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Central Administrative Tribunal
Principal Bench

O.A.No.322/2004

New Delhi, this the 24th day of April 2005

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S. K. Naik, Member (A)

Shri P.N. Sharma s/o Shri V.N. Sharma
Retd. Dy. Postmaster Agra-I

Residential Address:

151, Mahavir Nagar
Bhuteshwar, Mathura (UP)

..Applicant

(By Advocate: Shri D.P.Sharma)

Versus

1. Union of India
through Secretary
Ministry of Communication & IT
Department of Posts
Dak Bhawan, Snsad Marg, New Delhi
2. The Senior Superintendent Post Offices
Agra Division-Agra

..Respondents

(By Advocate: Shri S.M. Arif)

O R D E R

Shri S. K. Naik:

Applicant – Shri P.N. Sharma – was served with a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 on 17.5.2000. Three different articles of charge, as stated in the Memorandum, were issued by the respondents (Annexure A-2). On the denial of the charges against him, the respondents had appointed an inquiry officer vide order dated 8.8.2000. Thereafter, the inquiry officer was changed thrice on one ground or the other mostly on account of transfer of the officers. In this process, the inquiry was delayed and in the meantime, the applicant superannuated on 31.8.2001. Thereafter, the incomplete inquiry was converted under Rule 9 of CCS (Pension) Rules, 1972 and even thereafter when the respondents, as alleged by the applicant, delayed the matter further, he filed OA-643/2002 in the Tribunal. The Tribunal, vide its order dated 16.12.2003 directed the respondents to conclude the case within six months. The respondents, however, had sought extension of time by filing MA-23/2003, which was allowed by the Tribunal by

order dated 7.3.2003. Thereafter, the respondents have passed the final order, which is the subject matter of challenge before the Tribunal.

2. Learned counsel for applicant has assailed the impugned order on the ground that the disciplinary authority has failed to pass a self-contained, speaking and reasoned order, which is violative of the principles of law laid down by the Hon'ble Supreme Court in the case of **Mahavir Prasad v. State of UP**, AIR 1970 SC 1302 and Government of India's instructions below Rule 15 of CCS (CCA) Rules, 1965.

3. The second important limb of the argument of the learned counsel is that he was not provided with the advice of the Union Public Service Commission (UPSC) before the final order of punishment was passed but it was supplied only along with the punishment order. The applicant, therefore, was not able to make an effective representation before the disciplinary authority as regards the punishment awarded. This is an important ingredient, which has severely prejudiced the cause of the applicant and would be sufficient for the Tribunal to set aside the punishment order on this count alone. The learned counsel has relied upon the decisions of the Hon'ble Apex Court in **Kalyani Sharp India Ltd. v. Labour Court No.1**, 2002 SCC (L&S) 1101 and in C.A. No.642/2004, wherein under similar circumstances, when the opinion of the UPSC had not been communicated to the appellant in that case before he was heard by the disciplinary authority, the Tribunal in OA-1154/2002 had held that there was violation of the principles of natural justice. The order of the Tribunal had thereafter been challenged before the High Court of Delhi, who had interfered with the same but in the CA, referred to above, the Apex Court had upheld the view taken by the Tribunal and had stated that the High Court was not justified in interfering with the order. The learned counsel has also referred to a number of other citations, in particular, **Union of India v. Charanjit Khurana** (CWP-69/2001) decided on 7.1.2002, **ECIL v. B. Karunakar**, JT 1993 (5) SC 1, etc.

4. He has further submitted that there has been no application of mind by the disciplinary authority and the punishment is merely based on the advice of the UPSC. This, the learned counsel contends, is violative of the principles of law laid down in the Apex Court's judgment in **Chairman Managing Director, United Commercial**

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Bank v. P.C. Kakkar, AISLJ (V) 2003 (2) 66. He further contends that the punishment awarded is not judicious.

5. Yet another line of attack of the learned counsel for applicant is that the provisions of Rule 9 of CCS (Pension) Rules provides for specific circumstances under which the President can exercise his right of withholding or withdrawing the pension or a part thereof and in that a specific finding has to be given that the misconduct and the negligence has to be of a grave nature. In the case in hand, the respondents themselves admit that as per UPSC's opinion, the applicant was not directly involved in the fraud but he has been held to be responsible for contributory negligence. This, the learned counsel contends, cannot be held to be a grave misconduct. In support of his contention, he has also referred to the judgment of the Hon'ble Supreme Court in the case of **D.V. Kapoor v. Union of India**, AIR 1990 SC 1923.

