

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 75 of 2009

Reserved on 2.2.2015
Pronounced on 25th February, 2015

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Vidya Prasad, aged about 46 years, S/o Sri Ishwar Din, R/o Village Mau Janipur, Post Office Dewan Sharif, District Barabanki.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Chief Postmaster General, U.P. Circle, Lucknow.
3. Director of Postal Services, Lucknow region, Lucknow.
4. Superintendent of Post Offices, Barabanki.
5. Sub-Divisional Inspector, North Sub Division, Barabanki

.....Respondents.

By Advocate : Sri S.P. Singh

ORDER

By Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(i) quash the orders dated 31.7.2007 and 28.5.2008 contained in Annexure nos. 1 & 2 and treat the applicant as ED BPM, Kundari with all consequential benefits.

(ii) Any other order or direction may also be passed which this Hon'ble Tribunal may deem just and proper in the circumstances of the case."

2. The facts of the case are that the applicant was appointed as ED Packer at Devan Sharif, District Barabanki on 4.7.1983 by respondent no.5 (Annexure no.3). Consequent upon opening of new branch post office at Kundari in March, 2001, the applicant was directed to work as ED BPM vide order dated 23.3.2001. He took over charge of ED BPM on 27.3.2001 (Annexure no.5). However, no appointment order was issued as ED BPM. He was drawing Basic pay of Rs. 1280/- per month whereas earlier as ED

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Packer while he was drawing basic pay of Rs. 1620/- . He gave a representation dated 8.12.2004 to respondent nos. 4 & 5 for making good shortfall as he was appointed substantively as ED Packer. However, such prayer was never disposed of. The applicant was issued a charge-sheet by respondent no.4 under Rule 10 of GDS (Conduct & Employment) Rules 2001 consisting of two charges (Annexure no.7). The applicant denied the charges and an inquiry was initiated. During the course of inquiry, one Sri Kedar Nath, who was one of the witnesses stated that he deposited the entire amount on 13.10.2006 for which the applicant was charged for irregularity, but this fact was not taken into consideration by the Inquiry officer. The Presenting Officer and the applicant both submitted their respective briefs including the evidence given by the witness Sri Ramakant Verma and Sri Kedar Nath before the Inquiry Officer, who did not consider the same and the charges were held to be proved against the applicant. The respondent no.4 issued a show cause notice alongwith a copy of inquiry report directing the applicant to submit a time bound reply. This was complied with (Annexure -12). However, the respondent no.4 passed an order of removal from service on 31.7.2007. The applicant filed an appeal pointing out that he was appointed on substantive basis as ED Packer and, therefore, the respondent no.4 was not competent authority to take disciplinary action against him. More-over the respondent no.4 was under transfer to Circle office by order dated 24.7.2006 and as such he had no power or jurisdiction to pass an order on 31.7.2007. The appellate authority did not fully appreciate the points raised by him and passed second impugned order dated 28.5.2008 (Annexure no.2).

3. In the present O.A., the applicant has further averred that in the chargesheet, it has been shown that the applicant has violated the Rule 164 165 (Ga), 174(2), 175(2) and 175(4) of BPO Rules. Although, the applicant has challenged the currency of the said rules, the authorities have not made any amendment. The Inquiry Officer had also held that the aforesaid rules have been changed on 31.3.1986 and the number of new Rules are 123, 124 (Ga), 133(2), 134(2) and 134(4). Thus, the chargesheet itself suffers from technical defects that the rules quoted were not in existence on the date of issuance of the chargesheet.

4. The respondents have denied the averments of the applicant through their Counter Reply. Their contention is that the applicant was initially appointed as ED Packer. The post of ED Packer was abolished, as a consequence of opening of Branch Post Office at Kandari vide O.M. dated 23.3.2001. Consequently, the applicant stood to loose his job. He was offered the post of ED BPM, Kandari to which he gave his consent through letter dated 27.3.2001 (Annexure CA-1). More-over by O.M. dated 21.12.2001 (Annexure CA-2) the pay protection at his earlier level of pay drawn was given to him. Thus, at the time of disciplinary proceedings, he was working as ED BPM, Kandari and as such the SPOs is the appointing/disciplinary authority for the post of ED BPM. The charge report of the applicant is at Annexure no. CA-4. The applicant was proceeded under Rule 10 of GDS (Conduct & Employment) Rules 2001 vide O.M. dated 28.2.2007. The charges leveled against the applicant were proved by the Inquiry officer. A copy of inquiry report dated 25.6.2007 was sent to the applicant vide O.m. dated 27.6.2007 requiring him to submit his representation, if any, within 15 days. The applicant submitted his reply and the disciplinary authority i.e. Sri Abdul Haneef, who was holding the charge of Division on the date of issue of punishment order and worked as SPOs, Barabanki till 5.8.2007, passed punishment order dated 31.7.2007. The applicant gave his appeal against the removal order dated 31.7.2007 and the same was disposed of through a detailed order dated 28.5.2008 by the appellate authority.

