

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

O.A. No. 1033 of 1989

DATE OF DECISION 4.4.96

Avadhesh Yadav

PETITIONER(S)

Shri R.K. Tewari

ADVOCATE FOR
THE PETITIONER(S)

VERSUS

S.D.I (Post) East Gorakhpur & others

RESPONDENTS

Shri N.B. Singh

ADVOCATE FOR THE
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. S. D. Gupta Member (A)

The Hon'ble Mr. T.L. Verma Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether to be circulated to all other Bench ? ✓

(SIGNATURE)

VKP/-

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, ALLAHABAD

DATED : This the 4th day of ^{April} March 1996

O.A. No. 1033/89

Hon'ble Mr. S.Das Gupta A.M.

Hon'ble Mr. T.L. Verma J.M.

Awadhesh Yadav s/o Ram Adhar Yadav,
Ex. E.D.D.A./M.C., Tuhasi, Pipraich,
District Gorakhpur.

----- Applicant

C/A Shri R.K. Tewari.

VERSUS

1. S.D.I. (Posts), East, Gorakhpur.
2. Senior Supdt. of Posts, Gorakhpur.
3. Chief P.M.G., U.P., Lucknow.
4. Union of India through Secretary,
Communication, New Delhi.

--- Respondents

C/R Shri N. B. Singh.

ORDER

By Hon'ble Mr. T. L. Verma. J.M.

This application is directed against the
punishment order dated 5.4.1987 passed by the
Disciplinary Authority, dismissing the applicant
from service, ^{order} dated 31.8.1987 passed by the



Appellate Authority and the order dated 21.7.1989 passed by the Reviewing Authority upholding the order of the Disciplinary Authority.

2. The applicant, while working as extra departmental Mail carrier, was issued charge sheet dated 29.11.1986. The applicant was charged on 4 counts. The first charge was that he had received a sum of Rs. 3,800/- from Shri Kishore, holder of Saving bank account no. 207217, in two instalments for being deposited in his account alongwith the pass book. The allegation against the applicant is that he did not deposit the amount in the Branch post office and retained the same and the pass book.

3. The second charge levied against the applicant was that he had received a sum of Rs. 500/- from Smt. Imrita, ~~xxxxxxx~~, Account holder of saving bank account number 205684, for being deposited in the branch post office alongwith the pass book. This amount is also ~~alleged~~ to have been retained by the applicant.

4. The third charge was that he misappropriated a sum of Rs. 200/- being the amount of money order addressed to Shri Gulab Harijan by forging his signature and the 4th charge related to irregular retention of four saving bank pass books by the applicant.

5. The applicant denied the charges. Accordingly disciplinary proceedings were initiated against him. The Enquiry Officer submitted his report annexure 4. The Enquiry officer has held that charges nos. 1, 2 and 3 are not proved. He, however, has come

to the conclusion that the charge relating to irregular retention of pass book by the applicant has been brought home. The Disciplinary authority disagreed with the findings recorded by the Enquiry Officer and has held that all the 4 charges have been established, and accordingly imposed the punishment of dismissal from service by order dated 5.4.1987. ~~The punishment of dismissal from service by order dated 5.4.1987.~~ The punishment imposed by the Disciplinary authority has been upheld by the Appellate as well as the Revisional authority by their orders dated 31.8.1987 and 21.7.89 respectively. Hence this application for the relief above.

6. The impugned punishment order has been assailed on the ground that findings in respect of the charges nos. 1, 2 and 3 are based on ^{no} evidence and that the punishment imposed in respect of charge no.4 is too harsh and disproportionate to the allegations made.

7. The respondents have contested the claim of the applicant. In the C.A. filed on behalf of the respondents, it has been stated that the findings of the Disciplinary authority are based on evidence and that no irregularity, in holding the enquiry, has been committed and as such no interference in the punishment imposed is ~~not~~ called for.

8. We have heard the learned counsels for the parties and perused the records. The scope of the said review in the matter relating to the Disciplinary proceedings is very limited. All that the court can

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legitimately do, in exercise of its jurisdiction of judicial review, is to examine whether the rules have been followed and whether non-compliance of the rules, if any, has resulted in failure of justice or not. It has neither been averred in the application nor argued in the course of hearing that the enquiry was held in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribed in mode of enquiry.

9. We have also carefully gone through the records and we find that there has been no infringement of the rules prescribed for holding the enquiry.

10. The learned counsel for the applicant submits that the findings of the Disciplinary authority in respect of the charges 1 to 3^{etc} based on statements recorded in the course of preliminary enquiry. As the applicant was not given any opportunity to cross examine the witnesses, their statements could not have been used against the applicant. It was said that after excluding the aforesaid statements from consideration, there remains no evidence to support the findings recorded by the Disciplinary authority.