6. Assailing the inquiry report, the learned counsel has contended that the inquiring authority has not complied with the principles of natural justice inasmuch as he has disallowed the additional documents demanded by the applicant vide Annexure A-5. The reasons for disallowing have not been indicated. The applicant, therefore, has been deprived of an opportunity of defence. Further, the documents mentioned at Sl. Nos. 9, 14 & 16, mentioned in Annexure A-4, were allowed but not summoned and obtained from the custodian of documents, which amounts to denial of an opportunity of defence violating the provisions of Article 311 (2) of the Constitution of India. He has further contended that two defence witnesses, namely, S/Shri S.P. Singh, Sub-Postmaster Fatehabad, Agra and Deoki Nandan, Postal Assistant were permitted by the inquiry officer but one of them, namely, S.P. Singh was dropped by the inquiry officer arbitrarily. His attendance was not procured through administrative authority, which has prejudiced his defence. He also finds fault with the inquiry report on the ground that S/Shri Prabhu Dayal, Assistant Postmaster, Agra Fort and V.V. Singh prosecution witnesses, who were directly related with the case, were not produced during the inquiry. On the other hand, their previous statements were exhibited by Shri R.N. Yadav as Annexure KA-18 and KA-19, which was against the rules and procedure. This has deprived the applicant of the opportunity to cross examine the material witnesses, and the documents could not have been taken



into consideration as they have been made exhibits to the inquiry report by the inquiring authority in an illegal manner. The learned counsel, therefore, submits that the order imposing a penalty of withholding of 25% of the monthly pension for a period of five years is illegal and needs to be set aside and quashed.

7. The respondents have contested the OA. They have filed their counter reply. Learned counsel appearing on behalf of the respondents has submitted that the applicant was involved in a case of fraudulent payment of bogus money orders and missing of money order paid vouchers in respect of MO charges during his tenure at Agra Fort Head Office during the year 1998. A fraud to the tune of Rs.14,40,000/- had come to light during the course of scrutiny and the lapses on part of the applicant were noticed. The applicant had failed to ensure timely submission of MO paid vouchers to his superior authority at Lucknow. Even though the case of missing of paid vouchers was brought to the notice of the applicant during duty hours, he failed to detain the concerned staff till the arrival of the inquiring authority. Further, the applicant did not take any precautionary measures for the safety of records, which facilitated the miscreant to steal the important records related to the case. Contrary to the rules and procedure, the applicant also allowed one B.B. Singh to work continuously as MO paid Assistant in that branch for a period of nearly two years, while he could not have been engaged beyond the leave period. The learned counsel has submitted that the hand of the applicant was clearly visible in the delay, which resulted into huge loss to the Government money and, therefore, he was proceeded against under Rule 14 of CCS (CCA) Rules.

8. The contention of the learned counsel for the applicant that there has been undue delay in the completion of the disciplinary proceedings, has been explained by the respondents by stating that while there has been delay, it was neither intentional nor intended to put the applicant in any disadvantage as the officers, who were appointed as inquiry officer and presenting officer from time to time, were shifted and transferred to various other places. Learned counsel has referred to the details of each and every officer appointed as inquiry officer and presenting officer and has contended that the delay was natural in the circumstances explained. In fact, the applicant had earlier agitated the matter of delay before the Tribunal and with the specific approval of the Tribunal to extend the time limit

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for completion of the inquiry, the respondents have now finally passed the impugned order.

9. The learned counsel has further argued that the applicant himself has also contributed to the delay inasmuch as on receipt of the charge sheet, when he was required only to state whether he accepted or denied the charge, he has also resorted to dilatory tactics by asking for the inspection and supply of documents, which were not relevant at that stage.

10. On the objections taken by the learned counsel for applicant on the order of disciplinary authority being non-reasoned and non-speaking, learned counsel for respondents has submitted that the disciplinary authority has carefully considered the facts of the case, circumstances and the evidence on record before passing the order dated 16.12.2003. According to the learned counsel, the order is self-contained, reasoned, speaking and self-explanatory and is in accordance with the rules.

11. On the point of non-communication of UPSC's advice before the final order, the respondents have submitted that it cannot be treated to be a serious *lacuna* since the applicant has not brought out as to how his case has been prejudiced by the non-receipt of UPSC's advice, which, in any case, has been supplied to him along with the final order.

12. Insofar as the respondents mechanically adhering to the UPSC in the award of punishment, the learned counsel has submitted that the disciplinary authority has applied its mind in the case and his order is not merely based on the advice of the UPSC. He has submitted that the UPSC being a recommendatory authority, it was open to the disciplinary authority to either accept their advice but the same has been done only after a proper appreciation of the evidence and the report of the inquiry officer.

13. With regard to the contention of the learned counsel that the negligence on part of the applicant is only contributory in nature as has been held by the UPSC and, therefore, there is no finding with regard to the misconduct being of a grave nature entailing withholding of a part of the pension of the applicant, the learned counsel has submitted that in the same very advice, the UPSC has held that "The charges established against the ex-official are grave

despite the fact that he was not directly involved in the fraud but his contributory negligence was responsible for the pecuniary loss caused to the Department". The President having considered the advice of the UPSC in toto has applied his judicious mind and, therefore, the applicant cannot pick only the contributory part of his negligence as opined by the UPSC and leave the finding of the charges being grave to the punishing authority. The learned counsel has further contended that the fact that the applicant allowed the engagement of his leave arrangement to continue for a period of two years against the rules and instructions cannot but be called a grave misconduct, specially when he had not only acted against the instructions but kept his superior authority in complete darkness about this arrangement. He has, therefore, submitted that it is wrong to say that there is neither grave misconduct nor negligence on the part of the applicant.

