

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 315 of 2008

Order Reserved on 15.7.2014

Order Pronounced on 04/08/2014

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

Lalji Dubey
Aged about 55 years,
Son of Sri Yagya Narain Dubey
Resident of Village & Post Sultanpur (Gaura R.S.),
Praapgarh.

Applicant

By Advocate Sri R. K. Upadhyaya

Versus

1. Union of India through
The Postmaster General,
Allahabad Region,
Allahabad.
2. Senior Superintendent of Post Offices,
Pratapgarh
3. Sub-divisional Inspector (Post Offices),
Patti, District Pratapgarh.

Respondents

By Advocate Sri S.P. Singh.

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:-

(i) To issue a suitable order or direction to the opposite parties quashing the impugned order dated 7.5.2007, appellate order dated 13.9.2007 and revisional order dated 27.2.2008 as contained in Annexure Nos. 1, 2 and 3 respectively to this Original Application.

(ii) To issue a suitable order or direction to the opposite parties to reinstate the applicant back in service with all consequential benefits of back wages.

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(iii) to issue any other order or direction which this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

(iv) to allow the Original Application with heavy costs in favour of the applicant.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and was charge sheeted vide charge sheet dated 4.11.2004 through which, it is indicated that the applicant has misappropriated a sum of Rs. 1500/- as such, he has violated the provisions of Postal Manual. Accordingly, the inquiry was conducted. The applicant after the receipt of the charge sheet, submitted a representation and demanded for certain documents vide his letter dated 21.3.2005 and the inquiry officer has categorically stated in his letter dated 30th March 2005 that certain documents were made available. Subsequently, another date was fixed in which, certain witnesses were require to be produced, but when they failed to appear, some of them are dropped and the next date 31.10.2005 was fixed. Subsequently, the enquiry officer submitted his inquiry report and in which, it is categorically mentioned by the inquiry officer that the applicant failed to discharge his official duties and earlier also he was put off duty from for four times as such, special attention is required on his working. The copy of the inquiry report duly served upon the applicant. The disciplinary authority after considering the inquiry report and other relevant documents passed an order of removal. The applicant preferred an appeal and the appellate authority also rejected the appeal of the applicant. Needless to say that the applicant also preferred a representation and the said representation was also rejected by the revisional authority. The learned counsel for the applicant has argued and submitted that the relied upon documents were not

provided to the applicant as well as the four witnesses also not appear before inquiry officer as such, they were dropped and only one witness was examined as mentioned in the list of witnesses. He has also relied upon certain decisions of the Hon'ble Apex Court such as the case of **Naseem Bano (Smt) Vs. State of U.P. And Others reported in 1994 SCC (L&S) 31, Union of India Vs. K.A. Kittu and Others reported in 2001 SCC (L&S) 8, Roop Singh Negi Vs. Punjab National Bank and Others reported in (2009) 2 SCC 570.** The decision of the Hon'ble Apex Court such as **Shant Deo Tripath Vs. Dy. General Manager/Appellate Authority S.B.I. and Others reported in [2012(1) ADJ29] , Narendra Kumar Pandey Vs. State Bank of India reported in [2011(8) ADJ(DB)(LB)], Smt. Madhurlata Bhatnaar Vs. Deputy Director of Education (Women), Allahabad and Others reported in 1983 (1) L.C.D. 146 and Jagdish Prasad Singh Vs. State of U.P. and Others reported in [1990]S.C.D 567** and submitted that the Hon'ble Apex court has been pleased to observe that while exercise of power of judicial review, the Tribunal may examined/consider contradictory finding of the inquiry office and the finding based on no evidence. Apart from this, it is argued by the learned counsel for the applicant that the inquiry has to be conducted according to the principle of natural justice and non production of material evidence the punishment order cannot stands on its legal footing.

