

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No 112/10

Order Reserved on 10.04.2014

Order Pronounced on 22-04-2014

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

Pramod Kumar Tewari
 Aged about 45 years,
 Son of Shri Sheo Kumar Tiwari,
 Resident of village Kanawa,
 Chaurey Bazar, District Faizabad.
 EX Gram Dak Sewak Branch Post Master Kanwa.

Applicant

By Advocate Sri Dharmendra Tiwari for Shri P. K. Shukla.

Versus

1. Union of India through,
 Secretary, Post and Telegraph,
 Government of India,
 New Delhi.
2. Director Postal Service/Chief Post Master General,
 U.P. Lucknow.
3. Senior Superintendent of Post Offices,
 Faizabad.

Respondents

By Advocate Sri S. P. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present O.A. was dismissed in default by means of an order dated 13.12.2012, the applicant moved an application for restoration. The cause shown in the restoration application to recall the order is sufficient. Accordingly, the O.A. is restored to its original number.

2. The present O.A. is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

"(i) That this Hon'ble Tribunal may be pleased to setting aside the impugned dismissal order dated 23.8.2007 appellate order dated 2.6.2008 and subsequently order dated 16.10.2008 issued by opposite party No. 3 and 2 as contained in Annexure No. 1, 2 and 3 to this original application

- (ii) That this Hon'ble Tribunal may be pleased to direct the respondents to reinstate in service with consequential benefits.
- (iii) That any other order or direction which this Hon'ble Tribunal may deem just and proper under circumstances of the case be also passed.
- (iv) Allow this application with costs."

3. The brief facts of the case are that the applicant was working with the respondents was served with the charge sheet on the ground of alleged embezzlement/ misappropriation of public money which was not properly distributed within time. The department appointed the inquiry officer to conduct the inquiry and the Enquiry Officer found charge No. 2 proved whereas, the charge No. 1 and 3 were not proved. The report of the Enquiry Officer was duly served upon the applicant who submitted his reply and the Disciplinary Authority passed an order on 23.8.2007 whereby, the applicant was removed from service. The applicant preferred an appeal and the Appellate Authority also passed an order on 2.6.2008 wherein the Appellate Authority after discussing the charges leveled against the applicant upheld the orders of the Disciplinary Authority and rejected the appeal of the applicant. Thereafter, the respondents again passed an order on 16.10.2008 on the basis of directions issued by this Tribunal in O.A. No. 247/2008 wherein, this Tribunal directed the competent authority to decide the representation of the applicant by means of a reasoned and speaking order and while passing the order on 16.10.2008, the respondents again pointed out that there is a case of embezzlement/ misappropriation of Government funds. As such, rejected the representation of the applicant. The applicant feeling aggrieved by all these orders preferred the present O.A. and pointed out that the amount of money order was duly paid to the concerned person as such, order of removal is harsh and disproportionate to the charges leveled against the applicant. In support of his arguments, the learned counsel has relied upon a decision of the Apex Court in the case of S. R. Tewari Vs. R. K. Singh and Another reported in (2013) 6 SCC-602 wherein, the Hon'ble Apex Court has

been pleased to observe that "court can consider circumstances under which misconduct was committed and, consider the effect if order of punishment imposed by disciplinary authority is set aside or substituted by some other penalty."

4. The learned counsel appearing on behalf of the respondents categorically pointed out that the applicant was appointed as GDS , BPM in 1993 and while working on the said post, a complaint was received from one Smt. Koila Devi for non payment of money order for sum of Rs. 1500/- . The case was inquired into and after due inquiry, it was found that the applicant did not paid the value of the money order. Further, the money order of Rs. 800/- which was payable to Ram Piyare and another money order for sum of Rs. 3000/- payable to Jai Prakash, the applicant got the forged signature of the payee and misappropriated the amount. For this misconduct the applicant, the disciplinary proceedings were initiated and after receiving of the charge sheet, the applicant denied the charges. Thereafter, the inquiry was initiated against the applicant after due opportunity to the applicant to appear before the inquiry officer and after completing the inquiry, the report of the Enquiry Officer was submitted. The applicant also submitted his representation vide letter dated 19.6.2007 and after considering the gravity of the charges, facts and circumstances of the case, as well as the report of the Enquiry Officer and other available material on record, the disciplinary authority awarded the punishment of removal from service. The appeal preferred by the applicant was also dismissed and after orders of the Tribunal in O.A. No. 247 of 2008, the competent authority again passed an order. The learned counsel for the respondents categorically pointed out that there is no irregularity in conducting the inquiry as such, the scope of judicial review is very limited. The learned counsel for the respondents has also relied upon a decision of the Hon'ble Apex Court in the case of Regional Manager, U.P.SRTC, Etawah and Others vs. Hoti Lal and anther reported In (2003) 3 SCC 605 and pointed out that

“where an employee is holding the position of trust the honesty and integrity are inbuilt requirements of functioning.” Apart from this, the learned counsel for the respondents also relied upon a decision of Hon’ble Apex Court in the case of Union of India Vs. Sardar Pahadur reported in (1972) 4 SCC-618 and pointed out that “the Tribunal cannot look into the quantum of punishment and also the issue of judicial interference cannot be looked into by the Tribunal.” As regard, the quantum of punishment, the respondents pointed out that it should be shockingly or strikingly disproportionate to gravity of misconduct or is arbitrary, violating Article 14 of the Constitution and has also pointed out that interference with punishment merely because it considers to be disproportionate cannot be taken into account. The learned counsel for the respondents has also filed the objections and through objections, the learned counsel for the applicant has also denied the averments made in the O.A.

