

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 990/92 /199

Date of Decision: 16-09-1998

A N JOSHI

Petitioner/s

MR. S.P. KULKARNI

Advocate for the  
Petitioner/s

V/s.

U.O.I. & ORS.

Respondent/s

S. S. KARKERA for Mr. P.M. PRADHAN

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Bawa, Member(A)

(1) To be referred to the Reporter or not ? *✓✓*

(2) Whether it needs to be circulated to *✓* other Benches of the Tribunal ?

*Reconsideration*  
V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESOT ROAD, MUMBAI 400001

O.A. No. 990/92

DATED : THIS 16<sup>th</sup> DAY OF SEPTEMBER, 1998

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.  
Hon. Shri D S Beweja, Member(A)

Avdhut Narayanrao Joshi  
Sub Post Master  
P&T Department  
R/a. Near Nandi Mandir  
Brahman Galli  
Kadrabad  
Jalna 431023  
Maharashtra  
(By Adv. Mr. S P Kulkarni)

..Applicant

V/s.

1. The Senior Superintndent  
of Post Offices,  
Aurangabad Division,  
Juna Bazar,  
Aurangabad 431001  
Maharashtra
2. The Regional Director of  
Postal Services  
Aurangabad Division,  
Juna Bazar,  
Aurangabad 431001  
Maharashtra
3. Union of India through  
Member(P)  
Postal Services Board  
Ministry of Communcations  
(Department of Posts)  
Dak Bhavan, Sansad Marg  
New Delhi  
(By Adv. Mr. S S Karkera for  
Mr. P M Pradhan, Central Govt.  
Standing Counsel)

..Respondents

ORDER

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(Per: R G Vaidyanatha, Vice Chairman)

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard Mr. S P Kulkarni, learned counsel for the applicant and Mr. S S Karkera, for Mr. P. M. Pradhan, Counsel on behalf of respondents.

2. The applicant is working as a Sub Post Master in the Postal Department. During 1985-86 a departmental inquiry was instituted against the applicant on four charges. The applicant gave a reply statement denying the allegations. Then inquiry officer was appointed. After recording evidence the inquiry authority gave a report to the effect that Articles of charges 1 to 3 are not proved, but held that charge No.4 was proved. Then the report of the inquiry officer was sent to the applicant asking for his comments. The applicant gave a reply. Then the disciplinary authority viz., Senior Superintendent of Post Offices passed an order dated 25.1.90 holding that all the four charges are proved and disagreed with the finding of the inquiry authority in respect of charges 1 to 3. Then he imposed penalty of reducing the pay of the applicant by five stages for a period of three years and further directed that during this period the applicant shall not earn any increments. Then the applicant challenged the same by preferring an appeal. The Appellate Authority viz., the Post Master General, Aurangabad, by a speaking order dated 4.6.90 confirmed the order of the disciplinary authority as far as the misconduct was concerned, but reduced the penalty to one of reduction of pay by three stages for a period of two years with a further direction that the applicant will not earn any increments during this period. The applicant carried the matter by way of further appeal to the competent authority viz., Member(Personnel), Postal Services Board, New Delhi, who by order dated 27.9.90 confirmed the findings of the lower authorities and



dismissed the appeal. Then the applicant submitted a review petition to the President of India. During the pendency of this application the President has since dismissed the review petition by an order dated 15.6.92. The applicant being aggrieved by the orders of the respective authorities has filed this application challenging the same. He has taken number of grounds in challenging the impugned order. On the other hand the respondents have filed a reply justifying the action taken against the applicant and they have narrated the misconduct of the applicant and supported the orders passed by the respective authorities.

3. At the time of arguments the learned counsel for the applicant raised some of the grounds to challenge the legality or validity of the impugned orders passed by the respondents. We will only refer to those submissions which are made on this behalf by the applicant at the time of arguments.

4. In the first place the learned counsel for the applicant contended that the Senior Superintendent of Post Offices was not the competent disciplinary authority for major penalties though he was a disciplinary authority for minor penalties and further submitted that it is the Director of Postal Services who would be the competent disciplinary authority for major penalties. We had heard the arguments in part on one day and adjourned the matter for further arguments the next day. On the



next date Shri S.P.Kulkarni, the learned counsel for the applicant, with his usual frankness and straightforwardness fairly admitted that as per the amendment the Senior Superintendent of Post Offices was the competent and appropriate disciplinary authority and therefore he is not pressing his earlier contention on this point. Hence we need not consider this point since it is not pressed.

