

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 6/2009

Reserved on 28.8.2014

Pronounced on 17.9.2014

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Radhey Shyam Pandey aged about 66 years son of late Sri Ramdular Pandey, Resident of House No. 2034, Shyam Nagar, Nabipur, District- Sultanpur, Pin Code No.228001, U.P.

By Advocate: Sri Dharmesh Sinha Applicant

Versus

1. Union of India through Director General, Postal Services, New Delhi.
2. Chief Post Master General, U.P.Circle, Lucknow-226001.
3. Director (H.Q.) Postal Services, Office of the Chief Post Master General, Lucknow-226001.
4. Superintendent of Post Offices, District-Sultanpur-228001 (U.P.)

By Advocate: Sri S.K.Singh Respondents

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i) That the Hon'ble Tribunal may kindly be pleased to issue order or directions for quashing/ setting aside the impugned order dated 27.09./2003, 30.9.2003 contained in Annexure No. A-1 and A-2 imposing the punishment of recovery and also quashing /setting aside the orders dated 20.9.2004 and 29.7.2008 contained in Annexure No. A-3 and A-4 respectively upholding the aforesaid punishment.
- ii) That the Hon'ble Tribunal may graciously be pleased to issue order or direction directing/commanding the respondents to refund the amount of Rs. 70,000/- (Rs. 36,160/- and Rs. 33, 840/- respectively) to the applicant in consequence of the quashing of impugned order and also to pay penal interested to the applicant.

iii) That such other appropriate order or direction which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case may also be passed in favour of the applicant.

iv) Kindly allow the original application of the applicant with costs.

2. The brief facts of the case are that the applicant while working as Sub Postmaster in the village Dostpur, Sultanpur from 2.8.1997 to 17.8.1998, received five bank drafts for Rs.40,000/- each. While the said demand drafts were under process for encashment, the encashed amount got looted on the way from bank to Post Office and after occurrence of the said loot, an FIR was lodged under Crime No. 243/98 on 31.7.1998 but subsequently, in relation to the above incident, a charge sheet was served upon the applicant on 11.12.1998, proposing to take action against the applicant under Rule 16 of the CCS (CCA) Rules, 1965, along with statement of misconduct and misbehavior. The applicant submitted the representation to the said charge sheet and has also requested for providing relevant documents for inspection through his letters which were duly received by the office of the respondents on 23.12.1998 and 28.12.1998 but instead of providing the required documents, the applicant was forced to submit his reply which he submitted on 12.1.99 without having been given an opportunity to inspect the relevant records and the disciplinary authority imposed the penalty of recovery of Rs. 70,000/- from the pay of the applicant. It is also argued on behalf of the applicant that the appeal was also submitted by the applicant but the said appeal was also rejected by the authorities vide order dated 20th September, 2004 and revision so submitted was also rejected by means of order dated 29.7.2008. The learned counsel for the applicant has vehemently argued that the order passed by the disciplinary authority, appellate

authority as well as revisional authority does not indicate this fact that the documents so demanded by the applicant were ever allowed to be shown or supplied to the applicant, as such, the entire proceedings is bad in the eyes of law and is liable to be interfered with.

4. On behalf of the respondents, the reply was filed and through reply, it is indicated by the respondents that after receiving the five bank drafts for Rs. 40,000/- each, the applicant endorsed all the five bank drafts in the name of Sri Ram Kewal Verma for encashment from Bank of Baroda Branch at Dostpur on 31.7.1998. Subsequently, Sri Shyam Lal was deputed in accompany of Sri Ram Kewal Verma, and they took delivery and left the post office and took the payment from the bank and kept the same in the bags available with each of them and after leaving the bank, some miscreants snatched the bags containing the case and postal articles and ran away. It is also indicated by the respondents that in pursuance of the same, the applicant was proceeded under Rule 16 of the CCS(CCA) Rules, 1965 and he was punished for recovery of Rs. 70,000/- from his pay and allowances against which the applicant preferred the appeal which has been finalized with enhancing the penalty into withholding of next one increment for one year without cumulative effect in addition to recovery of Rs. 70,000/-. The applicant preferred an O.A. before this Tribunal challenging the enhancement of punishment. By means of order of the Tribunal , the orders of the disciplinary authority as well as appellate authority were quashed and matter was remanded back from the stage of supplying the relevant documents to the applicant as agreed by the respondents in their own letter dated 22.1.99. The applicant was also granted time to file representation and the respondents were subsequently passed a fresh order. The learned counsel for the respondents has also indicated that in pursuance of

the orders of the Tribunal, the respondents have further passed the orders and rejected the claim of the applicant. The applicant feeling aggrieved by the said order, preferred the present O.A. Apart from this, it is also argued on behalf of the respondents that there is no procedural irregularities in conducting the enquiry and on account of negligence on the part of the applicants , respondents suffered loss , as such an amount of Rs. 70,000/- was ordered to be recovered from the applicant.

