

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW**

Original Application No. 174 of 2008

ORDER RESERVED ON 6.01.2015

ORDER PRONOUNCED ON 15/1/15

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

Ram Sanjiwan Nirmal,
Gramin Dak Sewak
Mail Deliverer Jagdishpur District Raebareil.

Applicant

By Advocate Sri R. S. Gupta.

Versus

1. Union of India through the Secretary Department of Post Dak Bhawan New Delhi.
2. Director Postal Services o/o Chief Postmaster General U.P. Lucknow.
3. S. P.Os Raebareli.
4. S.D.I. East Raebareli.
5. Tahsildar Salon District Raebareli.

By Advocate Sri S. P. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original application is preferred by the applicant u/s19 of the AT Act, 1985 with the following reliefs:-


(i) That this Hon'ble Tribunal may kindly be pleased to quash and set aside the dismissal and recovery orders dated 29.6.2007 and 31.1.2005 and 30.5.2008 as contained in Annexure No. 1 A ,1B and 1C and allow applicant to be reinstated to service as GDS MD with all consequential benefits including pay.

(ii) Any other relief found just and proper in the circumstances of case with cost in favour of applicant.

2. The brief facts of the case are that the applicant was appointed in the respondents organization and after serving for more than 25 years he was served with a charge sheet under Rule 10 of GDS (Conduct & Employment) Rules 2001 vide charge sheet dated 22.03.2006. After the issuance of the said charge sheet, due enquiry was conducted and thereafter, the respondents imposed penalty of dismissal upon the

applicant. Not only this, it is also to be pointed out that prior to issuance of the charge sheet an FIR was lodged under Section 419, 420, 409 of the IPC. Learned counsel for the applicant has categorically indicated that the applicant was not holding a post of Branch Post Master at the time of the issuance of the charge sheet and the charge sheet is also issued by the incompetent authority. Not only this, it is also argued by the learned counsel for the applicant that the applicant was not given the appropriate opportunity of hearing as such, the entire proceedings is bad in the eyes of law and are liable to be quashed. While submitting the contentions on behalf of the applicant, the learned counsel has also raised the issue that the ground taken in the reply were not answered by the competent authorities and the appellate authority has not even decided the appeal of the applicant.

3. On behalf of the respondents detailed reply as well as supplementary counter reply is filed and through which the respondents have categorically indicted that at the time of misappropriation of government fund, the applicant was posted as BPM. As such, the applicant cannot raise a ground that he was not posted as BPM Jagdishpur, Raebareli at the time when the incident took place. Apart from this, the applicant himself has admitted in the inquiry that he worked as BPM till 2.6.2004. The learned counsel for the respondents has also categorically indicated that there is no procedural irregularities in conducting the inquiry and has also filed the copy of the decision of the appeal which was considered and decided by the Director Postal Services on 30th May 2008 and is also indicted that the applicant has not challenged the same by means the amendment application. A regard, the posting of the applicant as BPM, Jagdishpur Raebareli is concerned for which the respondents have also annexed a document through which the competent authority has passed an order asking the applicant to work as BPM, Jagdishpur Raebareli. The said document is annexed as Annexure C-3 to the counter reply.



4. In the supplementary counter reply, mostly the averments made in the counter reply are reiterated. However, it is vehemently argued by the learned counsel for the respondents that the inquiry officer has submitted the report after due consideration and after the opportunity to the applicant and disciplinary authority has passed the orders after considering the entire inquiry officer report and there is no irregularities or violation of any act or rules. Since the applicant has misappropriated public fund and lowered the image of the department in the eyes of public, as such the applicant is not entitled to get any relief and the O.A. is liable to be dismissed.

5. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. However, it is once again indicated by the learned counsel for the applicant that the applicant was also not imparted with any training for the said post as such, any action taken against the applicant is illegal. Therefore, the O.A. is deserves to be allowed.