5. It was then argued that no show cause notice was issued to the applicant by the disciplinary authority giving an indication that he would like to disagree with the findings of the inquiry authority and calling upon the applicant to show cause as to why it should not be done. He strongly placed reliance on a decision of the Supreme Court in NARAYAN MISRA Vs. STATE OF ORISSA reported in 1969 SLR 657 where the Supreme Court has observed that if the disciplinary authority wants to disagree with the report of the inquiry authority on the question of exonerating the delinquent officer of certain charges then he must give an opportunity to the delinquent as to why such a course should not be adopted. No doubt this decision supports the contention of the applicant's counsel. But there is a latter judgement of the Supreme Court in 1994 SCC (L&S) 1019 [STATE BANK OF INDIA, BHOPAL Vs. KOSHAL] where a different view has been taken, stating that no such show cause notice or opportunity to be given. It is apparent that there is conflict between the two decisions of the Supreme Court;



a Bench of this Tribunal referred the question to a Larger Bench to decide the question as to which decision of the Supreme Court has to be followed. The Larger bench of the Tribunal vide its decision dated 22.1.1996 in O.A.No. 64/93 had reached the conclusion that there is no such conflict between the two decisions of the Supreme Court and the said judgments operated in different periods of time. It is held that the judgement of the Supreme Court in KOSHAL's case applies to all orders passed between the period from 1.1.1977 to 19.11.1990. In the present case the order of the disciplinary authority was passed on 25.1.90 which comes within the period between 1.1.77 and 19.11.1990 and therefore this case is covered by the judgement of the Supreme Court in KOSHAL's case as held by the Full Bench. In view of the decision of the Full Bench the decision of the Supreme Court in NARAYAN MISRA case will not apply to this case and therefore the argument of the learned counsel for the applicant based on MISRA's case cannot be accepted.

6. In addition to the above reasoning, we are also fortified in our view by a subsequent and a recent judgement of the Supreme Court in the case of STATE OF RAJASTHAN Vs. M.C. SAXENA reported in 1998(1) SC 379. In this case the Supreme Court has clearly ruled that there is no necessity of giving a fresh opportunity or hearing to a delinquent official if the disciplinary authority wants to take a different view disagreeing with



the view taken by the inquiry authority. The only requirement of law, observed the Supreme Court, is that the disciplinary authority should record reasons for differing with the findings of the inquiry authority. In view of this latest judgement of the Apex Court, the argument of the learned counsel for the applicant that the applicant should have been given an opportunity by the disciplinary authority as to why he should not take a different view than the one taken by the inquiry authority is not sustainable. Therefore, the first submission of the applicant's counsel is rejected.

7. The next submission of the learned counsel for the applicant is about the merits of the case. The following articles of charges were framed against the applicant during the inquiry:

ARTICLES OF CHARGES:

"ARTICLE (I):

THAT THE SAID SHRI AWADHUT NARAYAN JOSHI WHILE FUNCTIONING AS SUB POSTMASTER JALNA, MONDHA TSO, DURING THE PERIOD FROM 20.7.82 TO 11.1.86 ALLOWED HIS WIFE AS SMALL SAVINGS AUTHORISED AGENT CONTRAVENING THE PROVISIONS OF RULE 3 OF SAS RULES QUOTED IN DG PO. CIRCULAR NO. 66 DTD. 4.3.60 AMENDED FROM TIME TO TIME AND INSERTED IN CL. XXXI OF SMALL SAVINGS SCHEME PART I AND BY CLAIMING COMMISSION THEREON IN CONTRAVENTION OF RULES 543(9) OF P&T MAN.VOL. VI PART.II.

"ARTICLE (II):

THAT DURING THE AFORESAID PERIOD AND WHILE FUNCTIONING IN THE AFORESAID OFFICE THE SAID SHRI AWADHUT NARAYAN JOSHI ACCEPTED THE AMOUNT OF Rs.1000 FROM SHRI B.S.BHOSALE TOWARDS PURCHASE OF 6 NSS No.E/6-334893 ON 4.X.85 AND Rs.1300 FROM REPRESENTATIVE OF



SHRI SURESHCHAND PANNALAL JAIN TOWARDS PURCHASE OF 3 XIX YEAR NSCs OF RS.100 DN. AND 2 OF RS.500 DN. ON BEHALF OF SHRI SURESHCHAND PANNALAL JAIN R/O. JALNA AT COUNTER AND SHOWN THEM TO HAVE PURCHASED THROUGH AN AUTHORISED SMT. S.P. KULKARNI & CONTRAVENED THEREBY THE PROVISIONS OF RULE 543(8)(A) AND (D) OF P&T MAN. VOL.VI PART II & RULE 3(1)(ii) OF CCS (CONDUCT) RULES, 1964.

