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**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No 382 of 2008
Order Reserved on 7.7.2014**

Order Pronounced on 04/08/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Raja Ram aged about 43 years S/o Sri Mehi Lal R/o village Arhauri P.O.
Maholi district Sitapur.

Applicant

By Advocate Sri R.S. Gupta.

Versus

1. Union of India through the Secretary Department of Post Dak, New Delhi.
2. The Chief Postmaster General U.P.m Lucknow.
3. The Director Postal Services (HQ) O/o chief Post master General U.P. Lucknow.
4. the Superintendent of Post Offices, Sitapur.

By Advocate Sri G. K. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)


The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (i) To quash and set aside the ordfes by dated 12.6.1998,30.7.1999, 11.3.2008 as contained in Annexure No. 1-A, 1-B, and 1-C and direct opposite parties to allow applicant to be reinstated to duty with all consequential services benefits including back wages.
- (ii) any other relief deemed just and proper in the circumstances of case.
- (iii) Allow cost of O.A. is favour of applicant."

2. The brief facts of the case are that the applicant was initially appointed on the post of Post Man in 1985 and while working at Mohali Post Office, the applicant was served with a

charge sheet Under Rule 14 of the CCS (CCA) Rules 1965. The Superintendent of Posts Offices, imposed punishment of compulsory retirement which was subsequently confirmed by the Appellate Authority vide order dated 30th July 1999. The applicant also submitted a petition under Rule 29 of CCS(CCA) Rules 1965 to the CPMG, UP Circle Lucknow which was also rejected by means of an order dated 11.3.2008. The applicant challenges the order passed by the Disciplinary Authority dated 12.6.1998, order passed by the Appellate Authority dated 30.7.1999 and the order passed by the Revisional Authority dated 11.3.2008. The learned counsel for the applicant fail to annex the copy of the charge sheet as well as the copy of the appeal, though the Appellate order shows that appeal is dated 31.8.1998.

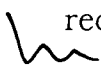
3. Learned counsel for the applicant has categorically pointed out that in the inquiry, the applicant was exonerated, but no disagreement memo is served upon the applicant as such, the entire inquiry is vitiated and as such interference is required by this Tribunal. Not only this, the applicant has also asked for copy of the charge sheet, inquiry report, statement of PWs/DWs, through his letter dated 26.5.2008. It is also alleged by the applicant that despite the letter dated 26.5.2008, no such documents were provided to the applicant.

4. On behalf of the respondents, the reply was filed and through reply, it is indicated by the respondents that the grounds taken during course of arguments by the learned counsel for the applicant in the appeal were duly considered by the appellate authority but he fail to annex the copy of the appeal or the charge sheet. Apart from this, it is also submitted by the learned counsel for the respondents that the inquiry officer after  considering each and every aspect of the matter and also after


full opportunity of hearing has submitted his report to the disciplinary authority and the disciplinary authority after considering the entire material on record passed the order of compulsory retirement. On behalf of the respondents, it is also pointed out that the applicant while working at Mohali received certain money orders and after doing forged signatures of the payee showed that the money orders were paid to the concerned person. As such, he violated the provisions of Rule 709 of P&T Manual Volume VI Part III. Apart from this, the applicant also remained absent for the period from 14.9.1991 to 23.05.1995 in an unauthorized manner as such, he violated the provision of Rules 92 and 93 of P&T Manual Volume II. Accordingly, the applicant was charge sheeted and the punishment of compulsory retirement from service is imposed upon the applicant. It is also indicated by the respondents that the appeal submitted by the applicant was duly considered by the appellate authority and the revisional authority has also considered the revision of the applicant and passed the orders. The learned counsel for the respondents also argued that there is no procedural irregularities in conducting the inquiry. As such, no interference is required in the present O.A. and the O.A. is liable to be dismissed.

5. On behalf of the applicant, the rejoinder affidavit is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. Through rejoinder affidavit, the applicant has once again reiterated that he has made a request for providing five documents through his letter dated 26.5.2008, but none of the documents were provided to the applicant.

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



7. The applicant was working with the respondents organization and was charge sheeted under Rule 14 of CCS(CCA) Rules, 1965 and as per the order of the Disciplinary Authority, the date of the charge sheet is shown as 17.1.1996. In the said charge sheet, it is indicated that the applicant has contravened the provisions of Rule 709 of P&T Manual Volume VI Part III and after putting his forged signatures misappropriated some money orders. It is also indicated in the charge sheet that the applicant remained unauthorizedly absent for the period from 14.9.1991 to 23.5.1995 without any application of leave. As such he has violated the provisions of Rule 92 and 93 of P&T Manual Volume-II. The copy of the inquiry report was served upon the applicant which was received by him on 19.1.1996. But he has failed to submit any of his representation and in the month of March, 1996, the inquiry officer was appointed. The copy of the inquiry report was duly served upon the applicant and he was asked to submit his representation. The applicant submitted his representation on 8.6.1998 in which he has requested for kind consideration. The Disciplinary Authority has also indicated in his order that he has gone through with the charge sheet, inquiry officer report and other relevant documents including the applicant's representation. The misappropriation of government fund by putting forged signatures on the money order is not undisputed. Since the applicant has failed to give any authentic evidence in regard to those money orders and has also not submitted any documentary evidence which may prove that the applicant is innocent as such, the charges levelled against the applicant stand fully proved. Therefore, the disciplinary authority has passed an order of compulsory retirement.

