IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.6.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Petition No.3902 of 2015

1. Union of India, rep. by
   the Director of Postal Services,
   O/o. The Post Master General,
   Southern Region [TN],
   Madurai.

2. The Superintendent of Post Offices,
   Dindigul Division,
   Dindigul. ...Petitioners

vs.

1. P.Subburaman

2. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, Chennai-104. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records in respect of the impugned order passed by the 2nd respondent in OA.794/2012 dated 11.8.2014 and quash the same.

For petitioners : Mr.Venkataswamy Babu senior panel counsel for the Govt. of India

For respondents : Mr.R.Malaichamy for R1



O R D E R
[by V.Ramasubramanian, J.]

This Writ Petition is filed by the Union of India, challenging the order of the Central Administrative Tribunal, Madras Bench, quashing a penalty of recovery imposed upon the 1st respondent and remitting the matter back to the Disciplinary Authority for the conduct of fresh proceedings.

2. Heard Mr.Venkataswamy Babu, learned senior panel counsel for the Government of India and Mr.R.Malaichamy, learned counsel for the respondent.

3.When the 1st respondent was working as a Treasurer in the Nagalnagar Sub Office of the Department of Posts, a charge memo dated 30.6.2011 was issued under Rule 16 of the CCS [CCA] Rules, 1965, for the imposition of a major penalty. The 1st respondent gave a reply to the charge memo. Thereafter, the disciplinary authority passed an order dated 2.2.2012, imposing upon the 1st respondent, a penalty of recovery of a sum of Rs.2 lakhs, at the rate of Rs.4,000/- per month for a period of fifty months.

4. The 1st respondent filed an appeal to the Appellate Authority on 8.3.2012.

5. Thereafter, the 1st respondent also filed an application in O.A.369/2012 before the Central Administrative Tribunal challenging the order of penalty. The Tribunal disposed of the said application by an order dated 21.3.2012, directing the Appellate Authority to dispose of the Appeal within three months.

6. Pursuant to the said order, the Appellate Authority gave a personal hearing to the 1st respondent and thereafter passed an order dated 20.6.2012 dismissing the Appeal.

7. As against the order of the Appellate Authority, the petitioner filed O.A.794/2012 on the file of the Tribunal. This application was allowed by the Tribunal by an order dated 11.8.2014, setting aside the order of penalty and remanding the matter back to the Disciplinary Authority for a full-fledged enquiry. Aggrieved by the said order, the Union of India is before us.

8. The main grievance of the Union of India is that insofar as minor penalty proceedings are concerned, there is no requirement in the Rules to hold a full-fledged enquiry. A full-fledged enquiry can be conducted if the Disciplinary Authority is of the opinion that it must be held. If the Disciplinary Authority is not of the opinion that an enquiry is necessary, it is not open to the employee to compel the Disciplinary Authority to conduct an enquiry, even for the minor penalty proceedings.

9. We have carefully considered the above submissions.

10. Keeping in mind the fact that the penalty imposed upon the 1st respondent was for recovery of Rs.2 lakhs, let us now have a look at Rule 16 of the CCS [CCA] Rules, 1965. It reads as follows:-

> "16. Procedure for imposing minor penalties
>
> [1] Subject to the provisions of sub-rule [3] of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause [1] to [iv] of Rule 11 shall be made except after --
>
> [a] informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
>
> [b] holding an enquiry in the manner laid down in sub-rules [3] to [23] of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;
>
> [c] taking the representation, if any, submitted by the Government servant under Clause [a] and the record of inquiry, if any, held under Clause [b] into consideration;
>
> [d] recording a finding on each imputation of misconduct or misbehaviour; and
>
> [e] consulting the Commission where such consultation is necessary."

11. It is clear from the clause [a] of sub rule [1] of Rule 16 that if the Disciplinary Authority decides to impose only a minor penalty, it is sufficient if they inform the government servant in writing, of the proposal to take action and of the imputations of misconduct. In other words, a reasonable opportunity to make a representation against the proposal is sufficient compliance of clause [a] of sub rule [1] of Rule 16.

12. But clause [b] of sub rule [1] of Rule 16, obliges the disciplinary authority to hold an enquiry in the same manner as laid down for imposition of major penalty under sub rules [3] to [23] of Rule 14, in every case in which the disciplinary authority is of the opinion that such enquiry is necessary.

13. But it does not mean that the discretion to hold or not to hold an enquiry is completely that of the Disciplinary Authority. Wherever the imputations of misconduct can be proved only by

evidence, the conduct of an enquiry is certainly necessary. Say for instance, an allegation of misappropriation is made; or an allegation of negligence resulting in a huge loss to the Department is made. If it is held that an enquiry should not be conducted for the imposition of a minor penalty, even in such cases, it is not known as to how a finding of negligence can be recorded especially when the allegation is flatly denied by the delinquent. Therefore, the conduct of the enquiry even in cases under Rule 16 may be necessary where the allegations made in the charge memo cannot be proved except in an enquiry.

14. The nature of the minor penalties that can be imposed upon a government servant, vary from censure to reduction in the time scale of pay. All minor penalties cannot be placed on the said pedestal. Some minor penalties will have a long term effect. Therefore, the question as to whether an enquiry is to be held or not would also depend upon the nature of the penalty sought to be imposed and on the question whether the allegations could be proved without an enquiry or not.

15. In the cases on hand, the allegations made against the 1st respondent are such that they cannot be proved except in an enquiry. The mere service of a charge memo and the explanation given by the 1st respondent are not sufficient to come to the conclusion that the charges could be taken to be proved in cases of this nature. Therefore, we find that the Tribunal was right in allowing the application and remitting the matter back to the Department for the conduct of fresh proceedings. Hence, the Writ Petition stands dismissed. No costs. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gs.

To

1. Union of India, rep. by
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Madurai.

2. The Superintendent of Post Offices,
   Dindigul Division,
   Dindigul.

3. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, Chennai-104.

1 CC to Mr.Venkataswamy Babu,Senior Panel Counsel for the Govt. of India, Advocate SR.No. 30395

1 CC to Mr.R.Malaichamy, Advocate, SR.No. 30436

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PUR (CO)
PSI (07.07.2015)