(2021) 12 CAL CK 0006

In the Calcutta High Court

Case No : W.P.C.T. No. 56 Of 2020

Union Of India And Others APPELLANT

Vs

Satya Jiban Roy RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16
Post Office Savings Bank Manual (Volume 1) — Rule 3(2)(ix)
Income Tax Act, 1961 — Section 269T

Citation : (2021) 12 CAL CK 0006

Hon'ble Judges : Sabyasachi Bhattacharyya, J;Jay Sengupta, J

Bench : Division Bench

Advocate : Achin Kumar Majumdar, Arijit Majumdar, Ujjal Roy, Arpa Chakraborty

Final Decision : Dismissed

Judgement

Jay Sengupta, J

1. This is an application directed against a judgment and order dated 29.08.2019 passed by the Learned Central Administrative Tribunal, thereby quashing and/or setting aside an order of recovery of Rs. 2,24,140/- and passing a direction upon the authorities/petitioners to refund the recovered amount to the respondent with interest at the rate of 8% per annum within a stipulated time.

2. The respondent was working as a postal assistant at the Purulia Head Post Office. It was alleged that on three different dates in the month of August 2002, premature withdrawals of monthly income scheme account of the depositor amounting to Rs. 4,10,000/- and odd were effected at the post office. The amounts were remitted to the messenger of the depositor in cash instead of by an account payee cheque or a demand draft, which was a clear violation of the DG Posts Instruction No. 5-20/UP-06/2000-IND dated 29.08.2001 (the said Postal Instruction, for short) that was issued in compliance with Section 269T of the Income Tax Act. Subsequently, the depositor went before the learned District Consumer Redressal Forum with his grievances. The learned Forum decided that

the messenger of the depositor was liable for the misappropriation and ordered him to pay back the entire amount of premature withdrawal. The depositor preferred an appeal before the learned State Commission. The learned State Disputes Redressal Commission arrived at the conclusion that not only the messenger of the depositor but the Purulia Head Post Office was also equally liable for the violations.

3. In complying with the order of the learned State Commission, the petitioners purportedly sustained a loss to tune of Rs. 4,67,765/-. The present respondent was thereafter charge sheeted and penalty proceedings ensued. In fact, a penalty was awarded after considering the respondent's representation dated 31.04.2020 for recovery of Rs. 2,24,140/- from his pay in 28 equal instalments. The respondent preferred an appeal dated 19.12.2011 before the Director of Postal Services, South Bengal Region. However, the appellate authority, by an order dated 09.05.2012, upheld the punishment. Thereafter, the respondent approached the learned Central Administrative Tribunal, Calcutta Branch.

4. Learned counsel appearing on behalf of the petitioners submitted as follows. Rule 3 sub-rule (2) Clause (ix) of the Post Office Savings Bank Manual (Volume 1) designated the distribution of work where appropriate individual would be responsible to issue sanction of withdrawals and closure of accounts of sub offices/branch offices. The respondent being a postal assistant, thus, could very well have issued sanction of withdrawals and closure of accounts. The said Postal Instruction categorically barred remission of any amount including principal or interest in cash if the same was equal to or more than Rs. 20,000/-. This was in consonance with Section 269T of the Income Tax Act. The office order was widely circulated to all senior post master/post masters under the West Bengal Circular. Besides, Section 269T of the Income Tax Act also barred such transactions beyond a sum of Rs. 20,000/-. The respondent could not take a plea of ignorance of law as the same was not permissible. In a similar case decided by the Hon'ble Karnataka High Court reported in the Department of Posts and Others vs. V.C. Sitamma, 2008 AIR Kant 62, it was held that the Consumer Protection Act, 1986 had wide reach and had jurisdiction even in case of service rendered by statutory authorities. Here, the learned Tribunal failed to appreciate that the respondent was issued a charge sheet under Rule 16 of CCS (CCA) Rules and subsequently, after due consideration of the respondent's representation, the disciplinary authority imposed a penalty. It was a discretion of the disciplinary authority whether to proceed with a full-fledged disciplinary enquiry or not. The respondent could not claim any prejudice in this regard.

