

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 89/2009

This the th27 day of January, 2014

Hon'ble Sri Navneet Kumar , Member (J)

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

Prem Narain Sinha aged about 59 years son of Sri Lakshmi Narain Sinha resident of 18/3, P&T Colony, Sector 'K' Aliganj, Lucknow.

Applicant

By Advocate: Sri J.K.Sinha

Versus

1. Union of India through Secretary, Department of Post.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director, Postal Services, U.P. Circle, Lucknow-226001.
4. Senior Superintendent of Post Offices, Lucknow Division, Lucknow.

Respondents

By Advocate: Sri S.K.Singh

(Reserved on 18.12.2013)


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:-

- i) It is ,therefore, most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 19.9.2007 passed by the Opposite party No. 4 and the impugned order dated 15.1.2009 passed by Opposite party No. 3 contained in Annexure No. 6 and 2 respectively.
- ii) That this Hon'ble Tribunal may further be pleased to command the opposite party no. 4 to conclude the enquiry initiated against the applicant within the specified period provided by this Hon'ble Tribunal.
- iii) That this Hon'ble Tribunal may kindly be pleased to issue any further order or direction which may deem fit and proper in the circumstances of the case.
- iv) The original application may kindly be allowed with costs in favour of the applicant.

2. The brief facts of the case are that the applicant is presently posted in the respondents organization and is aggrieved by the punishment order whereby an order of reduction by three stages from Rs. 7550 to Rs. 7100 in the time scale of Rs. 5000-8000/- for the period of 2 years is imposed by the Senior Superintendent of Post Offices, Lucknow Division, Lucknow vide memo dated 19.9.2007. The applicant submitted that he has preferred an appeal against the punishment order and pendency of the said appeal, for such a long time had become legal impediment for not considering the promotion while the applicant become entitled for promotion in the month of July 2005 on the post of Post Master, whereas the juniors to the applicant were given promotion. It is also submitted by the learned counsel for the applicant that one Jhagroo Prasad who was punished, was promoted directly to the post of Higher Selection Grade I. The applicant, who was placed under suspension vide order dated 4.2.2005 in contemplation of an enquiry which was later on revoked after a period of 13 months. The learned counsel for the applicant has also pointed out that subsequently without adopting full-fledged enquiry, the applicant was awarded major penalty of reduction by three stages in the time scale of pay for a period of two years vide order w.e.f 19.9.2007. It is also pointed out by the learned counsel for the applicant that during the pendency of appeal, the O.P. No. 3 proposed to enhance the penalty of reduction from three stages to five stages in the time scale for a period of two years w.e.f. 19.9.2007 vide order dated 4.2.2008. The applicant submitted his representation, but instated of considering and deciding the same, the O.P. No. 3 again served the memo dated 6.6.2008. The applicant again submitted representation dated 24.6.2008 but without considering the said representation, the penalty through memo dated 6.6.2008 was passed and also dismissed the appeal vide order dated 15.1.2009. Feeling aggrieved by the communication of the respondents, the applicant preferred the present O.A.



3. The learned counsel appearing on behalf of the respondents field their reply and through reply , it was pointed out by the respondents that applicant while working as Assistant Post Master , Lucknow Chowk Head Quarter, opened a S.B. Account No. 658213 in his name and deposited Rs. 500/- on 24.5.2004 and he was given a cheque book. Subsequently another cheque book was issued to the applicant on 27.5.2004 and the applicant made an withdrawal of Rs. 400/- on 28.8.2004 from his account and subsequently, he has again withdrew Rs. 40,000/- on different dates from the same account. The applicant was charged for violation of Rule 3 (1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964 and an enquiry under rule 14 of CCS (CCA) Rules, 1965 was set up for probing the charges against the applicant. Subsequently, after completion of enquiry, it has been decided to impose punishment of reduction of 5 stages for a period of 2 years was passed. The applicant preferred an appeal against the order of disciplinary authority. The said appeal of the applicant was also rejected after considering all the material available on record. The learned counsel appearing on behalf of the respondents has categorically pointed out that the punishment awarded to the applicant was only after following full procedure of Rule 14 of CCS (CCA) Rules, 1965 and there is no illegality in conducting the enquiry. Apart from this, it is also pointed out by the respondents that applicant being a responsible Govt. servant is not expected to commit fraud in matters of transactions of Saving Bank Accounts including that in his own name and since the applicant has committed grave misconduct and failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant, as such the punishment was awarded against the applicant. Not only this, learned counsel for respondents also taken us to the enquiry report and through enquiry report, it was pointed out that the charged official along with his defence assistant participated in the entire enquiry and the charged official was given



