

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.5368 of 2019
and WMP.Nos.6094 of 2019 & 6867 of 2022

1. Union of India
Rep.by The Chief Post Master General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
 2. The Post Master General
Central Region (TN),
Tiruchirapalli 620 001.
 3. The Director of Postal Services,
Central Region (TN)
Tiruchirapalli 620 001.
 4. Superintendent of Posts,
Kumbakonam Division,
Kumbakonam 612 001.
 5. M.Thirugnanam ... Petitioners
- vs-
1. The Central Administrative Tribunal
Rep.by its Registrar,
Madras Bench, Chennai 600 104.
 2. G. Satish Kumar ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records of 1st respondent and quash the order dated 16.12.2016 made in O.A.No.853 of 2016.

For Petitioners: Mr.R.Murugesan
Central Government Standing Counsel

For Respondents

R1 : Tribunal
: Mr.R.Malaichamy for R2

O R D E R

S.VAIDYANATHAN, J.

&

N.MALA, J.

This Writ Petition has been filed to quash the order dated 16.12.2016 made in O.A.No.853 of 2016.

2. The case of the Applicant/second respondent herein is that while he was working as Postman at Koradacherry SO, he had mistakenly effected payment to a wrong person and on coming to know of the same, he had credited the sum of Rs.1,000/- into the Post Office Account and also credited Rs.41/- as penal interest for such irregular payment. However, he was issued with a charge memo dated 30.07.2014 under Rule 16 of the CCS (CCA) Rules, 1965 for the wrong effect of payment on 09.02.2013, while the payee was reported to have died on 20.01.2013. However, the 4th Respondent / Disciplinary Authority, not being satisfied with the reply of the Applicant and without any enquiry or opportunity of personal hearing, imposed the punishment of reduction of pay at the stage of Rs.8130/- + GP Rs.2,000/- to the stage of Rs.7830/- + GP Rs.2000/- in the Pay Band of Rs.5200 - 20200 + GP Rs.2000/- for a period of 36 months with effect from 01.09.2015 vide order dated 21.08.2014. However, the 3rd Respondent / Appellate Authority reviewed the punishment imposed against the applicant and held that the punishment is not commensurate with the gravity of charges and remitted the case to the 4th Respondent / Disciplinary Authority to conduct enquiry under Rule 14. As per Rule 14, a charge sheet dated 30.03.2015 was issued to the Applicant and the Applicant denied the charges. The Applicant requested for change of Inquiry Officer alleging bias against him. However, his request was rejected. The case of the Applicant is that while the original penalty order by the 4th respondent / Disciplinary Authority is in currency, remitting the case without setting aside the penalty is arbitrary and illegal. The 3rd Respondent / Appellate Authority is not vested with such power to direct the fourth respondent / disciplinary authority to conduct enquiry under Rule 14 and his request to drop the enquiry vide representation dated 07.05.2016 was also not answered by the respondents. Hence, the Applicant filed the O.A. The Tribunal set aside the penalty passed by the Disciplinary Authority and directed that after the Inquiry Officer concludes the inquiry, the matter shall be dealt with by the Disciplinary Authority in accordance with the procedure laid down under relevant rules and disposed of the OA. Aggrieved by the order of the Tribunal, the petitioners are before this Court.

3. The learned Central Government Standing Counsel for the Petitioners submitted that the Appellate Authority, while reviewing the punishment awarded by the Disciplinary Authority found that it is not commensurate with the gravity of irregularities committed by the second respondent and hence, directed to conduct inquiry under Rule 14 of the CCS (CCA) Rules 1965 and to submit the records, which is well within the powers conferred upon him under Rule 29 of the CCS (CCA) Rules 1965. Since the punishment awarded by the Disciplinary Authority is not commensurate, the Appellate Authority issued direction to issue charge sheet for major penalty and to remit the case to him, as it is well within his discretionary powers.

4. The learned counsel for the second respondent submitted that the fourth petitioner could not conduct enquiry under Rule 14, as ordered by the Tribunal in O.A.No.310/00853/2016 dated 16.12.2016 on the ground that they, having allowed to complete the period of punishment imposed on him as on 01.09.2017 and made the Applicant to suffer, could not impose one more punishment on him for the same cause of action.

