

14.09.2020
SL No.27
Court No.8
(gc)

WPCT 25 of 2020
With
CAN 1 of 2020
(Old No. CAN 4481 of 2020)
With
CAN 2 of 2020
(Old No. CAN 4482 of 2020)

Union of India & Ors.
Vs.
Swapan Kumar Adhikari & Anr.

(Via Video Conference)

Ms. Chandreyi Alam,
Ms. Ashima Roychowdhury
...for the Appellants.

Mr. Gopal Chandra Ghosh,
Mr. U.K. Bhattacharya
...for the Respondent No.1.

This writ petition is directed against an order dated 26th February, 2019 by which the learned Tribunal upon consideration of the materials on record and the order of removal from service of the respondent No.1 observed that it is a fit case for consideration of any punishment other than for removal from service and, accordingly, the orders of the Disciplinary Authority and the Revisional Authority were quashed and set aside. Two articles of charges were framed against the applicant. They are:-

“Article-I

It is alleged that Sri Swapan Kr. Adhikary, Inspector Posts (PG), Tamluk Division while working as Inspector Posts, Mathchandipur Sub Division for the period from 28.01.09 to 16.03.2010 made recruitment in the post of GDSMD, Khagda Birgram

B.O. (in account with Norghat S.O.) by way of notification vide memo no. A-2/Khagda Birgram/09-10 dated 10.09.09 without following prescribed time limit of 30 days from the date of sending requisition to Employment Exchange and also without endorsing copy of open notification to the local BDO, Head Master of local Primary School and above all to the concerned Gram Panchayet Prodhan thereby abstaining from the required wide publicity by way of public advertisement in its true spirit as well as depriving prospective candidates to apply for the said post within the time limit admissible to afford reasonable opportunity for applying for the said post. Thus said Sri Swapan Kr. Adhikary acted in contravention of the instructions contained in D.G., P & T., Letter No.45-22/71-SPD. 1/Pen., dated 04.09.1982 read with D.G., Posts No.19-4/97-ED & Trg., dated the 19.08.1998 thereby violated Rule 3(1)(ii) & 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article-II

It is alleged that Sri Swapan Kr. Adhikary, Inspector Posts (PG), Tamluk Division while working as Inspector Posts, Mathchandipur Sub Division for the period from 28.01.09 to 16.03.2010 made recruitment in the post of GDSMD, Khagda Birgram B.O. (in account with Norghat S.O.) by way of ignoring one application for recruitment preferred by one, Sri Kali Kinkar Mondal, Vill – Khagda, P.O.- Khagda Birgram Dist – Purba Medinipur although receiving the same within the last date fixed in the concerned notification dated 10.09.09 (the application sent under Speed Post, SPA No.103320528 IN dated 03.10.2009 was duly received by said Sri Adhikari on 05.10.2009;p whereas last date of receipt of applications was fixed on 09.10.2009) thereby depriving the potentially meritorious candidate (who secured total marks 557 in Madhyamik Pariksha) while selecting less meritorious

candidate namely Kakali Hait (who secured total marks 432 in Madhyamik Pariksha) for his unlawful personal gain. Thus said Sri Swapan Kr. Adhikary acted in contravention of the sole criterion of merit in the selection process as envisaged vide Para 4 of G.I., Dept. of Posts, Lt. No.22-12/2001-GDS, dated 17.09.2003, thereby violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.”

It appears from record that the respondent No.1 did not accept the said articles of charges and the Enquiry Officer proceeded with the enquiry. However, the respondent No.1 did not submit his written brief till 6th February, 2012. In the meantime, the Enquiry Officer submitted his report on the self-same date with his conclusion that both the two charges framed against Sri Swapan Kr. Adhikary are proved. Thereafter, the respondent No.1 contends that he has preferred revisional application as well as an appeal against the findings of the Enquiry Officer.

It appears from record that by a speaking order dated 31st March, 2016, the Appellate Authority recorded that since the revision petition filed by Sri Adhikary was disposed of on 1st February, 2015 as per provision contained in Rule 29(1) of CCS (CCA) Rules, 1965 which supersedes appeal the said prayer cannot be considered. There is no scope left with the Appellate Authority at this stage for disposal of the so-called appeal on the basis of the two articles of charges. The Disciplinary Authority by an order dated 12th October, 2012 removed the respondent

No.1 from service immediately by observing that the said order shall not be disqualification for future employment. The said punishment was upheld by the Revisional Authority.

It appears that the written submission was received by the Enquiry Officer after the Enquiry Officer prepared his report on 6th February, 2012 and sent it to the Disciplinary Authority for its consideration. It may have been that the written submission was received by the Enquiry Officer after he had dispatched the enquiry report to the Disciplinary Authority. The Disciplinary Authority proceeded on the basis of the said enquiry report and proposed the punishment of the removal from service. The said punishment certainly carries a stigma, although it shows that the said order of removal from service shall not be a disqualification for future employment.

We have considered the written submission made by the respondent No.1 before the Enquiry Officer as well as before the Disciplinary Authority. It does not appear from the order of the Revisional Authority that the said representations have been properly considered by the said authority. The issues raised in the written objection filed by the respondent No.1 has not been adequately addressed. We feel that when a punishment involves removal from service, which is a major penalty under the relevant service rules, the Revisional Authority while concurring with the views of the Disciplinary Authority must apply its mind to the materials on record and the reasoning for such

concurrence must be clear and discernable from the order. The applicant/respondent No.1 did not prefer any appeal against the order as a result whereof the Appellate Authority who is below the Revisional Authority cannot take a contrary view than that of the Revisional Authority.

Under such circumstances, the Revisional Authority shall revisit the punishment imposed in the impugned order dated 1st December, 2015. The Revisional Authority on the basis of the charges may consider a lesser punishment than that was proposed and ultimately confirmed by the Revisional Authority. It would also be open for the Revisional Authority to treat the order of punishment as an order of compulsory retirement and in which event the entire period under suspension shall be treated to be in deemed service for the purpose of all retiral benefits. The said observation is made in view of the fact that the respondent No.1 had retired on 31st October, 2018. There is no question of any reinstatement of the respondent No.1 in service. The order of the Tribunal is modified to the aforesaid extent. The Revisional Authority shall pass appropriate orders within a period of six weeks from the date of communication of this order after giving an opportunity of hearing to the respondents.

The reasoned order shall be communicated to the respondents within one week from the date of passing of such order.

All admissible dues of the respondent No.1 on the basis of the order of removal which has now been set aside

shall be released to the respondent No.1 if it had not been released in the meantime within a period of three weeks from date along with a proper calculation sheet.

The appeal being WPCT 25 of 2020 along with CAN 1 of 2020 (Old No. CAN 4481 of 2020) and CAN 2 of 2020 (Old No. CAN 4482 of 2020) are disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Jay Sengupta, J.)

(Soumen Sen, J.)