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(RESERVED ON 6.11.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

Allahabad, this the *9th* day of *November*, 2012

Hon'ble Mr. Sanjeev Kaushik, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Original Application No.798 of 2006

(U/s 19 of Administrative Tribunal Act, 1985)

Sushil Kumar Sharma, S/o Sri Ram Manohar Choubey,
R/o Village and Post-Mahuariya, Via Amwar, District-
Sonebhadra.

..... *Applicant.*

By Advocate : Shri A. Srivastava

V E R S U S

1. Union of India through Secretary, Ministry of Post and Telecommunication, Department of Post, Dak Bhawan, New Delhi.
2. The Director of Postal Services, Allahabad.
3. Superintendent of Post Offices, Mirzapur Region, Mirzapur.

..... *Respondents*

By Advocate : Shri R.P. Singh

O R D E R

Delivered by Hon'ble Mr. Sanjeev Kaushik, Member-J

By way of the instant original application, the applicant
prays for issuance of writ in the nature of certiorari quashing



the order dated 4.4.2006 with further prayer in the nature of mandamus directing the respondents to reinstate the applicant as Gramin Dak Sewak.

2. The facts is to be noticed first. The applicant who was working as Gramin Dak Sewak was served with a charge sheet on 14.5.2003. Applicant filed his reply denying all the charges.

Shri B.P. Yadav Assistant Superintendent of Post Offices (West) Sub Division was appointed as an enquiry officer. Shri Surendra Kumar Singh was appointed as a presenting officer. After receiving the enquiry report the same was forwarded to the applicant who submitted his reply on 20.2.2006. Acting upon the enquiry report the disciplinary authority passed an order on 4.4.2006 terminating the services of the applicant, hence the original application.

3. Pursuance to notice, respondents contested the case of the applicant by filing detailed counter affidavit taking therein the preliminary objection that the applicant has not exhausted the alternative remedy, therefore, in terms of section 20 of the Administrative Tribunals Act 1985 the petition deserves to be dismissed on this ground alone. On merit, it is averred that the

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applicant did not cooperate in the enquiry proceedings and ultimately proceeded ex-parte and finally after considering the enquiry report the order of termination was passed.

4. The applicant filed rejoinder affidavit.

5. We have heard Shri A. Srivastava, learned counsel for the applicant and Shri R.P. Singh, learned counsel representing the respondents.

6. Shri Srivastava, learned counsel for the applicant argued that the impugned order is liable to be set aside on two counts. Firstly, that his request for change of enquiry officer has not been considered. Secondly, he was not afforded proper opportunity in the enquiry proceedings thus principles of natural justice have been violated. He urged that one Shri P.K. Singh Inspector has been examined as a witness whereas he requested the enquiry officer not to proceed in the matter on the basis of evidence of said Shri P.K. Singh. He draws our attention to page no.48 where he requested that firstly Shri P.K. Singh be transferred and thereafter the matter be proceeded further. He further argued that he was not given chance to cross examine the witnesses produced before the enquiry

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officer. On the other hand, Shri R.P. Singh who represents the respondents argued that it is clear from the enquiry report that on no occasion the applicant appeared in the enquiry proceedings. After noticing the above facts the enquiry proceedings were proceeded ex-parte and after considering the material witnesses and the document on record the enquiry officer proved all the charges leveled against the delinquent officer. With regard to change of Shri P.K. Singh is concerned he submitted that neither he was enquiry officer which can prejudice the right of the applicant nor he was shown that he influenced the enquiry officer. Shri P.K. Singh Inspector was a witness among the other who was examined by the enquiry officer but the applicant did not appear and choose not to cross examine the said witness. To this effect he read para 6 of the enquiry report. He further urged that this court cannot sit as an Appellate Authority over the findings recorded by the disciplinary authority. He place reliance upon judgment in the case of *Shri Ji Vidhalaya and others Vs. Patel Anil Kumar Lalu Bhai and others, JT 1998 (8) SC 460.*

7. We have considered the rival submissions with the able assistance of learned counsel for the respective parties. We



have gone through the impugned order and of the view that it does not deserves any interference. Perused the enquiry report appended as Annexure A-6. From the enquiry report it is clear that the applicant did not participate in the enquiry proceedings for a single date and he remained absent which compel the enquiry officer to proceed further in the matter. After taking into account the relevant documents and the evidence the enquiry officer came to the conclusion which reads as under:-

मैं पैरा 6 में दिये गये तथ्यों, आरोप पत्र के आरोप सं0 1,2,3,4,5,व6 प्रस्तोता अधिकारी द्वारा प्रस्तुत लिखित सार, जांच में अभियोजन पक्ष द्वारा प्रस्तुत प्रदर्श- क1 से प्रदर्श-क 16 व गवाह SW-से1 SW-5 के बयानों के अनुसार यह स्पष्ट होता है कि आरोपित कर्मचारी श्री सुशील कुमार शर्मा जी0डी0एस0 / बी0पी0एम महवरिया के पद पर कार्य करते हुए निम्नांकित गम्भीर अनियमितताएं किया :—

