

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 292/2006

This, the 17th day of January, 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P. Singh, Member (A)

Nissar Ahmad aged about 55 years son of Sri Shamsuddin Khan, Gram Sawanpurwa, Post Ujjainkala, District- Gonda.

1/1. Tiflunnisa aged about 57 years w/o of late Nissar Ahmad.
1/2. Mohd. Rafi aged about 31 years son of late Nissar Ahmad.
1/3. Mohd Safi aged about 24 years son of late Nissar Ahmad
1/4. Mohd Sami, aged about 15 years son of late Nissar Ahmad
(All r/o of Gram Sawaqn purwa, Post Ujjainikala, District Gonda).

Applicant

By Advocate: Sri A.Moin

Versus

Union of India through :-

1. Secretary, Ministry of Post, Dak Bhawan, New Delhi.
2. Director Postal Services, Gorakhpur Region, Gorakhpur.
3. Superintendent of Post Offices, Gonda Division, Gonda.

Respondents.

By Advocate: Sri S.P. Singh.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh , Member (J)

This O.A. has been filed for the following reliefs:-

- i) to quash the impugned orders dated 25.8.2005 and 29.6.2001 passed by the Respondent No.2 as contained in Annexure A-1 and A-2 with all consequential benefits.
- ii) To quash the Charge sheet dated 7.6.2000 contained in Annexure A-3.
- iii) To direct the respondents to pay the cost of this application.
- iv) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The case of the applicant is that in the capacity of mail peon, his duty was of packing letters in a sack, stamping of letters received in the Post Office as well as opening of letter boxes. The distribution of money

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order was not in his duty. Both the money orders in question were of higher value and it was the duty of the Branch Post Master to ensure their correct delivery. But a charge sheet was served upon the applicant on 7.6.2000, charging him of having issued fake money orders for Rs. 5000/- and Rs. 4500/- and having paid the same to one Shri Iqbal Ahmed on 24.5.99 and 12.8.99 respectively and having received back the said amount from the alleged receiver and having spent the same for his personal use. Ultimately, vide order dated 29.6.2001, he was dismissed from service. His appeal was also rejected on 16.4.2002. Then he filed O.A. No. 233/2002 which was partly allowed on 6.11.2003 (Annexure A-8), saying that the punishment order was too harsh, therefore, the matter was remitted to the appellate authority for taking a decision afresh in the matter in accordance with law considering the entire facts.

2. In compliance of the judgment, the appellate authority passed an order dated 11.2.2004 maintaining the order of dismissal (Annexure A-9). Then the applicant filed another O.A. No. 77/2004 which was decided on 17.5.2005 (Annexure A-10), by means of which the appellate order was again set aside on the ground that no reasons have been recorded as to how the applicant is differently situated from others in the matter of punishment. In furtherance of that judgment, the respondent No.2 has again maintained the dismissal order of 25.8.2005 which has been impugned in this O.A.

3. During the pendency of this O.A., unfortunately, the applicant has died. Now in his place, his widow and three sons have been substituted.

4. The claim has been contested by the respondents by filing a detailed C.A. saying that in compliance of this Tribunal's order dated 17.5.2005, the matter has been reconsidered by the appellate authority and after due consideration, the appeal has been rejected.

5. A Rejoinder Reply has also been filed by the applicant reiterating almost all the averments contained in the O.A. It has also been added that in reply to para 4.20 of the O.A., in para 18 of the C.A., merely name of

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one Sri Ghanshyam Das has been described as main accused to whom also severe punishment has been given. But it has not been denied that other persons who were involved in the matter namely, Sri Panchoo Ram, Suresh Ram, Sunil Kumar, Shiv Nath, Shiv Lath, Vish Kumar and Ram Pyare were let off of as minor penalty. It has been further said that admittedly no loss was caused to the respondents.

6. We have carefully heard the learned counsel for the parties and perused the material on record.

7. At the outset it may be mentioned that the order dated 25.8.2005 has been passed by the appellate authority in compliance of this Tribunal's judgment and order dated 17.5.2005. The contention on behalf of applicant is that, it has not been passed in accordance with the judgment of this Tribunal. For this, first of all, we have to see as to what were the directions /observations of this Tribunal contained in the aforesaid judgment dated 17.5.2005 passed in O.A. No.77/2004. In para 3 of the judgment, it is mentioned that according to submissions made on behalf of the applicant, other employees had also been charged for the same misconduct, but they were awarded lesser punishment as averred in para 4.20 of the O.A. After perusing the order dated 11.2.2004 passed by the appellate authority, the order which was impugned in the above O.A., this Tribunal allowed the O.A. partly and after setting aside the aforesaid appellate order, directed the respondents to pass afresh order recording reasons as to how the applicant is differently situated from others in the matter of punishment.

