IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP: NAGPUR

Original Application No: 1179/93.

Date of Decision: MARCH 10th, 1998.

N. S. Kamble, ... Applicant.

Mr. K. Swaminathan, ... Advocate for Applicant.

Versus

Union Of India & Others, ... Respondent(s)

Shri R. S. Sunderam, ... Advocate for Respondent(s)

CORAM:

Hon'ble Shri. JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

Hon'ble Shri. M. R. KOLHATKAR, MEMBER (A).

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

(2) Whether it needs to be circulated to other Benches of the Tribunal? NO

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP: NAGPUR

ORIGINAL APPLICATION NO.: 1179/93.

~~Dated~~ This Pronounced the 10th day of March, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

N. S. Kamble,
Ex-Sorting Assistant,
R. M.S.,
R.P. Division,
Nagpur
(By Advocate Mr. K. Swaminathan) ... Applicant

VERSUS

1. Superintendent,
R. M.S., R.P. Division,
Raipur.

2. Shri S. K. Jugnar,
(Inquiry Officer),
C/o. Director of Postal Services,
Raipur Region,
Raipur.

3. Director of Postal Services,
Raipur Region,
Department of Posts,
Raipur.

4. Postmaster General,
Raipur Region,
Department of Posts,
Raipur.

5. Union Of India through
The Secretary,
Department of Posts &
Telegraphs,
Central Secretariat,
New Delhi.

.. Respondents.

(By Advocate Shri R.S. Sunderam)

: ORDER :

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

...2

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant was working as a Sorting Assistant in the R.M.S. Service of the Postal Department in 1983. He had to travel alongwith other members of his staff in the R.M.S. Compartment attached to the train. On 03.11.1983 and 05.11.19983 the applicant and other members of the R.M.S. staff travelled in the mail van in the train and the allegation is that, they had tampered insured letter nos. 762 and 997 and two more insured packets. The insured packet no. 762 had been booked at M.A. Marg Post office, Bombay, by one Shri Moinuddin Quadar of Bombay and addressed to one Shri Mohd. Ashraf Gori of Bhilai. The packet was insured for Rs. 2,400/- and it was booked on 01.11.1983. Article No. 997 was booked on 02.11.1983 by one Shri Sukul Lohar from Bansberia Bazar Post Office at Hooghly and addressed to Smt. Bindo Bai Lohar at Raipur District and the insured value was Rs. 300/-. At the place of destination, the two packets were found to be tampered with and contents were missing, namely - Rs. 1,500/- from packet No. 762 and Rs. 200/- from Packet No. 997. Then, a preliminary departmental enquiry was held, which indicated that the members of the staff of the R.M.S. who were on duty on that day were responsible

...3

for this tampering and mis-appropriation of the amount. On the basis of the preliminary enquiry, four officials including the applicant, came to be suspended and they were charged for different misconduct and irregularities. The main charge as against the applicant is that, he had tampered with the two insured articles and removed the contents of Rs. 1,500/- from one packet and Rs. 200/- from the other. There is also an allegation about tampering of two more packets but at the time of preliminary enquiry, the department had not come to know as to what exactly the amount missing from those two packets. Therefore, the enquiry was confined only to tampering and removal of Rs. 1,700/- from these two packets. There is also a further allegation that the applicant and other delinquents had consumed liquor in the R.M.S. van on that day. There is also an allegation that other delinquents had suppressed some material facts which pertained to the applicant in the preliminary enquiry. On these basis, charge-sheet was issued against four officials - B. D. Dongarwar, Head-Sorting Assistant, Shri N.S. Kamble, Sorting Assistant and who is the applicant before us, Shri B.W. Surpam, Mail Man, and Shri B. B. Potdar, Mail Man.

The applicant and the other three delinquents engaged defence assistants to defend themselves and filed their written defence denying the allegations.

Then, a joint enquiry was done from the stage of framing charges and till furnishing of copies and inspection of documents, etc. but recording of

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evidence was done individually against each delinquent.

As far as the case against the applicant is concerned, five prosecution witnesses were examined, including two of the four delinquents.

After appreciating evidences, the Inquiry Officer who was an Assistant Superintendent of Post Office, held that the applicant is responsible for tampering with the two insured packets and took away an amount of Rs. 1,700/- from those two packets. The applicant was exonerated regarding the charge of consuming liquor on duty. We are not concerned with the findings of the Inquiry Officer regarding the other three delinquents.

