

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 338/2005

Reserved on 6.10.2014

Pronounced on // February, 2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Sri Shashi Prakash, Member (A)

Om Prakash aged about 43 years son of late Shri Jag Mohan resident of village and Post Office Entai, District Balrampur (lastly working as Extra Departmental (now Gramin Dak Sewak) Branch Post Master, Entai, District- Balrampur.

Applicant

By Advocate: Sri Prashant Kumar Singh

Versus

1. Union of India through the Secretary, Ministry of Communication, Department f Posts, New Delhi.
2. Post Master General, Gorakhpur Circle, Gorakhpur.
3. Director Postal Services, Office of the Post Master General, Gorakhpur Circle, Gorakhpur.
4. Superintendent of Post Offices, Gonda Division, Gonda.

Respondents

By Advocate: Sri S.P.Singh

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i) issuing /passing of an order or direction setting aside the impugned order No. L/Ani.-05/99-2000 dated 12.12.2003, passed by the Superintendent of Post Offices, Gonda Division, Gonda inflicting the punishment of removal from service upon the applicant, impugned order No.R.P.G./Vig.M-18/3/2004 dated 4.10.2004 passed by the Director Postal Services, Gorakhpur rejecting the appeal preferred by the applicant and also the impugned order No.R.P..G./Vig.M/20/1/2005 dated 6.6.2005 passed by the Post Master General, Gorakhpur circle, Gorakhpur rejecting the revision petition of the applicant (as contained in Annexure Nos.A-1,A-2 and A-3 to this application) after summoning the original records.

W

- ii) issuing/passing of an order or direction to the respondents for reinstating the applicant back in service with all consequential benefits of seniority and pay and allowances etc.
- iii) issuing/passing of any other order or direction to the respondents as this Hon'ble Tribunal considers appropriate in the circumstances of the case.
- iv) allowing this original application with cost.

2. The brief facts of the case are that the applicant was initially appointed as Extra Departmental Branch Post Master, District Gonda in 1991 and while he was working at Balrampur, certain complaints were made against him. The applicant was also served with the charge sheet and after the due enquiry, the punishment of removal from service was passed by the Superintendent of Post Offices, Gonda. The applicant has preferred an appeal and the said appeal was rejected by the Appellate Authority in 2004 and subsequently, the revision petition preferred by the applicant was also rejected in 2005. The learned counsel appearing on behalf of the applicant has pointed out that the appellate order as well as revisionary orders are non-speaking and the applicant was not given full opportunity to participate in the enquiry and the orders were passed. As such, the same require interference by the Tribunal. It is also submitted by the learned counsel for the applicant that the respondents have imposed a punishment which does not commensurate with the misconduct as such quantum of punishment can also be looked into by the Tribunal.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is pointed out by the respondents that the applicant while working as Branch Post Master, misappropriated the amount of money orders and Saving Bank withdrawals by committing irregularities. This was done by the applicant not only in one case but in respect of number of accounts and for the lapses on the part of the applicant, he was served with the charge memo and an

enquiry was ordered and the enquiry officer and presenting officer were appointed vide order dated 6.11.2011. Not only this, it is also submitted by the learned counsel for the respondents that after completion of enquiry, the enquiry officer submitted enquiry report and in the said report, charge No. 1 and 2 were stand proved and after receipt of the enquiry report, disciplinary authority has taken a decision and punishment was awarded to the applicant. Not only this, the learned counsel for respondents has also pointed out that the applicant was duly given an opportunity to participate in the enquiry and as per the said detailed enquiry, no material is available which may indicate that the applicant was not given due opportunity to participate in the enquiry and after that the orders were passed.

4. Learned counsel appearing on behalf of the applicant filed Rejoinder Reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated. It is once again submitted by the learned counsel for the applicant that he has not committed any misconduct and the allegations leveled against him are totally false and fabricated.

5. Heard the learned counsel for the parties and perused the record.

6. Undisputed facts are that the applicant while working with the respondents organisation , was served with the charge sheet on 17.9.2001 and as per the said charge sheet, it is mentioned that he has not paid the amount of money orders and also not misappropriated the Saving Bank Accounts which is in the name of Smt. Shushila Devi and he has issued three sanction memo of withdrawals dated 18.7.95, 19.7.1995 and 22.7.1995 for Rs. 500/- each respectively and he had not returned the pass book to the distributor. Not only this, it is also indicated in the said charge sheet that a sum of Rs. 3000/- which was received by the applicant, was actually not handed over to the payee. For the aforesaid lapses on the part of the applicant , the enquiry was

