

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 20th day of March, 2008.

**HON'BLE MR. A. K. GAUR, MEMBER- J
HON'BLE MR. K. S. MENON, MEMBER- A.**

ORIGINAL APPLICATION NO. 1381 OF 2004

Raj Nath Prasad, Ex Assistant Post Master, P.A.C,
Ram Nagar, Varanasi, presently R/o House No. 236,
Mohalla- Eastern Bazar, Post Officer- Moghal Sarai,
Distt. Chandauli.

.....Applicant.

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1. Union of India through Postal Services Board,
New Delhi.
2. Post Master General, Allahabad Region,
Allahabad.
3. Director, Postal Services, Allahabad.
4. Senior Superintendent of Post Offices,
Varanasi East Division, Varanasi.

.....Respondents

Present for the Applicant:

Sri B.N. Singh

Present for the Respondents :

Sri Saumitra Singh

ORDER

BY HON'BLE MR. A.K. GAUR, J.M.

Through this Original Application, the applicant has prayed for
following relief(s): -

- i. to issue an order or direction in the nature of certiorari to
quash the order dated 15.06.2004 passed by respondent No.
2 (Annexure- 1 to the O.A) and order dated 25.09.2003

passed by respondent No. 3 (Annexure- 2) whereby the applicant has been removed from service from the post of Assistant Post Master at P.A.C, Ram Nagar, Varanasi ;

- ii. to issue a writ, order or direction in the nature of certiorari to quash the order dated 22.11.1999 passed by respondent No. 4 (Annexure- 3) whereby putting the applicant under deemed suspension inspite of setting aside the order of removal from service ;
- iii. to issue a writ, order or direction in the nature of mandamus commanding the respondent No. 4 to treat the applicant in continuous service since 10.11.1998 and pay the remuneration and other dues to the applicant admissible to him.

2. The grievance of the applicant in the instant case is that for fraudulent payment of N.S.Cs 7th issue, he was served with a charge sheet dated 18.01.1995 under rule 14 of CCS(CCA) Rules, 1965 and without giving him opportunity of hearing or furnishing the relied on documents during the enquiry proceedings, the Inquiry Officer completed the inquiry and based on the said inquiry report, the disciplinary authority has passed the order of removal from service on 30.09.1998. Aggrieved by the order dated 30.09.1998, the applicant preferred an appeal before the Director, Postal Service, Allahabad. As the appeal of the applicant could not be disposed of for long time, the applicant preferred Revision before the Postal Service Board and the Member of Postal Services Board, considering the revision of the applicant, vide order dated 03.11.1999 (Annexure- 3 to the O.A) set aside the order of disciplinary authority as well as the Appellate Authority , which was

passed on 25.01.1999 during the pendency of Revision. In pursuance of the order dated 03.11.1999, Senior Superintendent of Post Offices, East Division, Varanasi passed an order dated 10.11.1998 setting aside the order of removal from service dated 30.09.1998 with further direction to hold further inquiry in the matter under the provisions of CCS (CCA) rules, 1965 treating the applicant under deemed suspension. Under provision of rule (3) of Rule-10 of CCS (CCA) Rules, 1965, the applicant was also served with fresh charge sheet and regular Inquiry Officer was duly appointed to inquire in to the matter and Sri R.C. Shastri, Assistant Superintendent of Post Offices, Mughalsarai was listed as only witness to prove the charges against the applicant. The allegation against the applicant relates to payment of six monthly interest on 7th issue of six year N.S.Cs causing loss to the tune of Rs. 14,850/- to the department.

3. According to the applicant, during the enquiry proceedings, inspite of demand for certain documents as well as guard register of 7th issue of NSC, same were not provided to the applicant, whereas the guard register of 6th and 8th issue were shown to him, which have no relevance to the controversy. Further grievance of the applicant is that the sole prosecution witness was not independent witness and the applicant has already complaint against him, on basis of which, the inquiry was going on. Inspite of the objection of the applicant, the disciplinary authority based on the statement given by Sri R.C. Shastri, who was the sole witness of the department, has come to the conclusion and passed the impugned order.

