

**Central Administrative Tribunal Lucknow Bench
Lucknow**

Original Application No. 63/2007

Order Reserved on 10.2.2014.

Order Pronounced on 19-02-2014

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

Ramesh a Chandra aged about 28 years son of Sri Hari Prasad R/o Village & P.O. Sukhipur (RamSanehighat) Barabanki Ex. E. D.B. Pm Pure Chandraman (Asandara) Barabanki.

Applicant

By Advocate: Sri R. S. Gupta.

VERSUS

1. Union of India through the Secretary Department of Pst Dak Bhawan, New Delhi.
2. Director Postal Services o/o Chief Postmaster General U. P. Lucknow.
3. Superintendent of Post Offices, Barabanki.

Respondents

By Advocate Sri S. K. Singh

(Delivered 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 orders dated 312/5/2004 and 31/8/2006 as contained in Annexure No. 1 and 2 and treat the applicant in continuous service with all consequential service benefit including pay and promotions.

(b) Any other relief deemed just and proper in the circumstances of the case with cost of O.A."

2. The brief facts of the case are that the applicant while he was working in the respondents organization, was charge sheeted under Rule 10 of the GDS (Conduct and Employment) Rules 2001 wherein, certain charges have been leveled against the applicant in which, it is stated that the applicant has manipulated the money order and not delivered the person to whom it was addressed. After the said charge

sheet, the Inquiry Officer was appointed and the applicant was also given the time to reply to the said charge sheet. After the said process, the Inquiry was conducted and while coming to the conclusion, the inquiry officer found that one charge as proved and also leveled against the applicant was accepted by the charged officer. After that the enquiry officer submitted the report to the disciplinary authority who issued the disagreement memo and subsequently, Under such circumstances, the applicant was punished and the punishment order was issued whereby, he was dismissed from service by the SPOs vide order dated 31.5.2004. The applicant preferred an appeal to the Appellate Authority i.e. Director Postal Services who considered the appeal of the applicant and uphold the order of the Disciplinary Authority and pass an order on 31.98.2006. The applicant feeling aggrieved by the said two orders, preferred the present O.A. The applicant has not preferred any revision against the appellate order.

3. The learned counsel appearing on behalf of the applicant has categorically pointed out that the bare perusal of inquiry officer report is clear to the extent that the charged officer has accepted his ~~guilt~~ as such, the charge No. 2 stands proved. But the quantum of punishment can be looked into by the Tribunal as the applicant has not misappropriated such a huge money which may be treated as grave offence and an order of dismissal is imposed upon the applicant.

4. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was categorically pointed out by the respondents that the case regarding irregularities of the work of Branch Post Master was found correct in involving fraudulent payment of money order for Rs. 2000 and also a deduction of shortage of the balance of Rs. 369/= from the Branch Post Office was found at the time of the inspection by the Sub Divisional Office Haidergarh. It is also indicated by the respondents that the said money order is required to be paid to one Sri Ram Swaroop Pal which was not paid and it was wrongly shown as paid with witnesses of Shri Ram Surat where as, Shri Ram

Swaroop Pal denied the same in this written statement dated 9.5.2002. The learned counsel for the respondents has also categorically pointed out that the applicant being responsible in dealing with the financial matter is required to act with a trust where honesty and integrity are inbuilt requirements and functions. On behalf of the respondents, it is also argued that there is no procedural irregularity in conducting the inquiry as such, it does not required any interference by this Tribunal.

5. The learned counsel appearing on behalf of the applicant has filed their rejoinder and through rejoinder mostly the averment made in the O.A. are reiterated. It is once again pointed out by the applicant that he has committed no fraud and has also indicated that there is no provision under the ED Rules for disagreement on the finding of the inquiry officer. As such, disagreement note of the disciplinary authority is illegal and is liable to be set aside.

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

7. Admittedly, the applicant is working with the respondents organization was charge sheeted vide charge sheet dated 6.2.2003 wherein, certain charges were leveled against the applicant along with the charge sheet, the list of witnesses as well as the documents were also annexed. After the said charge sheet, the inquiry officer was appointed and he has given his report in which, it is categorically pointed out that the charged officer has accepted his guilt against charge No. 2. As such, charge No. 2 stands proved. The said report was submitted to the disciplinary authority, but the disciplinary authority disagreed with the finding of the inquiry officer given his disagreement memo and the applicant was given the copy of the inquiry report as well as disagreement memo and he was also asked to submit written statement/representation within a period of 15 days. After receipt of the said copy of the inquiry report as well as disagreement memo, the applicant submitted his report on 2.4.2004 in which, he has denied his charges and has also pointed out that due to personal dispute with Ram Swaroop Pal he has concocted this story and applicant was

unnecessarily harassed. The disciplinary authority after considering the inquiry officers reports as well as the defence statement of the charged employee i.e. applicant found that the charges leveled against the applicant are proved. It is also indicated by the disciplinary authority that since the applicant/charged employee himself has accepted the charge No. 2 leveled against him and certain deficiencies and irregularities are found as such, passed an order of dismissal from the service. The applicant thereafter submitted the appeal to the Director Postal Services i.e. Appellate Authority which contained in Annexure-10 to the O.A. the applicant in his appeal, once again reiterated the same submission as mentioned in the written statement/representations submitted against disagreement memo and also try to indicate that he may not be liable for the lapses committed by him. This aspect of the applicant in the appeal was also considered by the appellate authority and the appellate authority after considering the appeal and the entire disciplinary case including the documents found that the appellant has not given any new facts which may prove his case and found the punishment to be correct as imposed by the disciplinary authority and rejected the appeal of the applicant.

8. Now the question which requires to be 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. Undisputedly, the applicant was involved with the financial appropriation of funds.

9. As observed by the Hon'ble Apex Court in the case of ***Regional Manager, U. P. SRTC, Etawah and others vs. Hoti Lal 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. x x x x x x x x x x. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved -but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate.” 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. The courts exercising power of judicial review are entitled to consider whether relevant piece of evidence has been taken into consideration and irrelevant facts excluded there from, while proving misconduct against an employee. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. Doctrine of unreasonableness is giving way to the doctrine of proportionality. On certain aspects, even judicial review of facts is also permissible.”

910 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.”

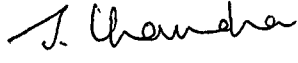
10. As observed by the Hon'ble Apex Court in the case of ***State of Rajasthan and another Vs. Mohd. Ayub Naz reported in (2006) 1 SCC 589***, the Hon'ble Apex Court has been pleased to observe as under:-

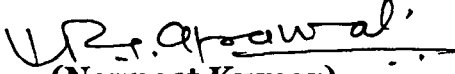
“This Court in Om Kumar Vs. Union of India while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused 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.”

11. As observed by the Hon'ble Apex court in the case of ***T. N. C.S. Corpn. Ltd. An Others Vs. K. Meerabai reported in 2006 SCC (L&S) 265*** that “the scope of judicial review and when the case of the misappropriating the Government fund is concerned ,

the primary factor to be taken into consideration was the loss of confidence and not the amount of money.” In the instant case, it is clear that the applicant is dealing with the Government fund and he misappropriated the amount of money order which is a loss of confidence and not the amount. As such, we are not inclined to interfere in the present O.A.

12. Accordingly, the O.A. is fit to be dismissed and is dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Vidya