(2018) 03 GAU CK 0096

In the Gauhati High Court

Case No : WP(C) 3701, 4552 of 2016

THE UNION OF INDIA and 3 ORS APPELLANT

Vs

PRABHAT MAHANTA RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 3(1)(ii)(iii), 14, 15(2)
Postal Savings Bank Manual — Rule 23(i), 23(1)(c), 37(4), (5)
Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0096

Hon'ble Judges : MANOJIT BHUYAN

Bench : Single Bench

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J

1.Heard Mr. S. C. Keyal, learned Assistant SGI for the petitioners and Sri H.K. Das, learned counsel for the sole respondent in WP(C) 3701/2016. In

respect of the analogous WP(C) 4552/2016, we have heard Mr. H.K. Das, learned counsel for the petitioner and Mr. S.C. Keyal, learned Assistant

SGI for the respondents.

2. Sri Prabhat Mahanta, who served as Sub Post Master at Rupnagar S.O. during the period from 10.12.2002 to 14.08.2004, was proceeded against

departmentally. The Disciplinary Authority vide order dated 03.12.2012 imposed penalty of reduction of pension to the level of minimum pension as

admissible under the Central Civil Services (Pension) Rules, 1972 on a permanent basis along with forfeiture of the entire admissible gratuity. This

order was put to challenge before the Central Administrative Tribunal, Guwahati Bench in OA No. 56/2013 and by order dated 03.07.2015 the

Tribunal held that in view of the fact that the employee has retired and punishment was awarded after retirement, the reduction of pension on

permanent basis was disproportionate. Order was made that pension and post retirement dues of Sri Prabhat Mahanta be calculated as if he retired on

superannuation in normal circumstances. Accordingly, it was directed that his pension be restored to the level he would have received in case of

normal retirement after deducting an amount of Rs.6,40,000/- i.e. the loss suffered by the department. The Union of India is before this Court in

WP(C) 3701/2016 challenging the aforesaid order of the Tribunal dated 03.07.2015. Sri Prabhat Mahanta is also before this Court in WP(C)

4552/2016 against that part of the Tribunalâ??s order directing deduction of an amount of Rs.6,40,000/- from his receivables.

3. Brief facts to be noticed are that proceeding under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was

initiated against Sri Prabhat Mahanta on charges that during the period from 10.12.2002 to 14.08.2004, while he was functioning as Sub Post Master

at Rupnagar S.O., he effected payment of Rs.6.4 lakhs, being the maturity value of 32 Kishan Vikash Patras (KVPs) of Rs.10,000/- denomination to

one Sri Anup Gupta without following relevant rules and procedure. The Statement of Articles of charge framed against Sri Prabhat Mahanta were as

follows:

â??ARTICLE â?"I

That the said Prabhat Mahanta, while functioning as SPM, Rupnagar S.O. during the period from 10.12.02 to 14.08.14 effected payment of Rs.6.4

lakhs being the maturity value of 32 KVPs of Rs.10,000/-deno which were purported to have been issued at Haspura and S. Park Haspura P.O. in the

name of Sri Anup Gupta without insisting production of identity Slips and without making inquiry about the actual identity of the holder i.e. the local

address furnished by him in contravention to Rule 23(i) of POSB Man. Vol. II. Sri Mahanta also did not scrutinize the transfer Application of KVP

properly and did not send the transfer application to the office of issue by a covering letter and no intimation was sent to the holder for production of

the KVPs for encashment as required under Rule 37(4) & (5) of POSB Man. Vol. II. No identification certificate also obtained on the KVPs from a

respectable person known to the Post office, at the time of effecting payments of the maturity value. Thereby Sri Mahanta failed to maintain devotion

to duty and acted in a manner which was unbecoming of a Govt. servant as enjoined in Rule 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE â?"II

That during the aforesaid period and while functioning in the aforesaid office, Shri Prabhat Mahanta effected payments of huge amount of Rs.6.4

lakhs being the maturity values of KVPs which were circulated to be lost/stolen in transit by the CPMG/GH and SSPOs/GH, without consulting the

said circulars as prescribed in Rule 23(1) (c) of POSB Man. Vol. II. Again Sri Mahanta delayed despatch of his letter seeking confirmation about the

genuineness of the KVPs without showing any reason. Moreover, Sri Mahanta displayed gross negligence by referring the matter to DO on 22.08.03

although the transfer Application of KVP was received on 10.07.03 and by effecting payment without receipt of reply from DO. Moreover, Sri

Mahanta failed to detect the discrepancy in the name of office of issue in the KVPs, date stamp, transfer Application etc. and to report the matter to

the higher authority. Thereby Sri Mahanta failed to maintain devotion of duty and acted as such which was unbecoming of a Govt. servant as enjoined

in Rule 3(1)(ii) & (iii) of CCS (conduct) Rules, 1964.