14. With regard to the number of infirmities, such as dropping S/Shri S.P. Singh, Sub-Postmaster Fatehabad, Agra from appearing as a defence witness and non-production of S/Shri Prabhu Dayal, Assistant Postmaster, Agra Fort and V.V. Singh prosecution witnesses and not permitting additional documents mentioned at Sl. Nos. 1, 2, 4, 6, 7, 10, 11 and 15, etc., the learned counsel for respondents has contended that these objections have been raised without any substance just to challenge the order of the disciplinary authority. He has submitted that the full procedure prescribed for holding a departmental inquiry, including full opportunity of defence to the applicant having been provided, it is not open for the applicant to agitate the same before the Tribunal in judicial review. These points had earlier been taken up before the appellate authority and the same having been duly considered, it cannot be agitated before the Tribunal, which can look into only legal infirmities and has to satisfy itself that the principle of natural justice has adequately been complied with. Since the preponderance of probability is the touchstone on which departmental proceedings have to be tested, the learned counsel has submitted that the minor technicalities even if they be there, cannot be the ground for interference by the Tribunal.

15. However, the learned counsel has offered the explanation that it was within the jurisdiction and competence of the inquiring authority to either allow the additional documents or to disallow after the application of mind as to whether the documents were relevant to

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the said proceedings. Referring to Annexure A-5, he has contended that the inquiry officer has clearly stated that only documents at Sl.No. 3, 5, 8, 9, 12, 13, 13(a), 14 and 16 were found proper. This clearly implies that the other documents were not found to be relevant by the inquiry officer.

16. With regard to the dropping of the defence witness, S.P. Singh, he has contended that the said witness was dropped for non-appearance and the said decision was taken in the presence of the applicant, who has also signed the order sheet. The applicant neither objected to the said decision nor insisted upon S.P. Singh being present on a future date. He, therefore, cannot raise this point now.

17. Insofar as non-appearance of Prabhu Dayal and V.V.Singh before the inquiry officer and their previous statements exhibited as KA-18 and KA-19 are concerned, the respondents have denied that their previous statements were got exhibited as KA-18 and KA-19 against the rules and procedure of the inquiry. Since these witnesses, despite the best efforts did not turn up after many summons and the inquiry had to be completed within a time frame, as directed by the Tribunal, they had to be dropped and there was nothing illegal about their earlier statements being produced by an official, who was conversant with their signatures etc. The learned counsel has, therefore, submitted that the complete procedure for holding of the departmental inquiry having been followed and the principle of natural justice fully complied with, there is no occasion for the Tribunal to interfere with the impugned orders and the OA be dismissed.

18. We have heard the learned counsel for the parties as also have perused the records of the case. While we are aware of limited role of this Tribunal in matters of judicial review, what has struck us in this case is the legal issue of the failure on part of the respondents to serve upon the applicant a copy of the advice of the UPSC prior to the imposition of the penalty of cut in pension. This is a pure question of law and does not require any probe.

19. The respondents admit that the advice of the UPSC was enclosed along with the final order of punishment and that the applicant had no occasion to submit his defence on the advice of the UPSC. While we do not find any substance/merit on the other grounds, such as undue delay and decision of the inquiry officer to disallow certain documents and dropping of some witnesses which

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are fully within the domain of the inquiring authority, which are in the nature of procedural inadequacies and infirmities and have not prejudiced the interest of the applicant in any manner; we are of the view that the impugned order has to be set aside purely on the legal infirmity that the applicant had not been provided with a copy of the advice of the UPSC prior to the imposition of the order of punishment. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **State Bank of India & others v. D.C. Aggarwal & another**, 1993 (2) SLJ 88 (SC) in which it has been held that:

“The disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself.”

20. The disciplinary authority in the instant case has heavily relied upon the opinion and advice of the UPSC. A copy of UPSC's advice was not supplied to the applicant before passing of the final order of punishment. Since the advice of the UPSC was prepared behind the back of the applicant and he was not aware of what material formed the basis of the advice of the UPSC, he had no opportunity to submit his defence before the disciplinary authority. The impugned orders, therefore, stand clearly vitiated.

21. In the total view of the facts and circumstances of the case, the impugned orders are, therefore, quashed and set aside. However, since the case is related to a huge monetary loss as a result of a fraud, we leave it open to the respondents to supply a copy of the advice/opinion of the UPSC to the applicant and give him an opportunity to submit his representation in the matter and thereafter pass an appropriate, well-reasoned, speaking and detailed order in this regard. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

22. The OA is *disposed of* in these terms. No costs.

Naik
(S. K. Naik)
Member (A)

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S. Raju
(Shanker Raju)
Member (J)