

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Dismissal

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O.A. No.
~~TA No.~~
~~XXXXXX~~

46 OF 1989

DATE OF DECISION 23-02-1993.

Shri B.F.Kazi, Petitioner

Shri D.V.Mehta Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.S.Hegde : Member (J)

The Hon'ble Mr. V.Radhakrishnan : Member (A)

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 it needs to be circulated to other Benches of the Tribunal? ∅

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Shri B.F.Kazi,
Ex-Postal Assistant
at Sahera,
Panchmahals Dn.
Dist. Panchmahal.

...Applicant.

(Advocate : Shri D.V.Mehta)

Versus

1. Union of India,
Notice to be served through
D.G.P.T., Postal Bhavan,
New Delhi.
2. Director of Postal
Services, Vadodara Region,
Fatehganj, Vadodara.

...Respondents.

(Advocate : Shri Akil Kureshi)

J U D G M E N T

O.A.NO. 46 OF 1989.

Dated : 23rd Feb.1993.

Per : Hon'ble Mr.B.S.Hegde : Judicial Member

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, for declaration to quash and set aside the order of the Appellate authority confirming the termination order dated 11.12.1987, and to declare that the order of termination dated 04.08.1986, passed by the Disciplinary Authority is bad in law and also direct the respondents to reinstate the applicant in service with back wages together with consequential benefits.

2. The applicant Shri B.F.Kazi, was working as Ex-postal Assistant of Panchmahals postal Division, Godhra, and was recruited in a Postal Division in the year 1967, was under the jurisdiction of the Supdt. of Post Offices,

Kheda Division, Nadiad. He states that the appointment of the petitioner was made by the officer of Grade-A of Indian Postal Services as "Senior Superintendent" of Post Offices". With the expansion of Post Offices the said Kheda Division was bifurcated in the year 1968 and Panchmahals District was placed under the authority of Superintendent of Post Offices. Thus, he states, that the Disciplinary Authority for imposing major penalty such as dismissal or removal has to be initiated and finalised by that authority.

3. At the relevant time, the applicant Shri Kazi was working as Postal Assistant Lunavada and he was served with the charge sheet. On the basis of the charge sheet, the inquiry was conducted in which he participated and thereafter the dismissal order was passed by the Senior Superintendent of Post Offices, vide its letter dated 04.08.1986, which is marked as Annexure-A. The applicant filed an appeal against the said order dated 02.10.1986, which is marked as Annexure-A/2. The appellate authority vide its order dated 11.12.1987, after considering the grounds of appeal, rejected the appeal and confirmed the order of the Disciplinary authority which is marked as Annexure-A/3.

4. The main charges were as follows :

"I. That the said Shri B.F.Kazi, while functioning as a P.A. Lunavada on 02.09.1982, did not bring to the account the amount of TRC bill and thereby violated the provisions of Rule No.4 (1) of F.H.B. Vol. I.

II. That said Shri B.F.Kazi, while functioning at aforesaid office on aforesaid date failed to prepare and submit account and return for TRC collections and thereby violated the provisions of Rule No. 64 of F.H.B. Vol. I.

III. The said Shri B.F.Kazi, while functioning at aforesaid office on aforesaid date failed to observe the procedure laid down in Rule. No.195 (b) of F.H.B. Vol. I and thereby violated the provisions contained therein.

IV. That the said Shri B.F.Kazi, while working at aforesaid office on aforesaid date replaced the receipt No. 131 to 135 of current Eng. 9 receipt book under use by the receipts bearing the same numbers from another blank receipt book in stock and thereby did an act in contravention of rule No. 55 of P & T Manual Vol. I.

V. That said Shri B.F.Kazi, while working at the aforesaid office on aforesaid date destroyed the original copies of the two receipts of Eng. 9 and thereby acted in a manner which was attracted the provisions of Rule No.55 of P & T Manual Vo.I."

5. The applicant had raised number of grounds in assailing the impugned order of dismissal and rejection of the appeal which are as follows : -

(i) The departmental inquiry should not have been proceeded further during the pendency of the criminal

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complaint before the Court.

(ii) That the prosecution side has not proved the charges.

(iii) The original receipt No. 133 alleged to have been issued by the applicant has not been produced before the defence side and during the inquiry. He further contends that the aforesaid receipt has not been seen by the inquiry officer and the accused have not been afforded an opportunity to inspect the documents at any stage. He further alleges, that the zerox copy used in inquiry is not a document enforceable in law as it is not permissible to use it under the circumstances. He also states, that the deposition of the accused official recorded in preliminary inquiry under duress is not admissible as a document as per the evidence Act.

