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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 26th day of July 2006.

Original Application No. 1314 of 2005.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member-A

Kumud Kumar Srivastava,
S/o Shri Udai Shanker Lal,
R/o Vill. Kayasthan,
Post Office-Pindra,
Distt: Varanasi (UP).

. Applicant

By Adv: Sri R. Verma.

V E R S U S

1. Union of India through the Secretary,
Ministry of Communication,
Department of Posts India
NEW DELHI.
2. The Director, Postal Services,
Bareilly Region,
BAREILLY.
3. The Superintendent of Railway Mail Service,
'BL' Dn. Bareilly.

. Respondents

By Adv: Sri S. Srivastava.

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member-A

In this OA No. 1314 of 2005 the applicant Sri Kumud Kumar Srivastava, formerly Shorting Assistant in Railway Mail Service, has challenged the penalty of dismissal from service imposed upon him by the respondent No. 3 vide its order dated 02.02.1998 and also appellate order dated 07.10.2005 passed by

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respondent No. 2 modifying punishment from dismissal to that of removal from service which was communicated through letter dated 07.10.2005 of respondent No. 3.

2. The facts of the case briefly are as follows:-
a. The applicant was appointed after selection to the post of Sorting Assistant the vacancies for which was advertised on 31.10.1991 by the respondents in the news paper. After the due process of selection the respondents informed the applicant of his selection vide order dated 27.04.1992 alongwith other candidates and his name was shown at sl. No. 4 in the merit position with 84% of marks. The selection was however subject to verification of the educational and other testimonials of the candidates including the applicant. Further the applicant was sent for training vide order dated 02.07.1992 and in compliance with the order the applicant underwent the training at Postal Training Centre, Saharanpur. The applicant has further submitted in the OA that he was selected on the basis of his having passed Purva Madhaymik in the year 1982 with Roll No.11525 B and Uttar Madhyamik in 1982 with Roll No. 8215 from Sampurnanand Sanskrit University, Varanasi. He was placed in the first division. Copy of marks sheet as well as certificate by both the

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examinations have been annexed to the applicant in the OA.

b. Thereafter, as stated by the respondents certain communication were made by the applicant and the Sampurnanand Sanskerit University, Varanasi. The verification of mark sheets is stated to have been gone against the applicant and charge sheet was issued against him on 13.11.1995 by the respondent No. 3 with the allegation that the applicant had secured the appointment in the year 1991-92 by the Bogus marks sheet No. 1351 with Rule 17354 of Uttar Madhyamik for the year 1982 and 17449 of Purva Madhyamik for 1980 issued by Sampurnanand Sanskerit University, Varanasi.

c. Thereafter, the matter was enquired into by the appointing Enquiry Officer and on the basis of final enquiry report the impugned penalty of dismissal from service was passed against the applicant on 02.02.1998. The applicant submitted an appeal on 18.03.1998 before respondent No. 2. As the appeal was not disposed of, the applicant filed OA No. 242 of 1998 in this Tribunal. The Tribunal disposed of the case by directing the Appellate Authority i.e. respondent No. 2 to decide the appeal within a period of four months. The aforesaid order of the Tribunal was not complied with by the respondents for which the applicant filed Contempt Application No. 129 of 2005, which was disposed of by the

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Tribunal vide its order dated 03.10.2005 extending time by further four months to decide the appeal.

d. In the meantime respondent No. 2 decided the appeal of the applicant and modified the punishment of dismissal to that of removal from service vide its letter dated 07.10.2005. It is against the order of punishment as well as the appellate decision that this present OA has been filed.

e. The allegation of the applicant is that he was falsely implicated by the respondents for alleged submission of bogus mark sheets for securing appointment. Against this allegation the applicant has submitted letter dated 10/12.08.1994 issued by the Vice-Chancellor of the University in which it has been clarified that the mark sheet for Roll No. 11525 B of Purva Madhyamik examination in the year 1980 and of Roll No. 8215 of Uttar Madhyamik examination in the year 1982 were genuine. This letter has been annexed as annexure XIV to the OA. The applicant has also referred to an FIR which was lodged at the Police Station Subhash Nagar, Bareilly by the respondent No. 3 for alleged forging of education documents by the applicant. The police case, however, ended in favour of the applicant as the police did not find any manipulation of records in respect of Roll No. 11525 B and 8215. The applicant has summed up his pleadings by saying that

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the matter was concocted by respondent No. 3 with malice towards the applicant for reasons best known to him.

3. The relief which has been sought by the applicant are as below:-

- a. To issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 02.02.1998 and 07.10.2005 passed by Respondent No. 3 and Respondent No. 2 dismissing the applicant from service and modifying the same to that of removal respectively.
- b. To issue a writ, order or direction in the nature of mandamus directing the respondents to reinstated the applicant forthwith in service as an Sorting Assistant with all consequential benefits such as continuity in service, seniority, full back wages, promotion and further promotion with the applicant could not get on account of the aforesaid illegal punishment order placing him at par with his juniors within a period as may be fixed by this Tribunal.
- c. To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal may deem fit and proper.
- d. To award an extemporary cost in this case to the applicant.

4. Counter affidavit was filed by the respondents in which the respondents have categorically and

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emphatically denied the allegations. The respondents have denied the statement of the applicant that at the time of his appointment the respondents had already verified the genuineness of the educational qualification. On the other hand, the respondents have submitted that along with the application, for the job the applicant had submitted marks sheet for Purva Madhayamik examination for the year 1980 having Roll No. 17449 and Uttar Madhayamik in the year 1982 having Roll No. 17354. These mark sheets were found forged during verification and that was confirmed by the concerned authority of the Sampurnanand University, Varanasi. It was only later that the applicant started asserting that he had submitted his true mark sheets i.e. with Roll No. 11525 B for Purva Madhayamik in 1980 and Roll No. 8215 for Uttar Madhyamki in 1982.