due opportunity to submit his defense. Not only this, defense statement given by the charge official as well as the defense assistant was also considered by the enquiry officer and after considering all the aspects of the matter, the disciplinary authority passed the order. As such, it is pointed out by the respondents that there is no illegality in conducting the enquiry, therefore, the present O.A. is liable to be dismissed out rightly.

4. Learned counsel appearing on behalf of the applicant has filed the Rejoinder Reply and through Rejoinder Reply, the averments made in the O.A. are reiterated. It is once again pointed out by the learned counsel for the applicant that neither the applicant has committed any misconduct nor has made any violation of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964. It is also pointed out that the enquiry has not been properly conducted and rejection of appeal by the appellate authority is also a non-speaking order and the same was rejected without considering the legal points raised in the appeal and moreover it is surprising that out of two charges, one charge was not proved and the other was also partially proved, then how even after awarding major punishment what was the occasion and justification to enhance the penalty.

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

6. Admittedly the applicant was working with the respondents organization and was charge sheeted . As per the said charge sheet, it is pointed out that while the applicant was working as APM, Lucknow Chowk, Lucknow opened a S.B. Account No. 658213 in his own name at Lucknow Chowk Head Office and initially deposited Rs. 500/- on 24.5.2004. He was issued a cheque book No. 046721 to 046740 and subsequently another cheque was issued containing cheque No. 046961 to 046980 on 27.5.2004 without exhausting any leaf of previous cheque book. The applicant used the subsequent cheque book


and withdrawn Rs. 400/- on 28.8.2004 from his S.B.Account from the subsequent cheque book and thereafter he has again issued 4 cheques of Rs. 10,000/- each on 8.9.2004, 20.9.2004, 28.10.2004 and 5.11.2004. It is also pointed out by the respondents that by virtue of this and as per the details of the transactions made by the applicant which caused the minus balance to the tune of Rs. 39900/-, as such it is clear case of fraudulent withdrawal without having balance at the credit in his SB Account No. 658213. On the basis of this, it is pointed out by the respondents in the charge sheet that the applicant has committed a grave misconduct and thereby failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming a Govt. servant as required to him under provisions of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964. Along with the charge sheet, the imputation of misconduct and misbehavior as well as list of documents was also enclosed. The enquiry officer was appointed and the applicant has also given the detailed reply/ representation to the enquiry officer and after the said reply by the charged official, the enquiry officer conducted the enquiry and the enquiry officer submitted the detailed enquiry report vide enquiry reported dated 15.12.2006. The enquiry officer in his enquiry report has categorically pointed out that the charged officer was given full opportunity to submit his explanation and he has participated in the entire enquiry. After the receipt of the enquiry officer's report, the disciplinary authority has passed an order and while passing the order, the disciplinary authority observed as under:-

"I, Priti Agarwal, Sr. Supdt. of Post Offices, Lucknow Division Lucknow ordered that the pay of Sri P.N. Sinha be reduced by three stages from Rs. 7550 to 7100/- in the time scale of pay of Rs. 5000-150-8000 for the period of two years. It will not effect the future entitlement of employee."

