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CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH,

LUCKNOW.

O.A.No. 335/90

Date of decision 25.11.97

Mian Lal Mishra

Petitioner

Siddheshwar Kant

Petitioner's Advocate.

V E R S U S

Subj. of Post offices & Others

Respondent(s)

Dr. D. Chaudhury

Respondents' Advocate.

CORAM:

HON.MR. V. K. Seth Member(A)

HON.MR. D C. Verma Member(J.)

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other benches?

L.S.

SIGNATURE.

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CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH:

LUCKNOW

Lucknow this the 25th day of November 1997.

Original Application No.335 of 1990(L)

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C.VERMA, MEMBER(J)

MADAN LAL MISRA S/o Sri Ram Chhatra Misra

R/o Village & Post Office-Nimchini,

District-Lakhimpur Kheri.

..Applicant

Vs.

1. Superintendent of Post Offices,

Kheri Division, Kheri.

2. Collector, Lakhimpur Kheri.

3. Tehsildar Mohammadi, District-Lakhimpur Kheri.

..Respondents

For the applicant: Sri Pradeep Kant, Adv.

For the respondents: Dr.D. Chandra, Adv.

ORDER

V.K. SETH, MEMBER(A)

Vide this O.A. the applicant has prayed for quashing of recovery proceedings initiated against him for recovery of Rs.80,500/-. He has also prayed for quashing of the order of his removal from service dated 29.9.89 passed by the respondent no.1.

2. Pleadings have been exchanged between the two sides and the same have been carefully perused by us. We have also taken note of the rival contentions advanced by the learned counsel for the parties during the course of hearing.

3. The applicant, who was serving as a Branch Post Master(Extra Departmental), Nimchini, was 'put off' duty on 10.8.1988 and on 3.3.1989 served with a charge-sheet for violation of certain provisions of the Branch Office Rules and Rule 17 of E.D. Agents (Conduct and Service) Rules ~~in accordance~~

as he /did not credit in the Government accounts the money deposited in some savings bank accounts and recurring deposit accounts and mis-appropriated the same while working as E.D.B.P.M. during the period October 1986 to June 1988. Charge-sheet further mentions that the applicant mis-appropriated a sum of Rs.47,690.80 in 41 accounts and specifically mentions his acts of omissions and commission in respect of five accounts. The applicant was allowed time for submitting his statement of defence, ~~in the meanwhile~~ On 24.4.89 an F.I.R. was also filed in respect of the same allegations. The applicant also addressed a letter dated 7.9.89 to the Enquiry Officer with reference to his letter dated 31.8.89 and denied the charges levelled against him. Also ^{in the meanwhile} /vide an order dated 13.3.89 the disciplinary authority appointed an Enquiry Officer & a Presenting Officer. The Enquiry Officer commenced the enquiry on 27.3.89 when the charges levelled against the applicant were read out, which he denied. The enquiry continued on some subsequent dates and the Enquiry Officer submitted his report on 19.9.89. The Enquiry Officer, inter alia, held that during the course of enquiry no document or witness was produced to substantiate the allegation that the applicant had mis-appropriated a sum of Rs.47,690.80 in 41 cases. However, five specific cases of allegations made in the charge-sheet were found to be true. Accordingly it was also held that the charge of violation of Rule 17 of the E.D. Agents(Conduct & Service) Rules was ~~also held~~ proved. The disciplinary authority viz. respondent no.1 after considering the report of the Enquiry Officer imposed the penalty of removal from service(~~discharge~~) on the applicant with immediate effect vide an order dated 29.9.89. Aggrieved by the said order the applicant has approached this Tribunal through the present O.A. He is also aggrieved by the citation of recovery of a sum of

Rs.80,500/- from him as arrears of land revenue.

4. While challenging the punishment order as the second relief prayed for / the applicant has advanced the ground of non-application of mind by the disciplinary authority. He has also mentioned about the denial of his signature against the entries of deposit in the pass-books and alleged bias against an official whose statement was relied upon by the Enquiry Officer. He has also alleged that the punishing authority committed an error in passing the impugned order on the ground that the applicant mis-appropriated an amount of Rs.47,600.85 whereas enquiry was made only in respect of an amount of Rs.1870/-. These arguments were again strenuously urged before us by the learned counsel for the applicant during the course of hearing.

5. As far as the above contentions of the applicant against the punishment of removal awarded by the disciplinary authority are concerned, we do not find any substance or merit in the same. During the course of enquiry, several documents and witnesses were examined. It is also stated in the enquiry report that the defence did not produce any document or witnesses in support of the applicant. After an analysis of the evidence produced before him, the Enquiry Officer reached the conclusion that the allegations in respect of five specific cases mentioned in the charge-sheet were true and he, therefore, also held as proved the violation of Rule 17 of the E.D. Agents(Conduct & Service) Rules by the applicant. However, he concluded that no documents or witness had been produced to substantiate the allegation that the applicant had mis-appropriated a sum of Rs.47,690.80 in 41 cases.

