

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 110 of 2008

Reserved on 2.2.2015

Pronounced on 4th March 2015.

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

Rajnish Kumar Singh, aged about 34 years, S/o Sri Ambrish Singh, R/o Village & Post Daulatpur via Suratganj, District Barabanki

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Postmaster General, U.P. Circle, Lucknow.
3. Director of Postal Services, Lucknow.
4. Superintendent of Post Offices, Barabanki.

.....Respondents.

By Advocate : Sri S.P. Singh

ORDER

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

“(i) wherefore it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the orders dated 28.5.2007 and 10.12.2007 contained in Annexure nos. 1 & 2 and treat the applicant in continuous service as Branch Post Master, Daulatpur, Barabanki with all consequential benefits. It is so prayed in the interest of service.”

2. The facts of the case are that the applicant was put off duty vide order dated 4.3.2005. A charge-sheet dated 7.11.2006 was served upon the applicant containing three charges. The applicant submitted reply to the charge-sheet denying the charges leveled in the charge-sheet, with the result, an enquiry was conducted. During the enquiry, all the witnesses appeared and got their statements recorded. The Presenting Officer submitted his written brief on 20.4.2007 to which the applicant submitted his defence brief on 27.4.2007. A show cause notice was issued to the

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applicant on 1.5.2007 enclosing a copy of inquiry report requiring the applicant to submit his reply within 15 days. The applicant submitted reply to the show cause notice on 14.5.2007. According to the applicant, the disciplinary authority, without considering the reply of the applicant against the show cause notice, imposed the punishment of dismissal upon the applicant. Against the dismissal order, the applicant preferred an appeal to Director, Postal Services, Lucknow, which too was rejected vide order dated 14.6.2007.

3. The main ground for challenge the impugned orders are that the applicant never violated the provisions of Rule 131(3), 165(g), 170(d), 173(c), 174(2) and 175(4) of BOO and that no enquiry was conducted as per the provisions of GDS conduct Rules and that the punishment is very severe and not commensurate with the gravity of the charges and lastly the applicant was not given any opportunity during the course of hearing.

4. The respondents have contested the claim of the applicant by filing Counter Reply whereby they have stated that while the applicant was working as GDS BPM, Daulatpur, Barabanki in the year 1995, a complaint was received against him regarding fraudulent payment in S.B. Account. As a consequence thereof, he was put off duty vide order dated 4.3.2005. They have further stated that Sri Nanku Singh, depositor of R.D. A/c no. 73792 had accepted the balance of his passbook including the deposit entry dated 30.3.2004 for Rs. 200/- which was found not to have been accounted for in the P.O. account, with the result a claim was submitted by him, which was sanctioned vide office memo dated 26.2.2007. They have further stated that during the course of enquiry, all these facts were accepted by Sri Nankau Singh before the Enquiry Officer. Smt. Manokamini Devi, wife of Sri Anand Swarup had preferred a claim on 19.5.2006 and the same was sanctioned vide order dated 26.2.2007 and her statement was also recorded on 19.5.2006. During the course of enquiry, Smt. Manokamini Devi stood by the complaint made by her dated 19.5.2006. The respondents have also stated that depositors of R.D Account nos. 73792, 737920 and 73921 had accepted the balance of their passbooks including the deposit entries dated 30.3.2004 for Rs. 200, 31.1.2005 for Rs. 50/- and dated

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31.1.2005 for Rs. 50/- respectively which were not found accounted for in PO account and the claims, which were preferred by these depositors and sanctioned vide memo dated 26.2.2007. The money was misappropriated by the applicant during his duty period, hence the order passed by the disciplinary authority is in proportion to the gravity of the charges. The disciplinary authority as well as appellate authority have passed the order after due application of their mind. Lastly, they have stated that the O.A. has no merit and it deserves to be dismissed.

5. The applicant has filed the Rejoinder Reply rebutting the contentions made by the respondents in their Counter Reply and reiterating the stand already taken in the O.A.

6. During the course of hearing, learned counsel for the applicant has produced relevant Rules for Branch offices including guidelines for Branch Offices. On the other hand, learned counsel for the respondents has placed decisions of this Tribunal which are as follows:-

- (i) O.A No. 422/07 Surendra Kumar Singh Vs. Union of India & Others decided on 1.7.2014.
- (ii) O.A. No. 530 of 2007 Jagdish Prasad Srivastava Vs. Union of India & Others decided on 16.7.2014.
- (iii) O.A. No. 112/10 Pramod Kumar Tewari Vs. Union of India & Others decided on 22.4.2014.
- (iv) O.A. No. 317 of 2008 Kamlesh Chand Vs. Union of India & Others decided on 17.9.2014
- (v) O.A. No. 126 of 2008 Mahesh Chandra Srivastava Vs. Union of India & Others decided on 4.8.2014.
- (vi) O.A. no. 155/06 Uma Shanker Yadav Vs. Union of India & Others decided on 10.12.2013.

