

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No. 388 of 2011

Order Reserved on 27.8.2015

Order Pronounced on 14-09-2015

**HON'BLE MR. NAVNEET KUMAR, MEMBER(J)
HON'BLE MR.O.P.S.MALIK, MEMBER (A)**

Bhikam Swaroop Gangwar, aged about 53 years, son of Late Durga Prasad, resident of R-295/349, Asharfabad, Lucknow.

Applicant

By Advocate Sri Dharmendra Awasthi.

VERSUS

1. Union of India, through the Director General, Post Offices, Ministry of Posts, New Delhi.
2. The Post Master General, Bareilly Division, Bareilly.
3. Director, Postal Services, Bareilly Division, Bareilly.
4. Senior Superintendent of Post Offices, Bareilly Division, Bareilly.
5. Assistant Superintendent of Post Offices, Pilibhit.

Respondents

By Advocate Sri Alok Trivedi.

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) quash the impugned orders dated 27.10.2009 and 15.2.2011 passed by the respondents No. 4 and 3 respectively as contained in Annexure Nos. 1 and 2 respectively to this original application.

(b) Direct the respondents to reinstate the applicant in service with all benefits.

(c) 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.

(d) Allow the present original application of the applicant with costs.”

2. The brief facts of the case are that the applicant was initially appointed in the respondents organisation as EDBPM in 1982. The applicant after being served for a

longer period was served with a charge sheet in 1997. The applicant submitted that the inquiry officer without considering the reply of the applicant, proved the charges against the applicant on the basis of Conjectures and surmises. The report of the inquiry was duly communicated upon the applicant and thereafter, it was submitted to the Disciplinary Authority and the Disciplinary Authority in the year 1999 passed an orders of removal. The applicant thereafter preferred an appeal and appeal so preferred by the applicant was also dismissed/rejected by the appellate authority.

3. The learned counsel for the applicant has categorically indicated that neither complainant appeared before the inquiry officer and even the affidavit so submitted by the applicant were not considered and even the Disciplinary Authority has also not considered the report of the inquiry officer and without discussing the same passed the non speaking order. Apart from this, it is also argued by the learned counsel for the applicant that the Appellate order has also been passed by the Appellate authority without considering the material available on record. As such, it requires interference by this Tribunal.

4. On behalf of the respondents, the detailed reply is filed and through which it is indicated by the respondents that after the receipt of complaint in regard to alleged short payment money of orders, the same was inquired and after due inquiry, it was found that the applicant manipulated the money orders and paid lesser amount to the payees. As such, the charge Sheet is served upon the applicant. The copy of the charge sheet was served upon

the applicant and thereafter, the inquiry officer was appointed . In the meantime, the applicant has filed an O.A. No. 744/1996 before the Allahabad Bench of this Tribunal which was subsequently withdrawn.

5. The Inquiry officer submits his report which was duly communicated upon the applicant to submit his defence representation but the applicant did not submit his defence representation against the inquiry report. Thereafter, the case was placed before the disciplinary authority and the disciplinary authority passed the order of removal . Apart from this, it is also indicated by the respondents that the applicant has not submitted any reply ,but has preferred an O.A. before the Tribunal vide O.A. No. 178 of 2002and the Tribunal decided the O.A. directing the respondents /Appellate Authority to take a decision on the appeal dated 20.4.1999. Accordingly the appeal of the applicant was decided by the Appellate Authority. Apart from this, it is also argued by the respondents that the appeal so submitted by the applicant was also considered and rejected by the Appellate authority.

6. The learned counsel for the respondents has also indicated that there is no procedural irregularities in conduced the inquiry as such, interference by this Tribunal is not called for.

7. As observed by the Hon'ble Apex Court, the Tribunal/Court cannot interfere in respect of where there is no procedural irregularities and the Tribunal cannot assume the rule of Appellate Authority as well.

8. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. Not only this, the respondents have filed a supplementary counter reply and the applicant has also filed supplementary rejoinder affidavit which are also taken on record and perused.

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

10. The applicant was appointed by the respondents. There was a complaint in regard to the short payment of money orders to which a report dated 4.6.1996 was submitted wherein, it was informed that certain money orders were received which were required to be paid, but the applicant did not pay the entire amount and manipulated the public money. After the receipt of investigation report of the ASPOs Pilibhit, the applicant was ordered to be put off from duty vide memo dated 5.6.1996 and as a result of inquiry, it was established that the applicant intentionally cheated the payees.

11. After the memo dated 5.6.1996 which was delivered to the applicant, the applicant did not give the charge of office and the parallel Post Office was opened on 8.6.1996 by handing over charge to Shri Mahesh Chand Gangwar and all the records and stamp/seal etc were still were kept by the applicant himself who intentionally avoids to handover charge to the present incumbent. As a result it was decided to take action against the applicant by SSPOs under Rule 8 of ED (Conduct & Service) Rules 1964 and

accordingly, charge sheet was issued to the applicant dated 2.2.1997.