8. Now, we come to the order, which has been passed by the appellate authority in compliance of the aforesaid direction. This order has been passed by the appellate authority on 25.8.2005 (Annexure A-1). This runs into 7 leaves but a careful perusal of this order shows that except the last two paragraphs of this order, the remaining entire order speaks about the earlier appellate order which was passed in compliance of earlier judgment dated 6.11.2003 passed in OA.No. 233/2002 by this



very applicant. The last two paragraphs consist of only 8 lines. This order is in Hindi and if it is broadly translated into English, the pith and substance of these 8 lines is that incompliance of the Tribunal's order dated 17.5.2005, all the records were thoroughly examined by the appellate authority and it was found that the punishment meted out to the appellant was in consonance with the gravity of misconduct which was found proved against the appellant. Further, it was also found by the appellate authority that other employees who were found involved in this episode, they were also punished in accordance with the misconduct committed by them.

9. From the reading of the above impugned order, it clearly comes out that the appellate authority, after copying out the 15 points raised by the applicant in his appeal he recorded his findings thereon point-wise. Thereafter, he mentioned about the earlier order of this Tribunal dated 6.11.2003 passed in another O.A. and the order passed by the appellate authority in compliance of that order. Thereafter, in the last but one paragraph consisting of six lines, the appellate authority rejected the appeal as said above i.e. merely by saying that after perusal of the record, he has reached to a conclusion that the quantum of punishment which has been given to the applicant vis-à-vis other employees is in accordance with the misconduct committed by them. But he has not made out any discussion giving details of misconduct of each employees, their complicity in the entire episode and nature of punishment awarded to them vis-à-vis this applicant. As has already been observed by this Tribunal in its judgment dated 17.5.2005, passed in O.A. No.77/2004, Articles 14 and 16 of Constitution of India also applies in case of punishment which is discriminatory as has been held by the Hon'ble Apex Court in the case of **Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and another reported in (2001) 10 Supreme Court Cases, 530.** While setting aside the order passed by the appellate authority, on the ground that no reasons had been recorded, this Tribunal

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had given fresh direction to the respondents to pass fresh order recording reasons as to how the applicant is differently situated from others in the matter of punishment. We have no hesitation in observing that this specific direction has not been complied with by the respondents while passing the aforesaid impugned order dated 25.8.2005. In this connection, it is also significant to mention that in para 3 of the judgment dated 17.5.2005, it was clearly mentioned that other employees were also dealt on the same misconduct yet they were awarded lesser punishment as have been averred in para 4.20 of the O.A. No. 77/2004. Thus, the specific reference was made to aforesaid averment in that judgment. Be we do not find even a whisper in this entire impugned order about this averment. Further, again in the present O.A. before us, in para 4.20, the following averments have been made.

“20. That in this connection, the applicant is giving the list of persons involved in the matter and the punishment imposed on them which would indicate that it is the only the applicant who has been visited with such a harsh punishment.

| <u>Name of the applicant</u> | <u>Designation</u> | <u>Punishment</u> |
|------------------------------|---------------------|-------------------------------------|
| Panchoo Ram | Clerk Utraula | Withholding of Increment & recovery |
| Shesh Ram | Postman,Utraula | Withholding of Increment |
| Sunil Kumar | Postman,Utraula | Recovery |
| Shiv Nath | Postman,Utraula | Recovery |
| Shiv Lath | Postman,Dhanepur | Recovery |
| Vish Kumar | Postman,Dhanepur | Recovery |
| Ram Pyare | ED Packer, Dhanepur | Recovery |

As such it is apparent that persons similarly circumstanced had been let off with a light punishment while it is only the applicant who has been visited with extreme penalty of dismissal from service without assigning any reason and with total non-application of mind by the appellate authority despite the specific orders of this Hon'ble Court.”

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10. The above paragraph has been replied by para 18 of the Counter reply which is as under:-

“18. That the contents made in para 4.20 of the Original Application are not admitted hence strongly denied. In reply thereto, it is submitted that Sri Ghan Shyam Dass, the main accused in this case has also awarded a punishment of dismissal from service and the circumstances of other responsible officials was not similar to the case of the applicant, therefore, no parity will be extended to the applicant as claimed by him.”

