

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 418 of 2008

Order Reserved on 28.8.2014

Order Pronounced on 17/09/2014

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

Sunil Kumar Seth aged about 57 years S/o Late R. P. Seth
Sorting Assistant R.M.S. HRD 'O' Division Lucknow.

Applicant

**By Advocate Sri P.R. Gupta.
Versus**

1. Union of India through the Secretary, Department of Post Dak Bhawan, New Delhi.
2. Chief Postmaster General U.P. Circle, Lucknow.
3. Director Postal Services (H.Q) o/o C.P.M.G. U.P. Circle Lucknow.
4. S.S.R.M. (O) Division Lucknow.

By Advocate Sri Atul Dixit.

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:-

- (a) That this Hon'ble Court may kindly be pleased to quash the orders dated 16.10.2008 and order dated 9.6.2008 as contained in Annexure No. 1 & 2 with all consequential benefits and refund amount already recovered.
- (b) Any other relief deemed just and proper in the circumstances of the case and with cost of O.A. in favour of the applicant.



2. The applicant earlier filed an O.A. 239 of 2008 which was disposed of by means of an order dated 21st July 2008 with a direction to the applicant to prefer an appeal and the respondents were directed to take a decision on the appeal of the applicant and in compliance to which, the respondents have passed an order on 16.10.2008 confirming the order of the disciplinary authority. Feeling aggrieved by the said order, the applicant preferred the present O.A. He has also challenged the order of the disciplinary authority whereby the punishment of recovery of Rs. 35350/- from the pay in 35 equal installments of Rs. 1000/- per month is made.

3. The applicant served with a charge sheet on 30.8.2007 and as per the statement of imputation of misconduct, it is indicated that due to gross negligent working of the applicant certain registered letters, insured letters, total 406 bundles could not be delivered timely and finally they were lost. As such, the amount of loss was assessed. After the issuance of the charge sheet, the applicant made a request for inspection of certain documents and in pursuance of his letter dated 12.9.2007, the respondents have issued a letter to the applicant for inspection of the desired documents on any working day. The learned counsel for the applicant has also pointed out that the relied upon documents were not provided to the applicant and the bags which were claim to be missing is not fault of the applicant. As such, the applicant cannot be held responsible for the same.

\\

4. On behalf of the respondents, the counter reply as well as supplementary counter reply is filed and through the same, the respondents have categorically indicated this fact that the case related to loss of 'R' bags for Basti RMS containing 261 registered letters + 143 Insured letters +2 Insured bundles total 406 letters/bundles. The value of 145 insured letters/bundles were assessed for Rs. 2, 54,700/-. The case was entrusted to the Inspector RMS, 'O' Division Lucknow for enquiry and thereafter a joint enquiry between SSRM, 'O' Division Lucknow and SSRM, 'G' Division, Gorakhpur was held on 8.11.2006 and 9.11.2006 and the applicant as well as Mail Guard of G-26 were equally held responsible for their negligent working and it was decided that 50% of total loss will be recovered from the defaulting officials of RMS, 'O' Division Lucknow and 50% from the official of RMS, 'G' Division, Gorakhpur. Not only this, it is also indicated by the respondents that during the course of joint enquiry, it was also disclosed that some documents were received short by the Mail Guard, which was subsequently received in different sections without entry in the mail lists. On account of this, the applicant was held responsible and the applicant was provided full opportunity to inspect all the relevant documents which were available in the office record. Despite the best efforts to insist for submitting his defence statement, he demanded for further inquiry into the case under Rule 16 of CCS(CCA) Rules 1965 vide his application dated

27.12.2007. Since joint enquiry was held and the applicant also attended the said enquiry, as such, it was decided that there is no need to hold further enquiry under Rule 16 (1) (b) and the applicant was directed to submit his defence statement within a period of one week from the date of receipt of the letter. The applicant was also granted time to submit his defence statement. But instead of submitting the defence representation, he again demanded to hold further inquiry. As such, the respondents passed an order of punishment. The O.A. so filed by the applicant against the punishment awarded by the disciplinary authority was disposed of, and the applicant was directed to file a departmental appeal and thereafter, the departmental appeal was finally disposed of vide order dated 16.10.2008 confirming the order of the disciplinary authority. It is also indicated by the respondents that there is no illegality in conducting the proceedings, as such the O.A. deserves to be dismissed.