12. The applicant was provided the copy of the charge sheet and he was required to give the reply to the same. After service of the charge sheet, the inquiry officer was appointed. In the mean time, the applicant filed an O.A. No. 744/1996 before the Allahabad Bench of the Tribunal which was subsequently withdrawn. Thereafter, the inquiry officer submitted the reply vide his letter dated 3.2.1999 which was duly communicated upon the applicant on 4.2.1999 to submit his defence representation, but the applicant did not submit any reply/representation against the inquiry report and thereafter, the Disciplinary Authority passed the orders of removal.

13. The applicant also claims that he has submitted the appeal to the authorities but, he has failed to indicate any particulars about sending of his appeal rather he has not supplied the copy of the appeal to the authorities concerned. The applicant also preferred an O.A. 178/2002 regarding non disposal of his appeal and the Tribunal vide order dated 8.4.2002, directed the authorities i.e. Appellate Authority to take a decision on the appeal dated 30.4.1999 within a period of 6 weeks.

14. The copy of appeal was available on record as Annexure-8 to the O.A., but was not addressed to the proper authority. However, the Appellate Authority decided the appeal vide memo dated 11.6.2002 within the prescribed period and rejected the same.

15. The applicant being aggrieved by the said order dated 11.6.2002, filed another O.A. vide O.A. No. 614 of 2002 which was decided by this Tribunal vide order dated 10.1.2008 with a direction to reconsider the case of the applicant by the Appellate Authority. Applicant thereafter, preferred a contempt petition which was also dismissed by the Tribunal vide order dated 23.12.2008. It is also indicated that the inquiry officer submitted his report dated 5.10.2009. The copy of which was given to the applicant but he fail to submit any representation up to 27.10.2009 and thereafter, the disciplinary authority passed the order of removal dated 27.10.2009 clearly stating that the applicant failed to produce any witness except the affidavit of Shri Om Prakash Rakesh Singh and the Anne Maulana which has no weightage as regard to open inquiry conducted against the applicant. The applicant aggrieved by the said order filed an appeal and also filed O.A. 507 of 2010 and the Tribunal disposed of the aforesaid O.A. at the admission stage itself with a direction to the authorities to decide the appeal of the applicant. Accordingly the appeal of the applicant was decided vide order dated 15.2.2011. Accordingly, the applicant has preferred the present O.A. challenging the order dated 27.10.2009 as well as 15.2.2011.

16. The question which are requires determination at this stage is whether after full fledged inquiry, the case can be interfered with or not. The bare perusal of the order of the Disciplinary Authority in which contents of the charge sheet are reproduced shows that the applicant fail to make payment of full amount of money orders to the payees and he manage and manipulated the public funds and paid

lesser amount of money orders to the payees. The applicant was given an opportunity to participate in the inquiry and he failed to give the reply to the inquiry officers report as also not annexed the copy of the charge sheet as well as reply if any submitted by him. The bare perusal of the inquiry officer report shows that the applicant was given due opportunity to participate in the inquiry and to which he participated as well and only thereafter, the inquiry officers comes to the conclusion that the charge so levelled against the applicant stands proved and the applicant was also provided the copy of the inquiry officer report, but he fail to give any reply to the same as disciplinary authority has no other option except to pass an order of removal from service.

17. 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 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. **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 judgment. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is noting but an 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 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.”

18. 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.”

19. 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.

20. 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."

21. As observed by the Hon'ble Apex Court in the case of **State of Bikaner Vs. Nemi Chand Nalwaya reported in 2011 (4) SCC, 584**, the scope of judicial review in functioning of disciplinary authority is hardly called for.

22. 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."**

23. 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."

24. The Hon'ble Apex Court in another decision of **State of UP v. Saroj Kr. Sinha reported in 2010 (2) SCC 772** has been pleased to observe that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him. In the instant case the entire proceedings were carefully considered by the disciplinary authority and full opportunity was given to the applicant in conducting the enquiry and applicant also failed to give reply to the enquiry officer's report.

25. The Hon'ble Apex Court in the case of **Divisional Controller, Karnataka State Road Transport Corporation Vs. M. G. Vittal Rao reported in (2012) 1 SCC 442** has been pleased to observe as under:

"In case of misconduct of grave nature like corruption or theft, no punishment other than dismissal is appropriate."

The Hon'ble Apex Court in the case of **Bank of India Versus Apurba Kumar Saha reported in 1994 (1) SLR 260** has been pleased to observe as under:-

"The records of the disciplinary proceedings show that the respondents had avoided filing of the written explanation for the charges of misconduct levelled against him and also had for no valid reason refused to participate in the disciplinary proceedings. A Bank employee who had refused to avail of the opportunity provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending conducted against him by the Bank employer had resulted in violation of principles of natural justice of fair hearing."

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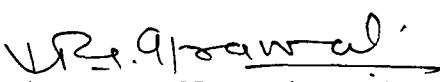
26. The Hon'ble Apex Court in the case of **State Bank of India Vs. Ram Lal Bhaskar and others** reported in (2011) **10 SCC 249** has been pleased to observe as under:

"In a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence."

27. 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.

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


(O.P.S. Malik)
Member (A)


(Navneet Kumar)
Member (J)

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