CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No.485 of 2009
Order Reserved on 13.10.2014

Order Pronounced on 20-11-2014

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

Ram Prasad Rana, Ex. DGS BPM Chhedia Pachchim (Kheri) S/o Ganga Ranm Rana R/o Vilage & P.O. Chhedia Pachchim (Chandan Chauki) District Kheri.

Applicant

By Advocate Sri R. S. Gupta.

Versus

1.Union of India through the Secretary Department of Post Dak Bhawan New Delhi.

2. P.M.G. Bareilly.
3. D.P.S. Bareilly.
4. S.P.Os Kheri.
5. Sri U.S. Sharma the then SPOs Kheri C/o P.M.G. Breilly.
6. Sri R. K. Shukla the then SDI Pallia (Kheri) C/o SPOs Kheri.

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:-

> *(a) That this Hon'ble Tribunal may kindly be pleased to quash the order dated 3.6.2004, 15.12.2005, 3.6.2004 and 23.12.2005/20.2.2006 and 17.6.2009 as contained in Annexure Nos. 1A, 1B, 1C, 1D with full consequential service benefits including full pay.*
>
> *(b) Any other relief deemed just and proper in the circumstances of the case with cost of O.A. in favour of the applicant.*

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization on the post of EDBPM and was charge sheeted in 2004 through which, certain charges were levelled against the applicant. The learned counsel appearing on behalf of the applicant submits that the charge sheet issued is on account of bias and of wrong report submitted by one Sri R. K. Shukla the then SDI Pallia. It is also indicated by the learned counsel for the applicant that the charge

No. 2 is also fabricated and bogus and is also not proved against applicant. Not only this, the inquiry was to be conducted as per the GDS (Conduct and Employment) Rules 2001. The inquiry officer submitted the report without considering the material evidence on record and the disciplinary authority as well as appellate authority orders are also non speaking order as such it requires interference by this Tribunal.

3. On behalf of the respondents detailed reply is filed and through reply, it is indicated that the work assigned to the applicant were held up on 22.8.2003 to 26.8.2003 and the applicant was therefore proceeded under Rule 10 of GDS (Conduct and Employment) Rules 2001. He submitted his representation and he was awarded with the punishment of censure through order dated 19.12.2003. After that on account of negligence in his duty, he has fail to produce cash, postage as well as other office record before SDI (P) on 2.6.2004 therefore, he was ordered put off duty vide order dated 3.6.2004 and was also served with a charge memo. He submitted his representation in pursuance of the chare sheet in which he admitted that he was absent from duty on 31.5.2004. Thereafter, the enquiry officer was appointed who submitted his report. The copy of the report was provided to the applicant for submitting his representation but no representation was submitted by the applicant against the enquiry report as such, the competent authority after considering the enquiry report and other material available on record passed an order on 15.2.2005 and punishment of removal from service was passed. The applicant thereafter filed O.A. before this Tribunal vide O.A. No. 369 of 2005 and the said O.A. was disposed of with a direction to the appellate authority to decide the appeal within a period of one month. After the orders of the Tribunal, the appellate authority duly considered the appeal of the applicant and passed an order on 23.12.2005/20.2.2006 and confirmed the order of removal from service passed by the disciplinary authority. Not only this, it is also pointed out by the respondents that the applicant again filed an O.A. No. 265/2006 and the said O.A. was also disposed of by the Tribunal with a direction that the

applicant may submit the revision petition and the Post Master General will dispose of the revision which was submitted by the applicant and PMG passed an orders on 17.6.2009. the learned counsel for the respondents has categorically indicated that the is no illegality in conducting the inquiry . The full opportunity was given to the applicant as such, there is no scope of judicial interference by this Tribunal, and O.A. is liable to be dismissed.

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

6. The applicant was initially appointed in the respondents organization as EDBPM who was assigned certain work and on account of lapses in confirming his duties a censure was awarded to him. Thereafter, when he could not improve himself, charge sheet was served upon the applicant through which it is indicated that while he was working in Chhedia Pachchim Branch Post Office TB on 31.5.2004 and 1.6.2004, he has fail to produce cash, postage as well as other office record on account of which the forwarding of postage got disrupted. Apart from this, while inspection of the office, he was found absent . Along with the charge sheet the statement of imputation is mentioned and list of witnesses and documents is also provided. The applicant was providing the copy of the charge sheet to which he has submitted his representation on 19.7.2004. After submission of the said representation, the inquiry officer was appointed and the inquiry officer submitted the report on 14.1.2005 through which it is indicated that the charges so levelled against the applicant stands proved. The inquiry officer in his inquiry report has examined all the witnesses and also examined the documents. The copy of the inquiry report was served upon the applicant. It is also to be indicated that the inquiry officer has provided sufficient opportunity to the applicant to participate in the inquiry. Needless to say

that the applicant was supposed to give reply to the inquiry report which he fail to do. As such, the disciplinary authority passed the punishment order.

