CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No.487/2007

Reserved on 09.12.2013.
Pronounced on 28.1.2014.

Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Rajesh Kumar Verma aged about 44 yhears son of Sri Gokul Prasad Postal Assistatn Pallia (Ex.) Kheri R/o Village Hariharpur Pl.O. Abdulla Nagar (Pehani) District Hardoi.

-Applicant.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India, through the Secretary, Department of Post, Dak Bhawan, New Delhi-0110001.
2. Director Postal Services O/O Postmaster General, Bareilly.
3. S.P.Os. Kheri.
4. Sri U.S. Sharma, S.P.Os. Badaun (the than P.O. Kheri).
5. Sri Manoj Kumar Misra, EO & A.S.P.Os. O/O C.P.M.G., U.P., Lucknow (the then ASP, Lko).

-Respondents

By Advocate: Sri. K.K. Shukla.

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

J.Chandra

"(i). That this Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 22/6/2004 and 23/7/2007 as contained in Annexure No.1,2 & 3 with all consequential service benefits including pay and leave salary alongwith interest @ 18% on such arrears..

(ii). Any other releif deemed just and proper in the circumstances of the case in favour of the applicant and allow O.A. with costs."

2. The facts relevant for to the adjudication of this OA are that:-

the applicant was initially appointed as Postal Assistant vide order No.Rectt/M-5/182/80 dated 27.1.1982. He was forced to be on leave as he fell sick between 01.03.1991 to 14.04.1992 while working as Postal Assistant in Pallia Post Office. Thereafter, he gave his joining report alongwith his illness certificates and his fitness certificate from the concerned private Doctor Dated (Nil). However, he was not given charge on any post. Periodically he gave applications dated 18.8.1994, 09.4 2000, 01.2.2001 and 4.6.2002 seeking posting. The applicant was finally charge-sheeted on 02.03.2003 on the charge of being on unauthorized leave from 02.03.1991 till dated of issued of charge report. The applicant filed the O.A.No.87/2003 for quashing of the charge report and for direction to allow him to join as Postal Assistant. He joined as Postal Assistant w.e.f. 6.12.2003 in compliance of an interim order passed in O.A.No.87/2003.

3. The respondents appointed three Enquiry Officers sequentially. The enquiry report was submitted by the third Enquiry Officer Sri M.K. Mihsra on 28.05.2004 holding that the charge against the applicant was proved. The Disciplinary Authority accepting the enquiry report

J. Chandra

passed the impugned removal order dated 22.6.2004 dismissing the applicant. The applicant filed his appeal against the order before the Appellate Authority. In view of these developments O.A.No.87/2003 was disposed of on 23.08 2005 with a direction to the Appellate Authority to decide the appeal of the applicant against the dismissal order expeditiously. The appeal was decided by the second impugned order dated 23.7.2007 by which his appeal was rejected. The applicant worked as Postal Assistant between 23.3.2004 to 21.6.2004 date till his removal order dated 22.06.2004. The third impugned order dated 22.6.2004 has been passed by the Disciplinary Authority declaring the period between 23.3.2004 to 21.6.2004 as dies-non on account of unauthorized absence of the applicant.

4. The applicant has challenged his termination order on the following grounds:-

That the respondents had changed the enquiry officer arbitrarily and last effective enquiry officer Sri Manoj Kumar Mishra was prejudiced against him. He was not given the sought for documents. His Defence Assistant was not given permission by his controlling officer to appear before the enquiry officer on the dates as required. He was not provided with an opportunity to make a representation against the proposed penalty of removal as the enquiry report is enclosed with the punishment order. The enquiry was not held at Pallia but at various other locations. The enquiry proceedings were held illegally in violation of prescribed procedure in Rule 14 and 15 and 27 of CCS (CCA) Rule, 1965 and Rule-8 of Postal Manual Volume–III. He was denied

T. Chandra

personal hearing. Finally the punishment of removal is disproportionate.

5. The respondents have contested the claim of the applicant by filing their Counter Affidavit stating therein that the applicant was appointed as Postal Assistant and he assumed duty at Pallia on 7.9.1982. Subsequently, he was transferred to various other stations. While working at Mitauli Sub Post Office, he remained absent from duty w.e.f 01.05.1986 to 05.01.1987 (Eight months five days). Thereafter he was transferred to Pallia Sub Post Officer and there he remained absent w.e.f 19.1.1987 to 16.03.1989 (about two years one month and twenty seven days). And again he remained absent between 18.03.1989 to 21.11.1990 (one year eight months and four days) and thereafter from Pallia he remained absent from duty since 31.1.1991 onwards. He was directed to explain the circumstances of his unauthorized absent from duty by S.P.O., Kheri vide his letter dated 18.07.1994. Instead of explaining the absence, he submitted a conditional application dated 18.8.1994, admitting that he had been "on leave" requesting his transfer from Pallia Sub Post Office to Kheri Head Office. The medical reports produced in the O.A. by the way of explaining his absence between 01.03.1991 to 14.4.1992 were never submitted to S.P.M. Pallia. He again made a request vide his application dated 09.03.2000 admitting that he had been "on leave" till he to allow to resume duty. As he had remained absent from duty from 31.01.1991 to 09.03.2000, exceeding five years as such he was not allowed to join duty. Subsequently, he was proceeded against under Rule 14 of CCS (CCA) Rules,

