

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW  
BENCH LUCKNOW**

**Original Application No.153/2006**

**Order Reserved on 28.10.2014**

**Order Pronounced on 11-11-2014**

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)  
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Amit Mishra aged about 30 years Postal Assistant, PAC, Post Office, Sitapur.

**Applicant**

**By Advocate: Sri R.S.Gupta**

**Versus**

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Director Postal Services, Office of Chief Post Master General, U.P., Lucknow.
3. Superintendent of Post Offices, Sitapur.

**Respondents**

**By Advocate : Sri Praveen Kumar for Sri G.K. Singh**

**ORDER**

**By Hon'ble Mr.Navneet Kumar, Member (J)**

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (i) That this Hon'ble Tribunal may kindly be pleased to quash the recovery of Rs. 22000/- order dated 27.7.2005 and appellate order dated 28.3.2006 as contained in Annexure No. 1 and 1B from pay of the applicant and order refund of amount already recovered with interest @ 18%.
- ii) Any other relief deemed just and proper in the circumstances of the case in the interest of justice with cost of O.A.
2. The brief facts of the case are that the applicant was working with the respondents organization was charge sheeted. It is alleged that the applicant while working as Sub Accountant Clerk at Sitapur Head Post Office, neither compared the amount of KVP discharge as shown in Maholi Sub Post Office daily account dated 17.5.1999 with the discharge vouchers or journals nor handed over the discharge vouchers /journals received from Maholi Post Office to the concerned postal Assistant. Thus the case of irregular charging of Rs. 10,000/- in

KVP/NSC by one Sri D.K.Shukla ,SPM, Maholi resulting the Department sustained the loss of Rs. 10,000/- due to irregularity committed by the applicant. The applicant also did not compare the amount of KVP and caused irregular charging of Rs.1,83,400/- .Therefore, the Department again sustained further loss of Rs. 1,83,400/-due to irregularities committed by the applicant. The applicant was proceeded under Rule 16 of CCS (CCA) Rules 1965 and was punished with recovery of Rs. 22,000/- vide memo dated 27.7.2005. The appeal so preferred by the applicant was also rejected by the appellate authorities. The learned counsel appearing on behalf of the applicant has taken a ground that the vouchers/ journals was duly transferred and received and accounts were complied correctly and the entire disciplinary proceedings were done against the principle of natural justice. Not only this, the applicant has also taken a ground that the appellate order is non speaking orders. Accordingly, the O.A. is liable to be allowed.

3. On behalf of the respondents , detailed counter reply is filed and through reply, it is indicated that on account of irregularities committed by the applicant, the Department sustained a loss of Rs. 10,000/- as well as Rs. 1,83,400/-. Accordingly, the charge sheet under Rule 16 of CCS (CCA) Rules, 1965 was issued and subsequently the applicant was punished with recovery of Rs. 22,000/- vide memo dated 27.7.2005. The appeal so preferred by the applicant, was also considered and decided by the Director, Postal Services , Lucknow vide memo dated 28.3.2006. As regards the opportunity of hearing is concerned, all the relevant documents were shown to the applicant and due opportunity was given to the applicant. The applicant also submitted the reply to the charge sheet and the appellate authority after considering the appeal and other relevant documents passed the detailed order on 28.3.2006.

4. On behalf of the applicant, Rejoinder reply is filed and contents of Original application are reiterated and denied the contents of the counter reply.

5. Not only this, Supple. Counter reply is filed which is also taken on record.

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

7. The applicant while working as Sub Accountant Clerk at Sitapur Head post office, on 18.5.1999 was served with the charge sheet dated 9.5.2005, through which it is indicated that he failed to compare the amount of KVP discharge with the discharge vouchers and not handed over the vouchers/journals to the concerned Postal Assistant. Thus, there was a case of irregular charging of Rs. 10,000/- in KVP/NSC by one Sri D.K.Shukla, SPM, Maholi resulting the loss of Rs. 10,000/- due to irregularities committed by the applicant. Not only this, the applicant while working as KVP discharge counter clerk at Sitapur Head office on 28.4.1999, 29.4.1999, 6.5.1999, 9.11.1999 and 15.11.1999, did not take discharge vouchers or journals received from Maholi Post Office from the concerned Sub Accountant Clerk and he failed to compare the amount of KVP discharge of Rs. 1,83,400/- thus, the case of irregular charging of Rs. 1,83,400/- in KVP/NSC could not come into the light resulting the department sustained further loss of Rs. 1,83,400/- due to irregularities committed by the applicant. Accordingly, the applicant violated the provisions of Rule 33(2)(3)(94) of S.B. Manual Volume II and Rule 51(2) of Postal Manual Volume VI Part III. Accordingly, the applicant was proceeded under Rule 16 of CCS (CCA) Rules, 1965 and the charge sheet was issued to the applicant. The copy of the charge sheet was served upon the applicant and the applicant also submitted the reply on 3.7.2005 and after considering the said reply, the respondents passed an order on 27.7.2005 for recovery of Rs. 22,000/- from the applicant which is to be recovered @ Rs.1000/- per month. The applicant feeling aggrieved by the said order, preferred the present O.A. The said O.A. was taken up for admission and through order dated 3.4.2006, this Tribunal passed an order