5. Heard both sides.

6. The Disciplinary Authority / Superintendent of Posts, Kumbakonam Division, Kumbakonam has passed an order against the Applicant, who is the second respondent and the relevant portion of the order is extracted as below:-

"Accordingly, I, S.Krishnamoorthi, Supdt. Of Post Offices, Kumbakonam Division, Kumbakonam 612 001 hereby order that the pay of the official drawn at the stage of Rs.8130/- + Grade Pay Rs.2000 w.e.f. 01.07.2014 in the pay band of Rs.5200-20,200 + Grade Pay of Rs.2000/- be reduced to the stage of Rs.7830/- + Grade Pay Rs.2,000/- in the pay band of Rs.5200 - 20200 + Grade Pay of Rs.2000/- for a period of 36 (Thirty Six) months w.e.f. 01.09.2014 without cumulative effect. The official will earn increments during the period of reduction."

7. The order of the Disciplinary Authority was not questioned by the Applicant either before the Department or before the Tribunal, but the decision of the Appellate Authority dated 20.02.2015 was questioned, wherein, apart from exercising the powers conferred under Rule 29 (1) (d) of the Central Civil Services / Classification, Control and Appeal) Rules, 1965 and enabling the Disciplinary Authority to proceed under the provision of Rule 14 of the CCS (CCA) Rules, 1965 for a major misconduct said to have been committed by the applicant, records were called for on receipt of the Enquiry Officer's report for

taking a decision. The contention of the Applicant / contesting 2nd Respondent herein is that once a decision was taken by the Appellate Authority to remit the matter to the Disciplinary Authority to proceed for a major misconduct, it is for the Disciplinary Authority to get the Enquiry officer's report and take a decision and not by the Appellate Authority, even though he has got powers to independently exercise the same after calling for the entire records. Once the powers have been exercised to remit the matter, he cannot call for the report from the Enquiry Officer directly to take a decision. He would further submit that Rule 29 (1) (d) of the CCS (CCA) Rules, 1965 has been referred to in the order dated 20.02.2015 and the relevant paragraph is extracted below:-

"Now, Therefore the undersigned in exercise of the powers conferred under Rule 29(1) (d) of the Central Civil Services/ Classification, Control and Appeal) Rules, 1965 remits the case to the SPOs, Kumbakonam Division, Kumbakonam for conducting detailed inquiry under the provision of Rule 14 of the CCS (CCA) Rules, 1965 and submitting the records on receipt of IO report.".

The said provision will not give enormous powers both to conduct enquiry as well as to call for remarks on the Inquiry Officer's report to take a decision, as it will certainly be a double-edged weapon and that the rights to approach the Appellate Authority, in case a wrong decision is taken by the Disciplinary Authority, will get diluted. The Applicant, who is the second respondent would submit that after the order of the Tribunal, enquiry has been conducted and that the Appellate Authority has got wide powers to revise and review the order in terms of Rule 29 (1) (v) is extracted as below:-

"may at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary and may -

(a) confirm, modify or set aside the order,

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to

make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit."

8. However, the party will have to be given an opportunity while reviewing or revising the order of enhancing the punishment. After hearing the parties, we are in entire agreement with the order of the Tribunal, by which the matter has been remitted to the Disciplinary Authority, who alone is empowered to conduct enquiry and review the Inquiry Officer's report, call for the comments on the Enquiry Officer's report from the applicant and thereafter, take a decision with regard to the punishment that may be imposed, while exercising the powers under Rule 14. The Appellate Authority, at this stage cannot call for the Inquiry Officer's report, as he has not exercised the powers to review as above. At this juncture, Mr. Malaisamy, learned counsel appearing for the second respondent submitted that the Applicant has suffered punishment and the period is already over, due to the pendency of the matter before the Tribunal and this Court and therefore, the matter could not be proceeded with rapidly to attain finality. In case the Appellate Authority comes to a different conclusion either charges are not proved or that the Applicant must be imposed with a major punishment, the original order passed by the Disciplinary Authority automatically vanishes, and that he will be entitled to all the benefits that has been deprived by the original order of the Appellate Authority, even though the applicant may or may not suffer a major punishment. Since the matter is subjudice before the Disciplinary Authority, we expect the Disciplinary Authority to conclude the proceedings within a period of three months from the date of receipt of a copy of this order after affording an opportunity to the Applicant / 2nd respondent herein and decision may be taken. Any observation made touching upon the merits of the matter will have no bar and it is for the Authorities to decide independently de hors the observation made in this order.

9. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dpq

To:

The Registrar,
The Central Administrative Tribunal
Madras High Court,
Chennai 600 104.

+1cc to M/s.M.R.Murugesan, Advocate, S.R.No.24956
+1cc to M/s.R.Malaichamy, Advocate, S.R.No.25224

W.P.No.5368 of 2019
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SSN(CO)
SB(13/07/2022)