CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION NO. 541 of 2010

RESERVED ON 22.7.2015.

PRONOUNCED ON. 05/8/2015

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

Udai Narain Singh, aged about 56 years, son of Sri R. L. Singh, Mail Over-Sear, Palia, District-Kheri, presently residing at Gangotri Nagar, District Lakhimpur Kheri.

Applicant

By Advocate Sri Dharmendra Awasthi.

Versus

1. Union of India, through the Secretary, Department of Post Dak Bhawan, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. Director of Postal Services, Bareli.
4. Superintendent of Post Offices, Kheri Division, Kheri.

Respondents

By Advocate Sri Subhash Bisaria

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:

> "(a) To quash the impugned orders dated 5.2.2009 and 19.1.2010 passed by the respondent Nos. 4 and 3 , which are contained as Annexure Nos. 1 and 2 respectively to this original application.
>
> (b) To pass any other suitable order or direction which this Hon'ble Tribunal may deem, fit, just and proper under the circumstances of the case in favour of the applicant.
>
> (c) To allow the present original application of the applicant with costs."

2. The brief facts of the case are that the applicant joined the respondents organization as Extra Departmental Postal P

thereafter promoted to the post of Man Cadre and subsequently posted as Mail Over sear Palia on 3.1.2006. Thereafter, on 1st of July 2006 , the applicant was placed under suspension. Feeling aggrieved by the said order the applicant preferred the O.A. 438 of 2006 in which the Tribunal quashed the charge sheet dated 9.8.2006 as well as the reversion order dated 19.10.2006 and directed the respondents to maintain status quo as on the date of suspension order i.e. 1.7.2006 with all consequential benefits accrued thereon to the applicant. After the said orders were passed, the respondents preferred a writ petition before the Hon'ble High Court. The respondents issued a charge sheet upon the applicant dated 26.7.2007 and finally they passed an order of reduction of pay of two stages from Rs. 9230 to 8690 for 18 months with cumulative effect vide memo dated 5.2.2009. The applicant preferred an appeal and the appellate authority also passed the orders upholding the orders passed by the disciplinary authority. Feeling aggrieved by the action of the respondents, the applicant preferred the present O.A. The learned counsel for the applicant argued that the respondents while issuing the impugned orders, did not consider certain material facts and the same required interference by this Tribunal and the impugned orders are liable to be quashed.

3. On behalf of the respondents, reply as well as supplementary counter reply is filed through which, it is indicated that the applicant while working as Mail over seer at Pallia Sub Division Kheri disobeyed the orders of SDI (P) and refused to deliver 45 letters received on 22.6.2006 from the delivery bags of R. K. Rastogi GDS Mail delivery. As the act of the applicant tarnished the image of the organisation and not only this, he always shows disrespect to the orders of the supervisory

authorities as well as he never discharged his. On the basis of his misconduct, the applicant was served with the memo of charges under Rule 14 of CCS (CCA) Rules 1965 vide memo dated 26.7.2007 and after the appointment of the inquiry officer, he conducted the inquiry and submitted the report to SPOs Kheri. Subsequently, the report of the inquiry officer was sent to the applicant on 5.1.2009 to submit his representation and he submitted his defence and after that the disciplinary authority after going through the entire proceedings, decided the case and awarded punishment of reduction of two stages from Rs. 9230 to 8690 for 18 months with cumulative effect vide memo dated 5.2.2009. The applicant preferred an appeal on 23.6.2009 to the Director Postal Services and the said appeal was also considered and rejected by the authorities. It is also argued that there is no illegality in conducting the inquiry . Apart from this, it is also indicated by the respondents counsel that the applicant has not filed any representation under Rule 29 of CCS(CCA) Rules 1965 and there are certain irregularities committed by the applicant as such, punishment was imposed and since there is no irregularities or infirmity in disciplinary proceedings, as such, it does not require interference by this Tribunal .

4. On behalf of the applicant rejoinder is field and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. Apart from this, it is indicated by the applicant that the revision is not mandatory and he was not given any disagreement note as such, it requires interference by this Tribunal.

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

6. The applicant joined the respondents organization was charge sheeted by charge sheet dated 26.7.2007 through which certain charges were imposed upon the applicant. The said charge sheet consist of Article of charges along with imputation of misconduct and misbehaviour and the list of witnesses and list of documents. After the issuance of the charge sheet, the applicant submitted the reply on 14.11.2008 and thereafter, the inquiry officer conducting the inquiry who submitted his report. The inquiry officer report was sent to the applicant which was received by him through show cause notice dated 5.1.2009 which was received by the applicant on 13.1.2009. The applicant was required to submit the reply.