(iv) The amount credited in treasury on 09.09.1982, has not been established during the inquiry proceedings, etc.,

(v) He also alleges, that the findings of the Disciplinary authority and the appellate authority, that the charges are proved are perverse and unsustainable as they were entered into on the basis of indissmissible evidence and without any applicable of mind.

6. The aforesaid contentions of the applicant have been denied and rejected by the respondents in their reply statement. The main contention of the respondents is that the applicant was served with the charge sheet under Rule-14 CCS (CCA) Rules 1965, after complying the relevant procedure and

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after considering the material on record, the inquiry officer submitted his report to the disciplinary authority. After taking into consideration the material on records, the competent authority i.e., the Disciplinary authority came to the conclusion that it is a serious misconduct on the part of the applicant. Accordingly, the order of dismissal vide its order dated 04.08.1986, was passed. It is true, as against the said order, the applicant had preferred an appeal which was duly considered and was dismissed by the appellate authority vide his order dated 11.12.1987.

7. The learned counsel for the respondents Shri Akil Kureshi, draws our attention, that it is not a matter of course, that whenever the criminal case is pending the department should not proceed with the departmental proceedings. In the instant case, he states, that the applicant during the inquiry has admitted the issue of receipt No.133, on 02.09.1987, for Rs.2,722.50/-. The reasons why the respondents could not produce the original receipt is as the said original receipt was required to be given in Court's proceedings and therefore, zerox copy of the same has been adduced during the inquiry proceedings. It is also denied that the prosecution side has not proved the charges as alleged. As a matter of fact, the prosecution side has proved the charges against the applicant.

8. The learned counsel for the respondents also draws our attention stating that the plea of the original receipt has not been raised during the course of enquiry proceedings. He has for the first time, raised this plea only in the appellate proceedings. He also states that no lacuna has been pointed out by the applicant during the inquiry or at the appellate stage. On the other hand, he was given inspection of the documents dated 10.02.1984, is clear from the inquiry proceedings which was duly signed by him and he had not insisted for the production of original receipt at that point of time. He further states that the applicant has changed his stand from time to time and also submitted lengthy written contentions which are not supported by any documentary evidence and no relevance to the issue at hand.

9. The learned counsel for the respondent, in support of his contention submits as to whether the Tribunal can go into the versity of the evidence adduced before the enquiry and the powers of the High Court under Section -227 of the Constitution. In this connection, he relies upon AIR 1963 SC 404, wherein the Supreme Court has observed as follows :

"In proceedings under Arts. 226 and 227, the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry so that if the High Court has purported to reappreciate the evidence for itself that would be outside its jurisdiction.....

High Court was not right in holding that there was no evidence in support of conclusions recorded by the Tribunal."

Secondly, in support of his contention as to whether the 'Disciplinary Proceedings can be proceeded with, while criminal proceeding is pending in a court of law. In this connection he relies upon the Supreme Court's decision in AIR 1969 SC 30, wherein the Court has observed : -

"The initiation and continuation of disciplinary proceedings in good faith do not obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. In the absence of a stay order, the disciplinary authority is free to exercise its lawful powers".

Therefore, he states on Both the Courts, the application deserves to be dismissed as it devoid of any merit.

10. After considering the rival contentions of the parties and considering the material placed upon the record, it appears to us, that the applicant has not been able to substantiate the impugned order of dismissal was passed malafide against him for an oblique purpose or for working vengeance against him. Unless such order is passed malafide or in violation of service Rules for dismissal without any justification, the court or the Tribunal should not

interfere in the order of dismissal by the competent authority.

11. After having heard the counsel for both the parties, we are of the view, that the short question for our consideration is whether the dismissal passed by the Disciplinary authority which has been upheld by the appellate authority can be set aside by the Tribunal or - the Court except on the ground of malafide or on the ground of non-compliance of the rules in the inquiry proceedings.

12. From the material placed before us, we find that the respondents have strictly followed the procedure laid down in the CCS (CCA) Rules 1965 and no such plea of malafide has been alleged by the applicant in the order of dismissal. Further, it has not being contradicted by the applicant that the original receipt no.133 has not been produced before the Court of law in a pending criminal proceedings. Even the enquiry officer after relying upon the oral as well as documentary material on record has come to the conclusion that the charges against have been proved.

13. On perusal of records, we find, that the various contentions of the applicant are misconcieved and are bare repetition. No prejudice is caused to the applicant, and since the applicant himself had tendered the money to the

treasurer with his written request dated 09.09.1982, duly endorsed by the SPM in favour of the treasurer, and hence, therefore, the question does not arise to hand over the receipt in presence of panchas as contended by the applicant.