3. On behalf of the respondents, counter reply is filed and through counter reply, it is indicated that the applicant while working as EDDA received the money order on 17.4.2004 and the same was paid to the other than payee and despite that he has show that the same is paid to the correct payee. Subsequently, a complaint was lodged and accordingly, the applicant was charge sheeted and inquiry proceeding initiated

against him and the charges levelled against him was also fully proved. Subsequently, the disciplinary authority after considering all the material available on record, removed the applicant from service. The applicant preferred the appeal and the said appeal was also rejected by the appellate authority and the revision so submitted by the applicant was also rejected. Apart from this, the learned counsel for the respondents has categorically pointed out that there is no procedural irregularities in conducting the inquiry as such, no interference is called for by this Tribunal. The respondents has also indicated that since the applicant misappropriated the government money by putting a forged signatures, as such, he is not fit to be retained in service. Accordingly, the disciplinary authority passed an order of removal. The witnesses were given enough opportunities to appear before the inquiry officer, but when they could not attend the inquiry, they were dropped by the inquiry officer.

4. 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.

5. The learned counsel appearing on behalf of the respondents has also filed the supplementary counter reply and no new facts are brought on record by the respondents through their supplementary counter reply. The learned counsel for the respondents has also relied upon certain decisions of the Hon'ble Apex Court such as **State of Uttar Pradesh Vs. Raj Kishore Yadav reported in 2006 (5) SCC 673, B.C. Chaturvedi Vs. U.O.I. & Ors. reported in 1995 (6) SCC 749, Union of India Vs. Upendra Singh, reported in 1994 (3) SCC 357, State Bank of India and Others Vs. Ramesh Dinkar Punde (2006) 7 SCC 212, Noharlal Verma Vs. District Cooperative Central bank Limited, Jagdalpur reported in (2008) 14 SCC 445** and has

indicated that the Hon'ble Apex Court not only once, but in a number of case has been pleased to observe that the Court/Tribunal cannot interfere with the punishment , if there is no procedural lapses in conducting the inquiry. Apart from this, it is also indicated by the learned counsel for the respondents that if the charge 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.

6. Supplementary rejoinder affidavit is also filed by the learned counsel for the applicant.

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

8. The applicant was working with the respondents organization was charge sheeted through charge sheet dated 4.11.2004 through which it is indicated that the applicant while he was working as EDDA on 19.4.2004, has misappropriated a money order of Rs. 1500/= and put his forged signatures of the payee as such, he violated the provisions of Postal Manual. In pursuance of the same, the inquiry officer was appointed and the inquiry officer conducted the detailed inquiry after giving opportunity of hearing to the applicant. In the inquiry report, it is indicated that a preliminary inquiry was conducted and the witnesses of Shiv Shankar Saroj, Mahendra Kumar Saroj and Jawahar Lal were recorded. In the preliminary inquiry, Mahendra Kumar Saroj has categorically mentioned that on the paid voucher, neither he has put his signatures nor he has indicated that he has received money and has also certified that the said documents is forged documents. Not only this, the other witnesses who were examined in the preliminary inquiry has also denied their signatures. Apart from this, few of them has also given their specimen signatures. Not only this, it is also

indicated in the inquiry report that in support of the defence, no witnesses were produced neither any written statement has been submitted. The charged officer has also accepted his guilt in the evidence. It is also indicated by the inquiry officer that the applicant was put off duty from for four times earlier. The inquiry officer in his inquiry report has also indicated that non presence of the witnesses does not support the claim of the applicant. After discussing the entire material in details, the inquiry officer came to a conclusion that the charges leveled against the applicant stands proved It is also to be pointed out that the said money order was given to the applicant on 7.4.2004 which he could delivered the same, as such, it was again given to him on 17.4.2004 which was again returned by the applicant to the authorities and finally, it was handed over to him on 19.4.2004 and as per the applicant, the same was delivered to the family member of payee and thereafter a complaint was lodged in the month of July 2004. In August, 2004, the inquiry was conducted and after the inquiry, the charge sheet was served upon the applicant on 4.11.2004. Undisputedly, the applicant denied the charges and asked for additional documents. By means of an order dated 30.3.2005, he was asked to show the documents. It is also indicated by the respondents that out of the five witnesses, four witnesses did not given any statement whereas one witness who has given his statement supporting the claiming of the applicant. It is also undisputed to the fact that the report of the inquiry officer was duly served upon the applicant on 27.6.2006 and the applicant submitted the reply on 8.7.2006. The matter was placed before the disciplinary authority and the disciplinary authority after considering the entire material available on record , passed an order of removal from service vide order dated 7.5.2007. Undisputedly, the applicant preferred an

appeal and the said appeal of the applicant was also rejected by the appellate authority. The applicant also preferred the representation which was also rejected by the revisional authority. The disciplinary authority in his order dated 7.5.2007 dealt with the defence taken by the applicant along with report of the inquiry office and other relevant documents and the appellate authority has also dealt with the grounds taken in the appeal and categorically pointed out that the applicant has misappropriated the money order of Rs. 1500/- and has also not given any concrete evidence. As such the appeal of the applicant was rejected. The revisional authority also so rejected the representation on 27.2.2008 after considering all the material available on record.

