

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 354/2008

This the 18th day of May, 2011

Hon'ble Sri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P. Singh, Member (A)

Ambrish Kumar Mishra aged about 57 years son of Sri Devi Prasad Mishra, resident of village and Post Baundi (Pakharpur) District-Bahraich.

Applicant

By Advocate: Sri Dharmendra Awasthi

Versus

1. Union of India through the Secretary, Department of Post, Ministry of Communication, Govt. of India, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Lucknow
3. Director of Postal Services, Gorakhpur.
4. Superintendent of Post Offices, Bahraich Division, Bahraich.

Opposite Parties

By Advocate: Sri S.P. Singh

ORDER

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following relief (s):-

- a) quash the order dated 31.10.1994/8.11.1994 issued by the opposite party No. 4 and order dated 12.7.2008 passed by opposite party No.3 contained as Annexure Nos.1 and 2 respectively to this Original Application.
- b) Direct the opposite parties to re-instate the applicant in service with all consequential benefits including payment of salary.
- c) Pass any other suitable order or direction which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case in favour of the applicant.
- d) Allow the present original application of the applicant with cost.

2. Applicant's case is that he was appointed as Postman on 6.11.1970. On 19.7.1993, some persons made a complaint against the

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applicant. On the same day, the applicant was placed under suspension. But no charge sheet was ever served upon him. On 8.4.1994, he came to know that some inquiry has been initiated and Sri K.R. Verma , CI, has been appointed as Enquiry Officer. The applicant thereafter appeared before the Enquiry Officer on 14.4.1994 and asked for the copy of charge sheet. But the Enquiry Officer declined the request.. The applicant was given an impression that the charge sheet has been sent by registered post but it was never received by him. Thus the ex-parte enquiry was conducted . Thereafter, a show cause notice was issued in respect of proposed punishment. Finally, order of dismissal from service was passed by opposite party No. 4 which was served upon the applicant on 10.11.1994. He preferred an appeal but that was not decided despite his several his representations. Hence he filed an Original Application No. 286/2000 before this Hon'ble Tribunal which was disposed of on 12.10.2010, directing the respondents to decide the appeal dated 16.3.1995 within a period of three months. In pursuance therefore, the appeal was rejected on the ground of limitation. The applicant therefore, filed another O.A. No. 637/2001 and the Hon'ble Tribunal without dwelling into the merit of the case, partly allowed it by setting aside the order passed by the Appellate Authority on 11.12.1995 and remitted back the matter to the Appellate Authority to decide the appeal afresh by means of speaking order within a period of 3 months. In compliance of this order, the Appellate Authority again rejected the appeal on 12.7.2008. Hence this O.A.

3. The respondents No. 1 to 4 have filed a Counter Reply saying that the charge sheet was sent to the applicant by registered post on his residential address but it was returned back as not claimed. Thereafter, the Postman delivered a notice at the residence of the applicant requesting him to attend the Post Office and take a delivery of registered letter. But the applicant did not claim the article

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from the Post Office. The Enquiry Officer, therefore, got it publicized in a newspaper and proceeded with the enquiry. After completion of the enquiry, it was found that all the five charges leveled against the applicant were fully proved. A copy of the enquiry report was sent on the last known address of the applicant but the applicant again refused to receive the registered letter. Finally, the dismissal order was passed against the applicant on 31.10.1994 /8.11.1994 which was served upon the applicant on 10.11.1994. The appeal preferred by the applicant was rejected and its copy was sent by registered post to the applicant but the applicant again refused to receive that delivery. Instead he filed O.A. No. 286/2000, which was decided with a direction to decide the appeal within 3 months. Since the appeal of the applicant already stood decided, a copy of the appellate order was again sent to the applicant which this time was delivered to him on 18.11.2000. The applicant again filed O.A. No. 637/2001, by means of which directions were given for deciding the appeal afresh. In compliance of the aforesaid order of the Tribunal passed on 9.1.2008, the appellate order was again passed on 12.7.2008 rejecting the appeal.

