

Central Administrative Tribunal, Principal Bench

O.A. No. 2566/2004

New Delhi this the 21st day of March, 2006

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Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Shri Chandrapal Singh
S/o Shri Amar Singh
Ex-ED Sub Postmaster Banel
District Bulandshahar (UP)

Residential Address

Village and Post – Banel
District Bulandshahar (UP). ...Applicant

By Advocate: Shri D.P. Sharma.

Versus

1. Union of India
through Secretary,
Ministry of Communication and I.T.,
Department of Posts,
Dak Bhawan – Sansad Marg,
New Delhi.
2. The Director Postal Services,
O/o the Postmaster General,
Agra Region, Agra.
3. The Senior Superintendent of Post offices,
Bulandshahar Division – Bulandshahar. ...Respondents

By Advocate: Shri R.N. Singh.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant, who was working as Extra Departmental Sub Post Master (EDSPM), Banel, has been dismissed from service in a disciplinary proceeding initiated against him under Rule 8 of EDA Agents (Conduct and Service) Rules, 1964. He has challenged the order of the disciplinary authority dated 24.2.1994 (Annexure A-1) whereby the penalty of dismissal from service was awarded and the order of the appellate authority dated 24.2.2003 (Annexure A-2) whereby the above order was confirmed in appeal.

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2. The applicant was served charge-memo on 27.1.1994 (Annexure A-3). The first charge against him was that while he was working as EDBPM, he changed the purchase application of NSC Regn. No.22 dated 2.7.1986 in which the name of the original nominee was also changed with the name of another person. The second charge was that a sum of Rs.1,000/- deposited by the account holder of S.B. A/c No. 7600308 on 9.1.1993 was misappropriated by him and no entry thereof was recorded in the departmental record. He participated in the enquiry proceedings. On conclusion thereof, the Inquiry Officer submitted his report dated 20.1.1995 (Annexure A-5) holding that both the charges have been proved against the applicant. The disciplinary authority after taking into consideration the representation of the applicant, agreed with the findings of the inquiring authority and imposed the penalty as aforesaid. The appellate authority affirmed the order of the disciplinary authority and rejected the appeal.

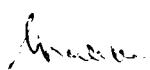
3. The applicant has assailed the penalty orders on the ground that Inquiry Officer did not allow him sufficient time to submit the written brief of his submission and taking them into consideration before recording his finding; the disciplinary authority did not take into consideration the defence of the respondent; the punishment is not commensurate to the charges and has violated the principles of natural justice; the orders of the disciplinary and appellate authorities are non-speaking; and lastly the appeal was decided more than 8 years of its submission, so the delay has denied the applicant justice.

4. The respondents in the counter affidavit have traversed the allegations of the applicant. It is submitted that the applicant had not submitted the written brief of his submission in time and that he had also not filed any appeal and it was only after he filed the OA 755/1997 that the appeal was decided by the appellate authority. It was denied that the impugned penalty orders suffered from any legal infirmity.

5. In the rejoinder the applicant reiterated his own case.

6. We have heard the learned counsel for the parties and perused the record.

7. The foremost submission of the learned counsel for the applicant is that the appeal was decided by the appellate authority after a delay of 8 years and for this reason alone the penalty order warranted interference by this Tribunal. To contra, it has been submitted on behalf of the respondents, that no appeal was filed by the applicant instead OA No. 755/1997 was filed by the applicant challenging the order of the disciplinary



authority and the said OA was disposed off by the Tribunal directing the respondents to decide the appeal within 3 months and in compliance with that order, the appellate authority has passed the order which is assailed in the present OA. The contention of the applicant that the appeal has not been decided despite lapse of a long period so the penalty order suffers from legal infirmity, did not find favour with this Tribunal and the disciplinary proceedings and the penalty order of the disciplinary authority was not set aside on this ground. Rather the Tribunal had directed the disciplinary authority as well as the appellate authority to decide the appeal of the applicant within 3 months. No delay for the period prior to the date of that order could be taken into consideration in the present proceeding. Even otherwise, no proof of filing of the appeal within prescribed limitation has been submitted in the present proceedings. Though it is stated that the order of the Tribunal is dated 14.8.1997 and the appeal is decided on 24.3.2003, i.e., beyond the period of 3 months of the order, but the copy of the order of this Tribunal has not been produced nor has the date on which the copy of the order was received by the appellate authority has been disclosed. As a result, it is not possible to hold that the appeal was not decided within 3 months as stipulated in the order of the Tribunal. This contention of the applicant, therefore, is devoid of any merit.