5. On behalf of the applicant, rejoinder is filed and through rejoinder, the applicant has reiterated the averments made in the O.A. and the contents of the counter reply are denied.

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

7. The applicant who was working with the respondents organization was charge sheeted vide charge dated 30.8.2007.

The statement of imputation of misconduct/misbehavior against the applicant reads as under:-

“Shri Sunil Kumar Seth SA HRO RMS ‘O’ Division Lucknow while working as I/C MA Lucknow RMS/1 dated 14.1.2006 received the R-bag closed by CRC Dadar Stg/2 dated 12.1.2006 for Basti EMSe/a/s No. 5 A/T7/x-7 in ML of CRSC Lucknow GPO Stg/1 dated 14.1.2006 for MA Lucknow RMS/1. He dispatched the said B-bag to G-26 In Section dated 14.1.2006 e/a/s No. 21 A/T 20/3-23 with wrong entry of closing office as CRC Lucknow GPO Stg/2 instead of Dadar Stg/2 which was reportedly neither received nor dispatched by the Mail Guard G-26 In Section Dated 14.1.2006.

2. Shri Sunil Kumar Seth SA HRO RMS ‘O’ Divn. Lucknow while working as I/C MA Lucknow RMS/1 dated 14.1.2006 dispatched the M.L. prepared by CRSC Lucknow GPO Stg/1 dated 13.1.2006 for G-26 In A/T5/X-5 to the Mail Guard G-26. In dated 14.1.2006 without dispatching the re respective B-bags for Barabanki RMS, Gonda RMS, Basti RMS, Gorakhpur RMS & Deoria RMS entered in the Mail List. These five B-bags were subsequently received to the M. G. G-26. In Section on 15.1.2006 without entry in any Mail List.

3. Shri Sunil Kumar Seth SA HRO RMS ‘O’ Divn. Lucknow while working as I/C MA Lucknow RMS/1 dated 14.1.2006 dispatched the ML prepared by CRSC Lucknow GPO Stg/1 dated 13.1.2006 for G-1 In A/T-6 /X-6 to the Mail Guard G-26 In dated 14.1.2006 without dispatching the respective B-bags for Barabanki RMS, Gonda RMS-Behraich Distt, Basti RMS, Gorakhpur RMS and Deoria RMS entered in the Mail list. These R-bags were found lying in MA branch of Lucknow RMS without Mail List and subsequently dispatched to G-1 In section on 15.1.2006 duly entered in Mail List at Sl. No. 8 to 13 A/T12/5=17 by I/C MA Lucknow RMS/3 dated 15.1.2006 who wrongly entered the R-Bag for Behraich HQ Stg. Instead of Barabanki RMS.

4. Shri Sunil Kumar Seth SA HRO RMS ‘O’ Divn. Lucknow while working as I/C MA Lucknow

RMS/1 dated 14.1.2006 dispatched the M.L. prepared by H.S. Lucknow RMS/2 dated 13.1.2006 for G-30 In A/T 10/x=10 to the Mail Guard G-26 In dated 14.1.2006 without dispatching the respective L-Bags for Barabanki RMS, Deoria RMS, Mau RMS and Azamgarh RMS entered in the Mail list. These L-bags were found lying in MA branch of Lucknow RMS without mail list and were subsequently dispatched to G-26 In on 15.1.2006 duly entered in Mail list at Sl. No. 8, 9, 10, 16, 17, 18 and 19 A/T 18/29+47 by I/C MA Lucknow RMS/3 dated 14.1.2006.

