

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur**

Original Application Nos.172/2003

Date of decision: 26th September, 2008

Hon'ble Mr. K.V.Sachidanandan, Vice Chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

1. Mandal Vyas, s/o late Shyam Sundar Vyas
2. Sunita Vyas, D/o late Shyam Sundar Vyas
3. Rupa Vyas, D/o late Shyam sundar Vyas
4. Smt. Sita Vyas, w/o late Shyam Sundar Vyas
5. Smt. Chand Bhor Vyas, D/o late Shyam Sundar Vyas.

Legal heirs of late Shyam Sundar (substituted vide order dated 02.04.2007 passed in M.A. No. 51/2007).

: Applicants.

Rep. By Mr. R.S. Saluja : Counsel for the applicants.

VERSUS

1. Union of India through the Secretary Ministry of Communications, Dak Bhawan, New Delhi.
The Chief Post Master General, Rajasthan Circle, Jaipur.
The Director, Postal Services, Rajasthan, Western Region, Jodhpur.
The Senior Superintendent of RMS, JP Division, Jaipur.

: Respondents.

Rep. By Mr. M. Godara proxy counsel for
Mr. Vinit Mathur,

: Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

Originally, the O.A was filed by Shyam Sundar Vyas on 31.07.2003. During the pendency of this O.A the said Shyam Sundar died on 26.01.2007. Therefore his legal heirs filed M.A. No. 51/2007 for substituting themselves as applicants. This Tribunal vide its order dated 02.04.2007 allowed the said M.A. Hence the present applicants are before us.

(Signature)



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2. Late Shyam sundar vyas had filed this O.A under Sec. 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

" 8.(i). that by an appropriate order or direction the impugned orders Annex. A/1, A/1-A and A/1-B being dated 31.08.2001, 14.03.2002 and 01.04.2003 may kindly be quashed and set aside;

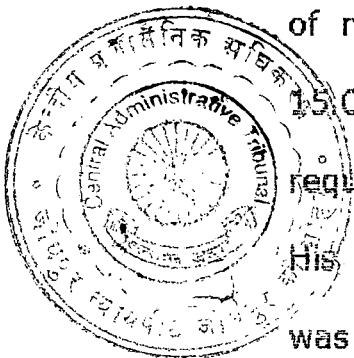
8.(ii). That consequent to aforesaid the respondents may kindly be directed to reinstate the applicant in service with all consequential benefits such as seniority and pay.

8.(iii) Any other direction/relief/order may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case ."

3. The brief facts of the case are that while late Shyam Sundar Vyas was serving as Postal Assistant, he was placed under suspension vide order dated 12.11.1997. A memorandum dated 04.08.98 (A/2) along with statement of article of charges and statement of imputation of misconduct was served upon him. He submitted a reply dated 15.02.99 (A/3) to the aforesaid allegation of misconduct and requested the authorities to issue him the copies of the documents. His request was not acceded to by the inquiry officer and the same was communicated to him vide letter dated 22.02.99 (Annex. A/4).

The applicant made a review petition to the Director of Postal Services, Jodhpur. The said authority vide his letter dated 03.05.99 (A/5) turned down the request of the applicant asking for supply of certain documents. The applicant preferred further petition dated 07.06.99 (A/6), to the Member (Personnel) Postal Services Board, New Delhi against the denial of supplying documents to him which was with held by the Appellate Authority.

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4. Earlier, vide his letter dated 16.10.98 (Annex. A/7), late Shyam sundar Vyas, had requested that since the inquiry officer is well versed in the disciplinary cases and the nature of instant case is of quasi-criminal nature, he may be allowed to engage a legal practitioner as his defence assistant. However, this request was also turned down.

5. Late Shyam Sundar Vyas has also alleged bias against the inquiry officer. Therefore he requested for a change of inquiry officer.

That request was also turned down.

6. The applicant produced medical certificate (Annex-A/11) issued by a medical practitioner stating that he was under treatment from 18.01.96 to 05.09.96.

7. The inquiry was conducted and the inquiry officer submitted his report on 10.02.2000 (A/9), holding that all the charges are proved against the applicant. Aggrieved by the inquiry report, he submitted a detailed representation dated 23.05.2001 (A/10).

