

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No 317 of 2008
Order Reserved on 26.8.2014**

Order Pronounced on 17/09/2014

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

Kamlesh Chand, aged about 54 years S/o Late Banshi Dhar, R/o House No. E-52/20, Sector 11, Rajajipuram, Lucknow, since dismissed from the post of S.P.M. Manas Nagar Post Office, District Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India through its Cabinet Secretary (Post and Telegraph department), Ministry of Telecommunication and P.&T. New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director, Postal Services (H.Q), U.P. Circle, Lucknow.
4. Sr. Superintendent of Post Office, Lucknow Division Lucknow.

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) This Hon'ble Tribunal may kindly be pleased to set aside the impugned order of dismissal from service dated 05.06.2008 passed by the respondent No.

2 as contained in Annexure No. 1 to this original

application. This Hon'ble Tribunal may kindly be pleased to quash/set aside the impugned order dated 24.6.2005 (Annexure No. 1-B) passed by the respondent No. 3 and also set aside /quashed the impugned order dated 14.8.2006 of dismissal from service contain in as Annexure No. 1-A passed by the respondent No. 4 whereby the petition of the applicant has been rejected without application of mind.

(ii) This Hon'ble Tribunal may kindly be pleased to direct to the respondents to the respondents to allow the applicant to continue as usual in the service as the impugned order of dismissal has never been passed and pa his arrears of salary and allowances treating him in continuous service with effect from 24.6.2005.

(iii) This Hon'ble Tribuna may kindly be pleased to pass such other orders which may kindly be deemed just and proper in the circumstances of the case and

(iv) To allow the original application with cost. The grounds for releif's are same as have been mentioned in para 5 herein above, of the original application.

2. The facts of the case are that the applicant while working in the respondents organization was served with a charge sheet vide charge sheet dated 20th April 2001 wherein, the it is indicted that while working as Sub Postmaster Manas Nagar Post Office, Lucknow , the applicant encashed 6 years NSC 6 in number for

denomination of Rs. 5000/- each without obtaining necessary verification of certificates as such, the Postal Department has suffered a loss to the tune of Rs. 20,150/-. Along with the charge sheet, the statement of imputation of misconduct and list of witnesses were mentioned. The copy of the charge sheet was duly served upon the applicant and thereafter, the enquiry officer was appointed and the enquiry officer submitted the enquiry report and observed that both the charges leveled against the applicant stands proved. The copy of the enquiry report was also duly communicated to the applicant and finally the disciplinary authority has passed an orders on 24.6.2005 dismissing the applicant from service. The applicant preferred the appeal against the dismissal order and the appeal of the applicant was also considered and decided by the appellate authority vide order dated 14.8.2006. While deciding the appeal of the applicant, the appellate authority confirmed the penalty imposed upon the applicant. The applicant further feeling aggrieved by the said appellate order, preferred the petition on 18.10.2006 and the said petition of the applicant was also considered and decided by the revisoinal authority and rejected the same vide order dated 5th of June 2008. The applicant feeling aggrieved by the aforesaid orders, preferred the present O.A.

3. On behalf of the respondents, the detailed reply is filed and through reply, it is indicated by the respondents that the applicant while working as Senior Post Master, Manas Nagar Post Office, Lucknow was proceeded under Rule 14 of the CCS (CCA) Rules, 1965 and he has encashed 6 NSCs of 6 years for Rs. 5000/- issued from Manas Nagar Post Office, Varanasi on 11.6.1994 and 11.7.1994 in the name of Shri Surnedra Chandra and other and in the name of Surendra Chandra and Smt. Sushma Sharma jointly without obtaining necessary verification of certificate from the office of issue and the applicant made payment of the above NSC without following the procedure contained in Rule 23 (1) & (2) of Post Office SB Manual Vol. II resulting a loss of Rs. 20,150/-. As such, the applicant was charged for failure to maintain absolute integrity, devotion to duty. The inquiry officer was appointed and the inquiry officer came to the conclusion that both the charges are proved and thereafter, the penalty of dismissal from service was issued. The appeal so submitted by the applicant was also considered by the appellate authority as well as revisional authority and there is no illegality in conducting the inquiry. As such, it does not require any interference by this Tribunal.

4. In reply to the averments made by the learned counsel for the respondents, on behalf of the applicant, the rejoinder was filed and through rejoinder, the applicant reiterated the averments made in the O.A. and denied the contents raised in the counter reply and has indicated that without any cogent reason, the applicant was punished for which he can not be held responsible.