4. On notice, the respondents have filed their Counter Affidavit stating therein that the applicant while working as Sub Post Master,

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P.A.C, Ram Nagar made bogus payment to the tune of Rs. 7,61,800/- on six monthly interest on 6 years NSCs 7th issue and for this reason, he was placed under suspension w.e.f. 19.01.1995 and charge sheet was issued under rule 14 of CCS (CCA) Rules, 1965 vide Memorandum dated 18.05.1995. It is further contended by the respondents that after holding usual inquiry in the matter, the applicant was awarded with the punishment of removal from service vide order dated 10.11.1998, against which the applicant preferred an appeal dated 18.12.1998 before the Director, Postal Services, Allahabad, which however, was rejected vide order dated 25.01.1999.. Aggrieved by the Appellate Order, the applicant filed Revision Petition before the Member (Posts), Postal Service Board, New Delhi on 21.04.1999, which was decided by the Member, Postal Service Board vide order dated 03.11.1999 remitting the case for DENEVO proceedings from the stage of issue of charge sheet. In compliance of the order dated 03.11.1999, earlier order of removal dated 30.09.1998 was cancelled and fresh enquiry was ordered under the provision of CCS (CCA) Rules, 1965 placing the applicant under deemed suspension under rule 3 of rule 10 of CCS (CCA) Rules, 1965. The contention of the respondents is that even after service of fresh charge sheet dated 22.11.1999 on 28.12.1999, the applicant did not submit any representation denying the charges leveled against him, therefore, the charges leveled were deemed to be established. The Director, Postal Services, Allahabad awarded punishment of removal from service on 25.09.2003, aggrieved, the applicant filed appeal dated 29.11.2003 before P.M.G, Allahabad, which was rejected vide memo 15.06.2004. In support of his contention, learned counsel for the respondents placed reliance on a judgment rendered by Hon'ble Supreme Court in Bank of India and another Vs. Degala Suryanarayana, JT 1999 (4) SC 489 and argued that

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strict rules of evidence are not applicable to departmental inquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity, may arrive at a finding upholding the gravity of the charge against the delinquent officer. The Tribunal cannot embark upon re-appreciating the evidence or weighing the same like an Appellate Authority, and sought for dismissal of O.A.

5. The applicant has filed Rejoinder Affidavit denying the submissions made by the respondents in their Counter Reply reiterating the same facts as enumerated in the O.A.

6. We have heard Sri B.N. Singh, learned counsel appearing for the applicant and Sri Saumitra Singh for the respondents and perused the pleading on record.

7. The grievance of the applicant is that the charge sheet has not been issued by the competent authority and has been issued by the SSPOs (East Division), Varanasi, is wholly illegal and without jurisdiction as he is not appointing authority of the applicant. But from perusal of the reply of the respondents, it is found that in compliance of order dated 03.11.1999, passed by the Member, Postal Service Board, a fresh charge sheet was issued by the SSPOs (East Division), Varanasi, under whom administrative control, he was posted, on 22.11.1999. In view of the submissions made by the counsel for the respondents, the arguments advanced by the counsel for the applicant has no legs to stand. It is also seen from the record that the earlier order of removal

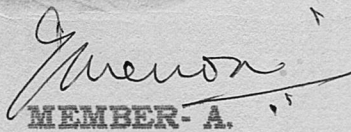
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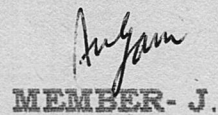
from service was set aside vide order dated 03.11.1999 and thereafter, issuance of fresh charge sheet placing the applicant under deemed suspension as per rule (3) of Rule-10 of CCS (CCA) Rules, 1965, cannot be said to be illegal or without jurisdiction. It is settled position of law that judicial review 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 reached 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 conclusion 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 or 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 received 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, [B.C. Chaturvedi Vs. U.O.I & Ors, 1996 SCC (L&S) 80]. In the case in hand, the applicant was served with

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the charge sheet but he did not file his reply either denying or accepting the same.

8. In view of the discussions made above, we are of the view that the action of the respondents are perfectly just, proper and in accordance with the provisions of the CCS (CCA) Rules, 1965 and accordingly the O.A fails and is dismissed being devoid of merits with no order as to costs.


MEMBER- A.


MEMBER- J.

/Anand/