8. The applicant (late Shyam Sundar Vyas) had prayed that the Disciplinary Authority, without taking into account any of the submissions made by him, accepted the report of the inquiry officer and imposed the penalty of dismissal from service vide order dated 31.08.2001(annex. A/1). Aggrieved by the above, he submitted an appeal dated 09.10.2001 (A/12). The Appellate Authority without considering the submissions made by him, rejected the appeal vide his order dated 14.03.2002 (Annex A/1-A), without assigning any reason

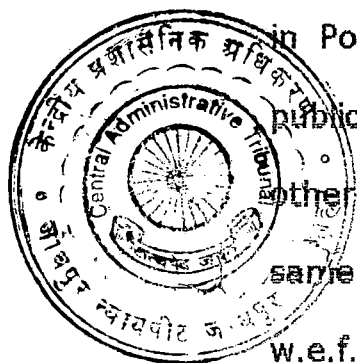
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for his conclusion as to why the defence taken by him in the appeal is not tenable.

Thereafter, the applicant has preferred a revision petition dated 18.05.2002 (A/13) under Rule 29 of the CCS(CCA) Rules, 1965, and the same was also dismissed by the Revisional authority vide order dated 01.04.2003(A/1-B)

9. Aggrieved by the above late Shyam Sundar Vyas filed this O.A praying for the reliefs extracted in para 2 above.

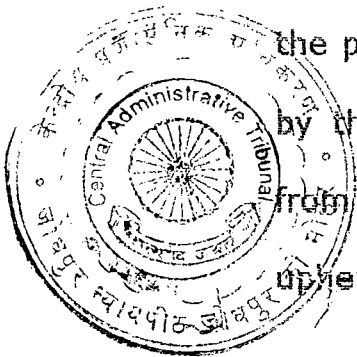
10. The respondents have contested the O.A by filing a detailed reply, inter alia pleading that while the applicant was working as SPM K.K. Chowk from the year 1993 to June 1996, he facilitated the fraud in Postal Saving Bank Accounts and Recurring Deposit Accounts of public to the tune of Rs. 5,16,191/- and even after his transfer to other post office at Nagauri Gate he also committed fraud adopting the same modus operandi and therefore, he was placed under suspension w.e.f. from 12.11.97.



11. The respondents have pleaded that the applicant while requesting the authorities to issue him the copies of certain documents, he had failed to show the relevancy of those documents with the charges leveled against him. The appellate authority held the refusal by the inquiry officer to issue him the copies of documents was proper vide its order dated 14.03.2002 (A/1-A). It is incorrect to say that the inquiry officer, Disciplinary Authority and Appellate Authority have not considered the request of the applicant properly.

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12. The Presenting Officer was not a legal practitioner and therefore the applicant was rightly not given permission to have the assistance of a legal practitioner to defend his case. The Inquiry Officer had given him full opportunity to defend his case and he cannot be considered as bias against the applicant for sole reason that he had refused to supply him the copies of documents asked for by the applicant. Further the applicant had not shown the relevance of the said documents in the instant case. The applicant was given sufficient and reasonable opportunities to defend his case at all levels. However, the charges were held as proved relying on the documents and statement of witnesses. Further the applicant has failed to account the money and credit the same in the respective accounts of the public. The inquiry officer's report has been considered judiciously by the Disciplinary Authority, who ordered dismissal of the applicant from service and the said order of the Disciplinary Authority was upheld by the Appellate Authority.



13. The reply further states that the so called sickness certificates produced by the applicant cannot be relied upon since neither the applicant has taken any leave nor he was ever admitted in hospital for any treatment. Further the medical certificate is not in proper format. However, the applicant being a postal employee, he was to take treatment in Postal Dispensaries for his ailments.

14. The Disciplinary Authority after carefully perusing the inquiry officer's report imposed the penalty of dismissal from service

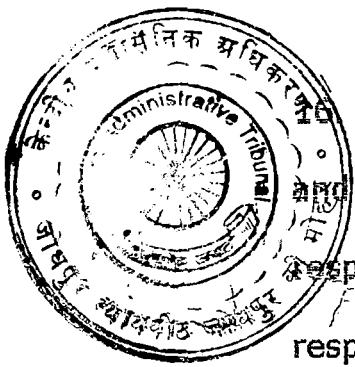
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considering the gravity of the charges. The Appellate Authority did not interfere with the decision taken by the Disciplinary Authority. Further the charges proved against the applicant are of serious nature and the revision petition was rejected after due consideration. The orders passed by the authorities are legally valid, just and proper as the same were taken after assessing the facts and due application of mind.

Further the scope of judicial review in disciplinary matters is very limited. Therefore, the respondents have prayed that the O.A is liable to be dismissed.

15. The applicant has filed rejoinder, wherein most of averments already made in the OA have been repeated. Additional affidavit has been filed by the respondents reiterating the stand taken in the reply.



We have heard Mr. R.S. Saluja, learned counsel for the applicant and Mr. M. Godara proxy counsel for Mr. Vinit Mathur, for the respondents. They have generally reiterated the stand taken in their respective pleadings.