"ARTICLE (III):

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THAT DURING THE AFORESAID PERIOD AND WHILE FUNCTIONING IN THE AFORESAID OFFICE THE SAID AWADHUT NARAYAN JOSHI TEMPORARILY MISAPPROPRIATED THE AMOUNT OF REBATE OF RS.40/- BY RECOVERING EXCESS FROM THE DEPOSITOR OF RD A/C.NO. 421457 STANDING OPEN AT JALNA MONDHA TSO. FOR A PERIOD OF 6.1.86 TO 10.1.86 ON WHICH THE AMOUNT STANDS PAID BY HIM TO THE AGENT SHRI SHANKARRAO BHIMRAO DESHMUKH SAVINGS AGENT JALNA FOR PAYMENT TO THE DEPOSITOR. THUS THE PROVISIONS OF RULE 4 OF FAB.VOL.IV RULE 502 OF P&T MAN.VOL. VI PART II & RULE 8 OF PO. RD RULES 1981 IS CONTRAVENED BY THE SAID SHRI A.N.JOHSI.

"ARTICLE (IV):

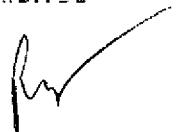
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THAT DURING THE AFORESAID PERIOD & WHILE FUNCTIONING IN THE AFORESAID OFFICE THE SAID SHRI AWADHUT NARAYAN JOSHI MISBEHAVED ARROGANTLY & DISCOURTEOUSLY WITH SHRI S.B.DESHMUKH, THE MEMBER OF PUBLIC WHILE DEALING AT THE COUNTER ON 9.1.86 BY CONTRAVENING THE PROVISIONS OF RULE 3(1)(iii) OF CCS (CONDUCT) RULES, 1964."

Seven witnesses were examined by the prosecution. The applicant examined himself in support of his case and he did not examine any defence witnesses. The inquiry authority has by some process of reasoning held that Articles 1, 2 and 3 are not proved. He held that Article 4 of the charges was proved. The disciplinary authority by a very detailed order

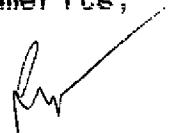
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considered the entire evidence and disagreed with the finding of the inquiry officer on the first three charges. Then we find that the appellate authority and the revisional authority have also considered the case of the applicant in respect of charges and by a speaking order they have rejected the contentions of the applicant and confirmed the orders of the disciplinary authority regarding all the four charges. There cannot be any dispute that the disciplinary authority is not bound by the report or finding of the inquiry authority and he has jurisdiction and power to take his own view and disagree with the findings of the inquiry authority. In this case the disciplinary authority has given cogent reasons as to why the charges 1, 2 and 3 are also proved. Though we have heard the learned counsel for the applicant on merits of the charges, we are not persuaded to hold that the finding of the disciplinary authority is perverse or bad in law. As far as charge 4 is concerned there is concurrent finding right from inquiry officer, to revisional authority and it is duly proved. We aren't sitting in appeal over the orders of domestic enquiry. We are only exercising a judicial review which is limited to decision making process and not the actual decision. It is not open for the Tribunal to reappreciate the evidence and take a different view as we cannot reappreciate the evidence and take a different view even if another view is possible based on material on record. There are number of recent decisions of the Apex Court on this point. We will only refer to the latest judgements



which are 1998(1) SC SLJ 78 [UNION OF INDIA VS. A. NAGAMALLESHWAR RAO]; 1998(1) SC SLJ 74 [UNION OF INDIA & ORS. VS. B.K. SRIVASTAVA] wherein the Supreme Court has held that the Tribunals cannot sit in appeal over the orders of the domestic tribunal and cannot reappreciate evidence as an appellate court.