7. The applicant raised certain objections of biasness and has indicated that since the authorities are biased, therefore, inquiry officer proved all charges against the applicant. It is to be indicated that neither in the reply to the charge sheet nor it is raised by the applicant to the enquiry authorities. The entire documents were placed before the disciplinary authority and the disciplinary authority after due consideration of all the material available on record passed an order of reduction of two stages from Rs. 9230 to 8690 for 18 months with cumulative effect vide memo dated 5.2.2009. The applicant submitted the appeal to the appellate authority against the punishment imposed upon the applicant, but neither in the appeal nor in other objections submitted by the applicants he has raised any ground of biasness . The Appellate Authority also considered the entire material available on record. As such, upholds the order of the disciplinary authority and rejected the appeal of the applicant by means of an order dated 19.1.2010.

8. The allegations of the applicant that the authorities are biased as such, they were bent upon to pass an order. The bare perusal of the entire proceedings does not show that the applicant raised any such objections before the competent authority at any stage.

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 and only if there is violation of statutory rules or it is a case of no evidence. Since the applicant has not alleged any such violation and in fact has challenged the decision of the appeal. It is also settled that the Court or Tribunal cannot sit in appeal over the decision of the disciplinary authority nor can it substitute its view in place of said authority. The applicant also fail to point out that any provisions of the principles of natural justice have been violated. This Tribunal can only look into that to what extent it can go into the scope of judicial review It is once again indicated that it is well settled the scope of judicial review in a disciplinary matter is very limited. 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 Vs. Raj Kishore Yadav reported in 2006 (5) SCC 673**. The Hon'ble Apex Court has been 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 the error of judgment. 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 extra ordinary 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. Union of India & 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 . In this regard, the Hon'ble Apex Court has been pleased to observe as under:-

"The Enquiry Officer submitted his report holding the charges against the appellant to have been proved. After consultation with the UPSC, the appellant was dismissed from service by an order dated 29.10.1986.The Tribunal after appreciating the evidence, upheld all the charges as having been proved but converted the order of dismissal into one of compulsory retirement. The delinquent filed an appeal challenging the finding on merits, and the Union filed an appeal canvassing the jurisdiction of the Tribunal to interfere with the punishment imposed by it. Allowing the appeal of the Union of India and dismissing that of the delinquent.

Per Ramaswamy and Jeevan Reddy, JJ

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

11. In another case the Hon'ble Apex Court in the case of **Union of India Vs. 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 ir-regularity 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. It cannot take over the function of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. 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."

12. Not only this the Hon'ble Apex Court has even pleased to observe 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 Vs. 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 and Others vs. Union of India, (2001) 2 SCC 386 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 any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant materials and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for."

12. In this context, we can usefully refer to B.C. Chaturvedi vs. Union of India and others, (3 Judges) wherein this Court held thus: (AIR p.484)

"Ramaswamy, J for himself and B.P. Reddy, J. - Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal; it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

14. This Court in B.C. Chaturvedi vs. Union of India and others (supra) further held that the Court / Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where findings of disciplinary authority or appellate authority are based on some evidence Court / Tribunal cannot re-appreciate the evidence and substitute its own findings. Observing further, this Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. This Court further held as follows:

When an inquiry is conducted on charges of misconduct by a public servant, the Court / Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court / Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court / Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court / Tribunal may interfere where the authority held that the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court / Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of that case."

15. V. Ramana vs. A.P. SRTC and others (2005) 7 SCC 338(Arijit Pasayat and H.K. Sema, JJ.) the challenge in the above matter is to the legality of the judgment rendered by a Full Bench of the Andhra Pradesh High Court holding that the order of termination passed in the departmental proceedings against the appellant was justified. This Court in para 11 has observed thus:

11. The common thread running through in all these decisions is that the court should not interfere with the

administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

13. Considering the averments made above and on the basis of the observations of the Hon'ble Apex Court and the facts of the case, we are not inclined to interfere in the present original application.

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

J. Chandra

(Ms. Jayati Chandra)
Member (A)

V.R.S. Agrawal

(Navneet Kumar)
Member (J)

vidya