

Central Administrative Tribunal ,Lucknow Bench, Lucknow.

Original Application No. 102/2006

Reserved on 6.1.2014

Pronounced on 11-02-2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Sri Shashi Prakash, Member (A)

Vikram Verma aged about 45 years son of late Sri Kunwar Verma r/o Postal Colony, Lakhimpur Kheri working as Postal Assistant, Kheri HO.

Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through Secretary, Ministry of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Kheri Division, Kheri,

Respondents

By Advocate: Sri Ganga Singh

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

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

- a) to quash the impugned punishment order dated 21.11.2005 communicated by the respondent No.1 as contained in Annexure No.A-1 to the O.A.
- b) to direct the respondents to pay the cost of this application.
- c) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant while working as Postal Assistant in Lakhimpur Kheri has applied for leave for 12.12.2002 to the Post Master Kheri to leave station and had gone to Hardoi in connection with the problems of certain employees at Hardoi. The learned counsel for the applicant pointed out that he has a peaceful meeting with the officer. Subsequently, in 2004, the applicant was served with a major penalty charge sheet inter-alia charging him for an incident of 12.12.2002 that he misbehaved with the Superintendent of Post Office Hardoi. The applicant denied all the charges and a departmental enquiry was set up against him and the enquiry officer found all the charges leveled against him as proved. Aggrieved against the said charge sheet and report of the enquiry officer, the

applicant submitted a detailed representation. Subsequently, the respondent No.2 by means of order dated 28.3.2005 passed the impugned punishment order, whereby he was punished of reduction by 10 stages in the pay scale fixing him at Rs. 4500/- from Rs. 5750/- for a period of 3 years with further direction that the applicant shall not earn any increments during the said period of 3 years with cumulative effect. Thereafter, the applicant preferred an appeal. During the pendency of the appeal, the respondents started making recovery from the pay of the applicant without waiting for the outcome of the appeal due to non-disposal of the appeal, the applicant preferred O.A. No.227/2005 and the same was decided with the direction to the respondents to decide the appeal of the applicant. Subsequently, the appellate authority has reduced the penalty of the applicant and reduction of 10 stages is modified as one stage from Rs. 5700/- to Rs. 5625/- for a period of one year w.e.f. 28.3.2005 and with further direction that applicant will earn increments during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay. The applicant being aggrieved by the order of the appellate authority, preferred another representation on the ground that appellate authority has not applied his mind and has also pointed out that the applicant has applied for casual leave for 12.12.2002 with out of station permission which was duly granted by the Post Master, Kheri and the charge of leaving head quarter without permission has been found to be untrue and not sustainable by the respondent No.1 and there was no occasion for the respondent No.1 to deprive the applicant for going to Hardoi for redressal of grievances of the staff of Hardoi Division, as such apparently, there is a gross violation of the rules of Principles of natural justice.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is categorically pointed out by the respondents that the applicant while working as Postal Assistant at Kheri applied for one day's leave and during that period, he participated in Gherav of Superintendent of Post Offices, Hardoi Division. It is also pointed out by the learned counsel for the respondents that during that period, he was holding the post of Divisional Secretary of National Postal Employee Union Class III of Kheri Division. It is also pointed out by the learned counsel for respondents that the Gherao was

organized at the behest of All India Postal Employee Union, Hardoi Branch and visit of the applicant on 12.12.2002 and 13.12.2002 was without permission of the competent authority, as such, the applicant was served with the charge sheet and after due enquiry, the punishment was imposed upon the applicant. The appellate Authority after considering the appeal of the applicant reduced the punishment and passed a fresh order on 21.11.2005. The outstanding work of the applicant as alleged by the applicant is also denied by the respondents and it is also indicated by the respondents that apart from the present disciplinary proceedings, other disciplinary proceedings were also initiated against the applicant during his service period. One such incident is in regard to opening of a fake saving bank accounts. The learned counsel for respondents has also annexed a copy of the leave application as well as another charge sheet in regard of opening of forged account. The leave application of the applicant said to have been given to the authorities is annexed as Annexure No.CA-2 to the Counter Affidavit which clearly provides the reasons of leave is personal and address during the leave period is "Dak Ghar Colony, Kheri" On the basis of said averments, it is categorically pointed out by the learned counsel for the respondents that there is no illegality in conducting the enquiry and the applicant left the station without prior permission of station leave.

4. Learned counsel appearing on behalf of the applicant has filed Rejoinder Reply and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated. It is once again pointed out by the learned counsel for the applicant that the applicant has obtained permission from the competent authority to meet with Superintendent of Post Offices, Hardoi for sorting out the problems of the Employees in the official capacity. The applicant has also alleged that the disciplinary authority being biased with the applicant has passed the order of punishment, imposing reduction of pay of 10 stages for a period of 3 years. The learned counsel for the applicant has also pointed out that the charge sheet against the wrong LTC claim as mentioned in the Counter Reply has also been quashed by the Tribunal and upheld by the Hon'ble High Court. It is also indicated by the learned counsel for the applicant that in regard to other charges of fake accounts, the said enquiry is

still pending . The Department is still to prove him guilty. Accordingly, the said enquiry cannot be taken into cognizance.