8. Undisputedly, the applicant has submitted an appeal to the  authorities though the appeal is not available on record, though

the Appellate order shows that appeal is dated 31.8.1998. In the appellate order, it is indicated that the applicant forged the signatures of the payees and showed the money orders as paid in the records. In the appellate order, it is also indicated that the grounds taken advanced by the appellant were considered carefully and the appellate authority came to the conclusion that the appellant fail to maintain absolute integrity in the capacity of postman and forged the payment of money orders. Accordingly, the disciplinary authority fixed the responsibility upon the applicant correctly as such, the appeal submitted by the applicant was rejected by the Appellate Authority. Undisputedly, the revision was also filed by the applicant though the said revision petition is not available on record. But the order of the order of the Revisional Authority dated 11th March, 2008 shows that the revision is dated 1.10.1998 and the Revisional Authority has also considered the entire material available on record and has observed that the charged official could not present any evidence to show that the said money orders were paid to the payee only. Hence the charges were found fully proved against the applicant. Accordingly, the revision petition was also rejected by the revisional authority. The applicant through letter dated 26.8.2008 though requested for providing the inquiry report, statement of PWs/DWs, but the bare perusal of the disciplinary authority orders clearly shows that the applicant was duly communicated with the copy of the charge sheet report of the inquiry officer. Needless to say that inquiry officer report, the statement of PWs/DWs must have been recorded though the same is not available on record. Therefore, it appears to be no latches on the part of the respondents in conducting inquiry. The violation of provision of Rule 709 of P&T Manual Volume VI Part III, is also established by the inquiry officer and the applicant also

remained unauthorisedly absent for the period from 14.9.1991 to 23.5.1995 in an unauthorized manner. The provision of Rule 709 of P&T Manual Volume VI Part III is reads as under:-

“709. Responsibility for correct delivery of articles and payment of money orders. –(1) Postmen are responsible for the correct delivery of all articles and the correct payment of all money orders entrusted to them. In all cases of doubt, the postman must satisfy himself as to the addressee’s or payee’s identity by making proper enquiries before delivering the article or paying the money order.”

Copy of the charge sheet was served upon the applicant, but he has not submitted any reply though the applicant has submitted the reply to the inquiry officer’s report which was considered by the Disciplinary Authority as such, it cannot be said that the applicant was not given full opportunity of hearing as indicated above, the applicant has also remained unauthorizedly absent for a period about more than 3 ½ years.

9. 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.”**

As stated above it is now well settled the scope of judicial review in a disciplinary matter is very limited. The Court or Tribunal can interfere only if there is a violation of principles of natural justice or if there is violation of any statutory rules or if it is a case of no evidence. **The Tribunal or the Court cannot sit as an appellate authority as observed by the Hon’ble Apex Court in the case of State of Uttar Pradesh v. Raj Kishore Yadav reported in 2006(5) SCC 673.**

10 The Hon'ble Apex Court in the case of B.C. Chaturvedi v. U.O.I. & 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."**

10. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited.

11. In the case of State of Rajasthan v. 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 v. Union of India 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 has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for."

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 disciplinary authority was within his right to issue appropriate punishment as he may have deemed fit and proper. 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.

12. In the case of **Mani 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. The Administrative Tribunals are to determine whether relevant evidences were taken into consideration and irrelevant evidences are excluded.

13. In the case of state of **State Bank of India an Others Vs. Ramesh Dinkar Punde** reported in **(2006) 7 SCC 212**, the Hon'ble Apex court has been pleased to observe as under:-

"6. Before we proceed further, we may observe at this stage that it is unfortunate that the High court has acted as an Appellate Authority despite the consistent view taken by this court that the High court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

"Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority."

Further it has been observed by the Hon'ble Apex Court as under:-

"9. It is impermissible for the High Court to re-appreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record."

14. In the case of state of **Union of India vs. Parma Nanda** reported in **(1989) 2 SCC 177**, the Hon'ble Apex court has been pleased to observe as under:-

"27. We must unequivocally state that the jurisdiction of th Tribunal to interfere with the disciplinary matters or punishment cannot be

equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

15. Further 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.”

16. Not only this, it is such a proposition that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. 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.

17. As observed by the Hon'ble Apex 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."

18. The applicant fail to make out any shortfalls in the enquiry proceeding, as such, it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the relevant facts.

19. 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

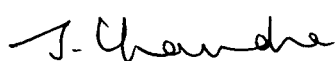
particularly when the appellate authority has exercised its

power lawfully. 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 can not be faulted with the procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. It is undisputedly that the judicial review is always directed not against the decision but is confined to the examination of the decision making process.


20. 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.

21. Considering the law laid down by the Apex Court as well as the arguments advanced by the learned counsel for the parties, and also after perusal of the record, we do not find any reason to interfere in the present O.A. Accordingly, the O.A. is dismissed.

No orders as to costs.



(Ms. Jayati Chadra)
Member (A)


(Navneet Kumar)
Member (J)