

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1156 OF 1999

ALLAHABAD THIS THE 5th DAY OF APRIL 2007.

**Hon'ble Mr. Justice Khem Karan, Vice-Chairman.
Hon'ble Mr. K.S. Menon, Member-A**

Dinesh Kumar, s/o Shri Vishwanath Prasad, r/o 3/382,
Rampur, Ram Nagar, District Varanasi.

.....Applicant

(By Advocate: Sri A.K. Dave)

Versus

1. Union of India, through Director General (Posts), Department of Post, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices (East), Division, Varanasi.
3. Assistant Superintendent of Post Offices, Moghal Sarai, Sub Division, Varanasi.

.....Respondents

(By Advocates: Sri S.C. Tripathi/Sri D.K. Dwivedi)

O R D E R

By Mr. Justice Khem Karan, Vice-Chairman

The applicant is challenging removal order dated 27.10.1998 (Annexure 1) and appellate order dated 23.12.1999 (Annexure 1A)

2. While working as E.D. Packer at P.A.C. Ramnagar Sub Division Moghal Sarai, he was served with a chargesheet dated 4.4.1997 (Annexure A-4). It was alleged that while working as E.D. Packer at P.A.C Ramnagar Sub Division, Moghal Sarai, Varanasi, he unauthorisedly retained with him Kishan Vikas Patra No. 14EE445401, 402 and 403 each of domination of Rs.500/-, issued in favour of Smt. Sneh Lata Rai wife of Rakesh Nath Rai and dishonestly encashed the same on 7.12.1996 from the Post Office and thereby contravened Rule 17 of Rules of 1964. There was a complaint dated 23.12.1996 by Smt. Sneh Lata Rai, to the effect that the said Kishan Vikas Patras purchased

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by her on 7.6.1994, were encashed by someone on 7.12.1996. The applicant replied this chargesheet, by putting a case that Smt. Sneh Lata Rai had handed over the said Kishan Vikas Patras to his wife, after taking an amount of Rs.1000/- and had also given an application to the Post Office for transferring the same in favour of the applicant's wife but subsequently transfer of those Kishan Vikas Patras could not materialize because of the fact that Smt. Sneh Lata Rai demanded more money. He said that those Kishan Vikas Patras were encashed by Smt. Sneh Lata Rai on her identification and it was wrong to say that he encashed the same on 7.12.1996. After necessary enquiry, Assistant Superintendent of Post Offices submitted his report dated 3.8.1998, holding the applicant guilty of charges. The applicant was supplied copy of the report with a direction to submit his defence within 15 days. It appears that he sought 20 days time for submitting his reply but Disciplinary Authority did not grant him that much time. Although applicant submitted his reply by Registered post on 20.10.1998 but the same could not be considered by the Disciplinary Authority and he passed the order dated 27.10.1998 (Annexure A-1) removing him from service. He preferred an appeal but without waiting for the result of this appeal, he filed this O.A. During the pendency of the O.A., appeal was also dismissed and thereupon he got his O.A. amended so as to challenge the appellate order as well.

3. The main grounds on which he is challenging these two orders are as under:-

- (i) *That finding that the applicant had unauthorisedly restrained the Kishan Vikas Patras in question, is totally perverse;*
- (ii) *That the finding of Enquiry Officer and Disciplinary Authority that the applicant and not Smt. Sneh Lata Rai encashed those Kishan Vikas Patras from the Post Office on 7.12.1996, is also perverse;*
- (iii) *That it was proved from the material on record that Smt. Sneh Lata Rai herself handed over those Kishan Vikas Patras to the wife of the applicant after receiving an amount of Rs.1000/- from her and*

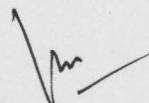


on maturity of those Kishan Vikas Patras, she herself went to Post Office and encashed the same.

- (iv) *That statement of Kuwar Singh, (who made payment on identification of applicant) that the lady who received the amount of those Kishan Vikas Patras was not Smt. Sneh Lata Rai, is totally unreliable and unacceptable;*
- (v) *That inspite of the request of the applicant, the Enquiry Officer did not obtain the report of handwriting expert as regards the signature of recipient.*
- (vi) *That penalty of removal is not proportionate to the guilt so proved.*
- (vii) *That the Appellate Authority has not considered the material in rational and logical way and has ignored the irregularities referred to in para- 2 and 4 to 4 (g) of grounds of appeal and also the fact that claimant complainant was not examined.*

4. The respondents have contested the claim by filing a written reply. According to them, applicant was afforded reasonable opportunity of hearing and after examining the matter in accordance with relevant Rules, the punishment order was passed. It is said in para 27 that since the applicant failed to submit his defence statement in time pursuant to show cause notice so the Disciplinary Authority was perfectly justified in passing the order of penalty, without waiting for his defence statement.

5. Shri A.K. Dave, learned counsel for the applicant has contended that finding of enquiry Officer as well as Disciplinary Authority, on the point that the applicant unauthorisedly retained the Kishan Vikas Patras in question issued in favour of Smt. Sneh Lata Rai and the finding that he got the same encashed on 7.12.1996 are totally perverse as no reasonable man would have ever reached that conclusion on the basis of material, so adduced during the course of enquiry. According to him, Kuwar Sen examined by the Department in support of charge, clearly stated that he did not know that lady



