

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 950 of 2004

This the 15th day of ~~January~~^{Feb 5}, 2006

**HON'BLE MR. D.R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J**

S.S. Shukla, S/o Sri D.N. Shukla, Aged about 52
years, R/o 145-C/T, Chandpur Salori, Allahabad.
.... Applicant

By Advocate : Sri S. Narain.

Versus

1. Union of India through the Ministry of Communication, Government of India, New Delhi.
2. Chief Post Master General (CPMG), U.P. Circle, Lucknow.
3. Post Master General (PMG), Allahabad Region, Allahabad.
4. Director, Postal Services, Allahabad.

.... Respondents

By Advocate : Sri S. Singh

O R D E R

By K.B.S. Rajan, Member-J

The applicant is aggrieved of the penalty order, the order of the Appellate Authority, which, had only modified the said penalty order of compulsory retirement to one of reduction in the pay scale of the applicant and the rejection by the Revisional Authority. The relief sought is:-

[Signature]

- (i) "to quash the orders impugned dated 20.12.2001, appellate order dated 27.11.2002 and Revisional order dated 26.2.2004.
- (ii) Direction commanding the respondents to reinstate the petitioner in service on his original post i.e. Sub-Divisional Inspector (P) with all other consequential financial and promotional benefits and with continuity of service."

2. The applicant's version as in the OA is as under:-

- (a) While the applicant was working as Sub-Divisional Inspector (P) Lal Ganj, Azamgarh, the post of EDDA Kuba Khas had fallen vacant. The then Assistant Director office of the Post Master General, Gorakhpur insisted the applicant to make substitute appointment of Sri Dev Kumar Singh. Since the record of Sri Dev Kumar Singh was doubtful, the applicant did not give approval.
- (b) One Sri Hari Shanker Bharatganj was given appointment as a Substitute EDDA, Kuba Khas w.e.f. 1.1.1999.
- (c) In between the period of 22.9.1998 to 31.12.1998, the concerned Branch Post Master performed the work of EDDA also, as per the report dated 22.9.1998, but it transpires in that period Sri Dev Kumar Singh performed the duties of EDDA, Kuba Khas, but neither he was permitted for the same nor issued any appointment order/memo.



(d) The applicant was shocked when he was asked for explanation against the complaint made by Sri Dev Kumar Singh for demand of gratification of Rs. 50,000/-. The applicant vide explanation dated 24.9.1999 replied.

(e) The respondent issued belated chargesheet dated 11.3.2000. Since documents by which the Articles of charges proposed to be sustained were not annexed, the applicant vide letter dated 13.4.2000 denied the charges and requested the respondent no.4 to provide documents by which the articles of charges were proposed to be sustained.

(f) The respondent no.2 without providing copies of required documents and even without taking into consideration of letter dated 13.4.2000, appointed Inquiry Officer vide their letter dated 9.5.2000 and in the mean time the applicant had been transferred from Azamgarh to Ballia.

(g) On the date of inquiry i.e. 20.6.2000, the applicant vide letter dated 20.6.2000 requested the Inquiry Officer to provide the relevant documents. The Inquiry Officer sent the copy of the application to the respondent no.3. The proceedings of 20.6.2000 was got adjourned. The applicant was on Earned Leave w.e.f. 1.7.2000 to 16.7.2000, but the Inquiry Officer again held an Inquiry

on 13.7.2000 without proper information to the applicant.

(h) The Inquiry Officer without supplying the documents proceeded with the inquiry and last 30.8.2000 was the date fixed, but the applicant was sick between the period of 5.6.2000 to 10.8.2000 and again 20.8.2000 to 3.9.2000 and was on sanctioned Earned Leave as such could not be attended the inquiry on 30.8.2000. The Inquiry officer debarred the applicant from producing the consent of his defence helper.

(i) The Departmental Authorities had not communicated to the Inquiry Officer about the sickness of the applicant on 30.8.2000 as such inquiry was proceeded *ex parte* without information to the applicant on 15.9.2000 prosecution witnesses were got examined.

(j) Further date of inquiry was fixed as 25.9.2000 on which date the applicant was allotted work to inspect of the certain post offices as such the applicant failed to participate the inquiry proceeding held on 25.9.2000.

(k) On that date remaining witnesses were got examined. The Inquiry Officer again fixed the date of inquiry i.e. 14.10.2000 duly changed the place of inquiry i.e. Mahnazpur sub Post Office, since there was holiday on 14.10.2000 for the Staff and officers and as such the applicant

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could not participate in the inquiry proceedings.

(l) The applicant vide application dated 16.10.2000 demanded the relevant documents including copies of statements of the prosecution witnesses with request to allow him to cross examined all the prosecution witnesses.

(m) The applicant was on sanctioned leave w.e.f. 18.10.2000, the applicant was shocked when he got the copy of inquiry report dated 2.6.2001 alongwith show cause notice dated 21.6.2001 on 28.6.2001.