5. Learned counsel appearing on behalf of the respondent, submitted as follows. First, the present enquiry proceeding could not be sustained in law because before the instant charge sheet, another charge sheet had been issued to the respondent for the same alleged misdemeanour. A reply was given in respect of the same making clear averments about the sequence of events involved. After receiving this response, the authority did not pursue the first charge sheet and

illegally issued a second charge sheet. This was in clear violation of Rule 3 of the Director General P & T Orders. In the said first reply, the respondent had clearly stated that after the MIS pass books were presented to the counter, the signature was tallied by the ledger clerk, the Assistant Post Master thereafter signed the vouchers and only thereafter, the respondent paid the amounts to the messenger in cash. Therefore, the respondent was not the disbursing authority. As was quite rightly held by the learned State Commission, it was the Assistant Post Master who was ultimately responsible for the disbursement. If the voucher for payment in cash was not signed by the Assistant Post Master, the respondent could not have made the payment. It was also true that once the Assistant Post Master signed the vouchers and sanctioned the payment, it was not open to the respondent to stop such payment. Therefore, no liability for any purported illegality in making such payment in cash could be attributed to the respondent. Although the respondent participated in the subsequent proceeding, yet the patent illegality in the same could always be agitated by him. Besides, although the respondent had categorically disputed the allegations in the charge sheet issued to him, no enquiry was conducted. Reliance was placed on a decision of the Hon'ble Supreme Court in the case of O.K. Bhardwaj vs. Union of India and Ors., (2001) 9 SCC 180 and it was submitted that if the charges were factual and if they were denied by the delinquent employee, an enquiry should also be called for. Reliance was also placed on a decision of the Hon'ble Apex Court in the case of Gulf Goans Hotels Company Limited and Anr. Vs. Union of India and Ors., (2014) 10 SCC 673 and it was submitted that unless an executive order was published in the Official Gazette, it did not have the force of law. The second charge sheet like the first one was absolutely vague and ought to have been quashed on the ground of vagueness alone.

6. In reply, learned counsel for the petitioners submitted that the first charge sheet did not contain a mention of the relevant circular and the relevant provision under the Income Tax Act. So, the said proceeding was dropped and a second proceeding was initiated. In fact, a charge sheet was issued also upon the Assistant Post Master and some money was recovered from him after imposition of penalty.

7. We heard the learned counsels appearing on behalf of the parties and perused the application and the written notes filed on behalf of the parties.

8. Before entering into the question of procedural irregularity, the bare facts of the case are required to be assayed. The respondent was working as a postal assistant at the Purulia Head Post Office. The process of making payments at the post office comprised of the following steps. After an MIS pass book was presented to the counter, the signature was to be tallied by the ledger clerk. Thereafter, the Assistant Post Master signed the vouchers. Only then could the respondent pay any sum of money to the messenger or payee concerned in cash. Therefore, quite clearly the respondent was not the disbursing authority. If the voucher for payment in cash was not signed by the Assistant Post Master, the

respondent could not have made the payment. Looking at it from the other angle, once the Assistant Post Master signed the vouchers and sanctioned the payment, it was not open to the respondent to stop such payment. As such, no liability for any purported illegality in making such payment in cash could be attributed to the respondent.

9. This is also a case where two charge-sheets were issued to the respondent over the self-same cause of action. Although, learned counsel for the petitioners argued that the first charge sheet did not contain references to the relevant circular and the relevant provision of the Income Tax Act, which prompted the issuance of the second charge sheet, it is quite apparent that this amounted to a violation of Rule 3 of the Director General P & T Orders. Rule 3 makes it obligatory to mention the reasons for cancellation of the original charge sheet or dropping of the proceeding and to state in the order that the proceedings were being dropped without prejudice to further action in future. This provision of law was not adhered to in the instant case. In fact, the respondent gave a reply to the first charge sheet explaining the facts and making clear averments about the sequence of events involved.

10. Besides, although the respondent had clearly disputed the allegations in the charge sheet issued to him, no enquiry was conducted in this case. In O.K. Bhardwaj (supra), the Hon'ble Apex Court, inter alia, held that if the charges were factual and if they were denied by the delinquent employee, an enquiry should be called for. However, in the present case, no such enquiry was undertaken although the delinquent respondent/employee disputed the allegations levelled against him.

11. In view of the above, the implication of the respondent in the alleged irregular disbursement of money on Monthly Income Scheme account of a depositor to a messenger does not appear to be tenable either on facts or in law.

12. Therefore, we do not find any worthwhile reason to interfere with the judgment and order dated 29.08.2019 passed by the Learned Central Administrative Tribunal.

13. Accordingly, the application is dismissed.

14. However, there shall be no order as to costs.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.