8. Even otherwise to satisfy our conscience we have considered the submission of the applicant's counsel and perused the evidence on record and find that the finding of the disciplinary authority on charges 1 to 3 are also fully justified and based on proper appreciation of evidence on record. In fact most of the facts are not in dispute at all. We just illustrate charge no.1 which pertains applicant's wife getting agency for Small Savings which was illegal. A relative of employee of a Postal Department cannot get such a licence as per rules. The fact that the applicant's wife was a licensed agent is not disputed, that she is the wife of the Postal employee is not in dispute. Therefore, the disciplinary authority has considered the circumstances and came to the conclusion that the applicant or his wife should have brought to the notice of the Collector, that she is the wife of postal employee. In our view the disciplinary authority by a very elaborate order rightly held that even charges 1 to 3 are proved. We do not find any illegality or infirmity in the findings of the disciplinary authority, which are duly confirmed by the appellate and revisional authorities. Hence on merits, the applicant has no case.



9. The only other submission made by the learned counsel for the applicant is that the sentence is excessive or disproportionate to the charges. He placed reliance on a recent judgement of the Apex Court reported in 1998(2) AISLJ 87 [COLOUR-CHEM LTD. Vs. A.L. ALASPURKAR & ORS.]. That was a case under the Industrial Disputes Act. The question was about unfair labour practice under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The misconduct alleged against the delinquent official in that case was that they were found sleeping when the machines were on. On holding departmental inquiry they were held to be guilty and dismissed from service. The Supreme Court observed that in the facts and circumstances of that case it was a shockingly disproportionate penalty and therefore interfered on the question of punishment. On facts such a decision will not have any bearing on the facts of the present case, but on the principle of law we agree that if the penalty is shockingly disproportionate to the misconduct then the Tribunal can interfere either directly by substituting appropriate penalty or by remanding the matter to the disciplinary authority to give a lesser penalty.

10. In the present case there are four charges against the applicant. We have already seen that the first charge was that he has allowed his wife to become a small savings agent which was not permissible in law being a wife of Postal employee. The second charge was that the



applicant had allowed his wife to draw commission in respect of savings transaction of one Mr. Bhosale, though his wife was not engaged by the customer as his agent, the third charge was that the applicant had temporarily misappropriated or unauthorisedly kept Rs.40/- which was due to some other National Small Savings Agent and the fourth charge was that the applicant misbehaved rudely with a small savings agent S.B. Deshmukh at the counter and during the working hours. The ultimate punishment imposed by the appellate authority on the representation of the applicant is deduction of pay by three stages for a period of two years. It cannot be said that this penalty is grossly disproportionate so as to shock the conscience of this Tribunal warranting in interference. Hence on facts we do not find that any case is made out for interference on the quantum of penalty.

11. Mr. S P Kulkarni made a submission that there is some confusion in the imposition or enforcement of the penalty which has affected the applicant with disadvantage. He, therefore, submits that a clarification may be made as to how penalty should be interpreted or enforced by the authorities.

12. The order of the disciplinary authority is that the applicant's pay is reduced by five stages from Rs.1680/- to Rs.1480/- in the present grade for a period of three years with effect from 1.2.1990 and further during this

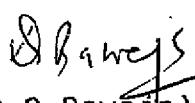


period he will not earn any increments, but without any cumulative effect. The above penalty was modified and reduced by the appellate authority by reducing the penalty to reduction of pay by three stages for a period of two years and during this period the applicant will not earn any increment.

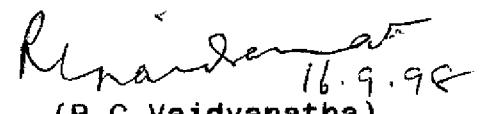
13. Now by reading the order of the disciplinary authority as modified by the order of the appellate authority, the penalty will now be reducing the pay of the applicant by three stages i.e., from Rs. 1680/- to 1560/- for a period of two years with effect from 1.2.90 and during these two years the applicant will not earn any increment. That means the applicant will get basic pay of Rs.1560/- only for two years which means from 1.2.90 to 31.1.1992. The applicant will not get any increments during this period of two years. Therefore, the applicant will not get his increment that was due on 1.2.1990 or that was due on 1.2.91. Therefore the applicant will get back his increments on 1.2.1992 and further his pay will be restored to basic pay of Rs.1680 with increments that were due to him on 1.2.1990 and 1.2.1991 which means that the applicant's basic pay will be restored back at Rs. 1680/- and also <sup>he will</sup> get two increments which were due on 1.2.90 and 1.2.91 as on 1.2.1992. We feel this clarification is sufficient so that the appropriate authority may regularise the pay of the applicant and pay the arrears, if any, due.

for

14. In the result the application is dismissed, but subject to the clarification regarding the penalty as mentioned in para 13 above. The respondents are directed to make payment of whatever arrears is due to the applicant in pursuance of the clarification made above within a period of three months from the date of receipt of this order.

