

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 85/2009

Reserved on 23.7.2014

Pronounced on 04/08/2014

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

Ahmad Ali aged about 61 years son of late Mohammad Ali resident of village and post – Saraura Kalan, District- Sitapur.

- 1/1. Fatima Bano w/o late Ahmad Ali.
 - 1/2. Mohammad Ahmad son of late Ahmad Ali.
 - 1/3. Mohammad Asif son of late Ahmad Ali
 - 1/4. Mohammad Arshad son of late Ahmad Ali.
 - 1/5. Mohammad Afjal son of late Ahmat Ali
- (All resident of village and post – Saraura Kalan, District- Sitapur.)

By Advocate: Sri Pradeep Kumar Singh

Applicants

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communication, Govt. of India, Dak bhawan, New Delhi.
2. Chief Post Master General, U.P.Circle, lucknow.
3. Director, Postal Services, Office of Chief Post Master General, U.P. Circle, lucknow.
4. Superintendent of Post Offices, Sitapur.

By Advocate: Sri G.K.Singh

Respondents

ORDER

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

The present O.A. is preferred by the applicant under section 19 of the AT Act with the following reliefs:-

- A. The Hon'ble Tribunal may graciously be pleased to quash/ set aside the orders dated 4.12.2008 , 25.4.2007 and 31.8.2006 passed by respondent No. 2,3 and 4 respectively contained in Annexures No.1,2 and 3.
- B. The Hon'ble Tribunal may graciously be pleased to issue an order or direction to the respondents to reinstate the applicant in service with all consequential benefits.
- C. Any such other order or direction which this Hon'ble Tribunal may deem just and proper in the circumstances of the case.
- D. Allow this original application with costs.

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2. The brief facts of the case are that the deceased applicant was working with the respondents organization and was confirmed on the post and continued for a period of 30 years. The applicant was issued a charge sheet dated 29.7.2005 and in pursuance to the said, the applicant submitted reply and enquiry officer submitted the enquiry report on 10.7.2006 and through enquiry report, it is indicated by the enquiry officer that though the charges levelled against the applicant are proved but no Govt. loss has taken place and since the matter pertains to 5 years old and looking to the service rendered by the applicant, he is entitled for sympathetic consideration. The applicant submitted the reply to the enquiry officer's report and categorically pointed out that he has not misappropriated any funds as such, he may be paraded where as the disciplinary authority has passed an order of dismissal. The applicant preferred the appeal. The said appeal of the applicant was rejected. Subsequently, the applicant preferred the revision and the revision has also been rejected by the authorities, through order dated 31.8.2006, 25.4.2007 and 4.12.2008 respectively. Feeling aggrieved by the said orders, the applicant preferred the present O.A.

3. During the course of arguments, it is indicted by the applicant that an incident took place in 2001 and the charge sheet was served upon the applicant in 2005 and as per the incident, it is mentioned that he has taken Rs. 2000/- from one Ram Sajivan for issuing Kisan Vikas Patra and has also not issued any valid receipt as such he has misappropriated sum of Rs. 2000/-. Along with charge sheet, list of witnesses, list of documents were also mentioned. The applicant has also demanded certain documents, such as complaint through which charge sheet was issued and has categorically pointed out that the enquiry officer has fairly mentioned in his report that the documents so demanded cannot be made available to the applicant. Not only this,

✓ it is also indicated by the applicant that fair and proper enquiry has not been conducted by the enquiry officer as such this original application requires interference by the Tribunal and in he has also relied upon decision of Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. Union of India and others reported in (1995) 6 Supreme Court Cases, 749** and a decision of Hon'ble High Court in the case of **Smt. Aamina Vs. Nagar Palika Parishad , Pratapgarh and others reported in 2012 (30) LCD 1676** and has pointed out that the decision of the authority must be on some evidence and apart from this, it is also argued on behalf of the applicant that the punishment so imposed by the authorities is disproportionate to the misconduct , if any committed by the deceased applicant. Needless to say that after the death of the applicant, legal heirs of the deceased applicant preferred a substitution application which was allowed and necessary amendments were incorporated. Not only this, the learned counsel for applicant has also pointed out that the revisional authority rejected the revision of the applicant after exercising the provision of CCS (CCA) Rules, whereas the deceased applicant belongs to Postal Department, as such GDS (Conduct and Employment) Rules, 2001 is applicable in the case of deceased applicant.

4. Learned counsel appearing on behalf of the respondents filed their reply and through reply it is indicated by the respondents that there is no procedural lapse in conducting the enquiry. The applicant has accepted sum of Rs. 2000/- from one Ram Sajeewan but he neither issued receipt to the investor nor incorporated the said amount in Govt. account on 9.10.2001, as such the applicant was proceeded under Rule 10 of GDS (Conduct and Employment) Rules 2001 for violation of Rule 154 of B.O. Rules and the charged sheet was issued on 29.7.2005. Subsequently, after the due enquiry, he was dismissed from service. The appeal preferred by the applicant was also rejected and revisionary authority also rejected the revision of the applicant. The main ground

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taken by the respondents that after accepting an amount of Rs. 2000/- the applicant has issued a plain receipt to Ram Sajeevan. It is also indicated by the respondents that when the complaint was received, the enquiry was proceeded and after the full fledged enquiry, the applicant was punished, as such there is no lapse in conducting the enquiry and no interference is required by this Tribunal.