The said Shri Sunil Kumar Seth also shown the entry of aforesaid Mail List prepared by HS Lucknow RMS/2 dated 13.1.2006 for G-30 In A/T 10/x=10 in Mail list of I/C MA Lucknow RMS/2 at Sl. No. 8 A/T 47/228+275.

5. Shri Sunil Kumar Seth SA HRO RMS 'O' Divn. Lucknow while working as I/C MA Lucknow RMS/1 dated 14.1.2006 dispatched the Mails to G-26 In Section dated 14.1.2006 by the Mail men without deputing a responsible official in absence of Mail Guard. Hence the mails could not be dispatched in accordance with the Mail lists actually dispatched.

Due to such gross negligent working of said Shri Sunil Kumar Seth SA the R-Bag closed by CRC Dadar Stg/2 dated 12.1.2006 for Basti RMS containing total 261 RLS+ 143 Ins. Letters +2 Ins. Bundles +406 could not be detected timely and finally lost. The value of 145 Ins. Letters was reckoned for Rs. 2,54,700/-

It is, therefore, alleged that the said Shri Sunil Kumar Seth, working in aforesaid capacity, infringed the provisions of Rule 105 of Postal Manual Volume-VIII (8th edition) and failed to maintain absolute devotion to duty and thus violated the provisions of Rule -3 (1) (ii) of CCS (Conduct) Rules-1964."

8. After the receipt of the said charge sheet, the applicant made a request for inspection of certain documents vide his application dated 12.9.2007. In response to this, the respondents have issued a charge sheet dated 30.8.2007 through which, it was informed to the him that he may

attend the office on any working day for inspection of documents so desired by him through his letter dated 12.9.2007. The applicant again served a letter dated 17.11.2007 asking for inspection of documents. The said letter was again replied to the applicant through letter dated 23.11.2007 in which, it is again informed to the applicant that as he again demanded some other documents for inspection, but he fail to inspect the 10 available documents as per his earlier request. But despite that the respondents asked the applicant that the case is been delayed therefore, it is informed to him to submit his defence statement within three days after inspection of the records. One Sri S. K. Saxena submitted a letter to the respondents on 15.11.2007 indicating therein that he has never infringed the provision of Rule 105 of Postal Manual. However, Sri S. K. Saxena is no where related with the present case. Subsequently, the applicant again made a request on 12.5.2008 for holding the inquiry under Rule 16(1) (b) of the CCS (CCA) Rules, 1965. The respondents through letter dated 28.4.2008 informed the applicant that he demanded the seal label used in registered bag for basti RMS closed by CRC Dadar. Since the above mentioned 'R' bag has been lost as mentioned in the charge sheet then how seal and label of the lost 'R' bag may be made available to him for inspection.

9. Apart from this, it is also indicated that since joint enquiry was held and in which, the applicant has also

participated therefore, there is no need to hold further enquiry under Rule 16 (1) (b) of the CCS (CCA) Rules 1965. After issuance of the said letter, the matter was placed before the disciplinary authority and the disciplinary authority vide order dated 9.6.2008 after considering the relevant records imposed the penalty of recovery of Rs. 35350/- from the pay of the applicant. While passing the said order, it is indicated by the disciplinary authority that due to gross negligent working of the applicant 406 bundles could not be detected timely and finally lost and the value of 145 insured letters was reckoned for Rs. 254700/-. As such, the applicant while working in aforesaid capacity, infringed the provisions of Rule 105 of Postal Manual Volume-VII and failed to maintain absolute devotion to duty and thus violated the provisions of Rule 3 (1) (ii) of CCS (Conduct) Rule 1964. The applicant was issued a memo of charges, he submitted an application for inspection of some documents which were arranged subsequently. The applicant inspected the relevant documents on 12.11.2007. It is also indicated by the disciplinary authority that the charged official i.e. applicant insisted vide letter dated 21.11.2007 to submit his defense statement, but he again moved an application for inspection of some more documents and also demanded the seal, label used in registered bag for Basti RMS closed by CRC Dadar.

