CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T. Jacob, Member (Admin)

O.A. No. 488/2013

Shri Gajendra Prasad Das, aged about 47 years, S/o Late Birendra Prasad Das, AT/post – Dwarika, Via – Gopalpur, P.S. – Kantapada, Dist – Balasore, Odisha.
……Applicant

VERSUS

1. Union of India represented through the Secretary, Department of Post, Dak Bhawan, New Delhi – 110001.
2. The Chief Post Master General, Odisha Circle, PMG Square, AT/Post – Bhubaneswar – 751001, Dist – Khurda, Odisha.
3. Director of Postal Services (Head Quarters), Bhubaneswar – 751001, Office of the Chief P.M.G., Odisha Circle, Bhubaneswar, Dist – Khurda.
4. Superintendent of Post Offices, Balasore Division, Balasore – 756001, Odisha.

……Respondents.

For the applicant : Mr. H. B. Sutar, Advocate.

For the respondents: Mr. D. K. Mallick, Advocate

Heard & reserved on :02.03.2021 Order on :21.06.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

The applicant by filing this OA is challenging the order of punishment of "removal from service" imposed on him after

completion of major proceeding under Rule 10 of GDS (Conduct and Employment) Rules 2001. The Disciplinary Authority after receipt of inquiry report passed the order of "removal from service", which was upheld by appellate authority too. The applicant is seeking the following relief(s):-

a. Direction/directions may be issued for quashing the Annexure 5, 7, 1 and 2.
b. Direction/directions may be issued as deemed fit and proper so as to give complete relief to the applicant and retirement benefit by awarding compulsory retirement instead of removal from service.

2. The brief of the case as averred by the applicant is that while he was working as GDS BPM at Dwarika BO, a major proceeding was initiated against him under Rule 10 of GDS (Conduct and Employment) Rules 2001. The applicant submitted that during the inquiry vital prosecution witnesses, i.e. depositor of SB account of Dwarika BO account No. 627077 and the payee of Faridabad MO No. 4986 dt. 23.07.05 for Rs. 3000/- were quite relevant to the allegation as alleged in article 1 and article 2 respectively, straight way disputed and denied the said allegation at the time of preliminary inquiry with sufficient reasons and corroboration in the deposition. But the finding of the IO said both the articles of the charges proved on the basis of inadmissible evidence is wholly unsustainable in the eyes of law. The applicant submitted that the findings of the IO are based on no evidence when both the witnesses on the basis of whose written statements, the proceedings was initiated

disputed and denied the entire evidence on records. The applicant submitted that as regards to article 3 of the charge memo, as per evidence on records, out of five transactions three transactions relating to receipt Nos 44, 45 and 60 are rightly taken into Govt account on 12.08.2005 and the rest other two transactions relating to receipt no. 64 and 65 are taken in to govt account on 17.05.2005 respectively i.e. actual dates in which the telephone subscribers paid the said alleged amount to the applicant. The applicant submitted that article 4 of the charge memo has not been proved. The applicant submitted that the disciplinary authority agreeing with the findings of the IO passed an unreasoned order inflicting upon the penalty of "removal from service" on the applicant. The applicant submitted that likewise the appellate authority outrightly rejected his appeal without any reasons confirming the order of the disciplinary authority. Hence the OA.

3. The respondents in their counter inter alia averred that the applicant had committed SB/MO/TRC fraud for which the department suffered permanent loss of Rs. 468/- and temporary loss of Rs. 20,965/-. Therefore, disciplinary proceeding was initiated against the applicant as per rule, and the applicant was given due opportunity to defend himself and then punishment was imposed on him after going through facts, circumstances and gravity of the offence. The respondents submitted that the applicant had misappropriated government money which is a serious

offence and the inquiry officer had relied upon documentary evidence to that effect and had held the article I, II & III of the charge memo as proved. The Disciplinary Authority had also taken all materials into consideration and imposed the punishment of removal from service. The appellate authority also taken all things into consideration and agreed to the punishment imposed on him.

4. We have heard learned counsels and have carefully gone through material on records.

5. The applicant strenuously submitted that during open inquiry both witnesses i.e. depositor of SB A/C No. 627077 and the payee of Faridabad MO No. 4896 have disputed and denied the allegations at the time of inquiry and hence the charges at article I & II are not proved. As regard to Article III, the applicant submitted that the collection made through receipt no. 44, 45 and 60 have been taken rightly in to Govt. Account on 17.05.2005 i.e. the actual date on which the telephone subscribers paid the alleged amount to the applicant and for other two receipts i.e No. 64 & 65 the original copies are not detached from the receipt books and lying in the govt records keeping it clear that the subscribers had not paid the said amount to be credited in Govt. Account. The applicant submitted that the relevant telephone subscribers have not been examined in the inquiry.

