

Central Administrative Tribunal, Lucknow Bench, Lucknow
O.A. No. 5/2010

Reserved on 4.9.2014

Pronounced on 17/09/2014

Hon'ble Sri Navneet Kumar, Member (J)

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

Ajay Kumar II aged about 36 years son of Sri Shiv Ram r/o Gram Rajapur, Post Kaimahara, District- Kheri working as Postal Assistant , Golagokarnnath, presently working at Head Post Office, Kheri.

Applicant

By Advocate: Sri Amit Verma for Sri A.Moin

Versus

1. Union of India through Secretary, Ministry of Post, Dak Bhawan, New Delhi.
2. Director, Postal Services, Bareilly Region, Bareilly.
3. Superintendent of Post Offices, Kheri Division, Kheri.

Respondents

By Advocate: Sri N.H. Khan

ORDER

By Sri Navneet Kumar, Member (J)

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

- a) to quash the impugned order dated 13.8.2009 passed by the respondent No. 2 as contained in Annexure A-1 to the O.A. with consequential benefits.
- b) to quash the impugned order dated 26.6.2008 passed by respondent No. 3 as contained in Annexure No. 2 to the O.A. with all consequential benefits.
- c) to direct the respondents to pay the cost of this application.
- d) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant while working with the respondents organization, a charge sheet is issued. Along with the charge sheet, list of witnesses and documents were enclosed. After the service of the charge sheet, the inquiry officer was appointed and inquiry officer subsequently submitted his report and on the basis of

inquiry report, punishment was imposed on the applicant for reduction in rank vide order dated 26.6.2008. The applicant submitted appeal and the appeal so submitted by the applicant was also dismissed by the appellate authority and has also enhanced the punishment from 18 months to 3 years. Learned counsel appearing on behalf of the applicant has argued that the complainant so mentioned in the list of documents, namely Sri Anil Kumar Gupta has not appeared before the inquiry officer for cross examination, as such the entire inquiry is bad in the eyes of law and is liable to be quashed. Learned counsel for applicant has also relied upon a decision of this Tribunal passed in O.A. No.130/2008 (Krishna Kumar Vs. Union of India and others) which was subsequently affirmed by the Hon'ble High Court and has also indicated that the said judgment is based on a point that notice to the complainant was served by registered post but the complainant did not appear before the inquiry officer and the inquiry officer without considering this fact, proceeded with the inquiry and found the applicant guilty of the offence. As such, the Tribunal quashed the order of punishment imposed upon the applicant which was confirmed by the Hon'ble High Court.

3. Sri N.H. Khan, learned counsel for respondents indicated that he has already filed reply and has indicated that applicant while working as Postal Assistant, on 30.6.2004, certain irregularities were committed and accordingly charge sheet was issued upon the applicant. The applicant was given full opportunity to participate in the inquiry and after that inquiry officer has submitted its report. Not only this, the appeal so submitted by the applicant was also considered by the appellate authority and there is no illegality in conducting the inquiry, as such the punishment imposed upon the applicant does not require any interference by the Tribunal. Accordingly, the O.A. is liable to be dismissed out rightly.

4. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder reply, mostly the averments made in the O.A. are reiterated

and denied the contents of the counter reply. It is once again submitted by the applicant that in the appeal, the applicant has categorically indicated that the complainant did not appear before the inquiry officer despite he was asked to appear before the inquiry officer on number of times, as such, the charges leveled against the applicant based on the said complaint does not require any action and the applicant is liable to be exonerated. But despite that the appellate authority has not considered the same and confirm the order passed by the disciplinary authority.

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

6. The applicant was working with the respondents organization and was charge sheeted vide charge sheet dated 19.12.2006. Inquiry officer has given his report on 14.4.2008 wherein it is categorically indicated by the inquiry officer that one Anil Kumar Gupta, whose name finds place at Sl. No. 13 in the list of witness, the complainant, was asked to appear before the inquiry officer on 23.11.2007, 28.12.2007, 12.1.2008 and 8.2.2008. Apart from this, he was also intimated over his mobile phone but he failed to appear before the inquiry officer and conclusion is being drawn on the basis of statement given by the complainant dated 31.8.2006 and finally came to the conclusion that the charges leveled against the applicant stands proved. The copy of the said inquiry report was duly submitted to the disciplinary authority and disciplinary authority through order dated 26.6.2008 passed punishment of reduction in rank by five stages for a period of 18 months. The applicant thereafter submitted the appeal to the appellate authority and in the appeal applicant has again categorically indicated that the complainant was asked to appear before the inquiry officer but he did not appear and on the basis of statement given by the complainant himself, inquiry officer came to the conclusion that the charges leveled against the applicant stands proved. The appellate authority thereafter considered the appeal of

applicant and modified the punishment from 18 months to 3 years vide order dated 13.8.2009. Feeling aggrieved by the said order, the applicant preferred the present O.A.

7. The main contention of the applicant is that despite repeated reminders, the complainant failed to appear before the inquiry officer and inquiry officer proceeded with the inquiry without examining the complainant which is gross violation of principles of natural justice.

8. It is true that in the disciplinary proceedings, technical rules of evidence are not applicable and court cannot enquire the correctness of findings in a disciplinary proceedings. Similarly, standard of prove in criminal cases vis-à-vis departmental proceedings is different.

9. In fact the case of **Roop Singh Negi Vs. Punjab National Bank and others reported in (2009) 2 Supreme Court Cass , 570** is one of the leading cases on the matters of departmental enquiry wherein several decisions of the Hon'ble Apex Court have been considered comprehensively. In para 16, one of such decision in the case of **Union of India Vs. H.C. Goel reported in (1964) 4 SCR 718** has been referred, wherein it was laid down that the court can and must enquire whether there is any evidence at all in support of impugned conclusion and if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved. This approach will avoid weighing the evidence. Applying this test, the Hon'ble Court opined that the order of dismissal in that case was not justified because the finding in respect of relevant charge was based on no evidence.

10. It is a case of no evidence and the enquiry officer arrived at his findings against the principle of natural justice and fair play. In the case of **Kuldeep Singh Vs. Commissioner of Police and others reported in (1999) 2 SCC page 10**, cited on behalf of the applicant, it was held that judicial review is not totally barred. Although finding of guilt would not be normally interfered with but the court can interfere

if the same is based on no evidence (as in the present case) or is such

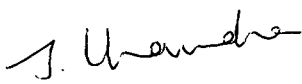
which could not be reached by any ordinary prudent man or is perverse or is made at the dictates of superior authority.

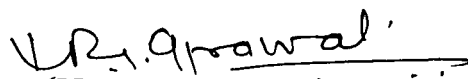
11. If a thorough examination is done to the appellate order, it is undisputedly clear that the appellate authority has not considered this fact that the complainant on the basis of whose complaint, the charge sheet was issued was present in the enquiry proceedings.

12. Learned counsel for the applicant has also indicated this fact that the order passed by this Tribunal in O.A. No. 130/2008 was subsequently challenged before the Hon'ble High Court in writ petition No. 521/2014 and the writ petition preferred by the respondents was dismissed by the Hon'ble High Court.

12. While considering the statement made by the learned counsel for parties and also perusal of records, it is clear that the impugned orders suffers from the infirmities and we found no occasion to defer with the earlier order passed by this Tribunal. Accordingly, interference is required by this Tribunal in the present O.A.

13. Accordingly, O.A. is allowed. Impugned orders dated 26.6.2008 and 13.8.2009 as contained in Annexure No.A-2 and A-1 are quashed. The applicant is entitled for all consequential benefits. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-