7. It is also to be pointed out that the applicant while working as EDBPM, Cheeria Pashchim Branch Post Office a complaint was received in regard to non-receipt of transit postal bags. The Sub Divisional Inspector visited the post office of the applicant and notices that the applicant was unauthorizedly absent from duty on 31.5.2004 and 01.06.2004. It is also notices that the transit bags of certain other post offices were not dispatched and the applicant also not cooperated with the Sub Divisional Inspector in producing the accounts as well as other documents of the post office on demand. As such, it was charged that the applicant did not display absolute integrity and devotion to his duty and violated provisions of Rules 52, 53 (5) and 175 (4) of Branch Office as well as Rule 21 of GDS (Conduct and Employment Rules), 2001. Not only this, it is also to be mentioned that the second charge related to his absence in the Branch Post Office and he also refused to cooperate in producing the cash and stamp and other documents of the post office and thereby violated the rules of Branch Post Office Rules. It is to be mentioned that the applicant was given full opportunity to participate in the inquiry and not submitted the reply as well. The disciplinary authority also came to the conclusion that the authorities were established the charges levelled against the applicant and further he imposed the penalty by passing the impugned order dated 15.12.2005. The appeal so preferred by the applicant was rejected and the orders of the disciplinary authority were confirmed. The learned counsel for the applicant has also taken a ground that he should have been given further opportunity in terms of Rule 14 to inspect the relevant documents and the notice asking him to participate in the inquiry was not delivered to him. Not only this, it is also argued on behalf of the applicant that he was denied the opportunity of providing certain documents without any justification. It is also pointed out on behalf of the applicant that there

are number of duties attached to the post GDS, BPM out of which only one half of duty i.e. dispatch of mails could not be performed by him and there is no complaint about his non discharge of other duties. The respondents through their counter reply has indicated that the applicant was guilty of similar negligence in the matter of exchange of transit bag in the year 2003 and he admitted his negligence and was let off with the punishment of censure only. It is also to be pointed out that neither the applicant submitted his written reply to the charge sheet nor did he care to put forward his defence case which would have been considered by the inquiry officer. In fact, some of the defence witnesses listed by him were examined and their evidence has been assessed by inquiry officer. As such, it cannot be said that there is a denial of opportunity in conducting the inquiry.

8. Not only this, as per the direction of the Tribunal in the O.A. 265 of 2006, the applicant was given chance to prefer a revision which he did and the revisional authority has also confirmed the order of the disciplinary authority as well as the appellate authority.

9. We have considered the rival submissions and perused the record. The question, what is the scope of judicial review in disciplinary matters has come up time and again and there are a catena of decisions on the subject. It is too late in the day to enter into this aspect of the matter by having review of all such authorities. In Special Appeal No. 1280 of 2005 decided on 20.2.2006, where in after considering a catena of decisions on the subject, the Hon'ble High Court crystallized the aspects which can be examined by the Court and which may justify judicial interference and not otherwise, which are reproduced as under:

> (1) The Tribunal exercising quashi judicial functions neither bound to follow the procedure prescribed for trial of actions in Courts nor bound by the strict rules of evidence.
> (2) They may obtain all information material for the points under enquiry and act upon the same provided it is brought to the notice j of the party and fair opportunity is afforded to explain.
> (3) The judicial enquiry is to determine whether the authority holding enquiry is competent, and whether the procedure prescribed is in accordance with the principle of natural justice.
> (4) There should exist some evidence accepted by the competent authority which may reasonably support the contention about the

guilt of the officer. Adquacy or reliability of the evidence cannot be looked into by the Court.

(5) The departmental authorities are the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the Court.

(6)There is no allergy to hear-se evidence provided it has reasonable nexus and credibility. All materials which are logically probative for a prudent mind are permissible.

7. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice.

(8) It is not necessary that the disciplinary authority should discuss material in detail and contest the conclusions of the Inquiry Office.

(9) The judicial review is extended only when there is no evidence or the conclusion or finding be such as no reasonable person would have ever reached on the basis of the material available.

10. Moreover, it is also well settled proposition, where conclusion drawn by the disciplinary authority is challenged on the ground that the same is based on no evidence whatsoever, the Court can look into the record to find out whether there is any evidence to sustain the conclusion or not, in **Union of India Vs. H. C. Goel, reported in AIR (1964) SC 364,** the Apex Court in para 23 of the judgment has said:

> "The only test which we can legitimately apply in dealing with this part of the respondent's case, is there any evidence on which a finding can be made against the respondent that Charge No. 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question; abut the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court 0.02" can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not."

11. 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. **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. The Hon'ble Apex Court has been further pleased to observe as under:-**

> **"4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is noting but an error of judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service."**

12. 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."**

13. In another case the Hon'ble Apex Court in the case of **Union of India v. Upendra Singh reported in 1994(3)SCC 357** has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

> **"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."**

14. In the case of **Moni Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** "The procedural fairness in conducting the departmental proceeding is a right of an employee." However, in this case the Hon'ble Supreme Court has also pleased to observe that the scope of judicial review in disciplinary proceedings is very limited. The Administrative Tribunals are to determine whether relevant evidences were taken into consideration and irrelevant evidences are excluded.

15. The applicant fail to make out any shortfalls in the enquiry proceeding as such, it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the relevant facts.

16. 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

17. Further , it has been laid down that the Court exercising of judicial review would not interfere with the findings of fact arrived at in