6. The respondents on the other hand submitted that the charge nos. I , II & III against the applicant are proved based on documentary evidences of pass book in question, SB

journal, BO account book and written statement of the depositor concerned, MO paid voucher, opinion of the GEQD, TRC receipts, TRC list, BO account book as well as oral evidences of telephone subscribers. Both the disciplinary authority and appellate authority in their orders too have remarked about the witnesses disputing their written statements in the inquiry but have taken the stand of applicants admission during the inquiry as grounds for charges to be proved. The respondents have submitted that article III of the charge memo has been proved on the basis of opinion of GEQD. The applicant challenges the opinion of GEQD as he has not been made witness in the inquiry and has not been cross examined.

7. The relevant portion of the order of the appellate authority dated 18.05.2010 is extracted below:

"I have carefully gone through the appeal, parawise comments on the appeal, brief history of the case and other related records. As regards Article I, Kumari Damayanti Sethi holder of SB account No. 627077 in her statement dt. 28.09.2005 at Ext S-2, has clearly admitted that she had deposited Rs. 200/- on 19.08.2003 & Rs. 200/- 10.7.04 respectively on two occasions raising her total balance to Rs. 450/-. The Postmaster had entered the entries under his initial and put the date stamp and retuned the pass book. Hence contradicting her own statement at a later stage does not stand to reason. Besides, the appellant has admitted that he has made entries in the passbook. The stand taken by the appellant that he has made entries in the passbook at the behest of others is not acceptable because the appellant is well aware of the rules and procedures of the department. Therefore, it is clear that the amount which has been entered in the passbook, has not been credited to Govt account.

As regards Article II, in Ext-S/3 the payee (SW-3) submitted his complaint on 12.08.05 that he has not received the payment of the MO in question on 02.08.05. The fact was also corroborated by his own statement on 17.08.05 that he has not signed on the MO form which has been shown as paid on 02.08.05. The veracity of the fact has also been fortified by the opinion of GEQD. The

opinion goes as follows: "The person who wrote the blue enclosed writings and signatures stamped and marked S-1 to S-10 did not write the red enclosed writings and signatures similarly stamped and marked Q1 & Q2." Therefore, the MO in question has not been paid to the right payee on 2.8.05.

The appellant about the third article of charge has put forth that the 5 witnesses have disputed their own statements explaining the circumstances under which their written statements were taken during the fact finding enquiry. But it is seen that, in Ext-S/33 the appellant has himself admitted that on the date of collection of TRC amounts, the amounts were not accounted for by him in the BO account and that he accounted for them on later dates. Hence, the charges against the appellant are clearly proved."

7. The scope of departmental inquiry and criminal cases have been considered by the Apex Court in number of cases. The said issue is no longer res integra. In B.C. Chaturvedi Vs. Union of India (1995) 6 SCC 749 the Supreme Court has held as under:

"12. 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 reaches 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 conclusions are based on some evidence, the authority entrusted with the 7 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 proceeding. When the authority 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 Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate 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 statutory 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 each case. (emphasis supplied)"

8. In Bank of India Vs. Degala Suryanarayana (1999) 5 SCC 762, it is held by the Apex Court as under:

"11. Strict rules of evidence are not applicable to departmental enquiry 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 gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held:

The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

9. In M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88, Supreme Court opined as under:

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot

take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with. [Emphasis Supplied]"

10. As per the principles laid down in the aforesaid cases, it is clear that interference can be made against the findings of Inquiry Officer and other authorities, provided findings are perverse or it is a case of no evidence. If there is some evidence to support the conclusion of Inquiring Authority, no interference can be made. Adequacy of evidence cannot be subject matter of judicial review. In the present case we find that the Inquiring Officer has gone through documentary evidence i.e. Annexure R/7, R/8 & R/9 before arriving at conclusion that the charges under Article I, II & III are proved. The applicant has not alleged any bias against the inquiring officer, disciplinary authority or the appellate authority. No malafide has been established by the applicant on the authorities. There is no material to show that there has been violation of principle of natural justice or violation of any statutory rules in the departmental proceeding in question. The Appellate Authority had also taken all the points as raised by the applicant in his appeal and specifically addressed each article parawise in her order dated 18.05.2010 (Annexure A/7). The punishment as given by the disciplinary authority and confirmed by the appellate authority is commensurate

with the action of the applicant. Hence, we do not find any merit in interfering in the same.

11. The OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(CSK)