

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

...

Original Application No. 130 of 2001.

this the 20<sup>th</sup> day of January' 2005.

HON'BLE MR. A.K. BHATNAGAR, MEMBER(J)  
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

Paras Nath Dubey, S/o Sri H.C. Dubey, aged about 58 years,  
R/o Village & post Leduka District Jaunpur.

Applicant.

By Advocate : Sri O.P. Gupta.

Versus.

1. Superintendent of post offices, Jaunpur Division,  
Jaunpur.
2. Director, postal Services, Office of post Master  
General, Allahabad.
3. Union of India through Secretary Ministry of  
Communication, Government of India, New Delhi.

Respondents.

By Advocate : Sri Saumitra Singh.

O R D E R

BY S.C. CHAUBE, MEMBER(A)

The applicant has impugned punishment order dated 31.8.98/4.9.98 passed by the Superintendent of post offices, Jaunpur Division, Jaunpur and the appellate order dated 17.3.2000 removing him from service by the Director, postal Services, Office of the postmaster General, Allahabad.

2. Briefly, the facts of the applicant's case are that he was working as Assistant Treasurer (Stamps) at Jaunpur Head office during the period from 10.10.1991 to 9.10.1993. He was served with memo of charges on

*Sak.*

.. 2.12.1994 and after departmental enquiry, he was punished ~~by~~<sup>by</sup> by the respondent no.1 ~~from~~ the penalty of recovery of Rs.54000/- from the pay and reduction of pay in Time Scale from Rs.4600/- to Rs.4500/- w.e.f. 1.9.1998 for a period of three years and six months. He preferred an appeal on 21.10.1998 before the respondent no.2, who served show-cause notice dated 15.10.1999 on the applicant for enhancement of the above punishment to the penalty of removal from service. The respondent no.2 after considering the representation of the applicant, rejected the appeal and enhanced the punishment to removal from service vide appellate order dated 17.3.2000.

3. The applicant has contended that six charges levelled against him are almost similar in nature. While the applicant has been charged by article nos. 1,5 and 6 mainly for the failure to maintain the records relating to receipts, sale and supply of postage stamps and stationery, by Article 2 & 3, he has been alleged that he failed to check and verify the postage stamps and stationery and also did not account for postage stamps of Rs.1-/ and by article 4, the applicant has been charged for keeping the packets of stamps etc. in torn and insecure condition. Further, it has been contended by the applicant that the charge nos. 1 and 2 are partial/<sup>-ly</sup>proved and charge nos. 3,4,5 and 6 are fully proved; that in para 8 of the enquiry report, the Enquiry Officer has stated that no evidence has been received in this regard, therefore, the charges could not be proved fully, but are proved partially; that charge relating to Article nos. 3,4,5 and 6, the Enquiry Officer shifted the burden of dis-proving the charges on the shoulder of the applicant and held since the applicant could not dis-prove the charges, therefore, these charges are fully proved against the applicant; that it was the duty of the prosecution to prove the charges on the applicant,

but the Enquiry Officer acted illegally and reversed the gear back and threw the burden on the charged employee that he has to prove the charges and as per Enquiry Officer the applicant could not dis-proved; that finding of the Enquiry Officer is perverse with the evidence on record; that the disciplinary authority has not categorically stated any-where whether he dis-agreed with the findings of the Enquiry Officer for charges under article 1 & 2, <sup>as</sup> fully proved ; that no fresh opportunity was given to the applicant by the disciplinary authority to know the reasons for dis-agreement and also to file representation, if he wished to; that in the absence of any notice or opportunity to the applicant by the disciplinary authority on the point of dis-agreement, the findings of the disciplinary authority as well as punishment order, are wholly illegal and against the settled principle of law; that the appellate authority did not clarify in the show-cause notice why punishment is not commensurate to the gravity of offences; that no deficiency or illegality or mis-conduct has been observed during the inspection of the work of the applicant as A.T.R. (Stamps) at Head office, Jaunpur during the period from 10.10.91 to 9.10.93; that while deciding the appeal of the applicant, the appellate authority in his order <sup>has not</sup> taken <sup>up</sup> all points <sup>of</sup> for <sup>the</sup> his defence in <sup>but only</sup> his appeal and <sup>at least</sup> four points <sup>reply to</sup> in his show-cause ~~reply~~ dated 10.2.2000 and further rejected all the points without disclosing any reason; that the logic of appellate authority is not based on evidence on record, but is merely based on assumption and presumption. Accordingly, the applicant has pleaded that the punishment order as well as appellate order are wholly illegal and are liable to be quashed.