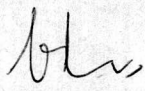
14. It is well settled principles of law that it is not open to the Tribunal or courts to reappreciate the findings already adduced before the Disciplinary proceedings, unless the plea of malafide is raised which is not the case here. Similarly, the recent Supreme Court's decision in Parmananda case (1989) the court has observed that "in the context of the quantum of punishment in a disciplinary action against Government servant, the Tribunal can perform the function of 'judicial review' like that of High Court and it cannot act as an appellate forum and reappreciate the evidence on which administrations decision is based.

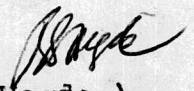
15. ~~Second~~ question is whether it is permissible to go ahead with the enquiry proceedings when a criminal proceedings is pending in a court of law, the very subject matter is covered by the decision of the Supreme Court in AIR 1969 SC. 30. Therefore, on both the counts it is not open to the applicant to question the veracity of the findings of the competent authorities at this stage before this Tribunal. Since, the applicant has not taken any steps to prevent the enquiry proceedings to proceed with the criminal complaint was pending against him in a court of law, which remedy

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was available to him, he cannot agitate the findings of the competent authorities at this stage as is clear from the observations of the courts. In the light of clear findings of the courts on both the issues, we have no option but to agree with the findings of the competent authorities.

16. For the aforesaid reasons, we are satisfied, that the application has no merit and is accordingly dismissed.


(V. Radhakrishnan)
Member (A)
23.02.1993.


(B.S. Hegde)
Member (J)
23.02.1993.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(New Delhi)

R.A.No. 13/93
in
O.A.No. 46/89

Dated: 10.9.93.

SHRI B.F. KAZI

V/s

UNION OF INDIA AND OTHERS

O_R_D_E_R

The applicant has filed his Review Application seeking review of the judgement dated 23rd February, 1993. We have seen the Review Application and we are satisfied that the review application can be disposed of by circulation under Rule 17(iii) of the CAT (Procedure) Rules, 1987 and we proceed to do so.

2. The applicant, Shri Kazi, Ex. Postal Assistant at Sahera, has filed O.A. No. 46/89 in respect of his dismissal from service. In the Review Application, the applicant states that the Tribunal had erred in not dealing with many of his contentions. Therefore, this Review Application has been filed. He challenges the competency to initiate the inquiry and the authority of the disciplinary and quasi-judicial authority and also non-production of

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original receipt No. 133. In this connection, it is relevant to recall the observation made in the judgement. The applicant has taken objection that departmental inquiry should not have been proceeded further during the pendency of the criminal case before the court. Prosecution has not been proved and also the original receipt No. 133 alleged to have been issued by the applicant has not been produced before the defence during the inquiry etc. He also challenges the findings of the disciplinary authority and the appellate authority and stated that the charges proved are perverse and non-sustainable as they were entered into on the basis of indissmissible evidence and without any application of mind. All these averments have been considered in the judgement. The reply given by the respondents is very clear and unambiguous. It is not a matter of course that whenever the criminal case is pending, the department should not proceed with the departmental proceedings. During the inquiry, the applicant had admitted the issue of receipt No. 133, on 2.9.87, for Rs.2,722.50. It is also explained why the original receipt could

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not be produced during inquiry as the said receipt was required to be produced in the court's proceedings and, therefore, zerox copy of the receipt was produced in the court during the enquiry. It is clear from the judgement that the applicant has not raised such a plea during the course of the enquiry. He for the first time raised that plea at the appellate proceedings stage. On the other hand, he was given inspection of the documents dated 10.2.1984 which was duly signed by him and he had not insisted for the production of original receipt at that point of time. It is on record that the applicant had changed his stand from time to time and submitted lengthy written contentions which are not supported by any documentary evidence and no relevance to the issue at hand at that time.


3. The question to be seen here is whether the inquiry proceedings had been initiated for want of non-adherence to the relevant rules..It is not the contention of the applicant. Normal procedures have been adopted and he had participated in the proceedings. Once the departmental enquiry has been conducted, it is not open to the Tribunal or courts to sit in appeal against the findings of the Disciplinary Authority

or reappraise the evidence on which the administrative decision is based. Parmananda case (1989_7.

4. Regarding the merits of the case, the same have been dealt with at pages 8 to 10 of the judgement. He also contended in para 12, page 9 of the judgement that there is error apparent on the fact of the record. The said contention is not tenable and not based on record.

5. In the circumstances, we are of the opinion, that neither any error on the face of the record has been pointed out nor any new facts have been brought to our notice calling a review of the original judgement. Further, keeping in view the provisions of O.47, Rule 1 R/W Section 115 of the CPC, the ground raised in the R.A. are more germane for an appeal against our judgement and not for review. The Review Application is, therefore, dismissed.


(V. Radhakrishnan)
Member (A)


(B.S. Hegde)
Member (J)

10/9/93