IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16875 of 2023

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1. The Union of India Through the Secretary, Department of Posts, Government of India, Sansad Marg, Dak Bhawan, New Delhi-110001.
2. The Director General, Department of Posts, Sansad Marg, Dak Bhawan, New Delhi-110001.
3. The Chief Postmaster General, Bihar Circle, Meghdoot Bhawan, Patna-800001.
4. The Director of Postal Services, Central Region, Meghdoot Bhawan, Patna-800001.
5. The Superintendent of Post Offices, Vaishali Division, Hazipur, PIN 844101.

... ... Petitioners

Versus

Krishna Kumar Singh Son of Late Gaya Prasad Singh, Resident of Village and Post Office- Ekwana, District-Bhojpur (Bihar) Pin Code-802311.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar Sinha
For the Respondent/s : Mr. Om Prakash Singh

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-08-2024

In the instant petition, petitioners-Postal Department have assailed the order of the CAT dated 11.01.2023.

2. Respondent - Krishna Kumar Singh, while working as Supervisor, SBCO, Hajipur Head Post-office, there were certain alleged allegations relating to misutilization of the department money to the tune of Rs. 64,61,644/-. In this regard, respondent was subjected to departmental inquiry and proceeded to impose the penalty of recovery of Rs. 3,50,000/- in 36 equal installments from the salary of the Respondent and withholding of his increment for six months without cumulative effect was passed by the Superintendent of Post Office, Vaishali Division on 29.05.2018, which was affirmed by the Appellate Authority resulted in filing of OA/050/00851 of 2018. OA was allowed, however, in para-9 and 13, the following observations have been made:-

> *"9. Counsel for respondents Shri B. Pandey argued that applicant working as Supervisor, SBCO was responsible for supervising banking transactions at Bhagwanpur SO including issuance of KVP, NSC etc. The applicant did not exercise proper check on various transactions of the saving accounts of the Bhagwanpur SO. The applicant had joined as Supervisor SBCO, Hajipur on 01.08.2016 and the fraud to the tune of Rs. 64,61,644/- took place during the period of his supervision. Despite repeated queries, counsel for respondents could not clarify how they fixed the liability of applicant at Rs. 3,50,000/-.*
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> *13. In the instant case, L/C for respondents could not clarify how they reached the figure of Rs. 3,50,000/- for recovery from applicant. The disciplinary authority was required to correctly and realistically assess the*

contributory negligence on the post of applicant. There was no allegation of applicant's direct involvement in the fraud or even of colluding with the staff of Bhagwanpur SO. The applicant's contribution to the fraud could be at the best on account of lack of supervision and failure to perform the assigned duties. As seen in para 11 and 12 above, coordinate benches of the Tribunal have held that if an official is not directly involved in a fraud committed by other persons, he cannot be held responsible for the said fraud and no recovery cannot be ordered from his pay."

3. We *prima facie* found that no interference was warranted. To that effect, on 07.05.2024 we have passed the following order:-

"Learned counsel for the petitioners is hereby directed to secure original records relating to initiation of inquiry for imposition of minor penalty read with relevant material information, so as to how the Disciplinary Authority has come to the conclusion that there is a loss of Rs. 3,50,000/- and the same has been order to be recovered in thirty six installments, when the alleged charge is for a loss of Rs. 92,75,344/-.

2. Re-list this matter on 25.06.2024."

4. Today, learned counsel for the petitioners have admitted that charge is in respect of Rs. 92,75,344/- and how the loss has been determined at Rs. 3,50,000/- so as to recover the same from the Respondent. In other words, defective inquiry has been held by the petitioners against the Respondent.

5. Taking note of these dates and events, the Tribunal should have remanded the matter to the disciplinary authority to commence inquiry from the defective stage in view of the fact that there are financial loss to the petitioners' department.

6. Hon'ble Supreme Court in the case of ***ECIL vs. B. Karunakaran*** reported in ***(1993) 4 SCC 727*** and ***Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors.*** reported in ***(2011) 5 SCC 142***. Paragraphs 46 to 50 reads as under:-

> *"46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of "no work-no pay". The delinquent had been practising privately, i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the*

conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

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, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.

48. In ECIL v. B. Karunakar, 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 , Akola Taluka Education Society v. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale.

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."*

7. The same has been reiterated in the case of ***State of Uttar Pradesh & Ors. vs. Prabhat Kumar*** reported in ***2022 Live Law SC 736.*** The overall principle laid down in the aforementioned decisions are that if there are any financial loss cause to the department/organization, in that event, departmental inquiry is to be treated to have been quashed on technicality. In such circumstances, the matter is required to be remanded to the disciplinary authority to commence the inquiry from the defective stage. The aforementioned principle is aptly applicable to the case in hand.

8. Therefore, order of the Tribunal is modified to the following effect. The disciplinary authority is hereby directed to commence the inquiry from the defective stage and complete the inquiry within a period of 06 months from the date of receipt of this order, failing which inquiry to be continued from the defective stage stands terminated for the reasons that Respondent is due for retirement shortly. The Respondent is hereby directed to cooperate in the departmental inquiry. The petitioners are hereby directed to refund the recovered amount within a period of 04 weeks, failing which Respondent is entitled to interest at the rate of 8% per annum on the recovered amount.

9. With the above observation, the Writ petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2024
Transmission Date	NA