11. The order by the Disciplinary authority may be seen at annexure A-1. The Disciplinary authority has examined and analysed the charges framed against the applicant separately. The first



charge against the applicant was that he had received a sum of Rs. 3,800/- in 2 instalments from the account holder alongwith the pass book for being deposited in the post office. From the order of disciplinary Authority, it would also appear that account holder did not appear as a witness for the prosecution. He, however, was examined by the applicant in his defence, as D.W.1. The attention of this witness was drawn to his statement recorded in course of preliminary enquiry and the written complaint filed by him. The order of the Disciplinary Authority indicates that the **witness** admitted to have submitted complaint Exhibit K-7. He also admitted to have given statement Exhibit K-8. He has, however, resiled from his earlier statement by saying that the person who wrote the complaint did not correctly record his statement. From the order aforementioned it would also appear that the applicant also admitted that he collected a sum of Rs. 3,800/- from the account holder. The Disciplinary Authority has, on an analysis of the facts before him, held that this charge against the applicant has been established. We find ^{that} the reasons given by the Disciplinary Authority, for arriving at the above conclusion, are not perverse. The jurisdiction of the court in exercise of judicial review being limited it can not undertake to re-assess the evidence and come to a different finding. We, therefore, find no reasons to interfere with the findings recorded by the **Disciplinary** Authority in respect of charge no. 1.

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13. Coming to the 2nd charge, the learned counsel submitted that findings of the Disciplinary Authority are based on the statement of Smt. Imrita Devi and Bhallan Tripathi recorded in the course of preliminary enquiry. The aforesaid witnesss not having



been examined during enquiry, their statements could not have been used for recording any findings. Admittedly Smt. Imrita Devi and Bhallan Tripathi were not examined in the enquiry as witnesses. From the order passed by the Disciplinary Authority it does not appear whether the person who had recorded the statements of Smt. Imrita Devi and Bhallan Tripathi was examined to prove that the statements were recorded by him. The Enquiry report also does not disclose that the person who held the preliminary enquiry was examined to prove that Smt. Imrita and Bhallan Tripathi had given evidence in support of the charge no. 2. This being so, finding in respect charge no. 2 can not be said to be based on evidence.

13. The 3rd charge pertains to the allegation that the applicant forged the signature of the payee of money order no. 4137 dated 28.8.1986 and converted the amount of money order to his personal use. Gulab Harijan, the addressee of the money order, was examined as witness. He appears to have given contradictory statements regarding his having received the amount of money order and putting signature on the money order coupon. The Disciplinary authority after analysing the evidence has recorded a finding that the applicant has forged the signature of the payee and mis-appropriated the amount of money order. We find no justification to reassess the evidence of said Gulab Harijan for arriving at a different conclusion. The 4th charge, as we have seen above, relates to the irregular retention of 4 pass books by the applicant. The learned counsel for the applicant argued that the findings recorded by the

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Enquiry Officer and agreed to by the Disciplinary Authority ~~is~~ **are based solely** on the statement of the applicant.

The said statement of the applicant, it was submitted, ^{and} was obtained by ~~the~~ inducement/coercion. There is ^{no} material on record to show that any inducement was given to or pressure was put on the applicant for making the statement. This admission, as stated in para 19 of the C.A., was made in the course of the confronted enquiry. We, therefore, see no substance in this argument that the admission of the applicant was the result of any inducement.

14. On careful consideration of materials on record, we find and hold that the charges no.1,3 and 4 have been rightly held as established. Therefore, no interference, is warranted, so far as these findings are concerned.

15. Now coming to the question that punishment awarded is harsh and excessive, it may be stated that settled principle of law is that imposition of appropriate punishment is within the **discretion** and judgment of the Disciplinary authority. The Hon'ble Supreme court in State Bank of India & Others V/s Samrendra Kishore (1994) 27 ATC 149 has held:

"Imposition of appropriate punishment is within the discretion and judgement of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair

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treatment and no to ensure that the authority after according a fair treatment and reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court. Bharat Ram V. State of H. P. is no authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the ends of justice. The Supreme court in Bhagat Ram case exercised equitable jurisdiction under Article 136. The High Court and the Tribunal has no such power or jurisdiction".

16. • In view of the ratio of the decision of Hon'ble Supreme Court in the ~~case~~ referred to above, we are of the view that we can not enter into the question of adequacy or otherwise of the punishment imposed. ~~we~~, ^{we} otherwise also ~~find~~ find no merit in this contention. Though we have held that charge no.2, which relates to misappropriation of a sum of Rs.500/- received, from Smt. Imrita Devi for being deposited in her saving bank account is not based on evidence., the nature of allegations in respect of charges 1 and 3, is such that the punishment imposed can not be said to be excessive or harsh. In view of the above, we find no merit in the O.A. and the same is dismissed, leaving the parties to ^{bear} their own cost.

J. M. M.
Member-J

W. P.
Member-A

Siddiqui