17. The learned counsel for the applicant contended that the inquiry officer was bias against the applicant, and he had conducted the inquiry in a mala fide manner. Therefore he requested for change of inquiry officer, which was not agreed to by the Disciplinary Authority. He had requested supply of copies certain additional documents which were not provided to him. Since the copies asked for by the applicant has not been supplied to him he contended that the inquiry is ab initio

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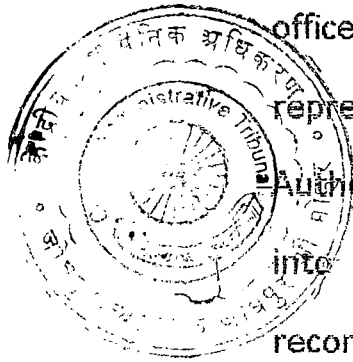
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void. In this regard the learned counsel relied on the following judgments:

C.B. Gautam vs. Union of India and ors. [(1993) 1 SCC 78; State of Madhya Pradesh vs. Chintaman Sadashiva Waishampayan [AIR 1961 SC 1623]; South Bengal State Transport Corporation vs. Sapan Kumar Mitra and others [2006 SCC (L&S) 553] ; State of Assam and anr. Vs. Mahendra Kumar Das and ors.[AIR 1970 SC 1255]. Therefore the learned counsel contended that the inquiry

proceedings are mala fide.

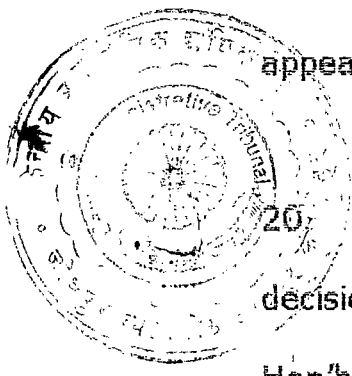
18. The learned counsel for the respondents submitted that the inquiry against the applicant was conducted by an independent inquiry officer who held that all the six charges as proved. Copy of the inquiry officer's report was supplied to the applicant and he made a representation against the same. The Disciplinary Authority, Appellate Authority and Revisional Authority have passed the orders after taking into account all the relevant facts and the materials available on record. The Disciplinary Authority has passed a very detailed order in this case. The learned counsel for the respondents also pleaded that there is no lacuna or procedural lapse has been committed by the respondent authority at any stage. The applicant has failed to establish the relevancy for the supply of photo/certified copies of the additional documents, which he prayed for. All the listed documents were supplied to him, whereas the applicant has been insisting that he should be supplied the original documents. He has not been able to show as to what prejudice has been caused to him by the non supply of original documents asked for. The permission to engage a lawyer



as defence assistant was denied as per rules since the presenting officer is not a lawyer. The learned counsel further pleaded that this Tribunal may not like to interfere with the orders passed by the respondents and the quantum of punishment imposed on him.

19. We have considered this case very carefully and perused the documents placed on record. It is a fact that the applicant misappropriated the Government money; a charge sheet was issued to him; an independent officer conducted the inquiry who held all the charges as proved. The Disciplinary Authority had imposed the punishment of dismissal from service after taking into account all the relevant material available on record under the powers vested with him. The Appellate Authority and Revisional Authority have upheld the orders passed by the Disciplinary Authority and they have rejected the appeal and revision petition, under the powers vested with them.

20. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. as has been held by the Hon'ble Apex Court in the case of V. Ramana v. A.P. SRTC (2005) 7 SCC 338). However, the Hon'ble Apex Court further held in case of B.C. Chaturvedi v. Union of India (JT 1995 Vol. 8 55) that if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases,



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impose appropriate punishment with cogent reasons in support thereof."

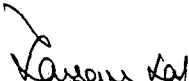
21. The late government servant Shyam sundar vyas had put in more than 30 years service. He had been acquitted in the criminal case filed in the Court Addition Chief Judicial Magistrate, Jodhpur, on the basis of benefit of doubt. He had also deposited the government money misappropriated by him. In the absence of any source of income his wife is facing financial difficulties.

22. In view of the above discussion, and as the family is facing financial hardship, the respondents are directed to re-consider this case and convert the penalty of dismissal into compulsory retirement.

The wife of the deceased government servant may be sanctioned family pension, as per rules, from the date of death of the late Shyam sundar Vyas. The above exercise may be completed within a period of four months from the date of receipt of a copy of this order. This decision cannot be quoted as precedent since this decision would be applicable to the facts of this case only.

23. The O.A is disposed of in the above terms.

24. No order as to costs.


[Tarsem Lal]
Administrative Member.


[K.V. Sachidanandan]
Vice Chairman.

jsv.

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