ARTICLE â?"III

That on the aforesaid date and while functioning as such Sri Prabhat Mahanta effected payment of Rs.40,000/- by cash to Sri Anup Gupta being the

maturity of 2 KVPs instead of by cheque contravening the Deptl. Instruction to pay Rs.20,000/- and above by cheques only; although he paid Rs.6

lakhs by cheque to the same person earlier. Thereby Sri Mahanta displayed lack of devotion to duty as enjoined in Rule 3(I) (ii) of CCS (Conduct)

Rules, 1964.â??

4. Sri Prabhat Mahanta submitted written statement of defence. For the purpose of holding enquiry the Department appointed a Presenting Officer as

well as an Inquiring Authority. On conclusion of the departmental enquiry, Report was submitted by the Inquiring Authority on 13.03.2009 holding that

â?" (a) the charge under Article-I with regard to the allegation as to the failure to make local enquiry about the identity of the applicant after

acceptance of the application in the local address furnished in the application and violation of Rule 23(i) of the Postal Savings Bank Manual, Vol. â?"II is proved and the rest are not proved being not maintainable on the face of the facts and evidences adduced in the inquiry, (b) the charges under

Article-II and Article- III are not proved being not maintainable on the facts and evidences adduced in the inquiry. A copy of the Inquiry Report was

served upon Sri Prabhat Mahanta, who submitted representation on the findings of the Inquiry Authority. However, an order was passed by the

Disciplinary Authority on 10.08.2011 mentioning that the copy of the Inquiry Report was forwarded to the charged officer without the Disagreement

Note, as required in terms of Rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. As such, on orders of the

President, it was decided to initiate de novo proceedings from the stage of admission of the Inquiry Report to the charged officer along with the Note

of Disagreement. Sri Prabhat Mahanta was asked to submit his written representation, if any, within fifteen days of receipt of the letter. On

29.08.2011, a letter was addressed to Sri Prabhat Mahanta by enclosing therewith the Disagreement Note of the Disciplinary Authority and asking

him to submit his defence statement within fifteen days of receipt of the letter. Eventually, the order of penalty dated 03.12.2012, as indicated above,

was issued.

5. At the very outset, it is placed on record that there is no challenge to the penalty on ground that the disciplinary inquiry and/or the disagreement

recorded by the disciplinary authority was in any way contrary to and in violation of procedure established by law and that of the principles of natural

justice. This being the admitted position, the scope of judicial review of this Court under Article 226 of the Constitution stands circumscribed. There is

no challenge that the inquiry was not held by a competent authority or held by flouting procedure prescribed for holding a disciplinary enquiry. The

primary ground of challenge is on the perversity of the findings of the Inquiry Officer in respect of Article- I to the extent it was found proved as well

as to the perversity in the findings of the Disciplinary Authority in holding all the charges as proved against Sri Prabhat Mahanta. This being the gamut

of challenge, our approach in deciding the present case must follow the dictum of law propounded by the Supreme Court in a catena of decisions

regarding the powers of the High Court under Article 226 of the Constitution while venturing into matters pertaining to disciplinary proceedings. We remind ourselves that under Article 226 of the Constitution this Court will not re-appreciate the evidence or interfere with the conclusion in the enquiry

so far it was conducted in accordance with law or go into the adequacy and reliability of the evidence or interfere if there be some legal evidence on

which findings can be based or correct the error of fact, however grave it may appear to be, or go into the proportionality of punishment unless it

shocks the judicial conscience. Apparently, the High Court is not a Court of appeal under Article 226 to sit over the decision of the authorities

following a departmental enquiry against a public servant.

