

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 355/2008

Reserved on 27.8.2014

Pronounced on 17-09-2014

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

Nagendra Prakash Yadav aged about 45 years son of Sri Guru Prasad Yadav, resident of E-131, RDA Colony, Indira Nagar, Raebareli (presently working as Postal Assistant, Head Post Office, Lalganj, Raebareli).

Applicant

By Advocate: Sri Prashant Kumar Singh

Versus

1. Union of India through the Secretary, Ministry of Communication (Department of Posts), New Delhi.
2. Director of Postal Services, Office of the Chief Postmaster General, U.P.Circle, Lucknow.
3. Superintendent of Post Offices, Raebareli Division, Raebareli.

Respondents

By Advocate: Sri S.P.Singh

ORDER

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

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

- a) issuing /passing of an order or direction to the respondents setting aside the impugned punishment order dated 14.1.2008, passed by the respondent No. 3 and the impugned appellate order dated 29.7.2008 passed by the respondent No. 2 (as contained in Annexure No. A-1 and A-2 to this Original Application) after summoning the original records.
- b) issuing/ passing of an order or direction to the respondents to pay the basic salary , increments and other allowances to the applicant as was being paid to him prior to passing of the impugned orders.
- c) issuing/ passing of any other order or direction as this Hon'ble Tribunal may deem fit and appropriate in the circumstances of the case, including allowing the original application with cost.



2. The brief facts of the case are that the applicant was working with the respondents organization, was served with the charge sheet through which certain charges were imposed upon the applicant. The Inquiry officer was appointed and inquiry officer submitted the report, through which he has indicated that the charges is partly proved. The copy of the Inquiry officer's report was served upon the applicant and applicant submitted the reply categorically indicating therein that the depositor failed to participate in the enquiry. The applicant through his reply also denied the charges leveled against him and has indicated that since the enquiry conducted is not a fair inquiry, as such the applicant may not be punished. The disciplinary authority after considering the relevant facts passed an order of reduction of pay of the applicant by 5 stages from Rs. 6000/- to Rs. 5375/- in the time scale of pay of Rs. 4500-125-7000/- for a period of six years with immediate effect and it is also observed that the applicant will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing the future increments of pay. The applicant submitted the appeal to the appellate authority and through appeal, it is indicated by the applicant that the entire inquiry is based on presumption. The relevant witnesses were not called for examination and there is no need to conduct oral inquiry and has also indicated that it is alleged that the applicant has misappropriated the govt. money but there was no documentary evidence to substantiate that there were actual misappropriation of Rs. 32000/- as the said amount was not charged under UCP subject to recovery or write off as per accounts procedure. The applicant has prayed to the appellate authority that the punishment so imposed be set aside so that he may work efficiently. The appellate authority rejected the appeal of the applicant by means of order dated 29.7.2008. Feeling aggrieved by the orders of the

disciplinary authority as well as the appellate authority, the applicant preferred the present O.A.

3. On behalf of the respondents, the detailed reply as well as Supple. Counter reply is filed and through reply, it is indicated by the respondents that the applicant has misappropriated the government money, as such disciplinary proceedings was initiated under Rule 16 of CCS (CCA) Rules, 1965 and on the basis of documentary evidence, he was awarded punishment by the disciplinary authority. It is also indicated by the respondents that the applicant has committed gross misconduct and irregularities. Apart from this, it is also indicated by the respondents that before awarding the punishment upon the applicant, the respondents have fully complied with the principles of natural justice as after giving full opportunity, the respondents have passed the orders and there is no illegality in the impugned orders. Not only this, the learned counsel for respondents has also relied upon the decisions in the cases of **Noharlal Verma Vs. District Cooperative Central Bank Limited Jagdalpur reported in (2008) 14 SCC 445**, **Chairman and M.D., United Commercial Bank Vs. P.C.Kakkar reported in (2003) 4 SCC 364** and **State Bank of India and others Vs. Ramesh Dinkar Punde reported in (2006) 7 SCC 212** and has indicated that the official who holding the position of trust where honesty and integrity are inbuilt requirements of functioning , it would not be proper to deal with the matter leniently. Apart from this, it is also argued by the learned counsel for respondents that scope of judicial review in respect of matters pertaining to disciplinary proceedings is very limited and as such, no interference is required in the present O.A. Accordingly, the O.A. is liable to be dismissed.