9. The decisions relied upon by the applicant are mostly in regard to the opportunity to be given to the charge official in the case of **Union of India Vs. K.A. Kittu and Others**, the Hon'ble Apex Court has been pleased to observe that the contradictory findings of the enquiry officer is required to be taken into account. As regard, the decisions relied upon by the learned counsel for the respondents, **State Bank of India and Others Vs. Ramesh Dinkar Punde (2006) 7 SCC 212**, it is categorically pointed by the Hon'ble Apex Court that " it is unfortunate that the Hon'ble High Court has acted as an appellate authority despite the considered view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an appellate authority.

10. As observed by the Hon'ble Apex court in the case of **State Bank of Mysore And Others Vs. M. C. Krishnappa reported in (2011) 7 Supreme Court Cases 325**, the Hon'ble Apex Court has been pleased to observe as under:

“No scope for interference with punishment warranted on a purely subjective view taken by High Court.”

11. Further in the case of **Union of India and Others Vs. Manab Kumar Guha** reported in **(2011)11 SCC 535**, the Hon’ble Apex Court again has been pleased to observe as under:-

“It is well settled that the High Court while exercising the power of judicial review from the order of the disciplinary authority does not act as a court of appeal and appraise evidence. It interferes with the finding of the enquiry officer only when the finding is found to be perverse. We are of the opinion that the Division Bench of the High Court erred in setting aside the order of the learned Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer is based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review.”

12. In the case of **Divisional Controller , Karnataka State Road Transport Corporation Vs. M. G. Vittal Rao** reported in **(2012) 1 SCC 442**, the Hon’ble Apex Court has been pleased to observe as under:-

“ More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption or theft , no punishment other than the dismissal may be appropriate.”

13. In the case of **State Bank Of India Vs. Ram Lal Bhaskar and Another** reported in **(2011) 10 Supreme Court Cases 249**, the Hon’ble Apex Court has been pleased to observe as under:-

“ 13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to , and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any

material on record and the allegations levelled against Respondent -1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct.”

14. As observed by the Hon’ble Apex Court in the case of

Vinod Kumar and another Vs. Union of India and Others
reported in (2012) 2 SCC (L&S) 917, the Hon’ble Apex Court has been observed as under:

“Appellate authority reappreciated entire evidence and examined findings recorded by disciplinary authority and reached the same conclusion. Appellants remained present throughout inquiry, but did not lead any evidence in defence. Inquiry was conducted strictly in accordance with law. Appropriate punishment of dismissal was rightly imposed after considering gravity of charges.”

15. 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.”**

16. Now, the question which requires determination is whether after the full fledged enquiry, how much the scope is left with the Tribunal to interfere in it. The bare perusal of the enquiry officer’s report clearly provides that the applicant fully participated in the enquiry and the enquiry officer considered each and every aspect of the matter and submitted the enquiry report to the Disciplinary Authority and the Disciplinary Authority disagreed with the finding of the inquiry officer and also issued the disagreement memo and the copy of which was duly given to the applicant and the applicant has also submitted the reply to the Disciplinary authority and the Disciplinary authority after due consideration of the reply given by the applicant as well as inquiry officer report came to the finding that the applicant is not fit to be retained in service accordingly, the order of dismissal was passed.

17. 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 extant it can go into the scope of judicial review in the matter of disciplinary proceedings. As stated above it is now well settled the scope of judicial review in a disciplinary matter is very limited. 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.**

18. 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.

19. 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.

20. 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."

21. After considering the entire material available on record, as well as the observations of the Hon'ble Apex Court, we do not find any justify reason to interfere in the disciplinary proceedings. Accordingly, the action taken by the respondents appears to be justified. No interference is called for. As such, the O.A. is fit to be dismissed.

22. Accordingly, the O.A. is dismissed. No order as to costs.

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

N.K. Agarwal
(Navneet Kumar)
Member (J)