We also notice that likewise the punishment order is also a detailed and speaking one and includes a discussion as to how the applicant's main contention regarding denial of his signature and the post office stamp on the pass-book being fictitious, were without substance when viewed in the light of statements of witnesses. Various other aspects of the allegations and the evidence also find place in the punishment order of the disciplinary authority. The next contention of the applicant that the disciplinary authority was swayed in deciding the quantum of punishment by the fact that amount of mis-appropriation was Rs.47,690.80 and not the much lesser amount of Rs.1870/-, is also without substance. The fact that he did not deposit Rs.1870/- in the government accounts and violated various statutory rules and thereby committed grave misconduct, cannot be said to be less serious ~~evidence~~ so as to merit a lighter punishment.

6. It is also noteworthy, as has been held by the apex court(in re State of Rajasthan versus B.K. Meena and Others reported in (1996) 6 Supreme Court Cases 417) that standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases(criminal proceedings & disciplinary proceedings.....added by us) are entirely distinct and different. Further the criterion for judging a charge or allegation/ proved in the case of a departmental proceeding is 'preponderance of probabilities' and not 'proof beyond reasonable doubt' as in the case of a criminal proceedings. The following observation of the apex court made in para 10 in re High court of Judicature at Bombay through its Registrar versus Udai Singh and Others reported in 1997 Supreme Court Cases (L & S) 1132 is most relevant:-

"But the disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of

criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion."

7. Further observation of the apex court made in the case of B.C. Chaturvedi versus Union of India reported in 1996 SCourt Cases (L & S) 80 defining the scope of judicial review is also most relevant and the same is reproduced below:

"12. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

8. From the above it is evident that the scope of judicial review of departmental proceedings is very limited and this Tribunal could intervene only if the conclusion of the Enquiry Officer was totally perverse

and based on no evidence, which is not so in the present case. Likewise it is also well established that the Tribunal cannot sit in judgment on the quantum of punishment unless there are very exceptional circumstances. If, therefore, the applicant desired a thorough reconsideration of the case including reappraisal of the evidence and quantum of punishment, the proper course for him was to have filed an appeal for which a statutory provision existed but this he failed to do.

9. In view of the preceding discussions, the claim of the applicant for quashing of the punishment order fails. The same is, therefore, rejected.

10. Coming now to the first relief prayed for by the applicant viz. for quashing of recovery proceedings initiated against him vide 'citation to appear' issued on 30.7.90 by the Tehsildar.'

It is apparent from the counter affidavit that recovery proceedings have been initiated u/s 4 of the P.A.D. Act. This fact is not disputed by the applicant in his rejoinder and he has only advanced the grounds that criminal trial is still pending and further the subject matter of the departmental enquiry was only in respect of an amount of Rs.1870/-.

11. In this connection it is relevant to note that this Bench in its order dated 24.9.96 passed in O.A.No.471/96(Raja Ram Saroj versus Union of India & others) held that the O.A. in respect of recovery under the provisions of the P.A.D. Act was not maintainable before this Tribunal. The relevant observations of the Bench are reproduced below:

"Under the Revenue Recovery Act, the recovery is being made as arrears of land revenue. The learned counsel for the applicant submitted that recovery as arrears of land revenue cannot be effected unless the department comes to a conclusive finding that loss has been caused to the government of the said amount. This submission is wholly untenable. The applicant does not dispute that he is a public accountant within the meaning of term as defined under section 3 of the Public Accountant Default Act. He further in the O.A. does not deny entrustment of the amount to him in that capacity which are government accounts. In the O.A. also he has not indicated anything to show how he accounts for the loss of the said amount which was entrusted to him. That being so, there was clear case of recovery as arrears of land revenue. Since the recovery is being effected under the provisions of P.A.D. Act and the Revenue Recovery Act, in our considered opinion, it cannot be said to be a service matter cognizable before this Tribunal."

12. It is also noteworthy that the view of this Bench has been upheld by the Hon'ble Supreme Court in their order of 8.9.97 passed in the No.1505/97 S.L.P./ filed by the applicant of the said O.A. against the order of this Bench. For ready reference the order of the apex court is also reproduced below:

"In the impugned judgment the Central Administrative Tribunal has observed that the matter of recovery that is being effected against the petitioner under the provisions of the Public Accountant Default Act and the Revenue Recovery Act and it cannot be said to be a service matter cognizable before the Tribunal. We do not find any infirmity in the said view of the Tribunal. It would be open to the petitioner to seek redress in an appropriate forum. The special leave petition is, therefore, dismissed."

13. In view of the law laid down by Their Lordships of the Supreme Court, as stated above, the prayer of the applicant for quashing of recovery proceedings against him is dismissed as not maintainable. Consequently the stay granted earlier in the matter stands vacated. It is, however, open to the applicant to approach appropriate judicial forum in the matter as he may be advised.

14. To sum up, the O.A. stands dismissed in the above terms. There shall be no order as to costs.

MEMBER (J)

MEMBER (A)

Dated: Lucknow: November 25, 1997.

Narendra/