

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No.126/2008

Reserved on 9.7.2014

Pronounced on 04/08/2014

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

Mahesh Chandra Srivastava aged about 62 years son of late Shiv Narayan Srivastava, Nath resident of Bhueswar Vihar Colony, Alam Nagar Road, Near Bhudheswar Mandir, Lucknow-226017.

By Advocate: Sri S. Lavania/ Sri Dharmenda Awasthi Applicant

Versus

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, U.P.Circle, Lucknow.
3. Director of Postal Services, Lucknow.
4. Senior Superintendent of Post Offices, Lucknow Division, Lucknow.

By Advocate: Sri S.P.Singh Respondents

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:-

8.1) Issue a writ order or direction in the nature of certiorari, to quash the impugned orders dated 26.6.2003 and 6.3.2008 passed by the opposite parties No. 4 and 3 contained as Annexure No. 1 and 2 to this Original Application.

8.2) issue a direction to the opposite parties to provide the residual amount of difference when had accrued to him and his pension be accordingly re-fixed.

8.3) issue any other suitable order or direction which this Hon'ble Tribunal may deem, just and proper under the circumstances of the case in favour of the applicant.

8.4) Allow the present original application with costs in favour of the applicant.



2. The brief facts of the case are that the applicant was initially appointed in the respondents organisation and joined as Postman in the Department of Posts in 1971. He was charge sheeted vide charge sheet dated 22.1.2001/10.5.2001. After appointment of the enquiry officer, the enquiry officer submitted his report and found the charges leveled against the applicant in Article 1(ii) and Article 2 as proved whereas charge mentioned as Article 1(i) as not proved. The copy of the enquiry officer's report was communicated to the applicant with an observation that the disciplinary authority does not agree with the findings of the enquiry officer's report, as such the applicant was asked to submit his defence. The applicant gave the detailed reply and pointed out that the six documents were not made available to the applicant including the complaint of Sri Mohd. Ahmad Bakai referred in the written statement dated 21.7.2001. Apart from this, it is also alleged by the applicant that disagreement memo is not the show cause notice whereas it is a decision of the disciplinary authority and there is no charge of embezzlement. After the enquiry officer's report and reply submitted by the applicant, the disciplinary authority passed the punishment order dated 26.6.2003. The applicant preferred the appeal and the said appeal was also decided by the Appellate Authority on 6.3.2008. Thus, the applicant has preferred the present O.A.

3. Learned counsel for applicant has also pointed out that the author of documents or the complainant was also not cross examined and there is no procedural irregularities found against the applicant. Apart from this, it is also argued on behalf of the applicant that punishment awarded to the applicant is too harsh as per the misconduct, if any and the documents demanded by the applicant were also not provided to him. The learned counsel for applicant has also relied upon two decisions one passed by the Hon'ble High Court in the case of **Dhirendra Kumar Rai Vs.**

State of U.P. reported in 2010 (28) LCD 1248 as well as decision of this Tribunal passed in **O.A. No.466/2006 in the case of Radhe Lal Nigam Vs. Union of India and others** and indicated that the Hon'ble High Court has been pleased to observe that ***"Judicial intervention is required if the punishment is without jurisdiction or is in excess of authority or there is abuse of power."*** While deciding the O.A. No. 466/2006 Radhe Lal Nigam (supra), this Tribunal dealt with whether the disagreement memo is required to be given to the delinquent or not.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it is indicated by the respondents that the applicant was charge sheeted vide charge sheet dated 22.1.2001/10.5.2001 and as per the Article of charges, it is indicated that the applicant failed to maintain absolute integrity, devotion to duty and acted in manner which is unbecoming of Govt. servant and also made withdrawal of Rs. 2,30,160 from the bogus S.B. Account No. 611309 without observing the provisions of Rule 33 (5) and 33(5)(ii) of P.O. S.B. Manual Volume I and thereby the applicant failed to maintain absolute integrity, as such the enquiry was conducted and the enquiry officer submitted his report and the disciplinary authority after considering the report of the enquiry officer and defence statement submitted by the applicant passed the punishment order dated 26.6.2003 whereby it has been decided that pay of the applicant be reduced by five stages from Rs. 5375/- to Rs.4750/- in the time scale of pay of Rs. 4500-125-7000/- for a period of 3 years with immediate effect. It is also directed that applicant will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay. The applicant submitted an appeal on 24.7.2003 and appeal of the applicant was