(n) The applicant vide letter dated 9.7.2001 replied the show cause notice in question and requested for not taking any action in pursuant to the ex-parte inquiry report.

(o) The Disciplinary Authority without taking into consideration of facts vide order dated 20.12.2001 imposed the penalty of compulsory retirement against which the applicant made statutory appeal on 8.2.2002.

(p) The appellate authority was not interested to decide the appeal and as such the applicant challenged the aforesaid illegal order of punishment dated 20.12.2001 before this Tribunal. This Court vide order dated 8.12.2002 directed the respondent no.2 to decide the pending appeal.

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(q) The appellate authority vide order dated 27.11.2002 rejected the appeal. Thereafter, the applicant moved a revision petition dated 2.12.2002, but the Revisional authority in spite of taking favorable decisions, rejected the same vide order dated 26.2.2004.

3. The version of the Respondent as in the counter (preliminary submission) is as under:-

(a) The post of EDDA Kuba Khas fell vacant on 22.9.1998. One Sri Deo Kumar Singh was engaged without any order on 30.9.1998. Sri Deo Kumar Singh said that he was verbally ordered by the SDI (P) and accordingly he has joined the post of EDDA.

(b) One Sri Ram Darash Singh EDPM Kuba Khas in his statement dated 10.4.1999 confirmed that Sri Deo Kumar Singh alongwith his father approached the office of SDI (P), who had prepared a charge report of his engagement in his own hand writing and directed Sri Deo Kumar Singh to join duty. As such, on the basis of this charge report and verbal direction, he got Sri Deo Kumar Singh Join as EDDA Kuba Khas on 30.9.1998. Thus, the applicant was held responsible for this irregular engagement of Sri Deo Kumar Singh without appointment order against the instructions convened in DGP&T letter dated 18.5.1979.

(c) Sri Deo Kumar Singh lodged a complaint to Minister of Communication. In this complaint, he alleged that SDI (P) Lalganj arranged his engagement on the post of EDDA Kuba Khas on the payment of Rs. 5,000/- advance and on agreement of final payment of gratification of Rs.50,000, but no appointment order was given to him. The applicant further insisted for payment of residual amount of agreed amount of Rs.50,000. On his inability to give the demanded amount, he was replaced by an other man of 31.12.1998.

(d) The applicant denied the charges of taking Rs. 5000 as advance or demanding Rs. 50,000 from Deo Kumar Singh and stated that charge report dated 30.9.1998 was not prepared by him. Sri Ram Darash Singh, EDBPM, Kuba Khas in his written statement dated 10.4.1999 stated that he engaged Sri Deo Kumar Singh on the verbal order of SDI, Lalganj and in his further statement dated 22.9.1999 clarified that on 30.9.10998 he happened to be the office of SDI, Lalganj. He admitted that in his presence Sri Mahendra Kumar Singh paid Rs. 5000/- advance to his son, Sri Deo Kumar Singh for its payment to SDI (P), Lalganj, for engagement as EDDA Kuba Khas.

(e) The applicant directed him (Branch Post Master) to engage Sri Deo Kumar Singh as EDDA Kuba Khas, as such he

complied his verbal order and jot joined Sri Deo Kumar Singh.

(f) Sri Mahendra Kumar Singh, father of Sri Deo Kumar Singh in his statement dated 22.9.99 also confirmed the payment of Rs. 5000/- to the applicant on 30.9.1998. Sri Deo Kumar Singh in his written statement dated 23.9.1999 confirmed that SDI (P) Sri S.S. Shukla demanded Rs. 50,000/- for his regular appointment in two instalments of Rs. 20,000 and Rs. 30,000. On his failure to accede the demand, SDI (P) relieved him abruptly.

(g) The applicant issued a notification no. A/Kuba Khas/EDDA dated 22.9.1998. This notification was shown to have been endorsed to E.E., Azamgarh SPM, Meh Nagar, Sr. P.M. Azamgarh and SSPOs Azamgarh, but in response to his notification, neither nomination from EE was sponsored nor any application received. The Asstt. Employment Officer vide his letter dated 26.3.1999 denied to have received this notification in his office. The Office of Sr. PM, Azamgarh and O/O SSPO, Azamgarh denied the receipt of this notification.

(h) Sri S.S. Shukla SDI (P) Lalganj, issued the appointment order dated 28.12.1999 to one Sri Hari Shanker Bhardwaj without observing any appointment formalities.



(i) The applicant was transferred and posted as CI, Ballia on administrative grounds. He without transferring the charge to Sri Raj Mani Yadav abstained from duty unauthorisedly and remained absent upto 6.3.2000. He has been un-authorisedly absent from 5.5.1999 to 6.3.2000 without any information.