4. We have heard the learned counsel for the parties at length and perused the material on record.

5. At the outset it may be mentioned that this is a third round of litigation. The applicant has been dismissed from service vide order dated 31.10.94/8.11.1994 (Annexure No.1). His appeal has also been rejected vide order dated 12.7.2008 (Annexure No.2). This O.A. has been filed impugning both these orders.

6. The norms of judicial review in the matter of disciplinary proceedings and punishments have been well settled. According to those norms, a Tribunal cannot sit as a court of appeal in respect of dismissal orders, particularly when the appellate authority has exercised

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its power lawfully. A High Court or a Tribunal can not substitute its judgment for that of administrative authority. Even though, the judicial review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. It must be remembered that a judicial review is always directed not against the decision but is confined to the examination of the decision making process. A Court or a Tribunal while exercising the power of judicial review must remain conscious of the fact that if the decision has been arrived at by the Administrative authority after following the principles established by law and the rules of natural justice and the individuals has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority. This preposition of law has been laid down in the case of **Apparel Export Promotion Council Vs. A.K.Chopra Judgment Today, 1999(1) SC 61.**

7. Further, it has been laid down that the Court exercising of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man of common reasonable prudence would have arrived at that finding. The court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

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as has been held in the case of **Bank of India and Another Vs. Degala Suryanarayana, Judgment Today 1999(4) SC 489.**

8. In the conspectus of the above, we have carefully gone through the impugned orders. The dismissal order dated 31.10.94/8.11.94 is a speaking and well reasoned order running into 8 typed pages. As we could glean from the aforesaid order, as many as 4 charges were framed against the delinquent official in respect of payment of four separate money orders, amount of which was actually not paid. Besides that, a charge was also framed for not obtaining the signature of the persons who identified the addressees to whom the other four money orders were claimed to have been paid. This charge sheet was sent by registered post No. 0781 dated 5.1.94 on the following address:-

Sri Ambrish Kumar Mishra,
Postman (Under Suspension)
Main Post Office, Bahraich.

9. This registered letter was given to one Indra Bahadur Singh for distribution who returned it with a note that addressee does not come to main post office, Bahraich and lives at his residential address in Meera Khel Pura, Bahraich. Therefore, this registered letter was again sent on 10.1.1994 through Shiv Kumar Singh, Postman. He visited his house on 10.1.1994, 11.1.1994 and 12.1.1994 and tried to meet the delinquent official but he was not available. Therefore, on 12.1.1994, the Postman gave a notice to the delinquent official to receive the registered letter from Main Post Office. But he did not come and ultimately, this registered letter was returned with a note of "Not claimed, returned to Centre". Thereafter, for holding open enquiry, an Enquiry Officer was appointed and written information regarding this was again sent to the applicant at the address of Gudri Bazar, Sub Post Office vide registered letter No. 4424 dated 27.1.1994. The Postman tried to contact the applicant at his residence but could not meet him. Then he give a notice at the resident of the applicant to

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receive the registered post from the Main Post Office on 29.1.1994. He again tried to contact the applicant but he was not there. Ultimately, this registered letter was also returned with a note that addressee not claimed, returned to Centre on 3.2.1994. Then a detailed notice was publicized in a newspaper on 10.3.1994 regarding initiation of departmental enquiry and informing the applicant to receive copy of charge sheet from the office of the undersigned and to participate in the enquiry, failing which it would be deemed that he has nothing to say, and the enquiry would be completed. On 28.3.1994, the applicant wrote a letter saying that charge sheet has not been given to him and therefore, a copy be supplied to him, so that he may submit his explanation. Accordingly, on 14.4.1994, a copy of charge sheet was handed over to him. Then after completion of the Enquiry, an enquiry report was submitted by the Enquiry Officer on 16.9.1994. A copy of the enquiry report was also sent to the applicant vide letter dated 20.9.94 so that he may make representation if any, within 15 days, failing which appropriate decision was to be taken. It was again sent to the applicant by registered letter No. 4164 dated 21.9.1994 but its service was again evaded in the similar manner in which the earlier notices were evaded.