4. The respondents on the other hand, have contended that the applicant was posted as Assistant Treasurer (Stamps) in Head post Office, Jaunpur from 10.10.1991 to 9.10.1993.

*Shri Rajbhar*

After completion of his tenure, ~~he~~ was ordered to take-over the charge of the said post from the applicant positively on 9.10.1993 vide order dated 9.10.1993. Accordingly, one Sri pool Chand Rajbhar, P.A., approached the applicant on the same day i.e. on 9.10.1993 at 4.30 P.M. for taking over the charge and infact took over the charge from the applicant. As per the details mentioned in the Stamps Stock Register, the postal Stationary and postage stamps worth Rs. 27,46,879.60/- were lying in the balance of Jaunpur Head post office and it was, therefore, not practically possible for any oneto physically count and verify the entire stock within the time of one and half hours. It is stated that to meet the situation, the applicant requested Sri phool Chandra Rajbhar to sign the charge report, noting the details of the balance shown in the stamps register and assured him to get the physical verification of stock done on the next day. Accordingly Sri pool Chandra Rajbhar signed the charge report with details noted as per stock register of stamps in the afternoon of 9.10.1993, which was attested by the postmaster, Jaunpur. Thus, the charge was transferred to Sri phool Chandra Rajbhar by the applicant under the mutual understanding of actual physical verification of entire stock on the next day. It has been contended by the respondents that after handing over the charge, the applicant on one pretext or the other had tried to post-pone the verification of the stock and avoided the same on the ground of illness upto 15.10.1993. On 16.10.1993 Sri phool Chandra Rajbhar brought the matter to the notice of postmaster, Jaunpur through note dated 16.10.1993. The postmaster directed ~~for~~ <sup>by</sup> physical verification of the stock done with the help of the applicant, but the applicant instead of doing the verirification of stock, left the office leaving an application for one day C.L. and did not turn up <sup>for</sup> ~~to~~ duty again. It is further contended by the respondents that when the matter was brought

*Shri*



to the notice of Superintendent of post offices, Jaunpur, <sup>who</sup> directed all the S.D.Is and A.S.P.Os/ C.I to complete the verification. Accordingly the verification which started on 18.19.1993 was completed in due course.

5. The case of the respondents is that as a result of verification, a deficit of Rs.58,345.75/- was found besides several <sup>other</sup> ~~order~~ irregularities like non-filing of invoices received from CSD, Kanpur serially, sale of service postage stamps against cash instead of cheques, short accounting of invoices, not counting of sale value of service stamps daily in the post office Treasury, keeping torn stamps packets with short value in stock etc were also found against the applicant. The applicant was placed under suspension vide memo dated 21.10.1993 and disciplinary proceedings under rule 14 of the CCS (CCA) Rules were initiated against the applicant vide memo dated 1.2.1995. The Enquiry Officer after completion of enquiry, submitted his report on 14.5.1997. A copy of the enquiry report was sent to the applicant under registered A.D. It is further contended by the respondents that when the enquiry report was given to S.D.I. (P), Machchalisahar for delivery <sup>the applicant</sup> on the applicant, ~~but the later~~ after signing the receipt snatched the receipt from the hands of the S.D.I. (P) and asked the S.D.I. to come on 8.8.1997 for the purpose. Thus, the applicant <sup>has</sup> ~~is~~ mis-behaved while acknowledging <sup>receipt</sup> ~~of~~ the enquiry report. The respondents have further contended that the applicant did not submit any representation of his defence against the enquiry report. Accordingly, the disciplinary authority decided the matter and finalized the same and passed the impugned order imposing the penalty of recovery of Rs.54000/- from the pay of the applicant, besides reducing his pay from the stage of Rs.4600/- to Rs.4500/- for a period of 3 1/2 years. on the appeal preferred by the applicant, the appellate authority after considering the entire matter and looking to the gravity of the