ordered and the enquiry officer and presenting officer were appointed. The applicant has given a reply on 29.10.2002 in which the applicant has denied the charges leveled against him. After the receipt of the said reply, the enquiry officer conducted the enquiry and he has given a detailed report , wherein it is clearly mentioned by the enquiry officer about the list of witnesses and documents relied upon as well as in the enquiry report, the enquiry officer discussed each and every charges and on the conclusion, he has found that the charge No.1 and 2 levelled against the applicant stand proved. The copy of the enquiry report was duly communicated to the applicant and after the receipt of the enquiry report, the applicant has also given a reply and again prayed that his case may be considered sympathetically and he may be exonerated from the charges leveled against him. After the receipt of the said reply by the applicant, the disciplinary authority passed an order of removal from service vide order dated 12.12.2003. The applicant submitted an appeal to the Director of Postal Services on 19.2.2004 and the appellate authority has also considered the appeal of the applicant along with report of the enquiry officer as well as punishment imposed by the disciplinary authority and agreed with the findings of the disciplinary authority. Not only this, the revision petition preferred by the applicant to the CPMG was also considered and decided and the revisionary authority rejected the revision petition.

7. The entire proceedings which has taken place in pursuance of the charge sheet after following due process of law, needless to say that the respondents have fully followed the procedure as provided under the rules and after discussing each and every aspects of the matter, the enquiry officer submitted his report to the disciplinary authority and after considering the same, disciplinary authority passed the order of removal. The quantum of punishment as argued by the learned counsel for the applicant is commensurate with the misconduct can only be looked where some procedural irregularities is there or it is

shockingly disproportionate. The charge sheet clearly shows that the applicant misappropriated the fund of public as such it cannot be said that the charges leveled against the applicant are disproportionate. The law is settled in regard to the scope of judicial review in the matter of disciplinary proceedings which is very limited and the same can be interfered only if there is violation of principles of natural justice and only if there is violation of statutory rules or it is a case of no evidence. In the entire proceedings, the applicant was fully associated with the enquiry as such there is no violation of principles of natural justice neither there is any ground for any supply of documents or non-examination of witnesses. As such, this Tribunal can look into that to what extent it can go into the scope of judicial review in the matter of disciplinary proceedings.

8. As stated above, it is now well settled that scope of judicial review in disciplinary matters are very limited. The Court or Tribunal can interfere only if there is violation of principles of natural justice and only if there is violation of statutory rules or it is a case of no evidence. The Tribunal or the Court cannot sit as an appellate authority.

9. The Hon'ble Apex Court in the case of **State of Uttar Pradesh v. Raj Kishore Yadav reported in 2006(5) SCC 673** has observed as under:-

“4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is noting but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits.

It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service.”

10. The Hon'ble Apex Court in the case of B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749 again has been pleased to observe that “the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence.”

11. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

“ In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.”

12. The Hon'ble Apex Court in another decision of **State of UP v. Saroj Kr. Sinha reported in 2010 (2) SCC 772** has been pleased to observe that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him. In the instant case the entire proceedings were carefully considered by the disciplinary authority and full opportunity was given to the applicant in conducting the enquiry and applicant also his defence submitted the reply etc.

13. As stated above that the Tribunal or the Court cannot sit in appeal over the decision of disciplinary authority nor can substitute its view in place of the said authority. The disciplinary authority was within his right to issue appropriate punishment as he may have deemed fit and proper. The Tribunal is not competent to go into the quantum of punishment inflicted by the disciplinary authority unless it is shockingly disproportionate the Tribunal cannot sit as an appellate authority on the decision of the disciplinary authority or exercise their jurisdiction of judicial review in disciplinary matters if there is no apparent illegality.

14. In the case of **Mani Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** "The procedural fairness in conducting the departmental proceeding is a right of an employee. However, in this case the Hon'ble Supreme Court has also pleased to observe that the scope of judicial review in disciplinary proceedings is very limited. The Administrative Tribunals are to determine whether relevant evidences were taken into consideration and irrelevant evidences are excluded.

15. In the case of **Regional Manager, UPSRTC Vs. Hoti Lal reported in (2003) 3 SCC 605**, the Hon'ble Apex Court clearly observed as under:-

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the

matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

16. In the case of **Union of India Vs.Sardar Pahadur reported in (1972) 4 SCC 618**, the Hon'ble Apex Court has observed as under:-

"A disciplinary proceedings is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The letters patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the single judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts."

17. The applicant is required to indicate the shortcomings in the enquiry and should also indicate that the disciplinary authority as well as enquiry officer has not followed the due process of law. In the instant case, no such facts has been mentioned. Apart from this, the appellate order as well as the revisionary order also cannot be considered as a non-speaking order. As such, it cannot be said that the authorities without considering the material facts on record, passed the impugned orders.

18. Considering the submissions of the learned counsel for the parties as well as observations made by the Hon'ble Apex Court, we do not find any good ground to interfere in the present case.

19. Accordingly, O.A. is dismissed. No order as to costs.

CR
copy of order
dt. 11-2-2014
Prepared
on 13-2-2014

S. K. K. P. K.
(SHASHI PRAKASH)
MEMBER (A)

Navneet Kumar
(NAVNEET KUMAR)
MEMBER (J)

HLS/-