4. On behalf of the applicant, Rejoinder reply is filed and through rejoinder reply, mostly the contents of the O.A. are reiterated and contents of counter reply are denied. It is also indicated by the learned

counsel for the applicant that show cause notice issued for initiation of proceedings against the applicant was without any basis and with oblique motive and purpose with a view to harass the applicant and without examining the complainant before the inquiry officer which was very basis of charge. The entire inquiry proceedings is bad in the eyes of law and is liable to be quashed.

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

6. That the applicant was placed under suspension vide order dated 9.10.2006 and thereafter, the charge sheet was served upon the applicant on 27.12.2006 under Rule 14 of CCS(CCA) Rules, 1965 and he was asked to submit the written statement of defence within a specified period of time. Through the said charge sheet, it is indicated in the Article that the applicant while working as Sub Post Master from 1.8.2006 to 19.9.2006 has accepted the pass book A/c No. 1406688 and on 8.9.2006 and 11.9.2006, he has filled up two withdrawal forms and after putting the forged signature, encashed the sum of Rs.10,000 and Rs. 7,000/-, as such total amount of Rs.17000/- is misappropriated from the aforesaid bank account. In support of the article of charges, the statement of imputation of misconduct is mentioned and list of documents along with list of witnesses is also mentioned. The list of aforesaid documents provides complaint dated 20th September, 2006 of Km. Champa Awasthi, the complainant, the written statement of Km. Champa Awasthi dated 7.10.2006 and certain other list of documents. After receipt of the charge sheet, the inquiry officer was appointed and the inquiry officer has submitted his report on 24.9.2007. The copy of the said inquiry report was communicated to the applicant through letter dated 17.10.2007. The inquiry officer in his inquiry report has categorically pointed out this fact that Km. Champa Awasthi, the complainant was asked to appear before the Inquiry on several occasions but she has not cooperated with the

inquiry. However, the complaint of the complainant Km. Champa Awasthi dated 20th September, 2006 and written statement of Km. Champa Awasti dated 7.10.2006 as well as dated 29.11.2006 and the actual agreement dated 27.9.2006 between Km. Champa Awasthi and Superintendent of Post offices, Raebareli was taken into consideration along with statement of Nagendra Prasad Yadav dated 7.10.2006. Apart from this, the inquiry officer has also recorded the statement of applicant. Inquiry officer has also indicated that after withdrawal of the aforesaid amount of Rs. 17000/-, an agreement was arrived and sum of Rs. 32000/- was accepted by the account holder on 29.7.2006 and the same was deposited in the account itself also shows that under pressure, the applicant has entered with an agreement with the complainant and paid her a sum of Rs. 32000/-. The signature as appended on the withdrawal form are also different than the specimen signature and the registry sent to the applicant was also returned back by the applicant on several occasions. It is also indicated by the inquiry officer that in the preliminary inquiry, the complainant has also not cooperated in the preliminary inquiry and finally the inquiry officer came to the conclusion that as regard the charges leveled against the applicant, only some part of the charge is proved. The copy of the inquiry officer report was given to the applicant through letter dated 17.10.2007 and disagreement memo was given by the disciplinary authority for submitting the representation of the applicant. In the disagreement memo, the disciplinary authority has categorically indicated that during the course of the inquiry, it is indicated by the charged officer that apart from Rs. 17000/-, another amount of Rs. 15000/- is shown as withdrawn from the account of the complainant, as such Rs. 32000/- is paid to the complainant by virtue of an agreement. Therefore, after the receipt of the aforesaid amount of Rs. 32000/-, the complainant has not cooperated with the inquiry.

Accordingly, the disciplinary authority has given disagreement memo

and against the disagreement memo, the applicant has given the reply and has categorically indicated that lady depositor failed to participate in the inquiry and also indicated that circumstantial evidence has been ignored all together by the disciplinary authority when the inquiry officer has taken into consideration rightfully the circumstances as per the circumstantial evidence, no charge is proved against the applicant. As such, the applicant has categorically indicated that the charge framed against the applicant is wrong and the applicant is liable to be exonerated from the charges.

7. The matter was placed before the disciplinary authority and the disciplinary authority after considering the material available on record, imposed a penalty of reduction in rank by five stages from Rs. 6000/- to Rs. 5375/- in time scale of Rs. 4500-125-7000/- for a period of six years with immediate effect. It is also indicated by the disciplinary authority that applicant will not earn increment of pay during the period of reduction and after expiry of the period of penalty , the future increments would not remain stopped. While taking such a view, the disciplinary authority has discussed the entire episode and has also indicated that the applicant has misappropriated the amount and has also filled up the withdrawal form and when the complainant complained about the same, he entered into an agreement with the complainant and deposited entire amount in the account. The applicant not being satisfied with the action of the disciplinary authority, preferred an appeal to the appellate authority and the appellate authority has passed the orders on 29.7.2008 confirming the order passed by the disciplinary authority.