5. Heard the learned counsel for the parties and perused the record.
6. Admittedly, the applicant is working in the respondents organization as Postal Assistant in Kheri. Apart from this, applicant is also the Divisional Secretary of National Postal Employees Union Class III of Kheri Division, U.P. Circle. The applicant was served with the charge sheet dated 6.7.2004 and as per the said charge sheet, it is indicated that while working as Postal Assistant at Kheri, he met with Superintendent of Post Offices, Hardoi on 12.12.2002 at 5.40 pm along with six others and continued the Gherao for about an hour. This act of the applicant has contravened the provision of CCS (CCA) Rules. Apart from this, it is also pointed out in the charge sheet that the applicant has left the station without prior permission which is against the violation of CCS (CCA) Rules, as well as against the P&T Manual , Volume 3. Along with charge sheet, the list of documents and list of witnesses were also mentioned. The applicant has given the reply to the said charge sheet and after that enquiry officer was appointed and he has given a detailed enquiry report and the applicant was also allowed to be associated in the same. In the enquiry report, the enquiry officer has categorically pointed out that applicant submitted his leave application for 12.12.2002 and 13.12.2002 and in the said leave application, he has categorically pointed out that he wants to take leave on his personal work and address shown in the leave application is "**Dak Ghar Colony, Kheri**" where the applicant was residing. The applicant without taking station leave permission went to the office of Superintendent of Post Offices, Hardoi on 12.12.2002 and entered into in his room at about 5.40 pm and remained there on Gherao till about 6.45 pm. Apart from this, it is also mentioned by the enquiry officer in his enquiry report that the charged officer has given in writing that on 12.12.2002 along with six others, visited the Hardoi as well, which appears to be clear violation of Rules and the applicant has visited Hardoi without taking station leave permission. In his enquiry report, it is mentioned that the charges leveled against the applicant stand proved, as such he has submitted the enquiry report to the disciplinary authority and the disciplinary authority while considering each and every aspects of the enquiry officer's report passed an order of reduction of pay of

10 stages for a period of 3 years. The applicant submitted an appeal on 26.4.2005 and once again he has submitted that he is innocent and he has been falsely implicated in the charges. When the said appeal was not disposed of, applicant filed O.A. No. 227/2005 and O.A. was disposed of by the Tribunal with a direction to decide the appeal of the applicant and in pursuance thereof, the appeal of the applicant was decided on 21.11.2005 and the appellate authority modified the punishment imposed upon the applicant and reduced the penalty of reduction of pay of the applicant from 10 stages to one stage from Rs. 5750/- to Rs. 5625/- for a period of one year w.e.f. 28.3.2005. It is also directed that he will also earn increments of pay during the period of reduction and the reduction will not have effect of postponing his future increments of pay.

7. Be that as it may, at has to be seen at this stage whether the enquiry conducted by the authorities is within the rules or any lapses has been committed by the enquiry officer or by the disciplinary authority. The bare perusal of the entire disciplinary proceedings from the stage of charge sheet till the award of the punishment by the disciplinary authority, the applicant was fully associated with the enquiry. He has been given copy of the charge sheet, the reply was given by him which was duly considered and the enquiry officer has submitted the detailed report. The applicant has also given the reply to the enquiry officer's report and after the bare perusal of the Annexure CA-2 annexed along with the counter reply clearly shows that the applicant applied for two days leave i.e. for 12.12.2002 and 13.12.2002 and reasons shown in the leave application is "**Personal**" and address shown during the leave period is "**Dak Ghar Colony, Kheri**". The admission of the charged employee before the enquiry officer is also clear that he has visited Hardoi for some personal work but he has come back to his residence in Dak Ghar Colony, Kheri. The applicant is a Govt. employee and he cannot leave station without the station leave permission sought from the superior authority.

8. The scope of judicial interference in the disciplinary matters is very limited and the Tribunal cannot act as an appellate authority as observed by the Hon'ble Apex Court. The scope of judicial review is not akin to adjudicate of merit to re-appreciate the evidence as an appellate authority. It is now well settled that the scope of judicial review in disciplinary matter is very

limited. The court or Tribunal can interfere only if there is a violation of principles of natural justice or if there is violation of any statutory rules or if it is a case of no evidence. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. It is also to be pointed out that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act or legislature or rules made under the proviso of Article 309 of Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority and if the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. In the instant case, it is apparently clear that the applicant was on leave on 12.12.2002 and 13.12.2002 on personal ground and address shown in the leave application is "Dak Ghar Colony, Kheri. But the applicant himself admitted that he visited Hardoi that too without station leave permission of the competent authority. Apart from this, it is also clear that the adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence. As observed by the Hon'ble Apex Court, the court can only interfere in the disciplinary matter if there is a violation of principles of natural justice or if there is violation of any statutory rules or if it is a case of no evidence. The Tribunal cannot sit as an appellate authority.

9. 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.**"

10. 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.”

11. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of **State of Rajasthan v. Md. Ayub Naaz reported in 2006 (1) SCC 589**. The Hon'ble Apex Court has been pleased to observe as under:-

“10. This Court in Om Kumar v. Union of India while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for.”

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 applicant must indicate the shortfalls in the enquiry proceeding and submit the same to the disciplinary authority and in case it is submitted, it is expected that the disciplinary authority will consider the procedural lapses if any and take a decision , as such it cannot be said at this stage that

the Disciplinary Authority has acted arbitrarily without considering the representations of the applicants.

14. On the basis of facts mentioned above as well as on the basis of enquiry conducted by the enquiry officer and observations of the Hon'ble Apex Court, the applicant took leave for two days on account of his personal work but he himself admitted that he visited Hardoi as such, he has contravene the provisions of Rules and there is no illegality or short comings in the entire proceedings, as such, we are not inclined to interfere in the present O.A. and the O.A. is fit to be dismissed. Accordingly, O.A. is dismissed. No order as to costs.

S. Prakash
(SHASHI PRAKASH)
MEMBER (A)

V.P. Agarwal
(NAVNEET KUMAR)
MEMBER(J)

HLS/-