5. The learned counsel for the applicant has filed the rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of counter reply are denied. Along with the rejoinder, the applicant also filed copy of the charge sheet wherein, three charges were leveled against the applicant.

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

7. Admittedly, the applicant was working in the respondents organization was served with the charge sheet dated 22.7.2005 wherein, it is categorically pointed out that the applicant has misappropriated the three money orders amounting to Rs. 1500/-, 800/- and 3000/- . The Enquiry Officer was appointed and the detailed inquiry was conducted. The applicant submitted reply to the charge sheet denying the charges leveled against him and the Enquiry Officer after giving due opportunity of hearing to the applicant, submitted the report to the Disciplinary Authority and also served copy to the applicant on which, the applicant submitted his representation vide letter dated 19.6.2007. The

applicant's representation dated 19.6.2007 along with the gravity of the charges, facts and circumstances of the case was considered by the competent authority and after considering other aspect of the matter, the competent authority awarded the punishment of removal from service vide order dated 21.7.2007. The applicant thereafter, preferred an appeal to the Appellate Authority and Appellate Authority also rejected the appeal of the applicant indicating therein that the applicant was found involved in misappropriation of government funds, as such, he was removed from service and rejected the appeal of the applicant. The applicant preferred O.A. before this Tribunal, vide O.A. No. 247/2008 in which, he has submitted that the inquiry is being conducted by retired officer as such, the Tribunal directed the applicant to submit their representation within a period of one month and the Appellate Authority was directed to dispose of the representation by way of reasoned and speaking order within a period of three months. In pursuance thereof, the respondents again passed an order on 16.10.2008, indicating therein that the applicant has not raised any grounds in his appeal in regard to the appointment of the Enquiry Officer. Neither he has raised any such grounds during the course of inquiry and has also never objected on the appointment of the inquiry officer during the pendency of the entire enquiry proceedings. The Appellate Authority once again considered the entire material on record and rejected the claim of the applicant.

8. The learned counsel for the applicant during the course of argument has pointed out about the quantum of punishment and also argued that the punishment awarded to the applicant is disproportionate to the misconduct committed by the applicant. For this, he has also relied upon a decision of S. R. Tewari (Supra) and pointed out that the Hon'ble Apex Court has been pleased to observe that "**Court can interfere with quantum of punishment only where punishment awarded is found to be shockingly or strikingly disproportionate to gravity of misconduct or is arbitrary, violating Article 14 of the Constitution.**"

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 and only if there is violation of statutory rules or it is a case of no evidence. The applicant could not pointed 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 as 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.**

10. 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."

11. 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.

12. In the case of **Mani 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.

13. The Hon'ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai reported in (2009) 13 SCC 469** has held that Courts are not

for interfering with dismissal order passed against respondent employee.

14. In the case of **State Bank of Mysore and Others Vs. M. C. Krishnappa** reported in (2011)7 SCC 325, the Hon'ble Apex has been pleased to observe that "No scope for interference with punishment warranted on a purely subjective view taken by High Court."

15. The Hon'ble Apex Court in the case of **Divisional Controller, Karnataka State Road Transport Corporation Vs. M. G. Vittal Rao** (2012) 1 SCC 442, the Hon'ble Apex Court has been pleased to observe as under:

"25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.

16. As observed by the Hon'ble Apex Court in the case of **State bank of India and Others Vs. Samarendra Kishore Endow and Another** reported in 1994 SCC (L&S) 687, the Hon'ble Apex Court has been pleased to observe as under:

"Imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court. Bhagat Ram Vs. State of H.P. is no authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the ends of justice. The Supreme Court in Bhagat Ram case exercised equitable jurisdiction under Article 136. The High Court and the Tribunal has no such power or jurisdiction."

17. Now the question which requires determination is whether quantum of punishment can be looked into by the Tribunal or whether the

Tribunal can interfere and invoke powers of judicial interference in the matters of disciplinary proceedings.

18. As observed by the Hon'ble Apex Court in the case of *Regional Manager, U. P. SRTC, Etawah and others vs. Hoti Lai and another* reported in (2003) 3 SCC 605 "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." It is further observed by the Hon'ble Apex Court in the aforesaid judgment that the "Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases."

Not only this, in the case of *Moni Shankar Vs. Union of India and Another* reported in (2008) 1 SCC (L&S) 819, the Hon'ble Apex Court further observed that "the departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justices are required to be complied with."

19. It is further observed by the Hon'ble Apex Court earlier in the case of *Union of India Vs. Sardar Pahadur* that the "Tribunal cannot look into the quantum of punishment and also the issue of judicial interference cannot be looked into by the Tribunal."

20. 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 order as to costs.

J.Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)