also considered by the Appellate Authority and appellate authority rejected the appeal of the applicant on 6.3.2008 observing therein that the service record of the applicant shows that he had committed serious irregularities in past also for which he was punished. It is also observed by the appellate authority that since the applicant was habitual in committing such lapses in his official duty, accordingly the appeal preferred by the applicant was rejected and order passed by the disciplinary authority was confirmed. Learned counsel for the respondents has also pointed out that the applicant has not taken any ground in reply to the show cause notice as well as in the appeal and the enquiry report is absolutely clear to the fact that the applicant is guilty of offence, as such he is liable to be punished. Learned counsel for respondents have relied upon on few decisions of the Hon'ble Apex Court such as:-

i) Chairman and Managing Director, United Commercial Bank Vs. P.C. Kakkar reported in (2003) 4 SCC 364

ii) Nohralal Verma Vs. District Cooperative Central Bank Limited Jagdalpur reported in (2008) 14 SCC 445.

4. Learned counsel for respondents also pointed out that the present O.A. is liable to be dismissed on the ground as there is no procedural irregularities in conducting the enquiry.

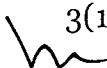
5. On behalf of the applicant Rejoinder reply is filed and through rejoinder reply, mostly the averments made in the O.A. are reiterated and contents of the C.A. are denied. However, it is once again argued by the learned counsel for the applicant that the punishment awarded to the applicant is too harsh and the present O.A. requires interference by this Tribunal since the documents so demanded by the applicant were not supplied to him and neither in the enquiry report it is being mentioned that the same has been provided to the applicant.

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

7. The applicant was working in the respondents organization and was charge sheeted in 2001 and soon thereafter, the applicant was supposed to submit his reply to the charge sheet but no such reply is available on record. The perusal of the enquiry officer's report also shows that the applicant has not submitted any reply to the charge sheet. The enquiry officer was appointed and the enquiry officer conducted the detailed enquiry wherein it is categorically mentioned that the applicant participated in the enquiry from beginning till end and he was assisted by one defence assistant. As per the enquiry report, the charges leveled against the applicant are as under:-

ARTICLE-I

While working as SPM Hussainabad Lucknow Sri Mahesh Chandra Srivastava opened SB A/c 611309 on 30.03.99 for Rs. 20/- in the name of fake depositors Mohd. Ahamed, Principal and Mohd. Naseem Asstt. Teacher, as Joint 'A' type a/c Madarsa Hanafia Ziyauul Khan Shahi Masjid Bara Chandganj, Lucknow and S.B. a/c No. 611310 for Rs. 50/- opened on 31.03.99 in the fake name of Pappu Khan Principal Madarsa Meharbaon Model School, Mahipat Mau Kakori, Lucknow without scrutinizing the application produced for opening of the a/cs and its admissibility under the rule of opening of the public a/cs the said Sri Mahesh Chandra Srivastava infringed the provision of Rule 23(9) (ii) read with the notes 1 & 2 below the above rule of P.O. SB Man Vol. I. Thereby the said Sri Mahesh Chandra Srivastava failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming to Govt. servant as required of him under Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964.



ARTICLE –II

While working as SPM Hussainabad PO Lucknow Sri Mahesh Chandra Srivastava allowed withdrawals and paid the amounts of the following bogus SB a/cs without comparing the signatures of the depositors on the application for the withdrawal's with specimen signatures without putting his signature below the signature of the depositors on the respective withdrawals forms. Thus the said Sri Mahesh Chandra Srivastava is alleged to infringe the provisions of Rule 33(5)(ii) of PO SB Manual Vol.I and thereby the said Sri Mahesh Chandra Srivastava failed to maintain absolute integrity, devotion to duty and acted in a manner of which is unbecoming of Govt. servant as required of him under rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964.