3. The enquiry report was submitted to the Disciplinary Authority, namely - the Director of Postal Services. A copy of the enquiry report was sent to the applicant for his comments. The applicant gave a detailed representation against the report of the inquiring authority. Then, on considering the evidence recorded by the Inquiring Authority and the enquiry report and the applicant's representation, the Disciplinary Authority held that the charges are proved against the applicant and held him guilty and imposed the punishment of removal from service as per his order dated 08.06.1990.

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The applicant challenged the same by preferring an appeal before the Appellate Authority, namely the Post Master General. After considering the appeal grounds and the entire materials on record, the Appellate Authority also passed a speaking order agreeing with the findings of the enquiring authority and the Disciplinary Authority and held that the charge is proved against the applicant and confirmed the punishment imposed by the Disciplinary Authority and dismissed the appeal by his order dated 10.03.1992.

4. Being aggreived by the report of the Inquiry Authority and the orders of the Disciplinary Authority and the Appellate Authority, the applicant has preferred this application before this Tribunal under Section 19 of the Administrative Tribunals Act. His case is that, he is innocent and he has been falsely implicated and wrongly found guilty by the authorities. It is also stated that he is prejudiced, since the applicant was not furnished certain documents and there was no proper enquiry and the applicant was not furnished with the deposition of witnesses recorded against the co-delinquents. It is also his case that the findings recorded by the authorities are not warranted from the evidence on record.

The respondents have filed a reply mentioning all the facts and supporting the orders of the respective authorities.

4. The Learned Counsel for the applicant took us through the materials on record and filed written

../6

submissions also and contended that the enquiry is vitiated, since certain documents were not furnished to the applicant. It was further submitted that the depositions of the order sheets in respect of co-delinquents were not furnished to the applicant and that evidence has been used against the applicant and, therefore, it has caused prejudice to the applicant. It was also argued that there is no sufficient material for issuing charge-sheet against the applicant. Then, on merits, it was contended that the evidence on record is not sufficient to prove the charges against the applicant. While supporting the findings of the respective authorities, the Learned Counsel for the respondents contended that the scope of judicial review is very limited and this Tribunal cannot re-appreciate the evidence as an Appellate Court.

5. The Learned Counsel for the applicant contended that the daily report and some documents asked for by the applicant was not produced inspite of his request. This point has been considered by all the three authorities and they have rejected it on the ground that the documents are not relevant and that no prejudice is caused to the applicant. The Learned Counsel for the applicant was not able to convince us about the relevancy of the documents and as to what prejudice is caused to the applicant by not producing the daily report or some other documents which he wanted. The whole case against the applicant depends upon the circumstantial evidences brought out in the inquiry and the conduct of the applicant. If that part of the prosecution case is

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believed, then the charge is proved against the applicant. Therefore, the question whether the daily report contained the entry that there was tampering or not, etc. are wholly irrelevant for deciding the case. The fact that the two insured covers had been tampered with, is not in dispute. The two insured packets when delivered were found tampered with at the stage of delivery and on complaint by the addressee that open delivery was given and missing of the amount was noted. The question is, as to who is the author of tampering and removal of amount. If the evidence produced by the prosecution is sufficient to connect the applicant with the tampering, then he has to suffer for the same and non-production of daily report or some other document would be wholly irrelevant. If however, the prosecution has failed to prove the case against the applicant, then the applicant is entitled to exoneration of the charges, irrespective of the production of those documents or not. Therefore, in the facts and circumstances of this case, the non-production of some documents sought for by the applicant, have no connection for proving or disproving the case against the applicant and the respective authorites have rightly held that the documents are not relevant and even otherwise, it is not shown as to what prejudice is caused to the applicant as a result of non-production of those documents.

6. The only other legal contention urged by the Learned Counsel for the applicant is that, upto a certain stage, joint enquiry was conducted against all

...8

the four delinquents, but recording of evidence of each charge against each delinquent was held separately. Some of the co-delinquents were examined as witnesses for prosecution against another co-delinquent. The argument is that the statement of witnesses recorded in co-delinquent's case was not furnished to the applicant. We have gone through the entire record. For example, for the charges against the first delinquent, B.D. Dongarwar, five witnesses were examined, including the applicant. That means, the applicant and Shri B.B. Potdar, who were co-delinquents were examined as prosecution witnesses 1 and 2 for proving the charges against B. D. Dongarwar and again three more witnesses were examined as Prosecution Witnesses 3, 4 and 5 to prove the charges against B. D. Dongarwar. The argument is that, the copies of the statements of these five witnesses, including the applicant, who were examined to prove the charges against Dongarwar, should have been furnished to the applicant, since the portion of that statement has been used against the present applicant while discussing the case against him. In the light of the arguments addressed by the Learned Counsel for the applicant, we have gone through the case papers and we find that the enquiry authority has separately discussed the evidence of witnesses pertaining to charges against each delinquent. For example, he considered the said five witnesses as against B. D. Dongarwar and recording the findings as to what charges are proved against him. Then he took up the case of the applicant. He referred to five witnesses, including B. D. Dongarwar

