

Central Administrative Tribunal ,Lucknow Bench, Lucknow.

Original Application No.155/2006

This the ¹⁰ day of December, 2013

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Uma Shankar Yadav aged about 50 years son of Sri Ram Dulare Yadav
Ex. P.A. Patranga R.S. Barabanki Division r/o Mohalla Gaura Patti,
H.No. 3/19/141, Faizabad.

Applicant

By Advocate: Sri R.S.Gupta

Versus

1. Union of India through Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Member (Personnel), Postal Services Board, o/o Director General (Post), Dak Bhawan, New Delhi.
3. Chief Post Master General, U.P., Lucknow.
4. Director Postal Services o/o Chief Post Master General, U.P., Lucknow
5. Senior Superintendent of Post Offices, Lucknow.

Respondents

By Advocate: Sri S.P.Singh

(Reserved on 25.11.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under section 19 of the AT Act with the following reliefs:-

- a) That this Hon'ble Tribunal may kindly be pleased to quash the orders dated 22.2.2000 , 18.4.2001 and 27.8.2004 as contained in Annexures No. 1,2 and 3 respectively with all consequential service benefits including back wages.
- b) Any other relief deemed just and proper in the circumstances of the case with cost of O.A.

2. The brief facts of the case are that the applicant was appointed as Postal Assistant vide order dated 16.5.1974. Subsequently, he was given promotion to L.S.G. w.e.f. 15.5.1990. Thereafter, he was deputed to Army Postal Services w.e.f. 9.6.1984 to 14.11.1995 and after coming back from the Army Postal Services, he was posted as S.P.M., Saadatganj and he was again transferred. The learned counsel for the

applicant has alleged that while he was in Army Postal Services, he remained out of touch with the working of the Civil Post Office, as such Postal Assistant who was working at Patranga committed fraud of Rs. 1,25,439.25 and the applicant was also held responsible along with one Mahmood Ahmad, Postal Assistant, Baij Nath, ASPOs. The learned counsel for the applicant has also pointed out that along with the applicant, Mahmood Ahmad as well as Baijnath were proceeded under the CCS (CCA) Rules, 1965 and after the due enquiry, the punishment were imposed. The learned counsel for the applicant has pointed out that a common proceedings should have been made under Rule 18 of CCS (CCA) Rules, 1965 whereas the discriminatory treatment was afforded to the applicant because of the fact that the procedure prescribed in Rule 18 of CCS (CCA) Rules, 1965 was not followed for taking action against all Govt. servants concerned involved in a common case whereas the punishment was imposed against the applicant of dismissal from service. Learned counsel for applicant has also pointed out that the persons against whom the charge sheet was issued cannot be included in the list of witness. Apart from this it is also argued that against the punishment order, the applicant preferred an appeal and the appellate authority after considering the contents of the appeal, reduced the punishment of dismissal from service to compulsory retirement by means of an order dated 18.4.2001. Subsequently, the applicant preferred the revision before the revisionary authority and the revisionary authority while deciding the revision petition, rejected the revision petition of the applicant. Apart from this, learned counsel for the applicant has also argued that there was no slackness on the part of the applicant, as such he was not the sole person against whom the charge was leveled and prayed that the order passed by the Disciplinary Authority, Appellate Authority as well as Revisionary Authority be quashed with all consequential benefits including the back wages.

3. Learned counsel appearing on behalf of the respondents filed reply on behalf of all the respondents and has pointed out that the applicant was working as SPM, Patranga R.S. during the period 1995-97 and during this period, shortage of cash to the tune of Rs. 1,25,439.25 came into light and after due enquiry, it was revealed that there were much more irregularities in the daily work of SPM and PA. Therefore, the SPM, Patranga, RS (applicant) and Mahmood Ahmad, PA, Patranga, RS were transferred as PA BBK HO and P.A. Mawai respectively. Thereafter, both the officials were placed under suspension. Applicant was proceeded under Rule 14 of CCS (CCA) Rules, 1965 and he was subsequently dismissed from service and after the appeal, the order of punishment was modified and it was converted from dismissal from service to compulsory retirement. Thereafter, the applicant has again preferred an appeal on 10.10.2001 which was rejected by the authorities. It is also pointed out by the learned counsel for the respondents that the applicant was punished on the basis of gravity of charges against him and the penalty imposed is justified and the same was done after due enquiry and there is no illegality in the entire proceedings, as such, it does not require any interference by the Tribunal.

4. The learned counsel for the respondents has also filed Supple. Counter Reply and through Supple. C.A., no new facts were brought on record except to the fact that the applicant as well as Sri Mahmood Ahmad were charge sheeted on different types of lapses. Therefore, the penalty awarded to both of the officials is according to the gravity of charges leveled against them.

5. Learned counsel for applicant has filed Rejoinder Reply and through Rejoinder Reply, he has mostly reiterated the averments made in the O.A.