5. On behalf of the applicant, Rejoinder Reply is filed and through rejoinder reply, it is once again reiterated by the applicant that the applicant was not provided the relevant records and documents as claimed for and the respondents have also not indicated the reasons as to why the documents so asked for was not provided to the applicant. As such, the present O.A. requires interference by this Tribunal and the same is liable to be quashed.

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

7. The applicant who was working in the respondents organization received five bank drafts of 40,000/- each to be encashed from the Bank of Baroda while he was posted as Sub Post Master in the village Dostpur, Sultanpur and being the last date of month, hundred of pensioners were required to be dealt with apart from receiving the mails from the 21st Branch Post Offices, as such, the applicant authorized Sri Ram Keval Verma, Postman to encashed bank drafts five in numbers as there was the liability of more than 2,70,000/- on the said date. It is also indicated that after collecting the amount, a robbery took place by some miscreants who snatch the bag containing cash and postal material and ran away. The matter was reported to the police and subsequently an amount of Rs. 27,500/- was recovered and one of the person involved in the looting was also arrested by the police. In pursuance

of the said incident, the applicant was charge sheeted under Rule 16 of CCS (CCA) Rules. The respondents indicated in the charge sheet as under:-

“Sri Radhey Shyam Pandey while working as SPM, Dostpur, P.O. on 31.7.98, deputed (authorized) Sri Ram Keval Verma, Postman, Dostpur, P.O. accompanied with one EDDA Sri Shyam Lal to encash bank draft No.s 175791 to 095795 Rs. 40000/- each total worth Rs. 2,00,000/- from bank of Baroda , Dostpur, Sultanpur beyond the prescribed limit for Postman accompanied by one another official. He would have get the drafts encashed one by one frequently. He did not obtained the police escort also for conveyance of such huge amount. Had he got encashed the drafts one by one and one..... Cash of one draft to P.O. only Rs. 40,000/- would have been looted. He got encashed all the drafts in one trip, which resulted in loot of such huge amount Rs. 2,00,000/-. The cash worth Rs. 2,00,000/- (Rs. two lacs) was conveyed through private bag instead of Departmental leather cash bag with locking arrangements. Thus, causing the loss of Rs. 2 lacs to the department.

Thus, it is alleged that by the above fact said Sri Radhey Shyam Pandey violated to observe the instructions contained in Directorate communication No.22-6/84-CI dated 10.10.96 circulated vide this office letter No. C/Cash-Van/96 dated 30.10.96 and rule 9(7) of Postal Manual Vol. VI part III and CPMG, UP circle Lucknow D.O. Letter No. INV.T-4/95/2 dated 2.3.98 circulated vide this office letter No. F/Circular/97098 dated 5.34.98 and reminded vide this office letter No. even dated 17.6.98 and thereby committed a grave misconduct and failed to maintain absolute devotion

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to duty contravening the provisions of Rule 3(1) (ii) and 391)(iii) of CCS (Conduct) Rules, 1964."

8. It is also submitted by the applicant that vide letter dated 18/23.9.98, the applicant asked for certain documents to be supplied to him so that he can give a detailed reply to the charge sheet but the respondents have not provided the documents to the applicant as such, the applicant was left with no other option except to submit his reply on 12.1.99. Subsequently, the disciplinary authority imposed the punishment upon the applicant of recovery of Rs. 70,000/- . The applicant feeling aggrieved by the said order, preferred an appeal to the CPMG and the appellate authority upheld the order passed by the disciplinary authority and also enhanced the punishment of withholding one increment for one year without cumulative effect in addition to the recovery. The applicant feeling aggrieved by the said orders, preferred an O.A. before this Tribunal vide O.A. No. 396/2000 and the said O.A. was finally disposed of by this Tribunal vide order dated 8th September, 2003, wherein the Tribunal remanded back the matter to the respondents to start the proceedings a fresh from the stage of supply of relevant documents to the applicant as agreed by the respondents in their own letter dated 22.1.99. It is also directed that the applicant was given two weeks time to file detailed representation and after receiving the representation of the applicant, disciplinary authority shall apply his mind to all the facts and pass a speaking order within a period of two months from the date of receipt of the order. The Tribunal also directed that any amount so recovered would be liable to be returned to the applicant and further amount will not be recovered. The applicant shall also given liberty that in case he is still aggrieved by the orders of the Tribunal, he may approach the Tribunal by filing a fresh O.A. In pursuance of the said directions of the Tribunal , fresh proceedings were started vide order dated