4. The applicant has filed Rejoinder Reply refuting the contentions of the respondents made in their Counter Reply and reiterating the averments made in the Original Application. More-over, the applicant has stated that the appointing authority of the applicant is Inspector of Post Offices and not the Superintendent of Post Offices and Superintendent of Post Office is the appellate authority and he issued the punishment order dated 31.7.2007 while he took over as the DDM (PLI) in the office of CPMG, U.P. Circle, Lucknow on 31.7.2007.

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5. We have heard the learned counsel for the parties and also perused the pleadings on record.

6. The applicant has challenged the order of disciplinary authority on the question of competency. His case is that he was appointed substantively as ED Packer and, therefore, the respondent no.4, who is appointing/disciplinary authority for ED BPM was not competent authority. However, from the facts, it is clear that the applicant was actually working as EDBPM, Kandari as per the charge report dated 27.3.2001 (Annexure no.5). The post of ED Packer was abolished as would be evident from the order dated 20.3.2001 contained as Annexure no.3 to Supplementary Counter Reply. The letter dated 20.3.2001 clearly stipulates that the post of ED Packer Dewan Sharif has been redeployed in the new Branch Post Office at Khandari. Therefore, there being no post of ED Packer on the date of issue the disciplinary order, the contention regarding that he was substantively working on the post of ED Packer is not correct.

7. Coming to the question of competency of respondent no.4 as he has been transferred allegedly on the date of passing of disciplinary order, the applicant has failed to produce any documentary evidence that he was not SPOs, Barabanki. The respondents have clearly stated in their Counter Reply that the disciplinary authority Sri Abdul Haneef was holding the charge of Division on the date of issue of punishment order and worked as SPOs, Barabanki till 5.8.2007. Therefore, this ground of the applicant also goes.

8. The scope of judicial review in a disciplinary case is very limited as has been held by Hon'ble Supreme Court in catena of cases. Further, the appellate authority has dealt with all the grounds raised by the applicant in his appeal while passing a reasoned and speaking order. The applicant has failed to demonstrate any irregularity or illegality in the decision making process.

9. The version of the applicant that Rule 164 165 (Ga), 174(2), 175(2) and 175(4) of BPO Rules was not in existence at the time of issuance of chargesheet does not have any effect as only new Rule

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with serial number namely 123, 124 (Ga), 133(2), 134(2) and 134(4) have been changed and not the contents thereof and further this was at the stage of chargesheet which has now over and further the chargesheet in which the aforesaid rules have been quoted has not been challenged in the present O.A. In this view of the matter, the ground so raised by the applicant in this regard is no longer survives.

9. **In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1993) Supp. 1 SCC 551]**, the Hon'ble Supreme Court has been pleased to hold that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. In the case of **State Bank of India & Ors. v. Samarendra Kishore Endow & Anr. [J] (1994) 1 SC 217**, the Hon'ble Supreme Court has held that the Tribunal had no power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

10. A Constitution Bench Hon'ble Supreme Court in the case of in **State of Orissa Ors. v. Bidyabhushan Mohapatra [AIR 1963 SC 779]** has held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. This view was reiterated by Hon'ble Supreme Court in **Union of India v. Sardar Bahadur [(1972) 2 SCR 218]**. In the case of **Bhagat Ram v. State of Himachal Pradesh & Ors. [AIR 1983 SC 454]**, the Hon'ble Supreme Court has held that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked.

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11. In view of the discussions made above, we do not find any good ground to interfere in the impugned orders passed by the respondents. Accordingly the O.A. is dismissed. No costs.

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

V.P. Agarwal
(Navneet Kumar)
Member -J

Girish/-