

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/915/2011**

Jabalpur, this Thursday, the 09th day of January, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Kailash Puri Goswami, S/o Late Shri Bishwambar Puri Goswami,
 aged about 60 years, R/o Village / PO Palkhuri, Keymore, District
 Katni – 483880 (MP) -Applicant

(By Advocate – Shri Vijay Tripathi)

V e r s u s

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Parliament Street, New Delhi 110001.
2. Chief Post Master General, M.P. Circle, Hoshangabad Road, Dak Bhawan, Bhopal – 462012.
3. Director, Postal Services, Indore Region, Indore – 452001 (MP).
4. Senior Superintendent of Post Offices, Jabalpur Division, Jabalpur (MP) – 482001 - Respondents

(By Advocate – Shri A.P. Khare)

(Date of reserving order : 13.02.2019)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the order dated 14.06.2010
 (Annexure A-1) passed by the Disciplinary Authority imposing the

punishment of compulsory retirement of service. He is also challenging the order dated 29.03.2011 (Annexure A-2) of the Appellate Authority, whereby his appeal against the said punishment order has been rejected.

2. The applicant has sought for the following reliefs:

“8.(i) Summon the entire relevant record from the respondents for its kind perusal;
(ii) Set aside the order dated 14.06.2010 **Annexure-A/1** and 29.03.2011 **Annexure A/2**.
(iii) Direct the respondents to reinstate the applicant with all consequential benefit as if the impugned orders are never passed.
(iv) Any other order/direction may also be passed.
(v) Award cost of the litigation to the applicant.”

3. Brief facts of the case, as projected in the Original Application, are that the applicant was initially appointed on 06.03.1978 as Group-D employee in the Postal Department. Thereafter, he was promoted as Postman on 07.07.1979 and Male Overseer on 07.04.1997. While working as Male Overseer, a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued to the applicant on 09.02.2005 (Annexure A-3) alleging that he has flouted the order of his superior in not delivering the letter issued by Circle Office Raipur to Shri Murari Lal Rowtel, Branch

Postmaster, Piparia Kalan (Barhi). The applicant denied the charges levelled against him.

3.1 The Disciplinary Authority proceeded with the enquiry and one Shri R.K. Agrawal, Assistant Superintendent, Post Office, Jabalpur was appointed as Inquiry Officer and Shri S.K. Jain as Presenting Officer. During the course of departmental enquiry, the applicant has categorically stated that he had not flouted the orders of his superior. After recording the statements of the prosecution and defence witnesses, the Presenting Officer submitted his brief. The applicant has also submitted his defence brief on 23.02.2010 (Annexure A-6). The Inquiry Officer submitted his report to the Disciplinary Authority (Annexure A-7) and has proved the allegations of the chargesheet against the applicant. The applicant, on receiving the inquiry report, preferred a representation on 04.05.2010 (Annexure A-8). However, the Disciplinary Authority, without considering the representation of the applicant, has passed an order dated 14.06.2010 (Annexure A-1), whereby the applicant has been compulsory retired from service. The applicant preferred an appeal on 19.07.2010 (Annexure A-9).

3.2 During the pendency of the appeal, the applicant preferred Original Application No.232/2011 before this Tribunal, which was

disposed of on 24.03.2011 (Annexure A-10) with a direction to the Appellate Authority to decide the appeal of the applicant within 90 days. The Appellate Authority, vide order dated 29.03.2011 (Annexure A-2) has rejected the appeal, without considering the grounds raised by the applicant in his appeal. Hence, this Original Application has been filed.

4. The main grounds for challenging the impugned orders of punishment are that during the course of departmental enquiry, the prosecution witness Shri P.L. Thakur had accepted that the applicant had gone to Piparia Kala Branch Post Office on 19.07.2004 to serve the order of the Circle Office, Raipur to Shri Murarilal Rowtel. Since Shri Rowtel was not available at Branch Post Office, no charge of insubordination can be made out against the applicant. Further, the applicant has produced four witnesses including himself during the course of enquiry, however, the statements of defence witnesses have been totally ignored by the Inquiry Officer in his report. It has also been submitted that the punishment imposed by the Disciplinary Authority is extremely harsh, excessive and disproportionate to the alleged misconduct. The order of the Appellate Authority is a non speaking order and without application of mind.

5. In their reply, the respondents have submitted that while working as Mail Overseer at Katni, a letter dated 07.07.2004 issued by Circle Office Raipur was required to deliver to Shri Murari Lal Rowtel, Branch Postmaster, Piparia Kalan, Barhi. The said letter was handed over to applicant on 19.07.2004 to deliver to Shri Murari Lal with the direction to relieve him from duty as the said letter was related to cancellation of appointment of Shri Murari Lal. But the applicant failed to do so and flouted the orders of his superior. Further, on 30.07.2004, the applicant visited Piparia Kalan, Barhi and handed over the charge of Branch Post Master to Shri Murari Lal Rowtel, who was on leave. Therefore, a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was served to the applicant. The Inquiry Officer has submitted his report to the Disciplinary Authority on 12.04.2010 and after affording due opportunity to the applicant, the Disciplinary Authority has passed the order dated 14.06.2010 imposing punishment of compulsory retirement from service.