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and B. B. Potdar, who were examined to prove charges against the applicant. He discussed the evidence and recorded the findings that one charge is proved against the applicant. Then he took up the case against B. B. Potdar and discussed the evidences against him and recorded findings. Then he took up the case against the last delinquent and discussed the evidence against him and gave his findings. The enquiry authority has never used the evidence against other delinquents as evidence against the applicant. Therefore, the question of furnishing the deposition of these witnesses examined against the co-delinquents to the applicant does not arise. The applicant is entitled to know as to what evidence is adduced against him. He is not concerned about the evidences let in against other delinquents when the enquiry against the co-delinquents was done separately and that evidence have not been used against the applicant.

7. Now the only point that remains is about the case against the applicant on merits. The contention of the applicant is that, there is no sufficient evidence to connect him with the incident in question. There is some reference to the discrepancy in statements and reliability of the witnesses who were examined against the applicant. In our view, the scope of judicial review in a matter like this is very limited. There are recently number of judgements of the Supreme Court where it has been clearly held that the High Court or Tribunal cannot sit in appeal over the decision of the Disciplinary Authority or the Appellate Authority. The scope of

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judicial review is expanded only to consider any defect in the decision-making process and not in the decision itself. It is not necessary to refer to all the decisions of the Supreme Court on this point. We refer only to two recent judgements on this point.

In 1998 (1) SC SLJ 74 (Union Of India & Others V/s. B. K. Srivastava) the Bench of this Tribunal at Allahabad had set aside the findings of the Disciplinary Authority by re-appreciating the evidences. The Supreme Court allowed the appeal and set aside the order of the Tribunal. In para 6, the Supreme Court observed that the Tribunal was not right in its approach and it has acted more as a court of appeal which it was not entitled to do so. In para 7 at page 78, the Supreme Court again observed as below :

> "The Tribunal could not sit in appeal against the orders of the Disciplinary and Appellate Authorities in exercise of its power of judicial review."

Again in para 8 it has observed as follows :-

> "There has been lawful exercise of power by the Disciplinary and Appellate Authorities. There has been no abuse of power. In these circumstances, the Tribunal should have stayed its hands. It is no part of the function of the Tribunal to substitute its own decision when enquiry is held in accordance with rules and punishment is imposed by the authorities considering all the relevant circumstances and which it is entitled to impose."

In another recent judgement in 1998 (1) SC SLJ 78 (Union Of India & Others V/s. A. Nagamalleshwar Rao (the Supreme Court has again reiterated the principles that the approach of the Tribunal in interfering with the orders of the Disciplinary Authority was erroneous, as it had proceeded to examine the matter as if it was hearing an appeal. In the last part of para 5 at page 80, it is observed as follows :-

> "It is really surprising that inspite of the clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the Inquiry Officer as if it was a court of appeal."

We, therefore, see that the latest view of the Supreme Court on the point is that the Tribunal in matters like this, cannot sit in appeal over the findings of the Disciplinary Authority or Appellate Authority and it cannot re-appreciate evidence and substitute its own findings in the place of the findings of the Competent Authority.

8. In view of the law stated above, we cannot accept the contention of the Learned Counsel for the applicant on the merits of the case. The Inquiry Authority has written a very lengthy order discussing the entire evidence against the applicant and held that the charge of tampering is proved. The Appellate Authority again by a reasoned lengthy order

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confirmed the finding of the Inquiry Authority and met all the contentions taken by the applicant in his representation. Then further, the Appellate Authority has also by a length speaking order considered all the contentions of the applicant in the appeal memo and considered the evidence and confirmed the finding of guilt and the punishment imposed against the applicant. That means, there is concurrent findings by three authorities on a question of fact, namely - whether the applicant tampered with the two insured covers and extracted the amount of Rs. 1,700/- from the covers. There is some evidences on record to substantiate this allegaion. The authorities have considered the entire evidence and the contentions of the applicant and recorded concurrent findingsof fact against the applicant. It is not for this Tribunal to again re-appreciate the evidence and find out whether there is sufficient evidence or not and then come to a different conclusion that the charge is not proved. Then, once we have rejected the legal contentions raised by the Learned Counsel for the applicant, then nothing survives, since the Tribunal cannot sit in appeal over the findingsof facts recorded concurrently by all the three authorities.

