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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00223/2011

Date of Order : 2nd May, 2017.

CORAM

HON'BLE SHRI A.K. PATNAIK, MEMBER (J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Nilakantha Mishra aged about 54 years S/o Shri Mrutunjay Mishra, Postal Assistant (BCR), Puri Division, at present working as Sub Post Master, Singhadwar Post Office, Puri.

...Applicant

By the Advocate- **Mr.D.K.Mohanty**

-V E R S U S-

- 1- Union of India represented through it's Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi 110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District Khurda- 751001.
3. Director of Postal Services, Bhubaneswar Region, Office of the Chief Postmaster General, Orissa Circle, Bhubaneswar, District Khurda - 751 001.
4. Senior Superintendent of Post Offices, Puri Division, At/PO/District Puri - 752 001.

...Respondents

By the Advocate-**Mr.S.Behera**

ORDER

Per R.C.MISRA, MEMBER(A):

By filing this O.A., applicant, who is an employee of Department of Posts, has prayed to quash the order of the disciplinary authority dated 31st December, 2008 Annex.A/5 and, the order of the appellate authority dated 12th November, 2009 Annex.A/7 and, accordingly direct the respondents to pay him all the consequential service benefits retrospectively as per rules.

2. The facts in brief are that applicant while working as Postal Assistant in Puri H.O. during 2004-2008 was issued a Chargesheet by the SSPO, Puri on 19.05.2006 . It is submitted by him that when he was working as Dy. Post Master on 05.10.2004, he received 30 Kisan Vikas Patra (KVPs) for encashment from the counter Assistant of the Certificate Branch of Puri H.O. and, the Certificates were said to be produced by one Sh. Bijay Gupta. He accordingly advised the holder of KVPs to open a S.B. Account which was being introduced by one Shri Basant Kumar Kar, Agent. It was alleged by authorities that applicant had not verified the Serial Numbers in the Negative List circulated by the CPMG office. It was also alleged that applicant did not insist upon the holder of the certificates to furnish his full name and present address. The amount was later on withdrawn by the said

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Shri Gupta. It was alleged that applicant facilitated fraudulent encashment of the certificates amounting to Rs. 6,06,990/- at Puri H.O. and, thereby caused a heavy pecuniary loss to the public exchequer. The applicant on receipt of the Memorandum of Charges dated 19.05.2006, gave his reply denying the charges and further stated that it was the counter clerk Sh. Hrushikesh Rath, who actually received the KVPs and opened a S.B. account. He has discharged his duties while sending the said KVPs to the concerned Rangabazar S.O. in Balia in the State of U.P. for verification. The charges, against the applicant were not proved except that he failed to insist upon the holder to furnish his full name and address on the application for transfer of the KVPs, as per the report of the inquiry officer. However, the disciplinary authority stated that the charge is partly proved as the applicant had not verified the register of lost/stolen certificates before forwarding the application to the issuing office. The Disagreement Note of Superintendent also goes to show that applicant has stated that he has verified the list of Lost/Stolen certificates available in the computer and when he did not find the alleged KVPs figured in the said list, he thereafter forwarded the same to the issuing office. The disciplinary authority after considering reply of applicant to disagreement note found the charges partially proved. Thus, the disciplinary authority on 31.2.2008 ordered for reducing the pay of the applicant by one stage for a period of two years w.e.f. 1.1.2009. Applicant's appeal dated 4.2.2009 (Annex. A/6) was dismissed by the Director of Postal Services, vide his order dated 12.11.2009 (Annex.A/7).

3. The respondents have filed their reply stating therein that applicant, a Postal Assistant, while he was officiating as Dy.Post Master, Puri HO on 5.10.2004, received 30 KVPs bearing No. 46 CC 896701 to CC 896730 for encashment from the counter assistant, Certificate Branch Puri HO purportedly tendered by one Shri Bijaya Kumar Gupta along with three applications for a group of 10 KVPs. The said KVPs were shown to have been issued by Raniganj Bazar SO under Balia Division of UP. The counter assistant received the KVPs with applications for further action. The applicant did not insist upon the holder of KVPs to furnish his full name and address as given in the application for purchase and his present address below his signature on the applications seeking encashment at Puri HO and simply forwarded the same to concerned Post Office for verification. No verification of identity of Shri Gupta on his local address as per the provisions of Rule 23 (1) of the Post Office S.B. Manual Vol. II was done by the applicant. The said KVPs were

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lost/stolen and were figured in the Negative List circulated vide Postal Directorate letter dated 9.3.1999 and further circulated vide SSPO, Puri Division letter dated 17.12.1999. But, applicant did not verify the certificates against the negative list. The applicant did not follow the instructions contained in the DG (Posts) letter dated 6.4.2004. It is averred that the applicant allowed one Shri Bijaya Gupta for opening a new SB account being introduced by one Shri Basanta Kumar Kar, Agent. Failure on the part of the applicant to act according to rules and guidelines issued by the department facilitated fraudulent encashment of KVPs amounting to Rs. 606990/-. In this view of the matter, the applicant was proceeded against under Rule 14 of the CCS (CC&A) Rules, 1965. Sri Srikanta Kar, ASP (Printing) Postal Stores Depot, Bhubaneswar, was appointed as a Inquiry Officer and Shri Sarbeswar Choudhury-II (Vig) Office of the CPMG, Orissa Circle, Bhubaneswar was appointed as Presenting Officer to present the case on behalf of the disciplinary authority. The inquiry authority conducted oral sitting of inquiry as per provisions of the rules and submitted his report on 22.12.2006 which was duly examined by the respondent No. 4, the disciplinary authority who observed that except a part of the charge, the inquiry authority in his findings disproved all other ingredients of the charges which was not agreed to by the disciplinary authority. Accordingly, the reasoned findings of the disagreement to those ingredients of the charge was recorded vide Note of Disagreement dated 14.10.2008 and the same was communicated to the charged official along with a copy of the inquiry report. It is further averred that having gone through the submissions of the applicant vis-à-vis the documentary and oral evidences, the disciplinary authority awarded punishment vide Annex.A/5 of reduction of pay by one stage in the pay bend of Rs. 9300-3482 from the present stage of Rs. 17,220/- to the stage of 16,710/- for a period of two years w.e.f. 1.1.2009. ^{Subsequently} Consequently, the punishment order was confirmed vide Annex.A/7 by the appellate authority and thus, in the above scenario, the applicant has no case and the same is liable to be dismissed.

