

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 155 of 2008

Reserved on 12.2.2015
Pronounced on 25th February, 2015

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Tej Narain, aged about 45 years, S/o Sri Bisheshwar Prasad, R/o Village & Post Shahapur, District Barabanki.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Postmaster General, U.P. Circle, Lucknow.
3. Director of Postal Services, Lucknow region, Lucknow.
4. Superintendent of Post Offices, Barabanki.

.....Respondents.

By Advocate : Sri K.K. Shukla for Sri G.K. Singh

ORDER

By Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

“(i) *Wherefore it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the order dated 30.5.2007 and order dated 10.12.2007 contained in Annexure nos. 1 & 2 and treat the applicant in continuous service with all consequential benefits as GDS BPM, Shahapur, District Barabanki.*

2. The facts of the case are that the applicant while working as GDS Branch Post Master was put off duty vide order dated 11.8.2003. A charge-sheet was issued to the applicant on 11.2.2005 wherein he charged of fabrication of signature of depositor of R.D. Account no. 41411 and fabricated the signature of witness and obtained an amount of Rs. 17549.55 and did not pay the same to the depositor. Upon receipt of charge-sheet, the applicant submitted his reply denying the charges leveled against him. Thereafter, an Enquiry Officer was appointed to inquire into

J. Chandra

the charges leveled against the applicant. The applicant, by means of letter, dated 21.12.2005 has demanded certain documents to which some of the documents mentioned in the letter has been supplied and some of letters have been denied. Thus, reasonable opportunity was denied as he was not given the relevant documents. A show cause notice was issued to the applicant enclosing therewith the report of Inquiry Officer vide covering letter dated 14.5.2007 to which the applicant submitted his reply on 29.5.2007. Without considering the reply filed by the applicant, he was dismissed from service by means of order dated 30.5.2007. Against the said order, the applicant preferred an appeal on 5.7.2007 before the appellate authority, which was rejected vide order dated 10.12.2007.

3. The grounds for challenge the impugned orders are that they are non-speaking orders and further appointment of a Retired SSPOs to conduct an enquiry is not permitted and as such it vitiates the entire proceedings. The applicant has also taken a ground that the prosecution had failed to produce the material witness during the course of inquiry, yet his statement was taken to be true in proving the charges and that there is a clear violation of Article 311 of Constitution of India.

4. The respondents have filed detailed Counter Reply, in opposition to the claim put-forth by the applicant in the instant O.A. by stating that the applicant while working as GDS Branch Post Master, Shahabpur, Barabanki, a recurring Deposit Account No. 41411 was running in the name of one Sri Lalit Kuamr and the applicant fraudulently withdrew the amount to the tune of Rs. 17549.55 from the said account on 5.5.2001 and closed the said account by making forged signature of the depositor by further forging the signature of one Sri Uttam Kumar as witness on the withdrawal form. The depositor had no knowledge and he continued deposited the installments. In 2003, when the maturity of the above account was due, the depositor produced the pass book of the aforementioned account for withdrawal of amount. The applicant gave him the receipt of passbook on 20.5.2003 by putting his signature, but thereafter destroyed the passbook. On the complaint, the matter was enquired and when the allegations made in the complaint was found true, the applicant was put off

duty vide order dated 11.8.2003 and charge-sheet under Rule 10 of GDS (Conduct & Employment) Rules, 2001 was issued vide Memorandum dated 11.2.2005. On conclusion of departmental enquiry, the charges leveled against the applicant were found to be proved and on the basis thereof, the applicant was dismissed from service vide order dated 30.5.2007. The applicant, thereafter, filed an appeal on 4.7.2007 to the DPS (Headquarters), Lucknow which too was rejected vide order dated 10.12.2007. Lastly, the respondents have stated that the impugned orders are perfectly legal and valid and the same have been passed by the competent authority after considering the gravity of the charges leveled against him as well as after considering the reply submitted by the applicant, hence it do not suffer from any infirmity or illegality and the O.A. is liable to be dismissed with costs.

5. The applicant has filed Rejoinder Reply denying the allegations made by the respondents in their Counter Reply and reiterating the averments made in the Original Application.

6. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

7. Admittedly, the facts narrated in the foregoing paragraphs have not been disputed by either of the sides. It is well settled law that Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. When the authority accepts that evidence and conclusion receives support there-from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the

J. Chaudhury

charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment.

8. The appellate authority has dealt with all the points raised by the applicant in his appeal and has passed a reasoned and speaking order detailing all the points raised by the applicant in his appeal. The applicant has failed to point out any irregularity or illegality in decision making process. The scope of judicial review is very limited as has been held by Hon'ble Supreme Court in catena of cases.

9. **In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1993) Supp. 1 SCC 551]**, the Hon'ble Supreme Court has been pleased to hold that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. In the case of **State Bank of India & Ors. v. Samarendra Kishore Endow & Anr. [J] (1994) 1 SC 217]**, the Hon'ble Supreme Court has held that the Tribunal had no power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

J. Chander

10. A Constitution Bench Hon'ble Supreme Court in the case of in **State of Orissa Ors. v. Bidyabhushan Mohapatra [AIR 1963 SC 779]** has held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. This view was reiterated by Hon'ble Supreme Court in Union of India v. Sardar Bahadur [(1972) 2 SCR 218]. In the case of Bhagat Ram v. State of Himachal Pradesh & Ors. [AIR 1983 SC 454], the Hon'ble Supreme Court has held that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked.

11. In view of the above discussions, the O.A. has no merit and the same is accordingly dismissed. No costs.

J. Chandra
 (Ms. Jayati Chandra)
 Member-A

V.R. Groawal
 (Navneet Kumar)
 Member -J

Girish/-