9. The Learned Counsel for the applicant then contended that there is no valid evidence. In our view, in a matter like this, about tampering an insured packet and taking away the amount, there cannot be any direct evidence. Nobody will tamper a document or remove the amount in the presence of other persons.

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It ia always a case of circumstantial evidence and conduct of parties.

It is an admitted case that only four departmental people were concerned with the R.M.S. Van. As far as sorting is concerned, there are only two persons who can do that, namely - B. D. Dongarwar and the applicant. The applicant has admitted that he had handled one insured cover but denies handling another insured cover. There was statement of B. D. Dongarwar that all the covers, including the two insured covers were handled by the applicant, therefore, the applicant had time and opportunity to meddle with the two insured covers. Then there is the statements of three to four witnesses who say that the applicant had got down in a particular railway station and his movement was suspicious and after he came back to the compartment, on suspicion, his muffler tied to the neck was removed by B. D. Dongarwar forcibly when notes of denomination of Rs. 100/- amounting to Rs. 2,000/- fell down. This is a most unusual conduct on the part of the applicant in keeping notes hidden under the muffler which covered his neck. Further, he was having a hand-bag which contained small cloth pieces which gave an indication about tampering the insured packet. Then further, there is statement of one or two witnesses who travelled in that compartment, that the applicant threatened to jump from the moving train but he was prevented. Then another important circumstance

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found against the applicant is that, on being questioned by the official superior, B. D. Dongarwar, the applicant wrote in his handwriting and gave a slip stating that this amount of Rs. 2,000/- which was with him, belonged to one Mr. Gangaprasad, Accountant of the Postal Department, who had given it to him for depositing in some co-operative society. But Mr. Gangaprasad's evidence has been recorded who has denied having paid any amount to the applicant for depositing in the Co-Operative Society. Now, the version of the applicant is that the contents of the chit is not proved and he wrote it at the dictation of B. D. Dongarwar. The authorities have considered the evidence and accepted the statement of prosecution witnesses and rejected the version of the applicant that the chit was written at the dictation of B. D. Dongarwar. The question whether the evidence of Prosecution witnesses 1 to 5 should be believed or not, whether the statement of the applicant should be accepted or not are in the realm of appreciation of evidence. The three authorities have given good reasons to accept the evidence of prosecution witnesses 1 to 5 and to reject the version of the applicant. We are not expected to re-appreciate the evidence and take a different view, even if another view is plausible.

10. We find that there is some evidence, which is believed, is sufficient to connect the applicant with the tampering of insured cover and removal of amount. The evidence has been accepted by all the three authorities

...15

There are no legal infirmities and no violation of principles of natural justice in conducting the enquiry. Hence, we do not find any ground to interfere with the findings of the respective authorities. Hence there is no merit in the application and it has to fail.

11. In the result, the application is dismissed. In the circumstances of the case, there will be no order as to costs.

(M. R. KOLHATKAR)
MEMBER (A).

10/3/98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD,MUMBAI:1

Review Petition No.20/99 in
Original Application No.1179/93.

Monday the 7th day of June 1999.

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

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

M.S. Kamble. ... Applicant.

By Advocate Shri K. Swaminathan.

V/s.

Union of India and others. ... Respondents.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is a Review Petition filed by the applicant to review the order of the Tribunal dated 10.3.1998 to which one of us was a party (Shri R.G.Vaidyanatha.) We have heard the counsel for the applicant in support of the Review Petition and M.P. for condoning delay in filing Review Petition.

2. After hearing the learned counsel for the applicant and on perusal of the allegation in the Review Petition we find that the Review Petition is more in the nature of an appeal. It is not in the form of review at all. It is not the case of the applicant that there is an apparent error on the record or discovery of any new material or any other grounds within the meaning of Order 47 Rule 1 CPC. The fact that the Review Petition runs into 83 pages itself demonstrates that the applicant wants to re-agitate the same matter before the same Tribunal once again.

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If the applicant is agrieved by the order of the Tribunal his remedy is elsewhere and certainly not in the form of Review Petition under Order 47 Rule 1 of CPC. Therefore the Review Petition is liable to be rejected. In view of this there is no necessity to pass any order on M.P. 299/99 and the same does not survive.

3. In the result both Review Petition and the M.P. 299/999 are disposed of.

(D.S. Baweja)
Member(A)

(R.G. Vaidyanatha)
Vice Chairman

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