6. In the instant case and on behalf of Sri Prabhat Mahanta, perversity in the findings of Enquiry Officer in respect of Article- I and that of the

findings of the Disciplinary Authority are made with reference to the record of cross examination of Sri Prabhat Mahanta by the Presenting Officer.

Particular reference is made to Question no. 3, which reads as under: â??3. Have you received any circular issued from SSPOâ??s, Guwahati

Division in the name SPM, Rupnagar.

Ans. Generally I receive all the circular issued from SSPOs, Guwahati Division but no circular was received relating to loss and stolen certificate as

mentioned in the charge sheet.â? It is stated that the categorical answer made to Question no. 3 was ignored while rendering impugned findings on

Article-I. The Disciplinary Authority, instead, relied on the answer given to Question no. 5 where Sri Prabhat Mahanta stated in the negative when he

was posed with the question:

â??5. Are you sure that circulars mentioned in charge sheet has not been received by you?â??

The reference to Question no. 3 and Question no. 5 is made as the Disciplinary Authority made categorical reference in its Disagreement Note that

the charged officer Sri Prabhat Mahanta could not speak specifically during cross examination by the Presenting Officer on 21.07.2008 whether the

Circular mentioned in the Charge Sheet listed as PE-(J) has been received by him in Question no. 5. It was, therefore, held that the allegation as to

violation of Rule 3(1) (ii) (iii) of the Central Civil Services (Conduct) Rules, 1964 stood proved, meaning thereby, that Sri Prabhat Mahanta failed to

maintain devotion to duty and acted in a manner which was unbecoming of a Government servant. On this aspect, we cannot agree with the argument on perversity advanced on behalf of Sri Prabhat Mahanta, inasmuch as, there must be a harmonious reading of the questions and answers, which also

includes the answer to Question no. 4 in the cross examination of the charged officer when he was asked:

â??4. Have you maintained any file to keep the circular received from the SSPOs office?

Ans. Yes, it was maintained since long. â?? It is difficult to comprehend that an employee well into long service would be oblivious to Circulars which

are of use in day-to-day affairs of the office, particularly to Circular pertaining to lost and stolen certificate.

7. We have carefully perused the materials on record, particularly the charges, the findings of the Enquiry Officer and that of the findings and decision

of the Disciplinary Authority, following the advice of the Union Public Service Commission. We find no infirmity in the penalty imposed. The alleged

perversity pointed out on behalf of Sri Prabhat Mahanta is not high enough warranting interference of the penalty so imposed. The said punishment

being commensurate to the charges framed and proved against Sri Prabhat Mahanta, this Court does not find any disproportionality in the punishment

so imposed to the extent of shocking the judicial conscience.

8. The Tribunal in its order dated 03.07.2015 was more swayed by the fact that Sri Prabhat Mahanta had retired from service and the punishment was

awarded only after his retirement. On this, the Tribunal found the punishment to be disproportionate. In the same breath, the Tribunal held that the

materials on record clearly suggested that the department was cheated of Rs.6.40,000/- because of lack of knowledge and negligence on the part of

the charged officer who had been working in the department for so long that he cannot be given the advantage to say that circulars were not available

in the office. The Tribunal also recorded that in respect of the contention of the charged officer that he did not find anything to verify the identity of

the person to whom he was making the payment, itself demonstrated gross negligence. In view of such categorical findings and to the extent of

directing deduction of Rs.6,40,000/- from amounts receivable by Sri Prabhat Mahanta, the Tribunal was not correct in interfering with the punishment

of reduction of pension on permanent basis and in directing that the pension and post retirement dues of Sri Prabhat Mahanta be calculated as if he has retired on superannuation in normal circumstances and/or as in the case of a normal retirement. In this respect, we find the directions made in the

order of the Tribunal as not sustainable in law.

9. For the discussions and finding above, we allow WP(C) 3701/2016 by setting aside the order dated 03.07.2015 of the Central Administrative

Tribunal, Guwahati Bench in OA No. 56/2013. The order of the disciplinary authority dated 03.12.2012 stands affirmed. As a necessary corollary,

WP(C) 4552/2016 filed by Sri Prabhat Mahanta stands dismissed, however, without any order as to cost.