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

7. The applicant was initially appointed in the respondents organization and after working for sometime, a charge sheet dated 26.11.1997 was issued upon the applicant containing four charges. The charges leveled against the applicant reads as under:-

"Article of Charge I"

- (i) While working as SPM, Patranga RS SO BBK Sri U.S.Yadav had noted imaginary balance due from EDBOs in S.O. A/c on a number of dates.
- (ii) Shri Mahmood Ahmad ,the then PA Patranga, RS, SO did not compile the B.O. summary on some dates, but Sri U.S. Yadav, being SPM failed to report the carelessness of Shri Mahmood Ahmad.

Therefore, it is alleged that said Sri U.S. Yadav violated the provisions of Rule 2 and 99 of Postal Manual Vol. VI part III and thereby failed to maintain absolute integrity and devotion to duty as required of him under Rule 3(2)(1) of CCS (Conduct) Rules, 1964.

Article of Charge II

- (i) While working as SPM, Patranga RS SO, Barabanki, Sri U.S.Yadav failed to issue MOs to the senders of V.P.articles delivered by EDBPM Giraunda and R.M. Bhatthi EDBOs.
- (ii) While working as SPM, Patranga,RS SO , he also failed to issue MO receipt for Rs. 264/- credited under M.S.-87 Receipt No. 20 issued by EDBPM Giraunda on 1.2.97. Thus, it is alleged that said Sri U.S. Yadav, violated provisions of Rule 51 and 70 of Postal Manual Vol. VI Part II and also infringed the instructions contained in Memo of distribution of work, issued under this office memo No.G. 3/13/19/93-94 dated 25.8.93 and thereby he also failed to maintain absolute integrity and devotion

to duty as required of him under Rule 3(2) (1) of CCS (Conduct) Rules, 1964.

Article of Charge III

- (i) While working as SPM, Patranga RS SO w.e.f. 17.6.96 to 21.6.96, Sri U.S.Yadav, get the S.O. A/c completed by Sri Mahmood Ahmad, the then PA. Patranga RS SO, while it was his personal duty.
- (ii) While working as SPM, Patranga RS SO on 1.4.97, Shri U.S.Yadav found the SO A/c incomplete w.e.f. 18.2.97 to 30.3.97 for the period of Sri Mahmood Ahmad, the then PA. and officiating SPM of Patranga RS SO, but said Shri U.S.Yadav did not get it completed and left the office on 2.4.97 by producing the medical certificate without completing the SO A/c for the date 1.4.97.

Thus, it is alleged that by the above acts, said Sri U.S.Yadav, violated the provisions of Rule 84 and 85 of Postal Manual Vol. VI Part III and thereby he failed to maintain absolute integrity and devotion to duty as required under Rule 3(2)(i) of CCS (Conduct) Rules, 1964.

Article of Charge IV

- (i) While working as SPM, Patranga RS SO, Barabanki Sri U.S.Yadav failed to maintain register of stamps and stationery with actual stock in hand and shown imaginary figures in SO A/c in the column prescribed for the purpose.
- (ii) Thus, it is alleged that said Sri U.S.Yadav, violated the provisions of Rule 65 of F.H.B-II, rule 85 (A) of PO Manual Vol. II Part I and thereby he also failed to maintain absolute integrity and devotion to duty as required of him under Rule 3(2)(i) of CCS (Conduct) Rules, 1964.

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Superintendent of Post
Offices
Barabanki Dn. Barabanki-25001."

8. After the issuance of the said charge sheet, the enquiry officer was appointed and the enquiry officer after recording all the evidences including after examining the witnesses as well as considering the submissions of the charged officer, submitted detailed report to the disciplinary authority vide enquiry report dated 29.4.1999. After the receipt of the report of the enquiry officer, the disciplinary authority considered the relevant provisions of the Act, Rules and imposed punishment of dismissal from service vide order dated 22.2.2000. Feeling aggrieved by the said order of the disciplinary authority, applicant preferred appeal on 15.5.2000 to the appellate authority and the appellate authority while considering the appeal of the applicant, discussed all the Article of Charges and has observed that after going through the contents of the appeal and other records revealed that the Disciplinary Authority has adjudged the responsibility of the appellant on the basis of findings of the enquiry officer. It is the enquiry officer who decides as to which portion of the Article of charge is proved or not proved. Apart from this, the charged officer not denied the preliminary investigation during the course of enquiries and did not produce himself as difference witness and the appellant being working as Supervisor over the work of Postal Assistant and as such, he was expected to keep proper control over the working of the officials under him and also on the EDBOs in account with his sub office to which he failed. Not only this, the appellate authority has also considered that as per the applicant's self admission that there was some conspiracy in between three Postal Assistants, it was observed by the appellate authority that had the appellant been vigilant in his supervisory duty, there would have been no occasion for keeping cash balance short on account of factitious remittances or otherwise. Despite this fact, the appellate authority took a little lenient view and modified the order of

punishment from dismissal to compulsory retirement. It is required to be submitted further that the applicant being not satisfied with the said order of appellate authority preferred again an appeal / revision to the Chief Post Master General on 10.10.2001 and prayed for mercy and for quashing of the punishment order as well as the appellate order. The CPMG again discussed the entire Article of Charges and after going through the entire records, came to the conclusion as under:-