11. From the perusal of the above, it comes out that in the present O.A. also, this specific averment of para 4.20 has not been specifically replied with by the respondents in the aforesaid para 18 of the C.A. In fact, para 18 of the C.A. mentions about only one Ghanshyam Das , who has also been dismissed. But in para 4.20 of the O.A., as many as seven officers have been named against whom only lesser punishment of recovery ,withholding of increment etc. have been given. In reply to this, in para 18 of the C.A., it has been merely said in a general way that the situation of other responsible officers was not similar. In fact, it is not the situation, which was relevant. It is the charge and misconduct of the officers which was relevant. But nothing has been said in this para as to what were the charges against them and what misconduct was found against them and finally what was the justification for passing lesser punishment to them.

12. Therefore, we have no hesitation in observing that the impugned appellate order dated 25.8.2005 has been passed in a slip shod manner without complying with the specific direction accorded by this Tribunal. It is needless to say that the recording of reasons not only gives fairness to an administrative order but also makes it more transparent. In fact, recording of reasons is in consequence of principle of natural justice. Therefore, the above order deserves to be set aside.

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13. During the course of arguments, two other things were also emphasized. First is that no pecuniary loss was caused to the Deptt as the amount in question was deposited and secondly that after contesting this case in the third round, unfortunately, the original applicant has now died. Now, his widow and three children have stepped into his shoes. It is said that in this back drop also, the ends of justice would meet if the appellate authority is directed to pass order afresh having regard also to the humanitarian aspects so that if some lesser punishment than dismissal is awarded, the heirs of the deceased employee may get at least some amount as family pension to subsist. We find substance in these submissions also.

14. From the side of the applicant, reliance has been placed on the following case law:-

Mainuddin Vs. Managing Director, U.P. State Road Transport Corporation, Lucknow and others reported in 2008(4) ALJ, 37-

In this case, disciplinary enquiry was initiated on the charges of misconduct against 28 employees, including the petitioner in respect of same incident. But some persons were inflicted minor penalties and some were inflicted major penalties. But a very harsh penalty of dismissal from service had been imposed upon the petitioner who filed a writ petition. The Hon'ble High Court found that the petitioner has been discriminated without any rhyme or reason and he has been imposed major punishment of dismissal from service and after recording the aforesaid finding, the High Court had given liberty to approach the Managing Director (authority) who was required to pass fresh orders. In this situation, it was held that only course open to the Managing Director to pass similar order of punishment like other delinquents. But it was not at all open to the Managing Director of UPSRTC to insist and go on justifying earlier decision taken against the petitioner, which has already been quashed by the

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Hon'ble High Court. But it is said that in the present matter, the same order is being repeated even after being set aside by this Tribunal.

15. From the other side, reliance has been placed on the following case laws:-

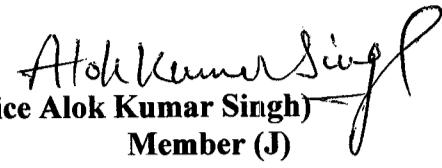
- i) ***Judgment of this Tribunal dated 18.5.2011 in O.A. No. 354/2008 (Ambrish Kumar Mishra Vs. Union of India and others)-*** We have gone through this judgment. Its facts and circumstances are different. Here this is specific question as to whether or not the impugned order has been passed in accordance with and in compliance of this Tribunal's judgment. Further, humanitarian aspects is also involved. Therefore, this judgment (by means of which, the O.A. was dismissed) is not applicable in the present case.
- ii) ***State Bank of India and others Vs. Ramesh Dinkar Punde reported in (2006) 7 Supreme Court Cases, 212:-*** This case is not applicable here. In this case, the that plea of leniency on the ground of long years of service was rejected.
- iii) ***National Fertilizers Ltd. And another Vs. P.K.Khanna reported in (2005) 7 Supreme Court Cases, 597-*** In this case, it was said that the disciplinary authority had not correctly appreciated the objection taken by the respondent against the enquiry officer's report. It was held that objections should be raised before the appellate authority. There cannot be any quarrel on this point. But as mentioned above it is a third round of litigation wherein some different facts and circumstances are also involved.

16. Finally, therefore, this O.A. is partly allowed. The order dated 25.8.2005 is hereby set aside with the direction to the respondents to pass orders afresh after considering the above observations as also facts and circumstances discussed hereinabove, within a period of three months

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from the date of receipt of a copy of this order. The rest of the reliefs are declined. No order as to costs.


(S.P.Singh)
Member (A)


(Justice Alok Kumar Singh)
Member (J)

HLS/-