

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 530 of 2007

Order Reserved on 1.7.2014

Order Pronounced on 16/07/2014

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

Jagdish Prasad Srivastava, aged about 53 years, son of Late Prayag Narain Srivastava, at present working as Postal Assistant, Aliganj, P.O. Lucknow.

Applicant

**By Advocate Sri Surendran P.
Versus**

Respondents

By Advocate Sri S. P. Singh.

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P. Lucknow.
3. Director of Postal Services, Head Quarter, Office of CPMG, Lucknow
4. Senior Superintendent of Post Offices, Lucknow.

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:-

Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the orders dated 15.1.2003 and 20.12.2005, order dated 21.4.2008 contained in Annexure No. 1 and 2 and 12 to this O.A. and a direction be issued to restore his original pay with all consequential benefits.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization as Postal Assistant in 1990. A charge sheet was issued to the applicant in the year 2001. the applicant submitted the reply and after the detailed inquiry, the punishment was awarded. The learned counsel for the applicant has categorically pointed out that the job

of the applicant was to calculate the amount and one of the witness namely Smt. Ruksana, was not cross examined. Apart from this, the learned counsel for applicant has categorically pointed out that Discipline Authority has not considered the reply submitted by the applicant and passed the impugned order of punishment. The applicant has also preferred the appeal and the Appellate Authority rejected the appeal of the applicant by passing the detailed order vide order dated 20th December, 2005.

2. On behalf of the respondents, the detailed reply was filed and in the reply, it is indicated that the applicant, who was appointed as Postal Assistant was charge sheeted Under Rule 14 of CCS (CCA) Rules 1965. While working as HO RD ledger Assistant at Chowk Head Office during the period 4.5.2000 to 17.5.2000, and misappropriated the government funds. As such, a detailed inquiry was conducted and the applicant was given full opportunity to defend his case and after the inquiry, the punishment was awarded to the applicant. It is also indicated by the respondents through their counter reply that the prosecution presented six witnesses where as no witness was presented by the charged officer and the inquiry officer submitted his report to the Disciplinary Authority with the finding that the charges against the applicant were partially proved. Against the order of the Disciplinary Authority, the applicant submitted the appeal and the said appeal was also decided by the Appellate Authority on 20.12.2005. Not only this, it is also argued by the learned counsel for the respondents that there is no procedural irregularities in conducting the inquiry. As such, the applicant fail to make out any ground for interference by this Tribunal. The learned counsel for the respondents has also relied upon certain decisions of the Hon'ble Apex Court as well as few decisions of this Tribunal.

3. On the behalf of the applicant, rejoinder affidavit is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

4. It is once again pointed out by the applicant that it is nowhere mentioned in the charge sheet that the applicant received pass book from Shri Rajiv Kumar Dwivedi and has also not violated Rule 33 (2) (iii) of the P.O.S.B. Manual Volume-1. Not only this, it is also indicated by the applicant that the comparison of signatures as well as claims of R.D. account was not the duty of the applicant.

5. On behalf of the respondents, the supplementary counter reply is filed and through supplementary counter reply, no new facts were brought on record. Only the averments made in the counter reply are reiterated and the contents of RA are denied.

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

7. The applicant was initially appointed in the respondents organization as Postal Assistant and he was charge sheet under Rule 14 of CCS (CCA) Rules 1965 vide charge sheet dated 2.5.2001. In the charge sheet, there are two Articles of charges, through which, it is indicated that the applicant while working as HO RD Ledger Assistant at Chowk Head Office, Lucknow during the period 4.5.2000 to 17.5.2000, received pass books and applications for withdrawal, appointing Smt. Ruksana, N. S. Agent as messenger on forged signatures of the depositors of R.D. A/c No. 145413, 145342 and 146668, and forged thumb impression of Smt. Manno Devi of R.D. AC No. 145662 and failed to compare the signatures/thumb impression of the depositors on the application for withdrawal with the specimen signatures on record and signed the withdrawal forms as required under Rule 33(2) (iii) of P.O.S.B. Manual Vol. 1. Therefore the applicant

facilitated Smt. Ruksana to take the forged amount and put the postal department to the loss of Rs. 68,508/-.