8. Now , the question which requires determination is in respect of scope of judicial review in the matter of disciplinary proceedings when there is no procedural lapses. The applicant holds the post of trust where honesty and integrity are inbuilt requirements of functioning , it would not be proper to deal with the matter leniently. Where the

person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the higher degree of integrity and trustworthiness is a must and unexceptionable.

9. Be that as it may, it is now well settled that the scope of judicial review in disciplinary matters are very limited. The court or Tribunal cannot sit as an appellate authority as observed by the Hon'ble Apex Court in the case of **State of U.P. Vs. Raj Kishore Yadav reported in 2006 (5) SCC 673**. In the case of **B.C. Chaturvedi Vs. UOI and others reported in 1995 (6) SCC 749**, the Hon'ble Apex Court has observed that "the scope of judicial review in disciplinary proceedings, the court are not competent and cannot appreciate the evidence."

10. This view is again reiterated by the Hon'ble Apex Court in number of cases including 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. Since the applicant holds the post of trust as such, it is expected that the honesty and integrity are inbuilt requirements of functioning. In the case of **Regional Manager, U.P. SRTC, Etawah and others vs. Hoti Lal and another reported in (2003) 3 SCC 605**, the Hon'ble Apex Court clearly observed that **"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.”

12. As stated above, the Tribunal or the Court cannot sit on appeal over the decision of the disciplinary authority nor can substitute its view in place of the said authority. Not only this, the Tribunal is not competent to go into the quantum of punishment inflicted by the disciplinary authority unless it is shockingly disproportionate. In the case of **Moni Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** “The procedural fairness in conducting the departmental proceeding is a right of an employee.” However, in this case the Hon’ble Supreme Court has also pleased to observe that the scope of judicial review in disciplinary proceedings is very limited.

13. . in the case of **Chairman and MD, United Commercial Bank vs. P.C. Kakkar** reported in **(2003) 4 SCC 364**, the Hon’ble Apex Court has been pleased to observe as under:-

“14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipliner are inseparable from the functioning of every officer/employee of the bank. As was observed by this court in **Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnaik** it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting an operating within their allotted sphere. Acting beyond one’s authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.”

14. As observed by the Hon’ble Apext Court in the case of **Noharlal Verma Vs. District Cooperative central Bank**

Limited Jagdalpur reported in (2008) 14 SCC 445, the Hon'ble Apex Court has been pleased to observe as under:-

"The appellant was holding position of trust and was Manager of a Bank. The charges levelled against him were serious in nature concerning misappropriation of money. Though the amount was not big and it was also repaid and the Bank has not suffered, yet the fact is that Manager of a cooperative bank was involved in financial irregularities. The Bank was satisfied that he should not be retained in service and passed an order of removal. It cannot be said that such punishment is grossly disproportionate or excessively high. Normally in exercise of power of "judicial review", a writ court will not substitute its own judgment or decision for the judgment or decision of disciplinary authority unless it comes to the conclusion that it has shocked the conscience of the court or the punishment is such that no "reasonable man" would impose such punishment, or the decision is so absurd that the decision - maker at the time of making the decision "must have taken leave of his senses."

15. The applicant was given full opportunity to participate in the inquiry. Though the complainant was not cross examined by the inquiry officer but the complaint so submitted by the complainant was on record and it was taken as a document along with charge sheet and after issuance of the charge sheet, the amount was deposited in complainant account. As such non cooperation of the complainant cannot be taken as a ground of defence. The norms of judicial review in the matter of disciplinary proceedings is well settled and accordingly, the Tribunal cannot sit as a court of appeal in respect of disciplinary proceedings, particularly when the appellate authority has exercised its power lawfully. However, it has been laid down that the Court while exercising the powers of judicial review would not interfere with the findings of fact arrived at in the departmental inquiry 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.

16. Considering the law laid down by the Hon'ble Apex Court as well as pleadings available on record, we do not find any reason to interfere in the present O.A.

17. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra
(JAYATI CHANDRA)

MEMBER (A)

N. Rawal
(NAVNEET KUMAR)

MEMBER(J)

HLS/-