5. The respondents have also averred that the report of the police only confirms genuineness of the mark sheets bearing Roll Nos. 11525 and 8215. The respondents have no disagreement with that. On the other hand their allegation is that while the applicant sought appointment he had submitted bogus mark sheets bearing No. 17449 of 1980 and 17354 of 1982. It was this mark sheets which on verification were found to be bogus.

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6. Let us now look at the ground on which the applicant has sought the relief, which are as under:-

- a. For the reason that the applicant has been falsely implicated by the respondents in a charge sheet with the allegation of procuring appointment by producing bogus mark sheets.
- b. Because the respondent No. 3 for the reasons best known to him, wanted the applicant to be thrown out of the employment.
- c. Because during the enquiry the applicant denied the charges and further argued that his actual mark sheets i.e. of Roll No. 11525 B of 1980 and of Roll No. 8215 of 1982 were found to be genuine.
- d. Because respondent NO. 3 took the initiative to verify the mark sheets personally overstepping his jurisdiction.
- e. Because the Inquiry Officer wrongly and illegally held the charge as proved.
- f. Because after the applicant was dismissed from service because respondent No. 3 lodged an FIR which was concluded without any stigma on the applicant.
- g. For the reasons that when the applicant challenged the order of dismissal by filing an earlier OA No. 242 of 1998, the respondents contested the same without mentioning anything about the FIR and its outcome.

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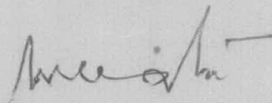
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h. Because the Appellate Authority i.e. respondent No. 2 illegally modified the punishment to that of removal by modifying previous punishment of dismissal.

i. Because the Appellate Authority, though has referred in his appeal, in pursuance of the order of this Tribunal dated 01.03.2005, has repeated wrong rule by way of sustentative charge.

7. If we look at the ground alongwith relief sought, we find that the applicant's allegations can be divided into two categories. First set of allegations pertain to was so malicious efforts made by the respondents No. 3 in particular and the other respondents and bringing his conduct into disrepute on the false charge of securing entry into department through bogus mark sheets. The second group of allegations relates to the Disciplinary Proceedings and the alleged irregularities therein.

8. By taking second group of allegations first, we would like to mention at the outset that the scope of judicial review of Disciplinary proceedings is limited. What we have to satisfy ourselves with is that the conclusion of guilt was based on evidence and was not perverse, as no reasonable man would like to conclude. It is not for the Tribunal to make a total reassessment of the facts and material evidence just like the Appellate Authority and give a decision. We have to satisfy ourselves that it



was for trial in which reasonable opportunity was given to the applicant for defence. The only ground in our view on which the disciplinary proceedings can be set aside are on the ground of illegality, irrationality and malafide.

9. There are a good number of judicial pronouncements by the Apex Court in this issue such as *B.C. Chaturevedi Vs. Union of India and others* 1996 SCC (L&S) 80, *High Court of Judicature at Bombay Vs. Shashikant S. Patil*, AIR 2000 SC 22. *Colour Chemical Limited Vs. A.L. Alaspurka*, (1998) 3 SCC 192 and so on. It has been reiterated in these decisions that the scope of interference by Court or Tribunals is limited to the situations where the proceedings were held in violation of principles of natural justice or violation of statutory rules prescribing the mode of inquiry. It would be quite pertinent to reproduce the observations of the Apex Court in case of *B.C. Chaturvedi* (supra), which is as under:

"Para 12, 13- Judicial review is not an appeal from a decision but a review of the manner in which the decisions made. Power of judicial review is meant to ensure that the individuals 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 inquiry is conducted on charges of misconduct to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings of 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 proceedings. When the authority

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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 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. 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 stationary 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 that case."

10. In several judgments the Apex Court have considered the issue of violation of the principles of natural justice and have concluded that each and every violation will not ipso facto invalidate the punishment order or disciplinary proceedings and it all depends on the facts and circumstances of a given case, as to whether such violation vitiates in order of punishment. We have gone through the records relating to the disciplinary proceedings and also heard the learned counsel for the parties on disciplinary proceedings. Our observations may be briefly stated as follows:-

- a. The charge sheet, which was served, contains the charges in distinct articles with reference to the conduct of the applicant.
- b. The Inquiry Officers conducted the enquiry for appointed according to the provisions of the Rules.

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- c. Opportunity was given to the charged official for representing his case giving access to the material evidence in support of the charges.
- d. That the charged official was also permitted to cross-examine the witnesses.
- e. The findings of the Inquiry Officer were reasoned and elaborate and were not held back from the charged official.
- f. Orders of punishment were issued by an authority who is competent under the rules.
- g. The appellate decision was also passed by the officer competent under the rules and decision was reasoned and speaking one.
- h. The Appellate Authority while revising the order of punishment had given opportunity to the applicant to show cause notice.

12. Lastly, regarding the allegation of the applicant that the entire charge was concocted as his main plea that somebody might have substituted his mark sheets with bogus one to falsely implicate him and that the whole thing was consequence of the malice which respondent No. 3 was harboring against

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him, we are of the view that all these allegations have been taken care of by the Inquiry Officer during disciplinary proceedings. As stated earlier the scope of judicial review was not to re-examine the material evidence and witnesses to establish the truth into such allegations or not. With these observations the OA is dismissed with no order as to costs.

Member (A)

Vice-Chairman

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