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

6. The applicant who was working with the respondents organization, was placed under suspension vide order dated 19.3.2001 and subsequently, he was served with a charge sheet dated 20th April 2001. In the said charge sheet, it is indicted that the applicant while functioning as Sub Postmaster, Manas Nagar Post Office, Lucknow on 6.1.2001, obtained 31 NSCs from Shri Surendra Chandra holder of the KVPs including NSC in number 6 each for denomination of Rs. 5000/- issued from Nagar Mahapalika P.O. Varanasi on 11.6.1994 and 11.7.1994 and he obtained the signatures of the holder Shri Surendra Chandra on each KVPs and made the payment to the tune of Rs. 37,000/- on 6.1.2001. Subsequently, the holder has lodged the FIR to Krishna Nagar Police Station, simultaneously information of the loss was given to the Senior Post Master, Chowk, HO, Lucknow on


19.1.2001 and 20.1.2001 and this facts was intimated to the charged official on 6.1.2001 as stated by the holder in his complaint dated 30.1.2001 and written statement dated 15.3.2001. Later on the applicant encashed both NSCs under reference on 19.1.2001 without obtaining necessary verification of the certificates from the office as required under Rule 23 (1) of P.O. SB Manual Vol. II. Thus the applicant violated the provisions of Rule 32 (1) of P.O. S.B. Manual Vol. II thereby committed a grave misconduct and failed to maintain absolute integrity, devotion to duty. In second Article of charge, it is indicted that the applicant made the payment of six years NSCs, the Postal Department has suffered the loss to the tune of Rs. 20,150/-. Along with the charge sheet, the list of documents as well as the list of witnesses is also mentioned. The inquiry officer was appointed and the inquiry officer conducted the detailed inquiry wherein, the inquiry officer has given the date of proceedings including the examination of documents and witnesses. It is also indicated by the inquiry officer that the charged officer has mentioned in his reply that non observation of Rule 23 (1) of P.O. SB Manual Vol. II has no effect in discharge of the certificates under reference because the holder was well known to the Post Office as he was identified by authorized agents while

taking encashment of NSCs/KVPs on 6.1.2001. It is also pointed out by the enquiry officer in his enquiry report that the charged official got signature of Shri Surendra Chandra on all the NSCs/KVPs including the NSCs Ex Ka-5 and Ka-6 and subsequently encashed by himself on 19.1.2001. It is also indicated by the inquiry officer that the holder of the aforesaid NSC lodged FIR on 19.1.2001 at Police Station, Krishna Nagar Lucknow and also given application to Senior Post Master, Lucknow Chowk on 20.1.2001 reporting loss/misplacement of NSCs in question and has also lodged complaint on 30.1.2001 to SSPOs Lucknow and during the preliminary inquiry, the holder depose the facts mentioned in his complaint. As such, it is indicated by the inquiry officer that the holder of the aforesaid NSCs has brought the misplacement of NSCs to the notice of the charged officer on 6.1.2001. As such the charged officer was aware of the fact of loss/misplacement of NSCs in question, even then he did not took proper identification at the time of encashment.

7. The learned counsel appearing on behalf of the applicant has relied upon the documents annexed with the O.A. as Annexure -7 and 8 which are statement of the applicant. It is also to be indicated that the said statements are part of the inquiry report. The applicant



has not put in his signatures. Not only this, it is also indicated by the applicant that the entries were not made by the applicant himself in his own handwriting and the handwriting which is available on the forms also does not belong to the applicant. Not only this, the inquiry officer has also indicated that though the applicant denied his signatures in his examination in Chief but during cross examination by defence he admitted the same to be in his own handwriting. Further the inquiry officer came to the conclusion that the charges so levelled against the applicant stands proved. The copy of the inquiry report was duly communicated to the applicant and the applicant has also submitted the reply. It is also clearly stated by the inquiry officer that the charged officer i.e. applicant was aware of the fact of loss /misplacement of NSCs in question, even then he did not took proper identification at the time of encashment. After the receipt of the reply by the charged officer i.e. the applicant, the matter was placed before the disciplinary authority and the disciplinary authority after considering all the material available on record passed an order of dismissal through order dated 24.6.2005. The applicant submitted the appeal to the appellate authority and the appellate authority has also rejected the appeal of the applicant. While taking the decision, the disciplinary



authority has categorically gone through the inquiry report and material available on record and defence statement submitted by the charged officer, and came to the conclusion that the applicant is liable for punishment of dismissal from service. The appellate authority while deciding the appeal of the applicant has categorically indicated that the holder has also admitted the facts during oral inquiry that loss of certificates was brought to the notice of the appellant on 6.1.2001. The appellant has also admitted that he is familiar with the investor. Therefore, he should not allow the encashment of certificates on 19.1.2001 even when verification report was not received from the office from which the certificate was issued and the applicant allowed the encashment of certificates without receipt of verification report violating the provision of departmental rules. As such, the appeal of the applicant was rejected by the appellate authority and the order passed by the disciplinary authority was confirmed. The applicant being not satisfied with the said orders, preferred the petition and the petition so preferred by the applicant also got rejected by the revisional authority vide order dated 5th June 2008.

8. 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.”**

9. 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 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.**

10. It is undisputed to the fact 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.

11. In the case of state 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."

12. 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. 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."

14. 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. In the instant case, the applicant 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. The applicant was well within his knowledge about the loss of NSCs which he got encashed on 19.1.2001 without proper verification and there is no procedure lapses in conducting the enquiry. As such, the applicant has failed to maintain devotion towards his duty and the applicant was also granted full opportunity to participate in the inquiry proceedings. As such there appears to be no illegality in conducting the inquiry by the inquiry officer.

Not only this, the disciplinary authority as well as the appellate authority has passed the orders after considering all the material available on record.

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

J. Chandra

(Jayati Chadra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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