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

7. The applicant was appointed in the respondents organization as EDDA which is now called as GDS DA, Jagdishpur, Raebareli vide memo dated 8.12.1979. On retirement of one Sri Sharda Prasad from the post of GDSBPM, Jagdishpur, Branch Office on 05.11.2002 the applicant was engaged to look after the work as officiating GDSBPM Jagdishpur, Raebareli vide Memo dated 6.11.2002. While working on the said post from 05.02.2003 to 31.05.2004, a misappropriation of government amount of Rs. 1,99,358 was detected from 51 SB and RD accounts. Accordingly, the applicant was placed under put of duty vide Memo dated 02.06.2004. After the due verification of the work, it was indicated that a total amount involved in the case is Rs. 1,99,358.50 as such the department sustained the said loss. Accordingly, the recovery certificate was issued and the proportionate part of Rs. 33,869 has been recovered from the property of the applicant. Not only this, an FIR was also

lodged under section 419, 420 and 409 of IPC against the applicant. After the investigation, the police authority has also filed the charge sheet and the case is still pending in the court of ACJM III Raebareli vide case No. 275/2005.

8. Since the applicant misappropriated an huge amount of Rs. 1,99,358.50, accordingly the disciplinary proceedings under Rule 10 of the GDS(Conduct and Employment) Rules proceeded against him and the charge sheet in connection with amount defrauded from particular accounts Nos issued to the applicant on 22.3.2006. Though the applicant has denied the charges and has also demanded the open inquiry through his representation dated 10.4.2006. Accordingly, the inquiry was conducted after nominating the inquiry officer and subsequently, the inquiry officer submitted the report through which all the charges against the applicant stands proved. The applicant was also provided the copy of the inquiry report and is also asked to submit the representation within a period of 15 days of receipt, but the applicant fail to submit any reply within the stipulated time. As such, taking into account the charge sheet, the facts of the case, inquiry officer report and also after perusal of the entire record, the disciplinary authority decided to pass an order. Accordingly, the applicant was dismissed from service vide memo dated 29.06.2007. Feeling aggrieved by the said order, the applicant preferred an appeal dated 19.8.2007 and the said appeal was also considered and decided by the appellate authority vide Memo dated 30th May, 2008 through which the appeal of the applicant was rejected and the copy of the decision was also communicated to the applicant on 18.6.2008.

8. The charges so leveled against the applicant are clear to the extent that the applicant while posted at Jagdishpur Raebareli, there was misappropriation of government fund from the account Nos. 108083 and 108166 as well as the account Nos. 28211741 and 2825417. The inquiry officer was appointed and the inquiry officer has also conducted the detailed inquiry and after given time to the applicant to participate in the

inquiry proceedings which the applicant has done the inquiry officer has also examined all the relevant documents and has also examined the witnesses and finally came to the conclusion that the applicant is found guilty of all the charges leveled against him. The copy of the inquiry report was also provided but the applicant has not submitted any representation to the same. The bare perusal of the charges so leveled against the applicant shows that the misappropriation of government fund took place in the month of February 2003 to May 2004 and as per the charge certificate so given to the applicant also shows that the applicant has taken charge of BPM, Jadishpur Raebareli. As such, it cannot be said that the applicant was not posted at Jagdishpur Raebareli, and misappropriation of fund has taken place. As such, it is explicitly clear that the applicant was posted at that point of time when the misappropriation of fund has taken place.

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. 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.

12. 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.”

13. In the case of **Union of India Vs. Sardar Pahadur reported in (1972) 4 SCC 618**, the Hon'ble Apex Court has observed as under:-

“A disciplinary proceedings is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The letters patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the single judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.”

14. In the case of **State Bank of India and 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 **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.”

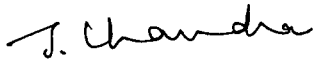
16. As observed by the Hon'ble Apex Court in the case of **Noharlal Verma Vs. District Cooperative central Bank Limited Jagdalpur** reported in (2008) 14 SCC 445, the Hon'ble Apex Court has been pleased to observe as under:-

“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

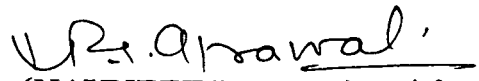


Manager of a cooperative bank was involved in financial irregularities. The Bank was satisfied that he should not be retained in service and passed an order of removal. It cannot be said that such punishment is grossly disproportionate or excessively high. Normally in exercise of power of "judicial review", 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."

17. 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 good ground to interfere in the present case.
18. Accordingly, O.A. is dismissed. No order as to costs.



(Ms. Jayati Chandra)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER(J)

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