10. Then on 3.10.94, it was again sent to the Post Master, Bahraich with a direction that it may be served by Head Post Man. It was again received back with an endorsement that the applicant had refused to take the registered post. Report of Head Postman dated 7.10.94 was also enclosed, saying that on 6.10.94, during noon, while the applicant Sri Ambrish Kumar Mishra was sitting in the Accounts Branch, he was asked to receive the registered post but he said that he would not receive it till that time his GPF is passed and his pending medical bills are also passed. The Head Post Master also endorsed that on 7.10.94, Sri Ambrish Kumar Mishra, the applicant again met him and he again requested him to receive the registered post. The applicant however,

refused to take it saying that he regularly receives only those registered posts which are according to his need. After considering these points, the disciplinary authority examined the whole enquiry report and found that the enquiry officer conducted the enquiry on the following dates i.e. on 11.2.94, 18.2.1994, 1.3.1994, 15.3.1994, 31.3.1994, 14.4.1994, 29.4.1994, 16.5.1994, 2.6.1994, 21.6.1994, 7.7.1994 and 15.7.1994. Out of the aforesaid dates, the applicant also appeared only on 14.4.1994 and 16.5.1994. Thereafter, on 16.5.1994, the Enquiry Officer recorded the statements of three witnesses and the applicant also appended his signature below those statements, but he refused to sign order sheet No. 8 of 16.5.1994. The Enquiry Officer has also mentioned in the order sheet that on the aforesaid dates, on which the applicant did not appear, the Enquiry Officer had sent the notice to the applicant which were received back with remark that the applicant either hides himself or avoids to receive those registered letters. On one occasion, when a register letter No. 4899 dated 22.2.94 was sent in respect of fixing enquiry for 1.3.1994 and when the Postman went to serve it, the applicant seeing the Postman coming towards him, immediately stood up and went to the market side. It has already been said that on 14.4.1994, while he was present in the enquiry he was informed about the next date i.e. 29.4.1994 and a copy of the proceedings was also given to him and he was also asked to attend the enquiry on 29.4.1994 at the relevant time and place, failing which the enquiry shall be proceeded with ex parte. Even then he did not come on 29.4.1994. In view of the above, the disciplinary authority was of the view that except on two dates, the applicant has deliberately avoided to be present in the enquiry.. All the possible efforts were made to procure his attendance but the applicant did not pay any heed and therefore, the continuance of remaining enquiry as ex parte was found to be justified by the disciplinary authority and rightly so. Thereafter, the disciplinary authority discussed

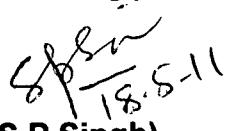
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each and every charges vis-à-vis the evidence adduced in respect thereof and ultimately he agreed with the findings recorded by the Enquiry Officer. After that, he passed the order of dismissal on 31.10.1994/ 8.11.1994, which has been impugned

11. Similarly, we have also carefully gone through the order dated 12.7.2008 passed by the appellate authority rejecting the appeal. This order is also a detailed and speaking order running into five pages. After making detailed examination of the order passed by the disciplinary authority, there was no occasion for him to have reached to a different conclusion. He has also observed that in the appeal before him, only the process of enquiry has been commented upon by the applicant. The applicant did not refute any of the charges by giving any clear and factual material. Finally, therefore, he did not find any substance in the appeal to justify interference in the order passed by the disciplinary authority. Therefore, he confirmed the order of dismissal from service and rejected the appeal vide order dated 12.7.2008, which has also been impugned in this O.A.

12. A careful and thorough perusal of both the impugned orders shows that these are well reasoned and speaking orders running into 8 pages and 5 pages respectively. As discussed above, we do not find any embellishment in either of these orders either on legal or factual matrix. There also does not appear to be any flaw in the decision making process.

13. In view of the above, this O.A. deserves to be dismissed and accordingly it is so ordered. No order as to costs.


(S.P.Singh)
Member (A)

HLS/-


Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J)