8. Further, in Article 2, it is pointed out that the applicant fail to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming a government servant. Along with the charge sheet, the statement of imputation of misconduct and misbehavior as well as the list of documents and list of witnesses are provided. Not only this, the applicant has denied the charges levelled against him and has also submitted an application dated 16.8.2001 wherein he has requested that the statement of Smt. Ruksana may kindly be arrange as defence witness. Subsequently, the enquiry officer was appointed and detailed inquiry was conducted after fixing number of dates, in which it is categorically pointed out that seven witnesses were proposed to be examined on behalf of the prosecution. But one Smt. Siddheshwari Tiwari did not attain the inquiry even on issuing of the notice. As such, six prosecution witnesses were examined. The said six prosecution witnesses were considered as PW-1 to PW-6. Apart from this, the documentary evidence were also taken care of. The applicant, who is charged officer in his defence statement has pleaded that in all the four cases pass books and withdrawal forms were received by the counter assistant and comparison of the signatures were done by the APM for the payment to Smt. Manno Devi illiterate depositor was made on the basis of the thumb impression taking into identification by the counter Postal Assistant and accepted by the APM and it does not require comparison by the ledger assistant. Apart from this, written proof by the charged officer was also taken due care of and subsequently the enquiry officer dealt with the Article -1 and 2 of the charge sheet and finally came to the finding in regard to Article -1 that the applicant fail to observe the provisions of Rule

33(2) (iii) of P.O.S. B. Manual Vol. 1 and fail to maintain absolute integrity devotion to duty as required under Rule 3(i) and (ii) of the CCS (Conduct) Rules 1964. As such, the charges stands proved. The copy of the enquiry officer was also duly communicated to the applicant who has submitted his representation on 24.6.2002 and denied the allegations levelled against him. The case of the applicant was placed before the Disciplinary Authority and the Disciplinary Authority passed an order on 31.12.2002/15.1.2003 wherein, the Disciplinary Authority awarded the penalty of recovery of Rs. 20000/- in twenty equal installments of Rs. 1000/- per month from the pay of the applicant and also ordered that pay of the applicant will be reduced by the seven stages from Rs. 4700/- to 4000/- in time scale of pay of Rs. 4000-100-6000/- for a period of 5 years with immediate effect. Apart from this, it is also ordered that the applicant will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increment of pay. While passing the order, the Disciplinary Authority has also pointed out that the applicant while functioning as Ledger Clerk at Chowk HO , Lucknow failed to make an entry of withdrawal in the Ledger Card of each accounts after being satisfied and put his signatures in the ledger cards which cause loss to the government exchequer. As such, punishment was awarded to the applicant. Apart from this, the Disciplinary Authority in his order has indicated that the charged official has refused the charges on the grounds that Smt. Ruksana had kept the pass books with her. Therefore, she should have been interrogated. As such, after considering each and every aspect, the Disciplinary Authority has passed the punishment orders.

8. The applicant has also preferred an appeal through his appeal dated 26.2.2003 and has also pointed out that the charge sheet is not issued keeping in view the instructions and also pointed out that the Disciplinary Authority has also not considered the representation and passed the punishment order. The Appellate Authority passed a speaking and detailed orders on 20.12.2005 and has fully considered the points raised by the applicant in the appeal and has pointed out that the plea of the applicant is misleading in view of the fact that he did not compare the signatures/Thumb impressions with those available on SB-3 and has also allowed premature closure in respect of five years RD Account No. 146668 opened on 27. 04.98 before completion of three years on fake thumb impression without observing DG's instructions. Apart from this the Appellate Authority has also clearly pointed out that the applicant facilitated to take forged payment as such, cause loss to the government exchequer and the punishment order communicated to the applicant is a speaking order discussing the evidence and commissions and irregularities on the part of the applicant and the utter violation of duty by appellant facilitated the fraud. In view of the finding given by the Appellate Authority, it is mentioned by the Appellate Authority that the applicant cannot be spared from the responsibilities of comparison of the signatures of the depositors contravening the rules and instructions of the Department. Thus the misconduct on the part of the appellant stands proved and the Appellate Authority did not find any reason to defer with the observations of the Disciplinary Authority.