7. The said punishment order was passed by the disciplinary authority on 19.9.2007. Against the said punishment order, the applicant preferred an appeal on 23.10.2007 and when he has submitted appeal to the appellate authority, the appellate authority i.e. Director Postal Services passed an order on 14.2.2008 , disagreeing with the punishment imposed upon the applicant and issued a notice upon the applicant for enhancing of the penalty from three stages to five stages and the applicant was also asked to submit his representation if any, against the proposed revised penalty. The applicant submitted the representation as well. After the submissions of the representation, the Director Postal Services passed an order as under:-


“Now, therefore, the undersigned proposes to enhance penalty as “Reduction by 5 stages from Rs. 7550/- to rs. 6800/- in the time scale of Rs. 5000-150-8000/- for a period of two years w.e.f.19.9.2007.It is further directed that he will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay. Instead of “Reduction by five stages from 7550/- to 7100 in the time scale of pay of Rs. 5000-150-8000 for the period of two years. It will not effect the future entitlement of employee.”

8. Against the said enhanced penalty, the applicant again submitted a representation on 24.6.2008. Initially, the applicant was imposed a penalty of reduction by three stages from Rs. 7550 to 7100/- which was subsequently enhanced to five stages from Rs. 7550/- to Rs. 6800/- for a period of two years w.e.f. 19.7.2007. The question also requires determination is that before passing an order of penalty, whether the full fledged enquiry was conducted by the authorities or



not. It is evidently clear that the applicant was served with the charge sheet and after service of the charge sheet, applicant also filed reply against the charge sheet and after that enquiry officer has conducted the detailed enquiry and submitted the detailed enquiry report to the disciplinary authority and in the enquiry report, it is evidently clear that applicant was given full opportunity to participate in the enquiry along with his defense witness. The witnesses and documents were also examined both by the enquiry officer as well as the charged official. After the said enquiry, the disciplinary authority has passed an order of reduction by three stages which was subsequently, enhanced to five stages and the applicant also submitted the appeal and the said appeal was also rejected by the authorities. It is also to be pointed out that before enhancement of punishment, the applicant was given due opportunity and his reply was also duly considered.

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 can interfere only if there is violation of principles of natural justice or if there is a violation of statutory rules or it is a case of no evidence. The applicant could not point out that any provisions of the principles of natural justice have been violated. Neither any ground of non-supply of relied upon documents is taken by the applicant, as such, this Tribunal can only look into that to what extent it can go into the scope of judicial review in the matter of disciplinary proceedings. 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. The**



Hon'ble Apex Court has been further pleased to observe as under:-

“4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is nothing but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service.”

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.”

11. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and 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.”

12. 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.

13. 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.

14. The Hon’ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai** reported in **(2009) 13 SCC 469** has held that Courts are not for interfering with dismissal order passed against respondent employee and it has further been observed by the Hon’ble Apex Court observed as follows:-


“4. A memo of charges dated 23.12.1997 was drawn up, the charge memo was sent to the respondent by registered post at his home address. The respondent did not respond to the charges leveled and the charge memo was sent back undelivered. An enquiry officer was appointed and after issuance of notice to the respondent to appear before him on 26.1.1998 along with his written statement, reminder was sent to him on 10.2.1998. As the respondent did not respond to the notices issued, an order was passed ex parte.

12. The factual scenario shows that ample opportunities have been given to the respondent in order to enable him to effectively participate in the proceeding. He has failed to avail those opportunities. That being so the Division Bench of the High Court ought not to have interfered with the order of the learned Single Judge which according to us is irreversible. The appeal is therefore allowed and the impugned judgment is set aside.”

15. The applicant must indicate the shortfalls in the enquiry proceeding and submit the same to the disciplinary authority and in case it is submitted, it is expected that the disciplinary authority will consider the procedural lapses if any and take a decision , as such it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the representations of the applicants. In the instant case, due process is followed in conducting the enquiry.

16. Considering the submissions of the learned counsel for the parties as well as observations of the Hon'ble Apex Court, we do not find any justification to interfere in the present case.

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


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER(J)

HLS/-