mis-conduct committed by the applicant, issued show-cause to the applicant on 15.10.1999 proposing the penalty of removal from service. After considering the entire records and the representation of the applicant, the appellate authority passed the impugned order of removal from service. The respondents have further stated that the appellate order is well reasoned and speaking order and does not suffer from any illegality.

6. We have perused the pleadings and heard the counsel for the parties.

7. The learned counsel for the applicant has cited the decision of Chennai Bench of the Tribunal in O.A. no. 314 of 1999 in re. C.V. Anantharaghavan Vs. Union of India & Others, in which it was held that when show-cause notice issued by the Appellate authority does not mention the reasons for enhancement of penalty, there is denial of natural justice and consequently the same is to be quashed.

8. The learned counsel for the applicant has next cited the decision of Hon'ble Supreme Court in Civil Appeal no. 2508 of 1998 in Kailash Nath Gupta Vs. Enquiry Officer, Allahabad Bench & Others wherein it was held that the Court can direct reconsideration of case on the question of quantum of punishment, where punishment seems to be extreme.

9. The respondents have contended that the applicant was afforded every opportunity to present his case. It is stated that he has filed a representation before the disciplinary authority, who has duly considered the advanced pleas of the applicant. We are inclined to accept the contention of the respondents that the disciplinary authority had already informed the applicant vide letter dated 23.5.1997 that he dis-agreed with the findings of the Enquiry Officer and in the circumstances of the case

*Shank*

the charges levelled against the applicant were fully proved and thereafter the disciplinary authority imposed the penalty on the applicant. Thus, the contention of the applicant ~~is~~ that he was not given an opportunity to *for* defend his case, is not acceptable.

10. So far as the case of the appellate authority is concerned, the appellate authority is fully empowered to agree or not to agree with the punishment awarded by the disciplinary authority under Rule 27(2)(c)(i) of the CCS (CCA) Rules, 1965. It is matter of record that the applicant was afforded full opportunity to submit his defence representation, if any, with regard to proposed punishment by the appellate authority. The appellate authority, as contended by the respondents, has given due consideration to the entire record, the enquiry report, the punishment awarded by the disciplinary authority and the representation submitted by the applicant and thereafter passed the impugned order awarding the punishment of removal from service to the applicant. No malafide or violation of material rules of natural justice and procedure has come to our notice. Therefore, the cases cited by the learned counsel for the applicant do not render any help to ~~the~~ applicant.

11. This naturally bring us to the question of judicial review of administrative action. Reference may be made to the decision of Hon'ble Supreme Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra (JT 1991 (1) SC. 61 in which it was held that <sup>*the Court*</sup> in exercise of power of <sup>*Concluded*</sup> judicial review is not <sup>*for*</sup> with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was

*Shank*



*has* arrived at ~~judicial review~~. The apex court has further  
the Court  
held that/while exercising the power of judicial review  
must <sup>remain</sup> conscious of the fact that if the decision has been  
arrived at by the Administrative Authority after following  
the principles established by law and the rules of natural  
justice and the individual has received a fair treatment  
to meet the case against him, the Court cannot substitute  
its judgment for that of the Administrative Authority on  
a matter which fell squarely within the sphere of jurisdiction  
of that authority.

12. In view of the aforesaid discussions and the case  
law cited above, we are of the considered view that no  
judicial intervention is required. The O.A., which is  
devoid of merit, is, therefore, dismissed. No costs.

*Shank*  
MEMBER (A)

*Shank*  
MEMBER (J)

GIRISH/-