J. Chandra

1965 by the way of being charge sheeted on 02.04.2003, resulting his removal form service on 22.6.2004. He submitted his appeal before the Appellate Authority on 07.09.2005. The Appellate Authority turndown his appeal by passing a reasoned and speaking order vide second impugned order dated 23.7.2007. Coming to the specific averment of the applicant with regard to the holding of disciplinary proceedings, respondents have stated that the applicant was served with the charge sheet dated 2.4.2003. The specific charges proposed to read with against the applicant are as follows:-

"अनुच्छेद–।

यह कि उक्त श्री राजेश कुमार का स्थानान्तरण (डाक सहायक संदर्भ में) इस कार्यालय के ज्ञापन सं0 बी/अरेन्जमेन्ट/86–87 दिनांक खीरी 31–5–86 द्वारा उपडाकघर मितौली से उपडाकघर पलिया किया गया था।

उन्होने दिनांक 06–01–87 को पूर्वान्ह पलिया उपडाकघर में डा0सहा0 के पद पर कार्य भार ग्रहण किया। दिनांक 29–01–91 को उपडाकपाल पलिया द्वारा प्रेषित तार XT/1210/29 इस कार्यालय में दिनांक 30–01–91 को प्राप्त हुआ जिसमें सूचित किया गया था कि श्री राजेश कुमार वर्मा दिनांक 28–01–91 से अनुपस्थित है। दिनांक 18–02–91 को इस कार्यालय द्वारा प्रेषित पत्र सं0 बी/राजेश कुमार दि0 खीरी 13–02–91 के अनुपालन में उपडाकपाल पलिया ने अपने पत्र दि0 18–02–91 द्वारा सूचित किया कि श्री राजेश कुमार वर्मा किसी प्रकार की छुट्टी व स्टेशन छोड़ने की अनुमति नहीं लिए थे और 29–01–91 को अपरान्ह फिटनेश देकर अपनी ड्यूटी पर वापस आ गये है। इसके बाद वे पुनः दिनांक 02–03–91 से अपनी ड्यूटी से लगातार अनुपस्थित चल रहे हैं। इस सम्बन्ध में कर्मचारी को इस कार्यालय से समसंख्यक पत्र दिनांक 12–10–92 एवं 18–7–94 द्वारा पंजीकृत पावती के अन्तर्गत नोटिसे भेजी गयी व उनका इस प्रकार अनुपस्थित रहने के सम्बन्ध में स्पष्टीकरण मांगा गया....."

6. Initially Sri R.K. Dubey ASP (T) was appointed as inquiry officer. Due to other departmental work, he could not spare time for conducting the inquiry hence second enquiry officer Sri S.V. Verma was appointed. Sri S.C. Verma, was also transferred to Hosiarpur, Punjab as

J.Chandra

Senior Postmaster on promotion. Thus, third inquiry officer Sri Manoj Kumar Mishra was appointed. The applicant never moved an application to the competent authority for change of the inquiry officer on the ground of malafide or bias. The Inquiry Officer gave many dates for conducting the inquiry but the applicant himself absented from the enquiry on 16.9.2003, 24.10.2003, 03.03.2004, 10.03.2004. The Defence Assistant provided to the applicant has attended the enquiry only on 30.08.2003, 7.11.2003, 11.11.2003 and on 08.12.2003 The applicant was supplied with all the documents relevant for the enquiry. The Enquiry report dated 28.5.2004 was sent to the applicant vide S.P.O., Kheri by his letter No.B/Rajesh Kumar Verma dated 31.5.2004 and under Kheri H.O. R.L. NO.004 dated 01.06.2004 for his comments but he failed to submit his comments. Hence the order of Disciplinary Authority was passed on 22.06.2004. Thus, the grounds for challenging the enquiry does not show any bias, malafide or irregularity in carrying-out the entire disciplinary proceedings under Rule-14 of CCS (CCA) Rule 1965. Further, the respondents have cited the following judgments of Hon'ble Supreme Court, regarding the scope of judicial interference in disciplinary proceedings as well as the manner of the proceedings conducted against the applicant. The cases are:-

(i). State of U.P. & Another vs. Chandrapal Singh & Another (CA.No.1295/1998).

