

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 158/2008

Reserved on 2.4.2014

Pronounced on 15th April, 2014

Hon'ble Sri Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Kaushal Kishore Srivastava aged about 57 years son of Sri Raj Kishore resident of Type I/12, P&T Colony, Mahanagar, Lucknow (lastly working as Postman in General Post Office, Lucknow-26001).

Applicant

By Advocate:- Sri Prashant Kumar Singh

Versus

1. Union of India, through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Chief Post Master, General Post Office, Lucknow-226001.
3. Deputy Chief Post Master, General Post Office, Lucknow-226001.

Respondents

By Advocate: Sri S.P. Singh

ORDER

DELIVERED BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- a) issuing/ passing of an order or direction setting aside the impugned order dated 16.5.2007, passed by the respondent No. 2 imposing the punishment of compulsory retirement from service upon the applicant in exercise of revision power (as contained in Annexure No. A-1 to this Original Application) and also the impugned order dated 22.2.2007, passed by the respondent No. 3, imposing the punishment of reduction of pay of the applicant by 6 stages for a period of 2 years and 6 months (as contained in Annexure No.A-2 to the Original Application) after summoning the original records.
- b) issuing/ passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- c) allowing this original Application with cost.

2. The applicant was working in the respondents organization was charge sheeted in 2006 and in the reply to the charge sheet, the applicant denied the charges. Enquiry officer submitted the report to the disciplinary authority, copy of the enquiry report was also provided to the applicant and he was asked to submit reply and the applicant submitted the representation against the report of the enquiry officer requested for exonerating him from the charges. By means of order dated 22.2.2007, a penalty of reduction of pay for a period of 2 years and six months was imposed upon the applicant. The Chief Post Master issued show cause notice dated 21.4.2007 proposing to impose punishment of removal from service and also asked the applicant to submit his representation and in the absence of any such representation, it would be presumed that he has nothing to say and punishment would be imposed upon the applicant. The applicant submitted his representation dated 7.5.2007 and the Chief Post Master vide order dated 16.5.2007 imposed the punishment of compulsory retirement upon the applicant. The applicant not preferred any appeal against the order of Chief Post Master dated 16.5.2007.

3. Learned counsel appearing on behalf of the respondents filed their reply as well as Supplementary reply. Through reply as well as Supple.CA, it is indicted by the respondents that the applicant while working as Postman, Lucknow GPO misbehaved in a farewell party and used the uncivilized words against Sri D.S.Bisht, Assistant Superintendent Speed Post, Lucknow GPO. On receipt of a complaint, the matter was inquired into and after the preliminary enquiry, a charge sheet was issued and due enquiry was conducted. Though the applicant has denied the charges leveled against him, but the enquiry officer found the applicant responsible of the offence and also found charges proved against the applicant. The report of the enquiry office was duly communicated to the applicant and after reply sought from the applicant, the disciplinary authority imposed the punishment upon the applicant. The CPMG, being not satisfied with the punishment imposed upon the applicant, issued a show cause notice for


enhancing the proposed punishment for removal from service and asked the applicant to submit the representation. The applicant submitted the representation and the said representation of the applicant was also considered and CPMG passed an order of compulsory retirement from service. The learned counsel for respondents has also pointed out that the applicant has not preferred any appeal to the order of the CPMG and has also pointed out that the enhancement of punishment was in accordance with the CCS (CCA) Rules, 1965, as such, there is no illegality in enhancing the punishment. Learned counsel for respondents also pointed out that since there is no illegality in conducting the enquiry, and there is no procedural lapses and the Tribunal cannot look into the quantum of punishment as awarded to the applicant.

4. Learned counsel for applicant has filed Rejoinder Reply as well as Supplementary rejoinder reply and through Rejoinder reply and Supple. RA, mostly the averments made in the O.A. are reiterated and denied the averments made in the C.A. and Supple. CA and has also pointed out that the punishment order dated 22.2.2007 is not commensurate with the charges leveled against the applicant and the order dated 16.5.2007 is without any justified reasons. The learned counsel for the applicant has also pointed out that the show cause notice which is contained at annexure No.A-5 to the O.A. also does not show any reason and charges as mentioned in the charge sheet. It is also argued by the learned counsel for the applicant that approaching the Tribunal before exhausting the departmental remedy is not a bar and the O.A. is liable to be entertained.

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

6. Undoubtedly, the applicant who was working in the respondents organisation was charge sheeted under Rule 14 of CCS (CCA) Rules, 1965. In the said charge sheet, five charges are leveled against the applicant. Along with charge sheet, the list of witnesses and documents is also mentioned. The enquiry officer was appointed and the enquiry officer submitted his findings and came to the conclusion that the charge No.1, 2

,3 and 4 levelled against the applicant stands proved whereas charge No. 5 was not proved. The enquiry officer through his enquiry report has discussed the charges as well as complaint of Assistant Superintendent of Post Offices (Speed Post), Lucknow GPO as well as the list of witnesses were also examined. Not only this, the enquiry officer also examined all documents. The applicant was also associated with the enquiry. The enquiry officer has also gone through the written submissions made by the charged officer i.e. the applicant and submitted the enquiry report to the disciplinary authority. The copy of the enquiry officer's report was also served upon the applicant and the disciplinary authority through his order dated 22.2.2007 has also categorically pointed out that after the receipt of the charge sheet, the applicant in his representation dated 16.5.2007 accepted the charges leveled against him and came to the conclusion that the applicant was found guilty of the offence as such punishment of reduction of pay for 2 years and six months was imposed. The said order was passed by the Disciplinary Authority who is respondent No.3 in the O.A. The CPMG, being not satisfied with the said order of disciplinary authority issued a suo-moto show cause notice on 21.4.2007 proposing to pass an order of removal the applicant was asked to submit his representation to the CPMG. The applicant submitted his representation and after the said representation of the applicant, the CPMG passed an order of compulsory retirement from service. The reasons as indicated in the show cause notice is in reference to Rule 29(1)(v) of the CCS (CCA) Rules, 1965. It is also indicated by the authority that the copy of the charge sheet was also served upon the applicant and applicant has also submitted the representation. The CPMG while passing the order on 16.5.2007 has categorically pointed out that the applicant misbehaved with one officer at his farewell party and also used un-parliamentary language and showed his careless approach towards the service and subsequently requested for pardoning him being not mentally fit.



7. Undoubtedly, the scope of judicial review in the matter of disciplinary proceedings is very limited. In the instant case, the applicant was given full opportunity to participate in the enquiry. The copy of the proposed enhancement was also given to the applicant and has also submitted his representation to the same and there does not appear to be any procedural lapses in the whole process. The question of quantum of punishment cannot be looked into by the Tribunal.

8. 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.***" 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.***"

9. 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 Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya** reported in (2011) 4 SCC 584, the Hon'ble Apex Court has been pleased to observe as under:

"It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings, in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

11. In view of the discussions made above, we do not find any reason to interfere in the present O.A.
12. Accordingly, O.A. is dismissed. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-