and operation of the impugned order dated 27.7.2005 so far it relates to the recovery from the pay of the applicant remained stayed. Subsequently, the O.A. was finally disposed of by means of order dated 4<sup>th</sup> August, 2009 and the Tribunal quashed the order dated 27.7.2005 with liberty to the respondents to proceed with the enquiry. It is also to be indicated that thereafter, a review petition is filed and since the appellate order was available on record but the same was not be taken into consideration by the Tribunal, therefore, the review petition was allowed and the matter was heard finally. Needless to say that the applicant preferred the appeal against the punishment order dated 27.7.2005 and through which he has categorically raised the points that the documents so desired by him were not provided. Not only this, a ground is also taken by the applicant that request of enquiry under Rule 16 was also not accepted by the disciplinary authority and also requested for personal hearing by the appellate authority. Not only this, it is also a ground taken by the applicant that loss of entire amount was misappropriated by Sri D.K. Shukla and no action is taken for recovery of amount of loss under Public Accountant Defaulters Act, 1950 (In short PAD Act) from him whereas the portion of loss is being recovered from the applicant. In reply to these grounds, the appellate authority has categorically indicated that the relevant and available documents were shown to the applicant and reasons for holding the enquiry under Rule 16 was not mentioned by the applicant and the same also lies for sole discretion of the disciplinary authority. As regards the action against Sri D.K.Shukla, the then SPM, Maholi is concerned, the disciplinary and as well as action under Public Accountant Defaulters Act, 1950 (In short PAD Act) is already initiated against Sri D.K.Shukla and the recovery from the applicant is made only on account of irregularities committed by him. The appellate authority has also categorically indicated that the allegations framed against the applicant stands fully proved and on account of negligence on the part of the applicant, Sri D.K.Shukla succeeded in defrauding the Govt. money, as such the appeal has no substantial force

and cogent ground, therefore, the appeal so submitted by the applicant was rejected.

8. Be that as it may. We have considered the rival submissions and perused the record. The question, what is the scope of judicial review in disciplinary matters has come up time and again and there are a catena of decisions on the subject. It is too late in the day to enter into this aspect of the matter by having review of all such authorities. On the subject, the Hon'ble High Court crystallized the aspects.

9. Moreover, it is also well settled proposition, where conclusion drawn by the disciplinary authority is challenged on the ground that the same is based on no evidence whatsoever, the Court can look into the record to find out whether there is any evidence to sustain the conclusion or not, in **Union of India Vs. H. C. Goel, reported in AIR (1964) SC 364**, the Apex Court in para 23 of the judgment has said:

"The only test which we can legitimately apply in dealing with this part of the respondent's case, is there any evidence on which a finding can be made against the respondent that Charge No. 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question; about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court "can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not."

10. Be that as it may, it is now well settled that the 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 or if there is violation of statutory rules or it is a case of no evidence. The applicant could not point out that any provisions of the principles of natural justice have been violated. Neither any ground of non-supply of relied upon documents is taken by the applicant, as such, this Tribunal

can only look into that to what extent it can go into the scope of judicial review in the matter of disciplinary proceedings. **The Tribunal or the Court cannot sit as an appellate authority as observed by the Hon'ble Apex Court in the case of State of Uttar Pradesh v. Raj Kishore Yadav reported in 2006(5) SCC 673.** The Hon'ble Apex Court has been further pleased to observe 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 judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is nothing but an error of judgment. 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.”**

11. 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.”**

12. The norms of judicial review in the matter of disciplinary proceedings and punishments have been well settled. According to those norms, a Tribunal cannot sit as a court of appeal in respect of matters of disciplinary proceedings, particularly when the appellate authority has exercised its power lawfully

13. Considering the law laid down by the Hon'ble Apex Court as well as the arguments advanced by the learned counsel for the parties, and also after perusal of the record, we do not find any reason to interfere in the present O.A.

14. Accordingly, the O.A. is dismissed. No orders as to costs.

*J. Chandra*

**(Ms. Jayati Chandra)**  
**Member (A)**

*U.R. Arora*  
**(Navneet Kumar)**  
**Member (J)**

HLS/-