(j) The applicant was proceeded under Rule 14 of CCS (CCA) Rules 1965 vide memo dated 11.3.2000. The Inquiry Officer submitted his report dated 2.6.2001 and held three out of our charges proved. The DPS, Gorakhpur-disciplinary authority sent one copy of enquiry report to the applicant. The DPS decided the case and awarded the penalty of compulsory retirement vide memo dated 20.12.2001.

(k) The PMG, Allahabad decided the appeal and modified the orders of DPS, Allahabad and awarded the penalty of reduction to minimum stage of PA cadre in the scale of Rs. 4000-6000/- for a period of 5 years from the date of his order vide memo dated 27.11.2002. In the same order, it was also ordered that the period between the compulsory retirement and his reinstatement will be treated as dies-non.

(l) The applicant preferred a petition dated 2.12.2002 to the CPMG, Lucknow against the above appellate order passed and the Chief PMG, Lucknow

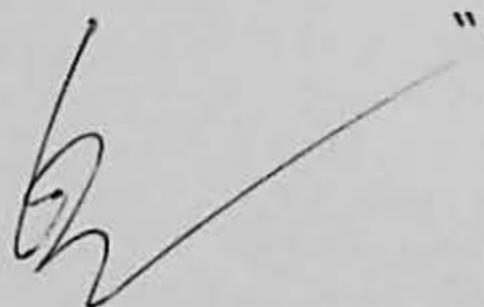
has rejected the petition vide his memo dated 26.2.2004.

4. The applicant has filed his rejoinder, rebutting the allegation of the charge of having demanded/received bribe and having been on unauthorized absence.

5. Pleadings were perused and arguments heard. No written arguments were filed despite permission.

6. The applicant has admitted the fact of his having not attended the inquiry on most of the days. Of course, his version for his absence is that he was either on sanctioned leave or sick leave. He had blamed the administration for not having sent communication to the Inquiry Officer over the leave or sick leave, forgetting the fact that it is his responsibility to communicate to the I.O. with intimation to the P.O. about his inability to attend. Again, though at many places, the applicant had mentioned about the non supply of the documents listed in the Charge Sheet, the cogent narration of the I.O. in his report, especially as to the proceedings dated 04-08-2000 and 17-08-2000 reproduced as under would confirm that all attempt had been made in supplying the documents and the applicant did have a look at those documents:-

"4.8.2000:- PO and SPs attended SPS Sri S.S. Shukla denied the charges and nominated Sri R.B.L. Awasthi (Retd. SSPOS) Gwaltoli, Kanpur.

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Photocopies of documents as mentioned in annexure III were supplied to the SPs alongwith proceeding sheet no.3 dated 13.7.2000, which was received back un-delivered. Next date was fixed vide proceeding sheet no.4 dated 4.8.2000 on 17.8.2000 at DO Basti and SPs was directed to ensure presence of his D.N. and submit list of his defence documents and defence witness.

17.8.2000: PO and SPs attended enquiry, but Defence Asstt. Sri Awasthi did not attend. SPs himself has examined the original documents as mentioned in annexure III of the chargesheet. On the consent of SPs and PO, next date was fixed at DO Basti on 30.8.2000. SPs was again directed to ensure presence of his Defence Asstt. Sri R.B.L. Awasthi and submit list of Defence witnesses and documents in duplicate vide order sheet no.5 dated 17.8.2000"

7. The applicant had preferred the appeal and the appellate authority had given his reasoning in arriving at a conclusion that the applicant deserved a lesser punishment and accordingly modified the same.

8. The Revisional authority had rejected the revision on finding no grounds.

9. All the procedural formalities have been completed in conducting the disciplinary proceedings and no legal lacuna could be observed therefrom.

10 The Apex Court in a catena of judgments has held that scope of judicial review in disciplinary

proceedings is very narrow and limited. The firm view of the Apex Court as observed in some of the latest judgments are as under:-

(a) In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made.

Principal Secretary Govt. of A.P. v. M. Adinarayana, (2004) 12 SCC 579, at page 588 :

(b) While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

Lalit Popli v. Canara Bank, (2003) 3 SCC 583, at page 591 :

(c) ... review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.

In B.C. Chaturvedi v. Union of India (1995) 6 SCC 749

(d) *In Union of India v. Upendra Singh (1994) 3 SCC 357 it was held thus: (SCC p. 362, para 6)*

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

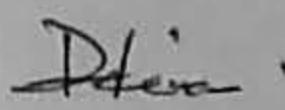
District Forest Officer v. R. Rajamanickam, (2000) 9 SCC 284, at page 285 :

11. Again, the relief claimed vide para 8(b) is redundant as the applicant is already in service and there is no question of reinstatement.

12. We are not able to discern any illegality or irregularity in the conduct of the proceedings. The application being devoid of merits is therefore, dismissed. No cost.



MEMBER-J



MEMBER-A

GIRISH/-