24.9.2003 and in pursuance to this, the applicant submitted his reply on 26.9.2003. The requisition made by the charged officer for inspection of supply of records in connection with charge sheet, vide his application dated 23.9.98, was answered and it was indicated that out of 15 documents so demanded for by the applicant, 8 documents were not made available whereas six documents were available and supplied to the applicant and against one document, it is only mentioned that it is available whether it is supplied or not is not shown in the said list. The respondents have finally passed an order on 27.9.2003 and ordered for recovery of Rs. 70,000/- from the applicant and has also indicated that though the amount of Rs. 36160/- has already been recovered, therefore, an amount of Rs. 33,840/- is to be recovered from the applicant in a lump-sum. The applicant feeling aggrieved by the said order, preferred the appeal and in the appeal, he has taken number of grounds and has also indicated that out of 17 relevant documents, only six documents were supplied and rest were said to be not available and thus, reasonable opportunity to the applicant was denied by the disciplinary authority. It is also indicated by the learned counsel for the applicant in his appeal that the order of the disciplinary authority is not reasoned and speaking order as such it is arbitrary and based on presumption. The appeal so submitted by the applicant on 29.10.2003 was considered by the appellate authority and appellate authority has passed an order on 20th September, 2004 and has also indicated in his order that the available documents were supplied to the applicant which was already accepted by the applicant way back in 26.9.2003, thus the plea of reasonable opportunity was not provided is not tenable. Accordingly the appeal of the applicant was rejected. The applicant again preferred the petition under Rule 117 and 118 of Postal Manual

Volume II and Rule 29(i) (vi) to the CPMG, U.P.Circle, Lucknow and

in the said petition , again the applicant has raised the same grounds and the revisional authority has once again passed an order on 29th July, 2008, rejecting the petition of the applicant.

9. The main contention of the applicant is that the order passed by the Disciplinary Authority, Appellate Authority as well as Revisional authority is a non-speaking order because as per request made by the applicant in regard to supply of relevant documents, the same were not supplied to the applicant and only few documents were made available to the applicant. As such, the entire proceedings is not in accordance with rules and it requires interference by this Tribunal. The learned counsel for applicant has also relied upon a decision of the Hon'ble Apex Court in the case of **State of U.P. Vs. Saroj Kumar Sinha reported in (2010) 2 Supreme Court Cases, 772** and indicated that the Hon'ble Apex Court has been pleased to observe that "**employee should be treated fairly in any proceeding which may culminate in punishment being imposed on him.**" In the instant case, the applicant was not given the relied upon documents, as such the proceedings so initiated against the applicant is liable to be interfered with. We have noticed that the efforts are made by the applicant to receive copy of the documents which were relevant for preparation of his defence in the departmental enquiry. As noticed earlier , all the requests made to the respondents fell on deaf ears. The applicant has been denied the documents sought to be relied upon against him and the authorities passed the order imposing punishment upon the applicant. It is also to be pointed out when a departmental enquiry is conducted against the govt. servant it cannot be treated as a causal exercise and the enquiry proceedings also cannot be conducted with a closed mind. The procedural fairness and regularity are of the indispensable essence of liberty.

Severe substantive laws can be endured if they are fairly and

impartially applied. As observed by the Hon'ble Apex Court in the case of **Kashinath Dikshita Vs. Union of India** reported in **(1986) 3 SCC, 229**, that “the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges leveled against a govt. servant..... the appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.” The proposition of law that a Govt. employee is facing a departmental enquiry is entitled to get all the material to enable him to have a reasonable opportunity to meet the charges against him.

10. It is undisputed that in this case, the documents so asked for by the applicant was not supplied to the applicant, as such on the basis of observations made by the Hon'ble Apex Court and on the basis of pleadings on record, we are inclined to interfere in the present O.A.

11. Accordingly, the impugned orders dated 27.9.2003, 30.9.2003 and 20.9. 2004 as contained in Annexure No. A-1, A-2 and A-3 are liable to be quashed and are accordingly quashed and the entire amount of recovery from the applicant be refunded without any interest.

12. With the above observations , O.A. is Allowed . No order as to costs.

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

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-