

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW**

Original Application No. 288 OF 2010

Order Reserved on 6.5.2015

Order Pronounced On 19-05-2015

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

Raghubir Sahai Verma, aged about 66 yers, EDBPM Deokalia (Retd.) R/o Village & Post Deokalia (Sadarpur), District Sitapur.

Applicant

By Advocate Sri R. S. Gupta.

Versus

1. Union of India through the Secretary Department of Posts, Dak Bhawan, New Delhi.
2. DPS (HQ) O/o CPMG UP Lucknow.
3. SPOs Sitapur.
4. Shri M.C. Pandey the then SPOs Sitapur.

Respondents

By Advocate Sri Praveen Kumar for Sri G. K. Singh.

ORDER

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:-

- (a) That this Hon'ble Tribunal may kindly be pleased to quash the order dated 22.6.2009 as contained in Annexure Nos. A-1 with all consequential service benefits including full pay and allowances along with interest @ 24 % on all arrears.
- (b) Any other relief deemed just and proper in the circumstances of the case.
- (c) Allow OA with cost.

2. The brief facts of the case are that the applicant was working with the respondents organization and was charge sheeted in the year 2007. The learned counsel for applicant has categorically indicated that an ex-parte enquiry was conducted and he was not

provided with the copy of the enquiry report. It is indicated that in the absence of service of any charge sheet or enquiry report, the punishment so awarded to the applicant is illegal, as such the same requires interference by this Tribunal. Apart from this, the applicant has also submitted the appeal and appeal so submitted by the applicant was also decided by the appellate authority by means of detailed order upholding the punishment so awarded to the applicant. The learned counsel for applicant has categorically indicated that neither the copy of the charge sheet nor the copy of enquiry officer's report is served upon the applicant and without holding proper enquiry, the punishment is awarded to the applicant as such the same is illegal and liable to be quashed by the Tribunal.

3. On behalf of the respondents, detailed reply is filed through which it is indicated that applicant while working as GDSBPM, absented himself from duty on and from 18.1.2006 and kept the Branch Post Office closed on his own which resulted in paralyzing mail exchange between Biswan and Deokalia BO. The unauthorized absence of the applicant caused trouble and embarrassment for the Department, as such with the help of District Administration, the lock of Deokalia branch office was opened by the committee consisting of SDM, Biswan, C.O. , Biswan and SDI , Biswan and after opening of the branch Post office, cash and postage stamps worth Rs. 11.95 and P.S. Rs. 127.45 were found whereas as per the Branch Office daily account, the balance of cash and postage should have been Rs. 7192.20 therefore, deficit of Rs. 7064.75/- was found. Accordingly, a charge sheet was served upon the applicant for mis-appropriated of amount against which an FIR was also lodged at P.S. Sadarpur by Sri A.P. Asthana, SDI , Biswan under case Crime No. 145 of 2006.

4. Copy of the charge sheeted was served upon the applicant and after receipt of the copy of the enquiry report, the same was

sent to the applicant on 27.5.2009 which was received by him on 30.5.2009. The applicant has failed to make any representation.


5. Subsequently, the punishment was awarded which was also served upon the applicant on 30.6.2009. The applicant preferred the appeal and the appellate authority after considering the gravity of misconduct, rejected the appeal vide order dated 22.10.2010. Apart from this, after that it is also found that the applicant misappropriated an amount of Rs. 452851.20 from various SB/RD/TD and KVPs, as such the punishment so awarded to the applicant is not against the provisions of law and is based on the misconduct committed by the applicant.

6. Apart from this, learned counsel or the respondents has also relied upon number of decisions of the Hon'ble Apex Court and has indicated that no interference is called for in the matter of disciplinary proceedings, as such the present O.A. is liable to be dismissed out-rightly.

7. On behalf of the applicant, Rejoinder to the short counter reply is filed but no R.A. is filed to the detailed counter reply filed by the respondents, through R.A. to the short CA, applicant reiterated the averments made in the O.A. and denied the contents of the short counter reply.

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

9. The applicant while working with the respondents organisation was charge sheeted vide charge sheet dated 30.4.2007, through which the applicant was found absent unauthorisedly and finally with the help of District Administration, the lock of branch post office Deokalia was broken in the present of SDM and other officers and after verification of the post office Rs. 7064.75 is found less in the govt. cash, as such the applicant is found responsible for violating the Rule 03, 52 and 177 of Branch Post office Rules to



which the applicant denied. The charge sheet was served upon the applicant and enquiry officer was appointed and after receipt of the copy of the enquiry report, the same was sent to the applicant on 27.5.2009 which was received by him on 30.5.2009 but the applicant failed to make any representation on the same.

10. Here it is relevant to mention that applicant denies the receipt of the enquiry report and submitted that in the envelop, there was no enquiry report for which he was supposed to protest which has not been done by the applicant.

11. After submissions of the enquiry report, the disciplinary authority awarded the punishment to the applicant of removal from service vide order dated 22.6.2009. The said punishment order was also served upon the applicant on 30.6.2009. The applicant feeling aggrieved by the said punishment order, preferred appeal dated 4.8.2009 which was received in the office of respondents on 19.8.2009.

12. The reading of the appeal shows that the applicant failed to attend the enquiry proceedings on account of non payment of subsistence allowance whereas he has not alleged any where in the entire appeal that he was not served with the copy of the enquiry report, as such he could not submit report before the Disciplinary authority on the enquiry report.

13. Therefore, arguments so advanced by the applicant that the copy of the enquiry report was not served upon him along with letter cannot be accepted and is accordingly rejected.

14. The reading of the order passed by the Disciplinary authority is clear to the extent that each and every aspect of the case has been considered by the disciplinary authority and thereafter, the disciplinary authority has passed the order.

15. The appeal so submitted by the applicant was also considered by the Appellate Authority and Appellate authority has

also dealt with all the grounds taken in the appeal, as such it cannot be said that the appellate authority has also not considered the relevant material available on record, as well as grounds taken in the appeal.

16. Accordingly, it cannot be said that there is any procedural lapse in conducting the enquiry. The applicant was given full opportunity to defend himself but he failed to do so, as such there is no violation of Principle of Natural Justice.

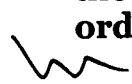
17. In the case of **Regional Manager, UPSRTC Vs. Hoti Lal** reported in (2003) 3 SCC 605, the Hon'ble Apex Court clearly observed as under:-

"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."

18. 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 to 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.”

19. The Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya** reported in **(2011) 4 SCC 584**, has been pleased to observe as under:

“It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings, in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

20. As observed by the Hon'ble Apex Court in the case of **Commandant, 22nd Battalion Vs. Surinder Kumar** reported in **2011 (10) SCC 244**, that “Courts interference is warranted not only when punishment is disproportionate but it should be shockingly disproportionate.”

21. Since the applicant has not stated anywhere in the appeal that he was not served with the copy of charge sheet or copy of enquiry report. Only he has taken a ground that he could not attend the enquiry only on account of non-payment of subsistence allowance, as such proper opportunity was provided to him to defend himself, Therefore, we are inclined to interfere in the present O.A.

22. Accordingly the O.A. is dismissed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)