  
(D S Baweja)

Member(A)

  
16.9.98  
(R G Vaidyanatha)

Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 03/99 IN O.A. NO.: 990/92.

Dated this Friday, the 4th day of June, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.  
HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

A. N. Joshi ... Applicant  
(By Advocate Shri S. P. Kulkarni)

VERSUS

Union Of India & 2 Others ... Respondents.  
(By Advocate Shri S. S. Karkera  
for Shri P. M. Pradhan)

OPEN COURT ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is a review petition filed by the applicant against our judgement dated 16.09.1998. The only grievance made out by the applicant was that the view taken by this Tribunal that in the case of disagreement between the Disciplinary Authority and the Inquiry Officer there is no necessity to issue a fresh notice to the applicant, is not correct in view of the decision of the Supreme Court reported in 1998(2) SC SLJ 117 [Punjab National Bank & Ors. V/s. Sh. Kunj Behari Misra]. Therefore, the applicant wants that in view of this later judgement of the Supreme Court, the order of the Tribunal should be reviewed. The Learned Counsel for the respondents says that an order cannot be reviewed only on the ground that there is a subsequent judgement of the Supreme Court. We have heard both Counsels.

2. This Tribunal by relying on the judgement of the Supreme Court in the case of State of Rajasthan V/s. M. C. Saxena reported in 1998(1) SC SLJ 379 held that there is no necessity for the Disciplinary Authority to issue a notice to the delinquent official about his intended disagreement with the findings of the Inquiry Officer and then after getting reply to the show cause notice to pass an order. Thereby, relying upon the judgement of the Supreme Court in M.C. Saxena's case we have taken that view. It may be that subsequently the Supreme Court has reversed its earlier judgement in Saxena's case in the latest judgement in Punjab National Bank's case mentioned above. That fact by itself is not a sufficient ground for seeking review of our order.

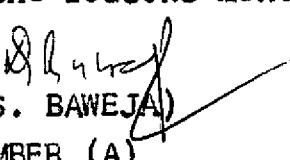
3. There is one more fact which may be mentioned. We have gone through the merits of the case and found that there is sufficient evidence on record to show and prove the misconduct of the applicant. That finding of the fact cannot be argued <sup>in</sup> this review petition since no apparent error has been brought on record and not even alleged. Therefore, our finding that the charge has been proved against the applicant and there is sufficient evidence, cannot now be altered by filing a review petition on a legal ground. Even if we now remand the matter to the Disciplinary Authority to issue a show cause notice to the applicant and then pass an order in view of the judgement of the Apex Court in Punjab National Bank's case, it will not help the applicant in any way, since our findings that misconduct has been proved against the applicant cannot be <sup>altered</sup> ~~a~~ subject now by <sup>this</sup> that process.

If the applicant is aggrieved by the order of the Tribunal, he has separate remedies and certainly not by way of review petition.

Alternatively, we may point out that the Inquiry Officer, though he exonerated the applicant in respect of charges I to III, he held that the Charge No. IV is proved. Hence, there is concurrent finding as far as Charge No. IV is concerned right from the Inquiry Officer to the Appellate Authority. Even if for a moment it is held that finding regarding charges I to III is not sustainable in view of the law declared by the Apex Court in the case of Punjab National Banks' case referred to above, the concurrent finding of Charge No. IV is itself sufficient to non-suit the applicant since the punishment is a minor punishment of reduction of pay to three stages only for a period of two years and that too without cumulative effect. Hence, no useful purpose will be served in reviewing the matter and remanding the matter to the Disciplinary Authority to pass fresh order regarding charges I to III after giving notice to the applicant.

For the above reasons we hold that Review Petition is not maintainable and liable to be rejected.

4. Accordingly, the review petition is rejected for the reasons mentioned above. No order as to costs.

  
(D. S. BAWEJA)

MEMBER (A).

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.