5.1 It has been further submitted by the respondents that the Appellate Authority carefully considered all the aspects of the inquiry proceedings and has rejected the appeal vide order dated 29.03.2011. There was no denial of reasonable opportunity or

violation of principles of natural justice at any stage of proceeding.

The enquiry was conducted in accordance with rule and the punishment was awarded based on the evidence on record.

6. Heard learned counsel for the parties and perused the pleadings and documents available on record.

7. From the pleadings it is clear that the only charge of insubordination has been framed and leveled against the applicant, which can be seen from Article-I of the charges that the applicant did not deliver the letter issued by the Circle Office Raipur dated 07.07.2004 to Shri Murari Lal Rowtel, Branch Postmaster, Piparia Kalan (Barhi, which was handed over to the applicant on 19.07.2004 which was regarding cancellation of appointment of Shri Murari Lal Rowtel. It has been further mentioned in the Article of Charge that on 30.07.2004, the applicant pressurized Shri Ram Saran Tiwari to hand over the charge of Branch Post Master to Shri Murari Lal.

8. It is the contention of the applicant that immediately after receiving the order of his superior, he went to Piparia Kala, Barhi on 19.07.2004 to serve the order. However, the same could not be served as Shri Murari Lal was on leave till 30.07.2004 due to

sickness of his wife. This fact has also been established during the course of departmental enquiry, wherein the prosecution witness Shri P.L. Thakur has accepted that the applicant had gone to Piparia Kala Branch Post Office on 19.07.2004 to serve the order. A copy of the leave application of Shri Murari Lal has also been filed as Annexure A-4, which shows that he was on leave from 20.07.2004 to 29.07.2004. Thus, he has not flouted the order of his superior, it has been contended.

9. Annexure A-7 is the copy of inquiry report, which itself shows that a detailed enquiry was conducted into the matter. In page 11 & 12 of the inquiry report (page 56 & 57 of the Paper Book), the Inquiry Officer has concluded as under:

“7—निष्कर्ष—यह सत्य है कि दिनांक 19.7.04 को श्री मुरारी लाल रौतेल के अवकाश पर चले जाने के कारण परिमण्डल कार्यालय रायपुर का ज्ञापन दिनांक 7.7.04 श्री के पी गोस्वामी द्वारा श्री मुरारीलाल रौतेल को वितरित नहीं किया जा सका जिसकी रपट सहायक अधीक्षक डाकघर कटनी को 20.9.04 शाम को कटनी वापस आने पर दी गई थी। परन्तु जांच में प्रस्तुत अभिलेखीय साक्ष्यों एवं मौखिक साक्ष्यों से स्पष्ट होता है कि श्री के पी गोस्वामी डाकघर पिपरिया कला दिनांक 30.7.04 को गए थे एवं शाडाघर के कार्यभार के हस्तान्तरण के समय भी के पी गोस्वामी शाडाघर पिपरियाकला में उपस्थित थे एवं श्री राम सरोवर तिवारी के ऊपर दबाव डालकर शाडापाल का कार्यभार श्री मुरारीलाल रौतेल को दिलवाया था। अपनी डायरी में शाडाघर की तारीख छापमुहर नहीं लगवाया एवं शापोमा के हस्ताक्षर भी नहीं कराये। जैसा कि श्री मुरारीलाल रौतेल ने स्पष्ट किया है।

उक्त विवरणानुसार श्री के पी गोस्वामी तत्कालीन डाक अधिदर्शक कटनी प्रथम के विरुद्ध वरिष्ठ डाक अधीक्षक जबलपुर के ज्ञापन क. ए3 /पिपरिया कला/शाडापा/88/खण्ड II दि 9.2.05 के तहत लगाए गए आरोप को पूर्ण रूपेण सिद्ध होना पाता हूँ।”

9.1 Thus, the Inquiry Officer after considering the evidence adduced during the enquiry, found that the applicant is guilty of the charge levelled against him. The applicant was given ample opportunity to defend himself. It is only thereafter the enquiry officer proceeded to give his findings on the charge after considering the evidence adduced during the enquiry.

10. There is no dispute that the Tribunal in its judicial review is only to see whether the rules and procedure have been followed and the applicant has been given opportunity to defend himself after following the principles of natural justice. The truth and correctness of the charges and findings are not to be examined by the Tribunal. Law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in **B.C. Chaturvedi Vs. Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, wherein it has been observed as under :-

“(12). Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence....."

(13). *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

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(18)...*the disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, can not normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either*

directing the disciplinary authority/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof".

(emphasis supplied)

11. In the instant case we find that the applicant was given full opportunity to defend his case during the course of enquiry. The charges leveled against the applicant were proved during the course of enquiry. The applicant has not raised any issue about the competence of the authorities to hold enquiry. We find that principles of natural justice were duly complied with during the course of enquiry, in as much as after the enquiry officer submitted his report, a copy of the report was duly supplied to the applicant and after getting his reply, the disciplinary authority has passed the order. Thus, we do not find any illegality or irregularity in the impugned orders passed by the disciplinary as well as by the appellate authorities.

12. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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