“5. I have gone through the contents of the petition and relevant records. The facts of the case are as under:-

- i) It is a fact that the shortage in cash was detected on 28.5.97 but the petitioner was fully dependent upon his Postal Assistant for day to day work. The petitioner failed to check the working of his PA completely and due to his slackness on the part of the petitioner , PA was free to maintain the record with incorrect figures with his ill motive.**
- ii) The petitioner failed to check that the VP MOs were issued in lieu of VP Articles sent/ delivered at BOs. He also failed to check that BO summary was being maintained by PA by showing excessive balances due against BOs to keep cash short in SO of the petitioner.**
- iii) The slackness on the part of the petitioner has facilitated Sri Mahmood Ahmad ,PA to commit the fraud.**
- iv) The lapses on the part of the petitioner have clearly been elaborated in the memo of charges.**

Keeping in view the above facts of the case, I find no point to interfere on behalf of the petitioner. The petitioner has also not clearly denied his lapses on his part. I therefore, reject the petition.

In exercise of the powers conferred on me under the provisions of Rule 29 of CCS (CCA) Rules, 1965, I hereby order accordingly."

9. Now, the question which requires determination is whether after the full fledged enquiry, how much the scope is left with the Tribunal to interfere in it. The bare perusal of the enquiry officer's report clearly provides that the applicant fully participated in the enquiry and the enquiry officer considered each and every aspect of the matter and submitted the enquiry report to the Disciplinary Authority thereafter the orders were passed.

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 and only 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 extant it can go into the scope of judicial review in the matter of disciplinary proceedings. As stated above it is now well settled the scope of judicial review in a disciplinary matter is very limited. The Court or Tribunal can interfere only if there is a violation of principles of natural justice or if there is violation of any statutory rules or if it is a case of no evidence. **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 judgement. 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 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.”

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. 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.”

13. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of State of Rajasthan v. Md. Ayub Naaz reported in 2006 (1) SCC 589. The Hon'ble Apex Court has been pleased to observe as under:-

“10. This Court in Om Kumar v. Union of India while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for.”

14. 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.

15. **The Hon'ble Supreme Court in the case of Union of India & Another. Vs. G. Ganayutham 1997 SCC (L & S) 1806**
has been pleased to observe as under:

“According to Wednesbury case, while examining ‘reasonableness’ of an administrative decision the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for Court to substitute its view.

Similarly, according to CCSU case, to characterize an administrator’s decision as ‘irrational’ the Court has to hold, on material, that it is a decision so outrageous as to be in total defiance of logic or moral standards.

In India, the role of the Courts/Tribunals is purely secondary in cases not involving fundamental freedoms. While applying Wednesbury and CCSU principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the Court and the Tribunals in India can only go into the matter, as a secondary reviewing Court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority, the Court/Tribunal cannot substitute its view as to what is reasonable.”

(1) To judge the validity of an administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.”

16. 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.

17. 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.

18. The Hon'ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai** reported in **(2009) 13 SCC 469** has held that Courts are not for interfering with dismissal order passed against respondent employee an it has further been observed by the Hon'ble Apex Court observed as follows:-

"4. A memo of charges dated 23.12.1997 was drawn up, the charge memo was sent to the respondent by registered post at his home address. The respondent did not respond to the charges leveled and the charge memo was sent back undelivered. An enquiry officer was appointed and after issuance of notice to the respondent to appear before him on 26.1.1998 along with his written statement, reminder was sent to him on 10.2.1998. As the respondent did not respond to the notices issued, an order was passed ex parte.

12. The factual scenario shows that ample opportunities have been given to the respondent in order to enable him to effectively participate in the proceeding. He has failed to avail those opportunities. That being so the Division Bench of the High Court ought not to have interfered with the order of the learned Single Judge which according to us is irreversible. The

appeal is therefore allowed and the impugned judgment is set aside."

19. The applicant must indicate the shortfalls in the enquiry proceeding and submit the same to the disciplinary authority and in case it is submitted, it is expected that the disciplinary authority will consider the procedural lapses if any and take a decision , as such it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the representations of the applicants.

20. 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 justification to interfere in the present case. Accordingly, O.A. is dismissed. No order as to costs.

J.Chand
(JAYATI CHANDRA)

MEMBER (A)

V.P. Arora
(NAVNEET KUMAR)

MEMBER (J)

HLS/-