8. The second contention of the applicant is that the applicant and the Presenting Officer were given 3 days' time each to submit their written submissions from 30.12.1994. The Presenting Officer submitted his synopsis on 10.1.1995, which was received by the applicant on 12.1.1995, but without allowing sufficient time to the applicant to submit his written synopsis, the Inquiry Officer had submitted his report on 20.1.1995. As per the submissions of the learned counsel for the applicant also, the enquiry authority had waited for 8 days to the submission of the written synopsis by the applicant. It is not understood how the applicant could say that he was not given sufficient time to file the synopsis. If he wanted some more time, he could have approached the Inquiry Officer. There is no allegation that he ever approached the Inquiry Officer for allowing him some more time to submit the written synopsis. The second ground as such also does not have any merit.

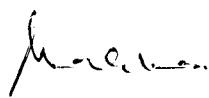
9. It is also argued by the learned counsel for the applicant that the allegation against the applicant was that he had changed the purchase form of the NSC with the name of the

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original nominee in the replaced form. According to the learned counsel if the purchase application is lost, the Post Master is authorized to obtain a duplicate form from the depositor and place it in the guard file. He also submitted that the applicant had right to change the nominee at any time. It is also stated that one of the son-in-law of the deceased certificate holder had put forth his claim to the money on the ground that he was the nominee in the form, but the original nominee was Smt. Dropdi Devi d/o of Late Shri Chaidda Lal Sharma holder of certificate No. SB-8/123/2005-06, who is reported to have died on 25.7.88, and the amount has been released in her favour on 6.10.2005. He has not been able to show to us that it is a case of no evidence and the findings recorded by the Inquiry Officer, the disciplinary authority or the appellate authority are not based on the evidence produced by the department and the applicant in the proceeding. The Tribunal is not an appellate authority to reconsider and reappreciate the evidence and come to its own conclusion.

10. Similarly, in regard to Article No.2 of the charge, i.e., misappropriation of the amount of Rs.1,000/- deposited by the S.B. Account holder, it is strenuously argued that there is no evidence on record to prove it. It is submitted that the pass book of the account holder had been sent to the Head Post Office and there was no entry in the record about deposit of money. It is, therefore, argued that the finding on this charge is also not based on the evidence on record. However, the learned counsel for the applicant has not been able to satisfy us that there was no evidence material or circumstantial before the Inquiry Officer and the disciplinary authority to hold that charge No.2 has been proved against the applicant. As observed above, the Tribunal cannot appreciate or reappreciate the evidence or consider the adequacy or inadequacy of the evidence produced in the department proceedings. He has also not been able to show that any of the findings of any of the two disciplinary authorities is perverse or is for some extraneous considerations. This argument also, therefore, does not have any merit.

11. It has also been argued that the orders of the disciplinary authority and the appellate authority are not reasoned order. This contention is not tenable. A perusal of the orders of the disciplinary authority dated 24.2.1994 (Annexure A1) and the appellate authority dated 24.11.2003 (Annexure A-2) would show that each and every allegation made by the applicant has been taken into consideration by the authorities before



reaching to the conclusion and holding that the charges have been proved. We do not find any merit in this contention also.

12. In the OA it is alleged that the punishment awarded is not commensurate to the allegations in the charges proved but the learned counsel for the applicant did not argue that the penalty imposed is not commensurate to the proven charge or is shocking to the conscious of the Tribunal in the facts of the present case. The allegation against the applicant is that he had replaced a purchase form of certain certificate and that he had also misappropriated an amount deposited by the S.B. Account holder. These are serious charges as the applicant was working as Extra Departmental Sub Post Master.

13. It is now well settled that the Tribunal in exercise of the power of judicial review does not review the decision but reviews the manner in which the decision has been arrived at. The object is to find whether the applicant has been given a fair hearing. The Tribunal does not act as an appellate court to appreciate or reappreciate the evidence or consider the adequacy or inadequacy of the evidence produced in the departmental proceedings. It cannot examine the proceedings and the orders of the disciplinary authority in order to reach its own conclusion. Its power is limited. If there is material irregularity in the proceeding that has resulted in prejudice to the delinquent official in submission of his defence in the proceeding or if the finding of the authorities is not based on any evidence, or it is perverse or it has been recorded on the dictates of the superior authority or it has taken into consideration some extraneous evidence or material the Tribunal may interfere with the order. None of the situation exists in the present proceeding.

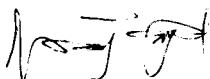
14. The Hon'ble Supreme Court in B.C. Chaturvedi Vs. U.O.I. & Others (1995) 6 SCC 749 has succinctly laid down the parameters of judicial review of the Tribunal in para 12 and 13 as under:-

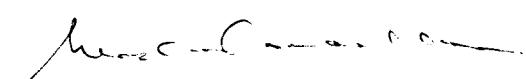
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“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry 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 proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, 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* this Court held at p.728 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.”

15. Applying the aforesaid principles of law on the facts of the present case, we do not find merit in the OA. Accordingly, the OA is dismissed leaving the parties to bear their own costs.


(N.D. Dayal)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh