IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22288 of 2018

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Ajay Kumar Son of Suresh Prasad, Resident of Village-Algana, Post Office-Saidabad, District-Jehanabad.

... ... Petitioner/s

Versus

1. The Union Of India and Ors
2. The Director of Postal Services Hq., O/o the Chief Postmaster general, Bihar Circle, Patna and App
3. The Senior Superintendent of Postal Officers, Gaya Division, Gaya.
4. The Postmaster, Jehanabad Head Post Officer, Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satya Prakash

For the Respondent/s : Mr.S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-12-2022

In the instant petition petitioner has assailed the order of the Tribunal dated 13.12.2017 passed in O.A No. 050/00513/2017 by the Central Administrative Tribunal, Patna Bench, Patna (for short CAT). The appellant was subjected to disciplinary proceedings under Rule 16 of CCS (CCA) Rules 1965(for short CCA Rules) on the allegation that he had manipulated office record in utilizing diesel for generator instead of utilizing electricity connection to the Sub-Post, Tehta, Sub-Office in account with Jehanabad Head Office, whereby he has caused financial loss to the Postal Department. Petitioner had submitted his explanation denying the alleged allegation on 11.11.2016. Disciplinary Authority proceeded to impose penalty in reducing one stage from Rs. 32300/- to Rs. 31400/- in the pay of Rs. 5200/- – 20200/- with a grade pay of 2400 for a period of three years with effect from 01.07.2017. It is further ordered that petitioner will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will not have the effect of postponing his future increment of pay. Thereafter, one more order has been passed ordering recovery on 25.07.2017. The petitioner feeling aggrieved by the order of recovery preferred appeal against the recovery order.

During pendency of the memorandum of appeal petitioner filed O.A. No. 050/00513/2017 before the CAT and further M.A. No. 050/00387/2017 filed. The Tribunal rejected the petitioner's Original Application as well as Misc. Application on 13.12.2017, thereafter, the appellate authority rejected the petitioner's appeal on 22.12.2017. Feeling aggrieved and dissatisfied with the order of the Tribunal, the petitioner has presented this petition.

Learned counsel for the petitioner vehemently contended that Rule 16 of CCA Rules relates to imposition of minor penalty. Against charge memo/show cause notice, he had submitted his reply on 11.11.2016, while denying the alleged allegations and also requested to initiate inquiry and he is prepared to face inquiry proceedings under Rule 14 of CCA, Rule 1965. Ignoring the disputed issues the Disciplinary Authority proceeded to impose the penalty on 18.07.2017 the penalty is as under:-

> *"Penalty in reducing one stage from Rs. 32300/- to Rs. 31400/- in the pay of Rs. 5200/- – 20200/- with a Grade Pay of 2400 for a period of three years with effect from 01.07.2017."*

It is further submitted that once the penalty order is imposed and the department cannot order one more penalty order in so far as recovery. It is further submitted that there is no determination of loss caused to the department in the departmental inquiry in a disputed matter. It is also submitted that the petitioner in his reply to the charge memo referred to two letters dated 22.11.2013 and 05.12.2013 the same has not been taken into consideration. When the disputed issues were cropped up in that event Disciplinary Authority is required to initiate inquiry in terms of Rule 16(1)(b) with reference to Sub Rule (3) to (23) of Rule 14. Disciplinary Authority has not formed opinion as to whether holding of inquiry in the aforesaid provision is warranted or not? In the light of the fact that the petitioner had disputed the alleged charge, these two issues have not been apprised by the Disciplinary Authority and CAT.

Per Contra learned counsel for the respondent resisted the aforesaid contentions and submitted that Rule 16 of CCA Rules provides for imposition of minor penalty and procedure is limited to the extent that issuance of show-cause notice and obtaining reply and thereafter to proceed to pass order by the Disciplinary Authority. Further, it is submitted that there is no infirmity in the order of the Disciplinary Authority and CAT. It is also submitted that petitioner has suffered order before the Appellate Authority after disposal of O.A. No. 050/00513/2017 by the CAT on 13.12.2017.

Heard the learned counsel for the respective parties, undisputed facts are that the petitioner while working in Sub-Post Office, Tehta, Jehanabad he is alleged to have misutilized the departmental money towards purchasing diesel and running the generator instead of utilizing the electricity connection to the office. On this allegation, he was subjected to inquiry under

Rule 16 of CCA Rules.

Rule 16 of the CCA reads as under:

RULE 16. PROCEDURE FOR IMPOSING MINOR PENALTIES:

Government of India Decisions

(1) Enquiry mandatory in certain types of the penalty of withholding of increments:-

It has been decided in the meeting of National Council held on the 6th and 7th November, 1967, that in cases where increments are withheld for a period of more than three years or where increments are stopped with cumulative effect or where such stoppage is likely to affect adversely the pensionary entitlement, the procedure of holding an enquiry should invariably be followed.

As the Ministry of Finance etc. are aware, clause (b) of sub-rule (1) of rule 16 of the CCS (CCA) Rules, 1965 makes provisions for holding an enquiry in the manner laid down in sub-rules (3) to (23) of rule 14 ibid in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. In view of the decision of the National Council, mentioned in the preceding paragraph, it has been decided that, notwithstanding the provision contained in rule 16 (1) (b) of the CCS (CCA) Rules, 1965, if in a case it is proposed, after considering that representation, if any, submitted by a Government servant, to withhold increments *of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the Government servant, an enquiry shall invariably be held in the manner laid down in sub-rules (3) to (23) of rule 14 ibid.*

[MHA OM No. 7/3/67-Ests. (A) dated the 19th January, 1968]

(2) Minor Penalty – holding of inquiry in specific circumstances:-

The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 had suggested that Rule 16 (1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provide for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) ibid leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehavior communicated to him, the disciplinary authority should apply its mind

> *to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that in inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."*

It is to be noted that the petitioner had disputed the alleged charge and he had also cited two letters in his reply to the charge/show-cause notice. Perusal of the Disciplinary Authority's order, it is crystal clear that Disciplinary Authority has not taken note of alleged disputed issues rised by the petitioner in his reply to the charge memo/show-cause notice. Further, in the event of disputed issues against charge memo/show-cause notice, in that event Disciplinary Authority is required to invoke Rule 16 (1)(b) while holding inquiry under Sub Rule (3) to (23) of Rule 14.

Perusal of the records, it is evident that the petitioner had disputed the alleged charge and he has also quoted two letters, in such an event Disciplinary Authority was bounden duty to invoke Rule 16(1)(b) in holding inquiry in respect of disputed issues. The same has not been appreciated by the Disciplinary Authority or CAT.

In the case of ***O.K. Bhardwaj vs Union Of India And Ors.,*** reported in ***(2001) 9 SCC 180*** it is held that in respect of disciplinary proceedings if the alleged charges are disputed in such an event inquiry is warranted.

In the light of these facts and circumstances, the petitioner has made out a prima facie case in so far as interference with the recovery order dated 25.07.2017.

Accordingly, order dated 25.07.2017 in so far as recovery of alleged loss to the tune of Rs. 5,26,213/- is hereby set aside, the appellate authority order would not come in the way. If the department have already recovered any amount the same shall be refunded to the petitioner within a period of three months from the date of receipt of this order.

At the juncture, it is to be noted that disciplinary authority while initiating inquiry under Rule 16 with an intention to impose minor penalty proceeded to pass two penalty orders one is penalty in reducing one stage from Rs. 32300/- to Rs. 31400/- in the pay of Rs. 5200/- – 20200/- with a Grade Pay of 2400 for a period of three years with effect from 01.07.2017 reducing and second one is recovery. The petitioner has not questioned the validity of the penalty order and he has questioned only recovery. In the light of these facts and circumstances, since petitioner has not questioned the validity of the penalty order and he has questioned only the recovery order, therefore, we are entertaining present lis only in respect of recovery order dated 25.07.2017. The same may be taken note of by the disciplinary authority while implementing the present order.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

aditya/minu

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.12.2022.
Transmission Date	N.A.