9. Undisputedly, the applicant was given charged sheet. The enquiry officer was appointed and after the full fledge inquiry, the punishment was awarded. It is also clear that the Court should

not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. It is also well settled that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations and the Tribunal should be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

7. In the case of **Regional Manager, U.P. SRTC, Etawah and others vs. Hoti Lal and another** reported in **(2003) 3 SCC 605**, the Hon'ble Apex Court clearly observed that **"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, held the matter should be dealt with iron hands and not leniently."**

8. 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 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 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.”

9. 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.”

10. 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."

11. 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**.

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."

12. 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.

13. 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.

16. 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 and it is further observed by the Hon’ble Apex Court:-

“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.”

14. In the case of state of **State Bank of India an Others Vs. Ramesh Dinkar Punde** reported in **(2006) 7 SCC 212**, the Hon’ble Apex court has been pleased to observe as under:-

“6. Before we proceed further, we may observe at this stage that it is unfortunate that the High court has acted as an Appellate Authority despite the consistent view taken by this court that the High court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

“Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.”

Further it has been observed by the Hon'ble Apex Court as under:-

“9. It is impermissible for the High Court to re-appreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.”

15. In the case of state of Union of India vs. Parma Nanda reported in (1989) 2 SCC 177 , the Hon'ble Apex court has been pleased to observe as under:-

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

Further in the case of **Chairman and MD, United Commercial Bank vs. P.C. Kakkar** reported in (2003) 4 SCC 364, the Hon'ble Apex Court has been pleased to observe as under:-

“14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipliner are inseparable from the functioning of every officer/employee of the bank. As was observed by this court in **Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnaik** it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting an operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.”

17. Not only this, it is such a proposition that 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 higher degree of integrity and trustworthiness is a must and unexceptionable.

18. As observed by the Hon'ble Apext Court in the case of **Noharlal Verma Vs. district Cooperative central Bank Limited Jagdalpur** reported in (2008) 14 SCC 445, the Hon'ble Apex Court has been pleased to observe as under:-

“The appellant was holding position of trust and was Manager of a Bank. The charges levelled against him were serious in nature concerning misappropriation of money. Though the amount was not big and it was also repaid and the Bank has not suffered, yet the fact is that Manager of a cooperative bank was involved in

financial irregularities. The Bank was satisfied that he should not be retained in service and passed an order of removal. It cannot be said that such punishment is grossly disproportionate or excessively high. Normally in exercise of power of "judicial review", a writ court will not substitute its own judgment or decision for the judgment or decision of disciplinary authority unless it comes to the conclusion that it has shocked the conscience of the court or the punishment is such that no "reasonable man" would impose such punishment, or the decision is so absurd that the decision - maker at the time of making the decision "must have taken leave of his senses."

19. The applicant fail to make out any shortfalls in the enquiry proceeding as such, it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the relevant facts

20. 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 dismissal orders, particularly when the appellate authority has exercised its power lawfully. Even though, the judicial review of administrative action must remain flexible and its dimension not closed yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which can not be faulted with the procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. It is undisputedly that the judicial review is always directed not against the decision but is confined to the examination of the decision making process.

21. Further , it has been laid down that the Court exercising of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of

malafides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man of common reasonable prudence would have arrived at that finding. The court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority.

22. Considering the law laid down by the 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.

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

J Chadra

(Ms. Jayati Chadra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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