7. We have heard the learned counsel for the parties at length and have also perused the pleadings available on record including the rules produced by the applicant's counsel as well as certain decisions produced by the learned counsel for the respondents and have also given anxious thought to the rival submissions made by the learned counsel for the parties.

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8. Admittedly, the applicant was chargesheeted through chargesheet dated 7.11.2006 and all the three charges stood proved vide Inquiry Officer's report dated 30.4.2007. The copy of inquiry report was sent to the applicant alongwith show cause notice dated 1.5.2007 requiring the applicant to submit his reply, if any, within 15 days and after considering the reply of the applicant, the disciplinary authority imposed the punishment of dismissal upon the applicant. Thereafter, the applicant preferred an appeal before the appellate authority, which too was dismissed vide order dated 10.12.2007 by detailing all the points raised by the applicant in his appeal and also after considering the gravity of the charges leveled against him. By assailing the aforesaid orders, the applicant took a ground that he has not violated the relevant rules of BOO. In this connection, it may be stated here that at this stage there would be no effect because if the applicant had any grievance against the same, he ought to have raised his voice at the time of issuance of chargesheet, but at that time, he was kept mum and now at a belated stage, he is raising that he has not violated any rules of B.O.O. Further, the applicant has not challenged the chargesheet and by merely assailing the punishment as well as appellate orders, he cannot be permitted to 'U' turn for assailing the same.

9. It is well settled that the scope of judicial review in a disciplinary matter is very limited. The Court or Tribunal can interfere only if there is violation of principles of natural justice or if there is violation of any statutory rules or it is a case of no evidence. The Tribunal or the Court cannot sit as an appellate authority as has been held by Hon'ble Supreme Court in the case of **State of U.P. Vs. Raj Kishore Yadav (2006 (5) SCC 673)**. In **B.C. Chaturvedi Vs. Union of India & others (1995 (6) SCC 749)** the Hon'ble Supreme Court has been pleased to hold that the scope of judicial review in disciplinary proceedings, the Court are not competent and cannot appreciate the evidence.

10. 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 by a public servant, the Court/Tribunal is concerned to determine

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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. When the authority accepts that evidence and conclusion receives support there-from, 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 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. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment.

11. The appellate authority has dealt with all the points raised by the applicant in his appeal and has passed a reasoned and speaking order dealing with all the points raised by the applicant in his appeal. The applicant has failed to point out any irregularity or illegality in decision making process.

12. **In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1993) Supp. 1 SCC 551**, the Hon'ble Supreme Court has been pleased to hold that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. In the case of **State Bank of India & Ors. v. Samarendra Kishore Endow & Anr. [J] (1994) 1 SC 217**], the Hon'ble Supreme Court has held that the Tribunal had no power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own

conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

13. A Constitution Bench Hon'ble Supreme Court in the case of in **State of Orissa Ors. v. Bidyabhushan Mohapatra [AIR 1963 SC 779]** has held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. This view was reiterated by Hon'ble Supreme Court in *Union of India v. Sardar Bahadur* [(1972) 2 SCR 218]. In the case of *Bhagat Ram v. State of Himachal Pradesh & Ors.* [AIR 1983 SC 454], the Hon'ble Supreme Court has held that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked.

14. As regards the quantum of punishment, the Hon'ble Supreme Court in the case of *State of Rajasthan Vs. Md. Ayub Naaz* (2006 (1) SCC 589) has been pleased to observe as under:-

"This Court in Om Kumar and Ors. v. 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 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 material and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for."

15. In *Mohan Lal Verma Vs. District Cooperative Central Bank Ltd.* (2008) 14 SCC 445 in a case where a Bank Manager was removed from service for misappropriation of money. The Hon'ble Supreme Court held that though the quantum of punishment may not be being and the amount was repaid, the punishment was not excessive having regard to the fact that he was Manager of a

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Bank. In the instant case, the applicant was the Branch Post Master.

16. The applicant has also failed to point out any lacuna in the enquiry proceedings, with the result, it cannot be held that the disciplinary authority as well as appellate authority have acted arbitrarily and illegally and also without considering the relevant facts as well as rules on the subject.

17. In view of the above discussions as well as the observations made by Hon'ble Supreme Court, we do not find any good ground to interfere in the impugned orders passed by the respondents. Accordingly, the O.A. is dismissed. No costs.

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(Ms. Jayati Chandra)
Member-A

V.R. Arora
(Navneet Kumar)
Member -J

Girish/-