1— आरोप पत्र संख्या 1 में दर्ज धनादेशों के डाकघर में कैरू रहते हुए भुकतान के लिए इ0डी0डी0ए0 को काफी विलम्ब से दिया जिससे इनके भुकतान में काफी विलम्ब हुआ।

2— लेखा कार्यालय से दिनांक 12-02-02 एवं 26-04-02 को भेजे गये डाक टिकट को प्राप्त तिथि क्रमशः दिनांक 12-02-02 एवं 26-04-02 को डाकघर के लेखा में नहीं लिया और इनकी रकम को बाद में लेखा में लिया।

3— आरोप पत्र सं0 3 में दर्ज बी0पी0 डाक वस्तुओं को वितरित करके उनकी रकम को वितरण तिथि में डाकघर के लेखा में जमा न करके लेखा में जमा किया।

4— आरोप पत्र सं0 4 के अनुसार बचत बैंक खाता सं0 1671612 व 1671655 को पासबुक में क्रमशः दिनांक 25-09-2002 व 25-08-2002 को धन जमा करने की प्रविष्टि किया, परन्तु जमा धन को बाद में डाकघर के लेखा में जमा किया।

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5— आरोप पत्र सं 5 के अनुसार आरोड़ी 0 खाता सं 2275912, 227913, 2275900, 2275901, 2275585 की पासबुकों में विभिन्न तारीखों में जमा धन की प्रविष्टि करके जाम रकम को अपने निजी कार्यों के प्रयोग में लिया और डाकघर के लेखा में जमा नहीं किया।

6— आरोप पत्र सं 6 के अनुसार बचत बैंक खाता सं 161513 की पासबुक में दिनांक 18-08-2000 को रु 500/- जाम करने की प्रविष्टि करके जमा धन का प्रयोग अपने निजी कार्यों में किया और जाम धन डाकघर के लेखा में जमा नहीं किया।

इस प्रकार आरोप संख्या 1, 2, 3, 4, 5, व 6 में लगाये गये आरोप अभिलेखों पर आधारित है और जांच के समय सत्य पाये गये हैं। गवाहों ने जांच में इनकी पुष्टि की है। इसके विपरित आरोपित कर्मचारी जांच में भाग लेने के लिए नहीं आया। कोई साक्ष्य या गवाह भी नहीं प्रस्तुत नहीं किया। वह अपना कोई बचाव बयान भी नहीं दिया जबकि उसे पर्याप्त अवसर प्रदान किया गया। जांच कार्यवाही के सभी कागजातों की एक प्रति आरोपित कर्मचारी को नियमित रूप से पंजीकृत डाक से भेजी गयी है।

इस प्रकार आरोपित कर्मचारी श्री सुशील कुमार शर्मा के विरुद्ध आरोप पत्र सं 1, 2, 3, 4, 5 व 6 में लगाये आरोप उनके विरुद्ध पूर्णरूप से सत्य साबित होते हैं। कर्मचारी अपने पद पर कार्य करते हुए शाखा डाकघर नियमावली के नियम क्रमशः 106, 174, 174(2), 131(3) का उल्लंघन करते हुए ग्रामीण डाक सेवक (आचरण एवं नियोजन) नियमावली 2001 के नियम-21 का भी घोर उल्लंघन किया है।

Based upon the above, the disciplinary authority passed an order of termination against the applicant. Perusal of both the orders indicates that not only the oral evidence the documentary evidence was also taken into consideration while reaching to the conclusion. The applicant fails to impress us with regard to any illegality committed by the enquiry officer. It is proved beyond doubt that the applicant was given an ample opportunity to stake his defence before the enquiry

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officer but he did not appear in the enquiry proceedings. There is no allegation of biasness against the enquiry officer or the disciplinary authority. Therefore, we are not able to accept the contention of the applicant to quash the impugned order. Moreover, the Hon'ble Supreme Court has repeatedly held that the High court or the Tribunal cannot interfere in the disciplinary proceedings and substitute their decision that of a disciplinary authority except in the cases where the delinquent officer able to prove the biasness or where findings are based upon no evidence. Reliance in this regard is place upon the judgment in the case of *State of Andhra Pradesh Vs. Shri Rama Rao*, AIR 1963 SC 1723 and the latest judgment in the case of *State Bank of India Vs. Ram Lal Bhaskar and others*, 2011 STPC (Web) 904 SC. Reliance is also placed upon the following judgments of the Hon'ble Supreme Court.

(I) *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority V. Gopi Nath & Sons*, 1992 Supp (2) SCC 312, wherein it has been held by the Apex Court as under:-

Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matte of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is

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authorized by law to decide, a conclusion which is correct in the eyes of the court, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

The above view is reiterated in subsequent judgment in the case of *Govt. of A.P. V. Mohd. Nasrullah Khan*, (2006) 2 SCC 373:

12. We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In *Union of India V. Parma Nand, K. Jagannatha Sheety*, J., speaking for the Bench, observed at SCC p. 189, para 27 as under:-

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be

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imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

The adequacy of penalty unless it is malafide is certainly now a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

8. In view of the above, we find no reason to interfere with the impugned order. Original application is dismissed being devoid of merits. No Costs.

Chandra
Member-A

Chawla
Member-J

/ns/