(ii). Devendra Swamy Vs. Karnataka State Road Transport Corporation JT 2001 (10) SC 433.

J. Chandra

(iii). Govt. of A.P. Vs. B. Ashok Kumar AIR 1997 S 1358.

(iv). Punjab State Civil Supplies Corporation Vs. Narinder Singh Nirdosh AIR 1997 SC-2604.

(v). Union Territory, Chandigarh Vs. M. Singh 1997 (1) LLJ SC-826.

7. The applicant filed Rejoinder reply rebutting the Counter Affidavit and reiterating the averments made in the OA.

8. We have heard the learned counsel for both the parties and perused the entire material available on record.

9. In this case, it is seen that proper charge sheet with all accompanying documents as required have also served upon the applicant. He was given many dates, which are 7.8.2003, 30.08.2003, 16.09.2003, 24.10.2003, 7.11.2003, 11.11.2003, 8.12.2003, 20.12.2003, 9.1.2004, 17.1.2004, 12.2.2004, 25.2.2004, 3.3.2004, 10.3.2004, 18.03.2004. The Enquiry Officer has given number of date and has given full opportunity to the applicant for cross-examining the witnesses and for producing any documents and or scrutinizing all the documents. In fact, on the request of the applicant Sri O.P. Tripathi, retired Prawar Adhishak Dak Pal was appointed as defence assistant. Thereafter, on his application dated 7.11.2003, Sri Ahmad Husain, Up Dak Pal, Gola Gokarannath was nominated as his defence assistant. The applicant had not disputed the change of defence assistant on his request. All defence witnesses

J. Chandra

had appeared on 25.2.2004 but their examination was postponed on the request of the applicant. In fact, on many occasions the witnesses were available but neither the applicant nor his defence assistant were available. The Enquiry Officer made certain documents available on the request of the applicant and finally, the enquiry report was drawn-up on the basis of the material available to him. Thus, there does not appear any kind of violation and extraneous consideration and any other extraneous aliment.

10. The applicant has made very general statement regarding the bias attitude of the Enquiry Officer and he has not provided any particular instances of the same.

11. The Hon'ble Apex Court in the case of **B.C.Chaturvedi v. Union of India & 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. In this regard, the Hon'ble Apex Court has been pleased to observe as under:-

> "The Enquiry Officer submitted his report holding the charges against the appellant to have been proved. After consultation with the UPSC, the appellant was dismissed from service by an order dated 29.10.1986.The Tribunal after appreciating the evidence, upheld all the charges as having been proved but converted the order of dismissal into one of compulsory retirement. The delinquent filed an appeal challenging the finding on merits, and the Union filed an appeal canvassing the jurisdiction of the Tribunal to interfere with the punishment imposed by it. Allowing the appeal of the Union of India and dismissing that of the delinquent. Per Ramaswamy and Jeevan Reddy, JJ.

J. Chandra

> "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 officer 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 re-appreciate the evidence and to arrive at its own WP (C) 3381/2012 Page 12 of 13 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.?"

12. Not only this the Hon'ble Apex Court has even pleased to observe 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 Vs. 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 and Others vs. Union of India, (2001) 2 SCC 386 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

I Chandra

> infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant materials and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for."
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> 12. In this context, we can usefully refer to B.C. Chaturvedi vs. Union of India and others, (3 Judges) wherein this Court held thus: (AIR p.484) Ramaswamy, J for himself and B.P. Reddy, J. - Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal; it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof;"

13. As stated above that the Tribunal or the Court cannot sit in appeal over the decision of disciplinary authority nor can substitute its view in place of the said authority. The Tribunal is not competent to go into the quantum of punishment inflicted by the disciplinary authority unless it is shockingly disproportionate. The Tribunal cannot sit as an appellate authority on the decision of the disciplinary authority or exercise their jurisdiction of judicial review in disciplinary matters if there is no apparent illegality.

14. We have also looked at the order passed by the Appellate Authority on 23.07.2007. The Appellate Authority had gone into each and every point raised by

J. Chandra

the applicant in his representation and has passed a reasoned and speaking order based on facts. The applicant had not made any specific averment challenging the legality of the 3rd impugned order dated 22.06.2004 by which the period between 23.03.2004 to 21.06.2004 has been treated as "dies non" under Rule 62 and Rule 162 of P&T Manual Volume-III as he remained absent from duty.

15. In view of the above and on the basis of the observations of the Hon'ble Apex Court and the facts of the case since the entire Disciplinary proceeding was conducted as per rules and no infirmity is indicated, we are not inclined to interfere with the impugned order. The O.A. is liable to be dismissed and is accordingly dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

V.K. Agrawal

(Navneet Kumar)
Member (J)

Amit/-