8. Enquiry officer's report also exhibits the documents presented by the Prosecution and Defence side and number of defence witnesses were also examined and cross examined. Not only this, the enquiry officer has discussed the case of the disciplinary authority. Apart from this, it is also pointed out by the enquiry officer that Sri Bakai informed that he has never opened any account in Hussainabad Post office where the applicant was working as SPM. After the detailed enquiry, the enquiry officer submitted his report and in the enquiry report, it is pointed out by the enquiry officer that Article 1(i) is not provided whereas Article 1(ii) and Article 2 stands proved. The applicant was served with the copy of enquiry officer's report and was asked to submit his representation within 15 days of receipt of letter and the said show cause notice also provides about the disagreement by the disciplinary authority. The applicant submitted the reply and through reply, it was indicated by the applicant that as many as sixteen documents were produced by prosecution side and taken on record as exhibits Ka-1 to Ka-16 but

certain documents were not produced and taken on record as exhibits though they have been listed in the memo of charges. The learned counsel for applicant has also submitted that through his letter dated 26.7.2002 he has requested for 9 additional documents, out of which only 03 documents were produced and remaining 6 documents were not made available including the complaint of Mohd. Ahmad Bakai which is referred to by the applicant in his written statement dated 21.7.2001. Needless to say that neither letter dated 26.7.2002 nor the written statement dated 21.7.2001 is available on record which may demonstrate that the applicant has requested for 9 additional documents, out of which only 3 were produced and accepted whereas remaining six documents were not made available including the complaint of Mohd. Ahmad Baqai. After submission of reply to the enquiry officer's report, the entire matter was placed before the disciplinary authority and the disciplinary authority has categorically pointed out that memo of charges were sent to the applicant and thereafter, the enquiry officer was appointed and the enquiry officer conducted the detailed enquiry in which the applicant was given full opportunity and there is no denial on the part of the applicant that he was not given any opportunity of hearing. The disciplinary authority has categorically pointed out that the conduct of the applicant is clear in regard to misappropriation of govt. money while opening the two accounts No. 611309 and 611310. Though the applicant denied this fact that Account No. 611309 is a public account but the ledger copy placed in the Head Quarter shows that Account No. 611309 is a public account in the name of Mohd. Ahmad, Principal and Mohd. Naseem , Assistant Teacher. Similar was the case in respect of Account No. 611310 and it is pointed out that the said account is also public account in the name of Pappu Khan. The only defence which is taken by the applicant is the account No. 611309 is not a public account

and as per ledger copy , it is clear that the said account is a public account. It is also pointed out by the disciplinary authority that the charges mentioned in Article 2 is that the applicant allegedly withdrawn and paid the amount of bogus S.B. account without comparing the signatures of depositors as such the said charges were proved against the applicant. Accordingly, the disciplinary authority passed the order of reduction of five stages and also directed that applicant will not earn increment of pay during the period of reduction. The applicant feeling aggrieved by the said order, preferred the appeal to the Director of Postal Services and has taken number of grounds and finally made a prayer that his appeal may be considered sympathetically in the interest of justice and fair play and penalty be set aside. The appellate authority also considered the appeal of the applicant along with Article of charges mentioned in the charge sheet and also discussed the points as raised by the applicant in his appeal. While deciding the appeal, it is categorically pointed out by the appellate authority that depositors of both accounts denied that they have opened any account and also denied that they have made withdrawal under their signature. As such, it was clear that the applicant is involved in misappropriation of Govt. fund. Accordingly, the appeal was rejected.

9. Learned counsel for applicant relied upon two decisions one passed by the Hon'ble Apex Court in the case of **Dhirendra Kumar Rai (supra)** and it is pointed out about the word "misconduct" which provides that term 'misconduct' implies with wrongful intention and not a mere error of judgment. Hon'ble High Court has discussed the word 'misconduct' and observed as under:-

"86. In Black's Law Dictionary Seventh Edition, the word,

W 'misconduct' has been defined as under:-

“Misconduct: A dereliction of duty; unlawful or improper behavior.

“Affirmative misconduct.¹ An affirmative act of misrepresentation or concealment of a material fact; intentional wrongful behavior”

Official misconduct. A public officer’s corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance- Also terms misconduct in office , misbehavior in office, malconduct in office. Misdemeanor in office; corruption in office; official corruption.”

“wanton misconduct. An act , or a failure to act when there is a duty to do so, in reckless disregard of another’s rights, coupled with the knowledge that injury will probably result. Also termed wanton and reckless misconduct.

