

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4372 of 2018

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Bijendra Kumar Son of Late Yoganand Mishra, Resident of Village P.O.-
Laxmipur, Police Station- Khajauli, District- Madhubani.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Chief Post Master General, Bihar, Patna.
3. The Director of Postal Services H.Q., O/C Chief Post Master General, Bihar, Patna.
4. The Post Master General, Northern Region, Muzaffarpur.
5. The Director, Postal Services N, O/o the Post Master General, Northern Region, Muzaffarpur.
6. The Superintendent of Post Offices, Madhubani Division, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Choudhary, Advocate Mr. Shailendra Kumar Jha, Advocate
For the U.O.I.	:	Dr. K.N. Singh Additional S.G. Mrs. Kanak Verma, C.G.C.
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 ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-01-2023

Pursuant to the earlier order Mr. Mahesh Pd. Deo,
SPOs, Madhubani and Mr. Ranjay Kumar Singh, Assistant
Director, (Establishment and Legal) O/o The Chief Postmaster
General, Bihar Circle, Patna are present in the Court.

2. In the instant petition the petitioner has assailed
the order of the Central Administrative Tribunal, Patna Bench
Patna (in short CAT) dated 20.07.2017 passed in O.A. No.



050/00840/2014 (Annexure 15).

3. Brief facts of the case are that the petitioner, while working as Gramin Dak Sevak (for short 'GDS') was charge-sheeted in a departmental enquiry on 02.02.2007. Enquiring Authority has opined that charges levelled against the petitioner were not proved. On receipt of Enquiring Officer's report, the Disciplinary Authority disagreed with the Enquiring Officer's report and proceeded to issue a show-cause notice asking the petitioner's explanation. The petitioner submitted his explanation but it was not to the satisfaction of the Disciplinary Authority. Thereafter, the Disciplinary Authority proceeded to impose the penalty of removal from service on 14.05.2009 on the petitioner. It was the subject matter of appeal and it was rejected on 19.08.2010. He has invoked remedy under Section 19 of the Central Administrative Tribunal Act, 1985 by filing OA No. 185 of 2010. It was disposed of while directing the petitioner to file a revision. The petitioner had filed a revision and it was rejected on 31.01.2012. The petitioner is stated to have filed one more O.A. No. 262 of 2012 dated 30.05.2014 and it was decided on 30.05.2014 in which the matter was remanded to the Reviewing Authority. Accordingly, the Reviewing Authority



proceeded to pass order on 15.09.2014 in rejecting the petitioner's claim. Still aggrieved by the decision of the respondent, petitioner invoked remedy before the CAT in filing OA No. 050/00840/2014 and it was decided on 20.07.2017 against the petitioner. Hence the present petition.

4. Learned counsel for the petitioner submitted that the Disciplinary Authority while disagreeing with the Enquiring Officer's report has not considered petitioner's explanation. It is further submitted that Disciplinary Authority has not been empowered to disagree with the Enquiring Officer's report in the Rules Called Department of Posts, (Conduct and Employees) Rules 2001 (for short Rules, 2001) with reference to Rule 10 of Rules 2001 in the result all the consequential orders passed by the Disciplinary Authority, Appellate Authority, Revisional Authority and order of the Tribunal are liable to be set aside on the legal issue that Disciplinary Authority is not empowered to disagree with the Enquiring Officer's report and proceed further in the matter.

5. On the other hand, learned counsel for the respondent Dr. K.N. Singh, Additional S.G. assisted by Mrs. Kanak Verma, C.G.C. , submitted that there is no infirmity in the enquiry proceedings and further the petitioner has admitted on



two occasions in respect of alleged charge. It is further submitted that Disciplinary Authority was not satisfied with the Enquiring Officer's report and disagreed with the Enquiring Officer's report and proceeded to issue a show-cause notice and obtained explanation from the petitioner and proceeded to impose the penalty of removal from service while invoking Rule 15 of the Central Civil Service (CCA) Rules, 1965. Hence, no inference is called for in so far as order of the CAT dated 28.07.2017 passed in OA No. 050/00840/2014.

6. Heard learned counsel for the respective parties.

7. In the light of various Apex Court decisions we are not in a position to re-appreciate evidence in the disciplinary proceedings & only procedural lapses or any violation of rules Tribunals and Courts can interfere insofar as disciplinary proceedings matters are concerned. In the present case learned counsel for the petitioner submitted that Disciplinary Authority has exceeded his jurisdiction on receipt of Enquiring Officer's report while importing Central Civil Service (CCA) Rules 1965, in particular, Rule 15 of the CCA Rules, 1965. The aforesaid issue is required to be taken note of. It is undisputed that the petitioner is a Gramin Dak



Sevak and he is governed by Rules 2001. Rule 2 of Rules 2001 reads as under:

2. Application

These rules shall apply to Sevaks of the Department of Posts, Ministry of Communications, Government of India.”

8. Perusal of the Rules 2001 it is evident that Central Government Servants (CCA) Rules, 1965 (for short Rules, 1965) have not been adopted to GDS. In other words, “Rules 1965” is applicable to Central Government servants. GDS post is not a Central Government servant post so as to import provisions of (CCA) Rules, 1965 to the case in hand (GDS). Therefore, the Disciplinary Authority has committed error in invoking Rule 15 of Rules 1965 instead of restricting to Rules 2001. In Rules 2001, there is no provision for the Disciplinary Authority to disagree with the Enquiring Officer’s report and proceed in the matter. This is legal lacuna which cannot be rectified.

9. The petitioner has made out a prima-facie case so as to interfere with the orders of the Disciplinary, Appellate, Revisional Authorities and CAT order dated 14.05.2009, 19.08.2010, 22.09.2010 and 30.05.2014, respectively. They are



hereby set aside, the matter is remanded to the Disciplinary Authority to pass a fresh order from the defective stage, namely, on receipt of the Enquiring Officer's report in terms of Rule 10 of Rules 2001. The above exercise shall be completed within a period of three months from the date of receipt of this order.

10. The concerned authority is hereby directed to regulate the intervening period from 14.05.2009 to till passing of afresh order in the disciplinary proceedings as suspension or duty and extend all monetary and service benefits, in the light of *Managing Director, ECIL V. B Karunakar*, reported in (1993) 4 SCC 727, read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others*, reported in (2011) 5 SCC 142, paragraphs 47 to 50, reads as under:-

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam v. Presiding Officer [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC633], Punjab Dairy Development Corpn.



Ltd. v. Kala Singh [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and Graphite India Ltd. vs. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126: AIR 2009 SC 161], this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is



reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC3018], Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC(L&S) 372].

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”



11. The writ petition is allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

himanshu/daya

AFR/NAFR	
CAV DATE	NA
Uploading Date	23.01.2023
Transmission Date	