The applicant was again allowed to inspect some more

relevant documents on 17.11.2007 and signed certificate as token of having seen the relevant documents. The disciplinary authority has also indicated that without giving any defence statement, the applicant again moved an application for inspection of documents as well as seal, label made in the registered bag for Basti RMS closed by CRC Dadar . Since the said bags were lost, as such it could not be shown to him and his demand for inspection was not found justified. The disciplinary authority has also indicated that the charged officer i.e. applicant was provided the opportunity to see all the relevant documents which were available in the office record. Despite all efforts to insist the applicant for submitting his defence statement whereas, he has insisted for holding an inquiry under Rule 16(1) (b) of CCS (CCA) Rules,1965 for which it was explained to him that since joint inquiry at the level of SSRM 'O' Division Lucknow and SSRM 'G' Division Gorakhpur has already been held on 8.11.2006 and 9.11.2006 and the applicant has also attended the said inquiry. Therefore, there is no need to hold further inquiry under Rule 16 (1) (b) of CCS (CCA) Rules 1965. Rule 16 (1) (b) of CCS (CCA) Rules 1965 reads as under:-

16. Procedure for imposing minor penalties

(1) subject to the provisions of sub rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after_

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry if any, held under Clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehavior; and
- (e) consulting the Commission where such consultation is necessary.

Finally the disciplinary authority has imposed a punishment of recovery of Rs. 35,350/- upon the applicant. While passing this order, the disciplinary authority has also indicated the functioning of the applicant and his careless approach in performing his job. The applicant preferred an appeal and the appeal so preferred by the applicant was considered by the appellate authority and by means of a detailed and speaking order and confirmed the penalty imposed by the disciplinary authority. While deciding the appeal, the appellate authority has discussed each and every grounds taken in the appeal filed by the applicant. It is also to be indicated that the detailed preliminary enquiry is conducted. The applicant was shown the relevant documents which was seen by the applicant and the respondents insisted the applicant to submit the defence statement as well.

10. The scope of judicial review in regard to the disciplinary matters is very limited. The joint enquiry was conducted in which the applicant also participated.

11. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. G. Annadurai reported in (2009) 13 SCC 469** that the employee's failure to participate in enquiry despite sufficient opportunity being given to him by sending notices at his home and it is further observed by the Hon'ble Apex Court as under:-

“5. Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again, there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved.”

12. Further in the case of **State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya reported in (2011) 4 SCC 584**, the Hon'ble Apex Court has been pleased to observe as under:-

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence

or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

9. Several witnesses were examined to prove the charge. One of them was H.S. Sharma who conducted the preliminary inquiry and to whom the respondent had made a statement broadly admitting the facts which constituted the subject matter of the second charge. I.M. Rawal, who was the cashier and I.C. Ojha, the officiating Branch Manager were also examined. Based upon their evidence, the Inquiry Officer found the respondent to be guilty of the second charge and that has been accepted by the disciplinary authority. The High Court has interfered with the said finding without expressly holding that the said finding of guilt was erroneous. The High Court has proceeded as if it was sitting in appeal over the departmental inquiry and interfered with the finding on a vague assumption that the respondent must have acted bonafide in an "increasing customer friendly atmosphere". There was no justification for the division bench to interfere with the finding of guilt."

13. The law is settled on the point that in the matters of disciplinary proceedings (pertaining to minor or major penalties, as the case may be), the Court/Tribunals have a very limited role to play to look into the decision making process. We do not have to go into the merit of the decision. We have only to see as to whether the decision making process was or was not in accordance with the relevant rules. No such flaw could be indicated on behalf of the applicant.

14. Considering the law laid down by the Hon'ble 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.

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

J. Chandra
(Jayati Chandra)
Member (A)

V.R. Agarwal
(Navneet Kumar)
Member (J)

vidya