Willful misconduct. Misconduct committed voluntarily and intentionally.

“This term of art [willful misconduct] has defined definition, but it is clear that it means something more than negligence. Two classic examples of misconduct which will defeat the seaman’s claim are intoxication and venereal disease. “Frank L. Maraist, Admiralty in a Nutshell 185-86 (3 ed. 1996)”.

87. In Law Lexicon by P. Ramanatha Aiyar, misconduct has been defined as under:-

“Misconduct. A transgression of some established and definite rule of action , a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are mis-demeanor, misdeed, misbehavior. Delinquency , impropriety, mismanagement offence, but no negligence or carelessness. Term “misconduct” when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. People v. Sigai ,

249 CA 2D 299, 57 Cal Rptr. 541, 549. Misconduct , with renders discharged employee ineligible for unemployment compensation, occurs when conduct of employment evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design . Walson V. Brown, La. App., 147 So 2D 29 (Black)."

10. As regards the decision of this Tribunal in the case of **Radhe Lal Nigam (supra)**, it is observed by the Tribunal that the copy of disagreement is required to be served upon the applicant in terms of the decision rendered by the Hon'ble Apex Court in the case of **Punjab National Bank Vs. Kunj Behari Mishra reported in (1998) 7 SCC 84** as well as the decision in the case of **Yogi Nath D. Bagde Vs. State of Maharashtra reported in (1999) 7 SCC 739**.

11. In the instant case, the copy of the enquiry officer's report along with disagreement memo was served upon the applicant prior to the disciplinary authority could pass any order. As such , the judgment of Radhe Lal (supra) relied upon by the applicant is not applicable in the case of the applicant. As regard the issue of 'misconduct' as discussed by the Hon'ble High Court in the case of Dhirendra Kumar Rai (supra) is concerned, the enquiry officer, disciplinary authority as well as the appellate authority came to the conclusion that the applicant misappropriated the govt. money as such it cannot be said that there is no misconduct on the part of the applicant. As such, the decision rendered by the Hon'ble High Court is also not applicable in the case of the applicant.

12. The Hon'ble Apex Court 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.”

13. The Hon'ble Apex Court in the case of **Noharlal Verma Vs. District Cooperative Central Bank Limited Jagdalpur** reported in (2008) 14 SCC 445, 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 s absurd that the decision – maker at the time of

making the decision "must have taken leave of his senses."

14. Now the question which requires determination is that after full-fledged enquiry, how much scope is left with the Tribunal to interfere in it. The bare perusal of the enquiry officer's report, it is clearly provide that the applicant was given full opportunity to participate in the enquiry and after considering all the evidences available on record, enquiry officer submitted enquiry report to the disciplinary authority. Copy of the enquiry officer's report along with disagreement memo was also given to the applicant to which he has submitted reply and the disciplinary authority also considered each and every aspect of the matter. Undisputedly, the Hon'ble Apex Court in the case 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 submitted his defence as well. It is to be pointed out that letter dated 26.7.2002 as well as 21.7.2002 are not available on record through which the applicant asked for the documents. Therefore, it cannot be said that which documents were asked by the applicant and not provided to him.

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. It is also undisputed that in the matters pertaining to disciplinary proceedings, the scope of judicial review is very little. 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."

17. The aforesaid view was reiterated by the Hon'ble Apex Court in the case 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."

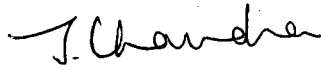
Further it has been observed by the Hon'ble Apex Court as under:-

"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."

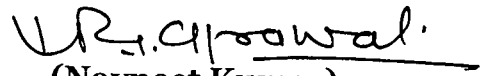
18. The applicant failed to make out any shortfall in the enquiry. As such interference with the orders passed by the disciplinary authority and Appellate Authority is unjustified.

19. Considering the observations made by the Hon'ble Apex Court as well as submissions made by the learned counsel for the parties, we do not

find any justified reason to interfere in the present O.A. Accordingly, the
O.A. is dismissed. No order as to costs.



(Ms. Jayati Chandra)
Member (A)



(Navneet Kumar)
Member (J)

HLS/-