P&T Manual Vol.III, which stipulates that it is necessary and desirable that the DA before initiating action against employee to verify facts from original records available with him but, in the instant case, the DA initiated the proceedings without verifying the original record. DGP&T letter No. 114/176/78-DISC-ii dated 13.02.1981 clearly mandates for issuance of charge sheet giving all details whereas the present charge sheet is sketchy and contrary to the letter dated 13.02.1981. The punishment for contributory negligence on supervisory officer is contrary to Appendix –IV of P&T FHB Volume-I. Further case of the applicant is that as per instruction contained in DG Post letter No. 15-9/74-Inv dated 10.02.1975 with Rule 204 and 204 (A) of P&T Manual Volume-II, responsibility for pecuniary loss should have been fixed on the person who had directly caused the loss and fraud of Govt. money and not on the others who has committed petty lapses. But, the DA as well as AA without taking into consideration the points raised by the applicant in its proper perspective or without making any confrontation with the applicant imposed the punishment, which is bad in law.

5. On the other hand, Ld. Counsel for the respondents has submitted that the points raised by the applicant are hardly of any help to him because it is settled law that the court and tribunal being not the appellate authority cannot re-appreciate the evidence and come to a finding other than the finding reached by the competent authority after taking into consideration all aspect of the matter and after giving due opportunity to the employee concerned. In the instant case, it is not the case of the applicant that there was any violation of the rules or he was not allowed any opportunity to defend his case rather the order of the DA and AA would establish that both he authorities after due application of mind reached the conclusion in a reasoned and speaking order. Therefore, this is a case where no interference is called for.

6. This Tribunal considered the rival submissions of the parties and examined the pleadings and materials placed in support thereof. The respondents have admitted that the fraud was committed by Sri Majhi and applicant was imposed with the punishment for his contributory negligence as the supervisor officer of Sri Majhi. It is seen that the main reason attributed by the respondents for imposition of punishment is that the posting of Sri Majhi on deputation basis was in violation of the rotational transfer policy issued by the Directorate. It is seen that the applicant has specifically denied the allegation that the posting of Sri

Majhi was not in any manner contrary to the rotational transfer policy and Sri Majhi was posted there taking into consideration the administrative need and experience of Sri Majhi. The allegation that the applicant was aware of th earlier fraud committed by Shri Majhi has been specifically and categorically denied by the applicant. This being a factual aspect, a regular inquiry should have been conducted. Besides the other allegations, as alleged against the applicant, have been specially and categorically has been denied by him. It was submitted by the Ld. Counsel for the applicant that no malafide has been alleged against the applicant. The applicant had also raised the question of non-supply of vital documents.

7. It is no doubt but true that in a proceeding under Rule 16 there is no scope for causing regular inquiry like the proceeding under Rule 14 unless it is sought by the delinquent and record does not show that the applicant has asked the same. However, making inquiry even a disciplinary proceedings initiated under Rule 16 came up for consideration before the Hon'ble Apex Court in the case of O.K.Bhardwaj Vs. UOI & Ors., 2002 SCC(L&S) 188, wherein their Lorships were pleased to hold as under:

"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"

In the case of Uday Shankar Das Vs. UOI in OA 436/2001, who was imposed with the minor penalty without inquiry, by applying the decision of Hon'ble Apex in the case of O.K.Bhardwaj (supra) this Tribunal quashed the punishment vide order dated 12.03.2003, which was also upheld by the Hon'ble High Court of Orissa.

8. As discussed above, since the basic question arises before the authorities as to whether the posting of Sri Majhi was in violation of the instruction contained in Para-4(v)(ii) of Directorates Memo No. 141-141/2013-SPM-11 dated 31.01.2014, and as to whether the recovery of the loss/fraud committed by another person is in contravention of the DG Post letter No. 15-9/74-Inv dated 10.02.1975 with Rule 204 and 204 (A) of P&T Manual Volume-II are the factual in nature and, therefore, by applying the ratio of the decision in the case of O.K.Bhardwaj (supra), the respondents department ought to have made an inquiry in the manner which has been followed in case of proceedings initiated under Rule 14. Hence, this Tribunal is declined to quash the charge sheet as prayed for and for the discussion made above, the order of punishment dated 24.10.2019 imposed by the DA and the order of AA dated 09.04.2020 are hereby quashed. The matter is remitted back to the respondents to cause an inquiry by giving adequate opportunity to the applicant and complete the same within a period of four months from the date of receipt of a copy of this order. It is made clear that

the refund of the recovered shall be the outcome of the proceedings.

9. In the result, the O.A. is allowed to the extent stated above. No costs.