5. Learned counsel appearing on behalf of the applicant has also filed Rejoinder Reply and through rejoinder reply, mostly the averments made in the Original Application are reiterated and denied the contents made in the counter reply. It is once again submitted by the applicant that applicant was not given the copy of the complaint and has also indicated that the amount was received by the applicant from Sri Ram Sajeevan, which was subsequently adjusted and the applicant has also issued Kisan Vikas Patra and has also paid the interest to Ram Sajeevan, the alleged complainant.

6. On behalf of the respondents, Supple. Counter Reply is filed. No new facts were brought on record. Only the earlier facts made in the counter reply are reiterated.

7. Undisputedly, the applicant has also filed Supple. Rejoinder reply and through which, no new facts were brought on record and only the earlier facts are reiterated.

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

9. The deceased applicant was initially appointed in the respondents organization as Extra Departmental Branch post Master in 1975 and after serving for a subsequent period of time, he was charge sheeted through charge sheet dated 29.7.2005. It is alleged that he has accepted Rs. 2000/- from Sri Ram Sajeevan son of Sri Jagganath Prasad for issuing Kisan Vikas Patra and without issuing proper receipt, he has just given a receipt on plain paper, as such he has violated Rule 154 of B.O. Rules. It is also indicated in the charge

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sheet that the said amount was received by the applicant on 9.10.2001 and as such the applicant has misappropriated that money. Along with the charge sheet, the list of witnesses and list of documents are mentioned, through which it is indicated that the statement of Ram Sajeeval has taken into consideration. The applicant, thereafter, submitted a reply and indicted therein that the amount was received by him is not an internal correspondents but it was only a personal transaction and action of the respondents for putting him off from duty is unjustified. Subsequently, the enquiry officer was appointed. The applicant has also asked for certain documents and the enquiry officer in his enquiry report has categorically pointed out that the documents so demanded, could not be made available to the applicant. Not only this, it is also mentioned in the enquiry report that presenting officer has informed that complainant i.e. Ram Sajeewan has not given any written complaint. He has only given a oral statement only. Apart from this, it is also indicated by the enquiry officer in his enquiry report that presenting officer has also informed that any claim of complainant for Rs. 2000/- has not been received nor any such claim is pending before the authorities. The enquiry officer, though finally in his report has come to the conclusion that though the applicant has already issued the Kisan Vikas Patra of Rs. 2000/- and has also paid Rs. 300/- as interest, as such the charges leveled against the applicant stands proved. Apart from this, he has also indicated that no loss has been caused to the Govt. and the present matter is five years old and the applicant has served for about 30 years in the Department, as such a sympathetic consideration may be made against the applicant. The deceased applicant has also submitted representation to the enquiry officer's report and finally the disciplinary authority imposed the penalty upon the applicant. The appeal so submitted by the applicant was also rejected by the appellate authority whereas the revisionary authority instead of exercising his jurisdiction under GDS (Conduct

and Employment)Rules, 2001, exercised his jurisdiction under CCS (CCA) Rules and rejected the revision of the applicant.

10. Undisputedly, the applicant has demanded certain documents which were not provided to the applicant. The complaint so mentioned in the charge sheet, is not available on record, neither in the report of the enquiry officer, it is mentioned. As observed by the Hon'ble Apex Court in the case of **State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772,** "the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him."

11. The Hon'ble High Court in the case of Smt. Aamina Vs. Nagar Palika Parishad (supra), has relied upon the decision of Hon'ble Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank and others reported in (2009) 1 Supreme Court Cases (L&S) 398** and has been pleased to observe as under:-

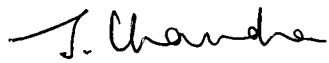
"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

12. It is also to be pointed out that the amount received is not a loss to the Govt. excheque and the amount so received was subsequently adjusted and the applicant has also issued Kisan Vikas Patra and has

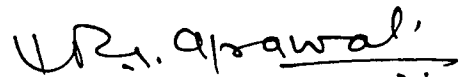
also paid interest of Rs. 300/- to Ram Sajeevan. As such, order of dismissal is not justified.

13. Accordingly, we are of the considered view and also keeping in view the unblemished carrier of applicant of 30 years, the impugned order dated, 31.8.2006, 25.4.2007 and 4.12.2008 as contained in Annexure Nos. 1,2 and 3 are liable to be quashed and are accordingly quashed and the legal heirs of the applicant are entitled to the consequential benefits.

13. With the above observations, O.A. is allowed. No order as to costs.



(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-