who received the payment on the identification of the applicant. Learned counsel says that if Kuwar Sen did not know the lady, who received the payment on 7.12.1996 then how it has been concluded that it was not Smt. Sneh Lata Rai but was some other lady. Sri A.K. Dave goes on to argue that the statement of Kuwar Sen that there appeared difference in the signatures of the holder and of the lady who received the payment, is wholly absurd in the sense that if it was so, then why he made the payment. Learned counsel says that it was the case of the applicant that Smt. Sneh Lata Rai, went to Post Office and got the payment on 7.12.1996, on his identification but how the Enquiry Officer concluded that the lady who ^{came} ~~came~~ to Post Office on 7.12.1996, was not Smt. Sneh Lata Rai. Shri Dave says how can Smt. Sneh Lata, be believed, when he herself gave acknowledgement dated 3.1.1997 and when she failed to how K.V.P went out of her possession. According to him truth could have been discovered by opinion of hand writing expert, which the Enquiry Officer did not think proper, ~~which the Enquiry Officer did not think properly~~ even after his request. The learned counsel says, that Enquiry Officer, the Disciplinary Authority shut their eyes to the fact that Post Office had sent K.V.Ps and application for transfer, to the Smt. Sneh Lata, at her postal address, then how she lost their possession. Sri A.K. Dave has taken us through the entire Enquiry report (Annexure A-8) so as to highlight the above points.

6. But the learned counsel for the respondents argues that this Tribunal sitting in judicial review cannot examine, ^{the} correctness or otherwise of finding of fact, by re-evaluating the evidence.



7. We have considered the respective submission on the point under discussion. We would like to recall the following dictum of law, which their Lordships laid down in B.C. Chaturvedi Vs. Union of India and Others, 1996 SCC (L&S) 80:-

"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 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 proceeding. 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 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 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 that case".

8. There were two sets of cases. The case of Department was that the applicant unauthorisedly retained those Kishan Vikas Patras, ⁴ of holder of which was Smt Sneh Lata Rai and it was he who got the same encashed on 7.12.1996. On the other hand, applicant came with a case that Smt. Sneh Lata Rai agreed to transfer those Kishan Vikas



Patras to his wife, after receiving an amount of Rs. 1000=00 and when the attempt to get the same transferred in favour of his wife, failed due to change in the mind of Smt. Sneh Lata Rai, she herself got the same encashed on 7.12.1996, on his identification. Both the parties adduced evidence during the course of enquiry. Kuwar Sen who made the payment and Smt. Sneh Lata Rai who denied such payment on 7.12.1996, were also examined by the Department in support of charges. Smt. Sneh Lata, denied to have gone to Post Office on 7.12.1996 and to have encashed K.V.Ps. After evaluating the evidence, the Enquiry Officer ~~believed~~ Behaved Smt. Sneh Lata and Kuwar Sen. The question as to whether evidence of Smt. Sneh Lata Rai on the point that she did not go to the Post Office on 7.12.1996 and did not receive the amount from the Post Office, is behavable or not, cannot be looked into by this Tribunal, in exercise of powers of judicial review. Similar can be said in respect of evidence of Kuwar Sen.

9. The next argument of Sri A.K. Dave is that the defence statement (A-9) sent by the applicant by registered post, in reply to the show cause notice was not considered by the Disciplinary Authority and so the order of penalty deserves to be quashed on that ground. It is said that had this statement been taken into consideration, the result could have been otherwise. It is an admitted case that this reply was submitted after expiry of the period, given for the purpose. It is stated in the penalty order dated 29.10.1998 that the applicant did not submit any defence statement in compliance to the show cause notice. It does not reveal that reply so sent by the Registered post on 20.10.1998 had reached the Disciplinary

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Authority before the impugned order, so there was nothing wrong on his parts in taking cognizance of it.

10. Shri Dave has also said that expert evidence could have clinched the issue, but no attempt was made to get the same, we think, we cannot interfere on such grounds, as we are not sitting in appeal.
11. We also do not find substance in the submission, that appellate authority acted mechanically or did not apply its mind, to the points placed before it. The Authority has reflected due application of its mind, by recording some reasons. We think, it was not required for him to write more exhaustive order.
12. The last argument of Sri A.K. Dave is that punishment of removal is disproportionate to the guilt so proved. He says that in the circumstances no such strict view ought to have been taken. Learned counsel goes on to argue that it was a case where Kishan Vikas Patras in question were handed over to the wife of the applicant against consideration of Rs.1000/- and taking ^{undue} advantage of the fact that transfer could not materialize in accordance with Rules, Smt. Rai made a complaint after receiving the amount from the Post Office. He says that in such circumstances removal from service does not appear to be justified. He has drawn our attention towards para-18 of B.C Chaturvedi case (supra) where the Apex Court has said that if the punishment imposed by the Disciplinary Authority or Appellate Authority shocks the ^{Conscience} ~~consent~~ of the Courts/Tribunals, it can properly mould the relief either directing the Disciplinary Authority/ Appellate Authority to



reconsider the penalty or to shorten the litigation, can itself, in exceptional and rare⁴ cases impose appropriate punishment with cogent reasons. On the finding so reached by the Enquiry Officer, Disciplinary and Appellate Authority that it was not Smt. Sneh Lata Rai but some other lady received the amount from the Post Office on 7.12.1996 on the identification of the applicant; it is difficult to say that the punishment of removal is disproportionate to the guilt so proved. So we are not convinced to say that punishment or removal is disproportionate.

13. Sri A.K. Dave also tried to say that Section 19 (4) of Administrative Tribunals Act, 1985, appeal stood abated as O.A. was admitted on 25.10.1999. Undoubtedly, the appellate order dated 23.12.1999 was passed after this O.A. was admitted in October 1999. The Tribunal passed no order so as to provide appeal could be disposed of irrespective of admission of the O.A. So from that angle Appellate order has no meaning but the applicant has sought relief for quashing the same.
14. So^{as}⁴ a result of discussion made above, the O.A. is dismissed with no order as to costs.

Manish
Member-A

C.Dw. 05-4.07
Vice-Chairman

Manish/-