

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No. 128 of 2009
Order Reserved on 3.2.2015**

Order Pronounced on 18/02/15

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Guru Dutt Ram Shukla aged about 55 years son of Sri Raja Ram Pyare Lal resident of Village and Post Sultanpur Khera District Raebareli.

Applicant

By Advocate Sri R.S. Gupta

Versus

1. Union of India through the Secretary Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Director of Postal Services, Office of Chief P. M. G. U.P. Lucknow.
3. Superintendant of Post Offices, Raebareli.

By Advocate Sri Praveen Kumar for 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 the punishment order dated 21/28.4.1997 as contained in Annexure No. 1A and the appellate order dated 2.1.2009 as contained in Annexure No. 1 dismissing the applicant from service.

(ii) To restore the applicant as E.D.B.P.M Sultanpur Khera with all consequential benefits including pay etc assuming as if he

✓ was on duty from the date of dismissal to the date of dismissal to the date of restoration to the post.

(iii) To any other relief which this Hon'ble court deems just and proper be also passed.

(iv) To award the costs of the O.A. in favour of the applicant.

2. The brief facts of the case are that the applicant joined the postal department as EDBPM, in June 1981 and in 1995 he was put up from duty and subsequently he was served with a charge sheet under Rule 8 of the EDAs (Conduct and Service) Rules 1964. The inquiry officer was appointed and the services of the applicant was dismissed. The applicant preferred the appeal and the appeal so preferred by the applicant was also rejected as such, the applicant preferred the present O.A. The learned counsel for the applicant has categorically indicated that the complainant was supposed to appear before the inquiry officer but in the entire inquiry report, it is not clear whether the complainant appeared before the inquiry officer or not and he was examined or not. Not only this the applicant has also taken a ground that applicant was not given an opportunity of hearing and the entire proceedings is bad in the eyes of law and is liable to be interfered with.

3. On behalf of the respondents, detailed counter reply is filed and through counter reply, it is categorically indicated that there is no procedural lapses in conducting the inquiry.

The applicant while working in the respondents organization found involved in misappropriation of government fund as

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✓ such violated the Rule 131 and 174 of Branch Post Master Rules as such, the punishment is imposed upon the applicant which is not liable to be interfered with. The learned counsel for the respondents has also relied upon the decision of the Hon'ble Apex Court in the case of B. C. Chaturvedi Vs. U.O.I. reported in 1995 (6) SCC 749 and has indicated that no interference is called for in regard to disciplinary proceedings as there is no procedural irregularity.

4. On behalf of the applicant, rejoinder is filed and mostly the averments made in the O.A. are reiterated and contents of the counter reply are denied. Apart from this, the learned counsel for the applicant has also vehemently argued that the entire story is false fabricated and based on the incorrect facts and the applicant is entitled for 25% subsistence allowance /ex-gratia payment during first 90 days of suspension/put off duty and thereafter 50% of the pay and allowances.

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

6. The applicant was working with the respondents organization was charge sheeted on account of misappropriation of government funds. Along with the charge sheet, the statement of imputation and list of documents are also mentioned. The respondents while issuing the charge sheet, categorically indicated that the applicant was involved in misappropriation of the government funds and an inquiry was conducted and the case of embezzlement came into light.

✓ As such, the action against the Branch Post Master i.e. the

applicant is taken under Rule 56 of Post and Telegraph Manual Volume III. Therefore the applicant was proceeded under Rule 8 of EDAs (Conduct & Service) Rules 1964 vide memo dated 26.2.1996. It is also to be pointed out that the applicant had misappropriated a sum of Rs. 40,782/- during the period 13.11.1990 to 26.6.1995. After service of the charge sheet, the inquiry officer was appointed and the inquiry was conducted and the inquiry officer submitted the report to the disciplinary authority and the disciplinary authority after considering the entire material available on record passed the orders of dismissal from service. The applicant preferred an appeal and appeal also got decided. The applicant preferred O.A. and the Tribunal directed the respondents to consider the applicant's appeal within the reasonable period of time which was decided by the respondents and the appellate authority passed an order on 2.1.2009.

7. The bare reading of the inquiry report, it is clear to the extent that the applicant was given due opportunity of hearing and he was also given a chance to participate in the inquiry and entire documents and witnesses were examined. As such it cannot be said that the inquiry officer has conducted ex-parte inquiry.

8. The copy of the inquiry report was also served upon the applicant to which the applicant also submitted the reply and only after submission of the same, the disciplinary authority, passed the orders of dismissal. As such it is explicitly clear that there is no violation of principles of natural justice.

As regard, summoning of the complainant is concerned, the entire proceedings does not shows that the same is based on any complaint, it was only on the basis of malfunctioning by the applicant as such, the inquiry was conducted therefore summoning of any complaints does not arise.

9. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. G. Annadurai reported in 2010 (1) SCC (L&S) 278**, the Hon'ble Apex Court has been pleased to observe as under:-

“5. Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved.

10. As observed by the Hon'ble Apex Court in the case of **State of Bikaner Vs. Nami Chand Nalwa reported in 2011 (4) SCC, 584**, the scope of judicial review in functioning of disciplinary authority is hardly called for. The Hon'ble Apex Court further observed as under:-

“7. When a court is considering whether punishment of termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts)

without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

9. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him. “

11. As observed by the Hon'ble Apex Court in the case of **B.C. Chaturvedi vs. U.O.I. & ors. (Supra)** has been pleased to observe that “the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence.”

12. 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. The Hon'ble Apex Court has been pleased to observe as under:-

“In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.”

13. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. Sardar Pahadur** reported in 1972 4 SCC-618

“A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.”

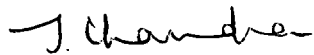
In the case of **Regional Manager, U.P. SRTC Vs. Hoti Lal** reported in (2003) 3 SCC 605, the Hon'ble Apex Court as held as under:—

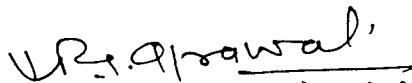
“If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable.”

14. In the case of **Ishwar Chandra Jayaswal vs. Union of India and Ors** reported in (2014) 2 SCC 748, the Hon'ble Apex Court has been pleased to observe that judicial interference when permissible on ground of reiterated, the test is whether conscience of Court is shocked as to the severity or inappropriateness of the punishment imposed.

15. Considering the observations of the Hon'ble Apex Court and the argument advanced by the learned counsel for the parties and also on the basis of records, we are not inclined to interfere in the present original application.

16. Accordingly, O.A. is dismissed. No costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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