4. Applicant has not filed any rejoinder to the reply of the respondents but has filed written note of arguments reiterating his stand taken in the O.A. The respondents have also filed their written notes of arguments.

5. We have perused the materials on records, heard learned counsels for both sides, and given our anxious consideration to the issues raised.

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6. ^{having been} The facts ~~being~~ stated above, need no reiteration. The inquiry officer came to a finding that charges were 'not' proved. But the disciplinary authority came to a different finding. We agree with the contention of the learned Senior Central Government Counsel that the findings of the inquiry officer are not binding on the disciplinary authority, who, after considering the inquiry report may have his own conclusion on assessment of evidence. But, the principle of natural justice demands that he must give the delinquent an opportunity to be informed about the note of disagreement. The disciplinary authority cannot proceed in such a case of disagreement, behind the back of the charged officer. In the present case, the disciplinary authority has differed from the findings of the inquiry officer for reasons that are well articulated, with proper application of mind. A note of difference was served upon the applicant, and his reply was obtained both on the inquiry report and the note of difference. There is no procedural lapse and principle of natural justice has been duly complied with.

7. We have perused the orders of the disciplinary authority as well as the appellate authority. These orders are well reasoned and detailed. Every issue has been addressed with due application of mind. The appellate authority has also dealt with all the grounds of appeal raised by the applicant. We did not find anything arbitrary or capricious in these orders. The departmental authorities are well within their right to inquire into the facts and circumstances of the charges, and to formulate their view about gravity of the charges judged against the departmental rules and regulations. The interference by the Tribunal would have been warranted if it was observed that the consideration by authorities ^{was} ~~were~~ subjective or motivated. The findings of authorities would have been found to be perverse, if it would have been noted that the findings were not based upon the facts. We are fully satisfied that there is no trace of subjectivity or arbitrariness in the orders impugned in the case. With regard to the difference of the disciplinary authority from the findings of the inquiry officer, we find nothing irregular or abnormal. It is not mandatory for the disciplinary authority to agree totally with the inquiry authority. The difference, however, should be based upon logical analysis of facts, and not on whims and caprices of authorities. Here the disciplinary authority has taken a view after due application of mind. There is neither any caprice nor any mala fide. We, however, cannot and must not adjudge

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whatever view the disciplinary authority has finally taken. It is the well settled law that the Tribunal in discharge of judicial review must not dictate what view is to be taken by the departmental authorities. The opinion in such matters is primarily of the disciplinary authority, and he being well aware of the facts as well as the departmental regulations, will take a view with regard to the gravity of the charges. The Court can interfere in the case of a material irregularity that has affected the delivery of justice to the applicant.

8. The decision with regard to quantum of punishment to be awarded to the delinquent employee, is also within the competence of the disciplinary authority. If the Court/ Tribunal after examining the facts of the case, is of the view that the punishment awarded is so disproportionate to the gravity of the offence, so as to shock the judicial conscience, then the Court / Tribunal may decide to issue direction for re-moulding the relief. In the absence of such situation, in the normal course, the Tribunal would observe restraint in such matters, and would be slow to interfere.

9. An important aspect of a disciplinary proceeding is the statutory remedy of appeal that an aggrieved employee has to avail of. In the present case, the applicant filed an appeal. The appellate authority has gone into all factual aspects as well as the grounds on which the appeal was made. After a detailed consideration only, the appellate authority passed her order confirming the orders of the disciplinary authority. We are convinced that there is no scope of interfering with the orders.

10. In course of hearing, learned counsel for applicant made a submission that on 11.11.2004, the disputed amount has been credited into the Government account and, therefore, there is no financial loss caused to the Department. In our view, such a submission does not help the case of the applicant. The charges framed against the applicant were not related to mis-appropriation or defalcation of Government cash. The charges were specifically about non - adherence to rules and regulations of the Department, a failure on the part of applicant which facilitated a fraudulent transaction. To sum up, we are of the view that the grounds agitated by applicant in challenging the impugned orders are not sustainable.

[Signature]


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11. We would in this regard refer to the decision of the Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. UOI & Ors.** reported in 1995 SCC (6) 749, the relevant part of which is quoted below :

"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 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 findings reached by the disciplinary authority is based on no evidence. If the conclusion or findings 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."

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12. We have also deliberated upon the facts of the case in the light of the decision of the Hon'ble Apex Court as quoted above, and come to the conclusion that the orders of the disciplinary authority and the appellate authority, being based upon evidence on record, and being arrived at as per the statutory procedure, and principles of natural justice, need not be interfered with by the Tribunal.

13. Thus, the O.A. being devoid of merit, is dismissed with no cost to the parties.


(R.C.Misra)
Member (A)


[A.K.Patnaik]
Member (J)