(2019) 02 GAU CK 0093

In the Gauhati High Court

Case No : Writ Petition (C) No. 4944 Of 2017

Union Of India And 3 Ors — APPELLANT

Vs

Tanu Ram Narzary — RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Post Office Savings Bank General Rules, 1981 — Rule 23(1)

Citation : (2019) 02 GAU CK 0093

Hon'ble Judges : A.S. Bopanna, CJ;Sanjay Kumar Medhi, J

Bench : Division Bench

Advocate : M A Islam

Final Decision : Disposed Off

Judgement

A.S. Bopanna, CJ

Heard Mr. S.C. Keyal, learned Assistant Solicitor General of India for the petitioners.

Also heard Mr. M.A. Islam, learned counsel for the respondent.

The petitioners are before this Court assailing the order dated 6.5.2016 passed by the Central Administrative Tribunal (for short 'CAT') in O.A. No.040/00362/2014.

The respondent herein who was working in the petitioners' Organization was imposed with the penalty dated 4.5.2011 whereby recovery of Rs.3,50,000/- in 100 equal installments was ordered. The respondent herein had assailed the same before the CAT and prayed for setting aside the same. The CAT through the order impugned dated 6.5.2016 has set aside the order. It is in that light, the petitioners are before this Court in this petition.

The learned Assistant Solicitor General of India while assailing the order passed by the CAT would contend that except for referring to the charge alleged against the respondent and the provisions as contained in Rule 23(1) of Post Office

Savings Banks Manual, the CAT has not adverted to the contentions on merit. It is his case that the CAT merely relied on the written statement of the Assistant Post Master/NSC Shri Dulal Chandra Borkakati filed by him in another proceeding initiated against him and has in that light, set aside the order of penalty. He contends that in a circumstance where Rule 23(1) of the Manual enjoins an obligation on the respondent herein as well and further in a circumstance where the holders of KVP have encashed, the respondent has not taken care to follow any of the instructions contained in Rule 23(1) of the Manual. In such circumstance, when due to the act of the respondent loss is caused to the petitioner Organization, the penalty as imposed to recover the same is in accordance with law. He, however, points out that the petitioners, in fact, have made easy for repayment by providing for installments and, therefore, the order of penalty, in any event, did not call for interference. Accordingly, he contends that the order passed by the CAT not being sustainable, is liable to be set aside.

Learned counsel for the respondent would, however, seek to sustain the order passed by the CAT. He contends that the respondent, in fact, had been transferred to the Guwahati GPO only a few days earlier to the period during which the disbursement of the amount was made. In that circumstance, he contends that the procedure of payment on cash basis was being followed in the Guwahati GPO and such procedure of payment has been, accordingly, made. Learned counsel for the respondent seeks to refer to the note whereunder the procedure for encashment has been indicated in the Manual as appended to Rule 23(1). In such circumstance, where a Departmental Enquiry was made and when Articles II and III have not been proved in the enquiry, the penalty as imposed based on Article of Charge No.I is not justified.

In the light of the rival contentions, at the outset a perusal of the order passed by the CAT would indicate that the CAT except for taking note of the charge and the Rule, has only made a brief reference to the reply that has been made by the respondent herein to the notice issued by the disciplinary authority. The CAT has, thereafter, referred to the enquiry that had also been held in respect of Shri Dulal Chandra Barkakoti since he has in his written statement filed in the enquiry submitted that payment of cash is allowed to be made and since such statement is made by him as Assistant Post Master has granted benefit to the respondent. At the outset, a perusal of Rule 23(1) of the Manual, which has been extracted by the CAT in its order would disclose that the laid down procedure is to be followed in the Post Offices when the KVP is tendered for such payment since the Department is to ensure that the same is to be paid to the actual holder of KVP. A procedure has been contemplated to verify the issuing office and on ascertaining the validity, the payment was required to be made. The contention of the respondent that he was not aware of the procedure as he had been recently transferred to the Guwahati GPO, in any event, cannot be sustained. It is for the reason that the respondent, in fact, had been transferred to Guwahati GPO from another office and in all such post offices, the same procedure is required to be followed and the plea of ignorance would not be justified. Though it is sought to be contended that Assistant Post Master has indicated to him that the payment could be made in cash as such procedure is followed in Guwahati GPO, the same cannot be accepted by us when a laid down procedure is contemplated. In that regard, though learned counsel for the respondent seeks to rely on the note as contained in the manual, the same also does not indicate that the payment is to be made in cash. What has been indicated therein is that the disbursing officer should verify the identity and reconfirm the identity of the holder/genuineness of the holder's name.

In the instant case, there is no material even to that extent to show that the respondent had taken care of that aspect and, thereafter, the disbursement was made. Further, reliance placed by the learned counsel for the respondent on the decision of this Court in W.P.(C) No.617/2015 would also not be of any assistance in as much as in the said case all that the Coordinate Bench of this Court has ordered was that the decision of the CAT in that case was only to the extent of noticing the procedural defects and allowed the enquiry to be redone. In that circumstance, since the order of penalty has been set aside, this Court has observed that terminal benefit is required to be made. The same would be of no assistance as in the present case no procedural defect is noticed and the finding rendered by the enquiry officer has not been set aside on such ground but we are of the opinion that it ought not to have been set aside. Therefore, if all these aspects are taken into consideration, the manner in which the CAT has set aside the same would not be justified.

Accordingly, the order dated 6.5.2016 passed in O.A. No.040/00362/2014 is set aside. Consequently, the order of penalty dated 4.5.2011 shall revive.

The petition is, accordingly, disposed of.

