

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 238/93.

Date of Decision :

3-11-98

M. M. Rane, Petitioner.

Shri C. B. Kale, Advocate for the  
Petitioner.

VERSUS

Union Of India & Anr. Respondents.

Shri S.S. Karkera for  
Shri P. M. Pradhan, Advocate for the  
Respondents.

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

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

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other  
Benches of the Tribunal ?

*R. G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

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MUMBAI BENCH

ORIGINAL APPLICATION NO.: 238/93.

Dated the 3<sup>rd</sup> day of November, 1998.

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

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

M. M. Rane,  
Postal Assistant,  
Subhash Road,  
Post Office-Vile Parle,  
Bombay.

... Applicant

(By Advocate Shri C.B. Kale)

VERSUS

1. The Sr. Suptdt. of  
Post Offices,  
Bombay City, North Divn.,  
Bombay - 400 055.

... Respondents.

2. The Director Of Postal  
Services, Bombay Region,  
Maharashtra Circle,  
Bombay - 400 030.

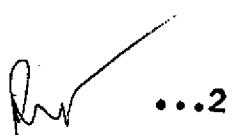
(By Advocate Shri S.S. Karkera  
for Shri P.M. Pradhan)

: O R D E R :

{ Per.: Shri R. G. Vaidyanatha, Vice-Chairman }

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

2. The applicant was working as Postal Assistant-II  
in Parleshwar Head Post Office during 1988. He was

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attending to the work of issuing National Savings Certificates . The N.S. Certificates would be in the custody of the Assistant Post Master. During inspection of the post offices in December 1989, it came to light that 100 National Saving Certificates of the value of Rs. 5,000/- each were missing. On that basis some enquiries were made and it disclosed that ten N.S.Certificates had been encashed by using fictitious registration numbers. A charge-sheet was issued for minor penalty. Then ~~a~~disciplinary enquiry was initiated against some of the officials, including the applicant, on the allegation that they are responsible for the loss of N.S.C. certificates. The applicant did not have the custody of N.S.C. and therefore, he was not responsible for the missing of the certificates. The charge-sheet issued to him was vague. The applicant requested for holding a regular inquiry but the Disciplinary Authority without holding a regular inquiry passed an order imposing the penalty of recovery of Rs. 15,228/- from the salary of the applicant by order dated 12.03.1992. Then the applicant preferred an appeal before the competent authority but he has not yet received any order of the Appellate Authority. Therefore, the applicant has approached this Tribunal challenging the order of the Disciplinary Authority. He has taken number of grounds in the application for challenging the order of the Disciplinary Authority.

3. Respondents have filed reply justifying the action taken against the applicant. Among other things, the applicant's duty was to maintain stock register

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of the National Saving Certificates properly and correctly. The missing of the certificates came to light during inspection of the Post Offices by the Senior Superintendent of Post Offices. The Disciplinary Authority found that there was no necessity for holding an independent regular enquiry. The applicant was given permission to inspect the documents. He never gave his defence to the charge-sheet. Hence, on the basis of the materials on record, the Disciplinary Authority imposed the minor penalty of recovery of a portion of loss of amount from the applicant. The appeal filed by the applicant has been disposed of by the Appellate Authority on 07.05.1993 that there is no merit in the application. That action has also been taken against Assistant Post Master and Deputy Post Master and orders have been passed against them for recovery of portions of the amount.

4. At the time of argument, the Learned Counsel for the applicant, Shri C. B. Kale, argued that the charge-sheet is vague. That there was violation of principles of natural justice in holding the enquiry. That the applicant had no opportunity to file his defence. He further submitted that the applicant was not responsible for the loss of the National Saving Certificates. On the other hand, the Learned Counsel for the respondents, Shri S.S. Karkera on behalf of Shri P. M. Pradhan, Counsel for the respondents, contended that the action taken by the respondents is fully justified and no grounds are made out for interfering with the order of the Disciplinary Authority or Appellate Authority.



5. We are not impressed by the argument that the charge-sheet is vague. A perusal of the charge-sheet taken alongwith the imputation clearly shows as to what is the case the applicant has to meet. Hence, there is no vagueness in the charge-sheet. All necessary particulars are given in the charge-sheet and also the imputation of allegations. Both, the articles of charges and imputations must be read together, which gives a clear picture of the case and there is no vagueness. This is a case of minor penalty charge-sheet, therefore, there is no question of holding any oral enquiry in the form of recording oral evidence, etc. On the basis of the charge-sheet and the documents and the defence given by the delinquent official, the Disciplinary Authority can proceed to pass the final order. Some documents are referred to in the charge-sheet. The applicant made a request that he wants to inspect the documents before submitting his defence. This can be gathered from the applicant's letter dated 29.10.1991 which is at page 25 of the Paper Book, where the applicant has asked for copies of some documents but the Disciplinary Authority in his reply, which is at page 26 of the Paper Book, dated 19.11.1991, has informed the applicant that the copies of the documents cannot be given but he is permitted to inspect the documents for the purpose of preparing his defence. It is not disputed that the applicant inspected the documents. Even otherwise, we find in the Inquiry file produced by the Learned Counsel for the respondents, where there is a clear record that the applicant has inspected the said documents. Inspite

  
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of this, the applicant did not file his defence. We do not see as to what is the violation of principles of natural justice. The applicant had sought extension of time for filing his defence. The time was extended. He never filed his defence. Then on the basis of the charge-sheet and the documents, the Disciplinary Authority has passed the impugned order. Therefore, we do not find that there has been any violation of rules or principles of natural justice.

6. Another grievance made by the Learned Counsel for the applicant that the Disciplinary Authority should have held a regular oral enquiry, as requested by the applicant. As already stated, in the case of a minor penalty charge-sheet there is no necessity for holding a regular enquiry. It is only in case of major penalty charge-sheet, Rule 14 of the C.C.S.(C.C.A) Rules provides for a detailed regular enquiry.

As far as minor penalty charge-sheet is concerned, it is covered by Rule 16. As per this rule, the Disciplinary Authority has to consider the charge-sheet, the documents relied on in the charge-sheet, the defence of the delinquent and then pass an order on the basis of the same. There is an enabling provision in Rule 16 (1)(b) which gives a discretion to the Disciplinary Authority to order a regular enquiry if he feels it is necessary. No right is given to a delinquent official to claim as to ~~to~~ right a regular enquiry in case of a minor penalty charge-sheet. Here there is only an enabling provision giving discretion to the Disciplinary Authority. In this case,

the Disciplinary Authority has indicated in the impugned order that it is not a fit case for ordering a regular enquiry. The applicant never gave his written statement to the charge-sheet. After inspecting the documents he just wrote a letter asking for a regular enquiry and never submitted his defence. There is no mandatory duty cast on the Disciplinary Authority to order a regular enquiry whenever requested by the delinquent official. Atleast, if the applicant had disclosed his defence in the form of a written statement and if some complicated question of law and facts arose for consideration, then the Disciplinary Authority could have exercised the discretion in ordering a regular enquiry. If there was no defence to the charge-sheet, then it is as good as an ex-parte enquiry and the allegations in the charge-sheet remains unchallenged. Then where is the necessity of ordering a regular enquiry. Therefore, in the facts and circumstances of the case, we do not find that the Disciplinary Authority has committed any illegality in not ordering a regular enquiry. On the other hand, we find from the impugned order that the Disciplinary Authority has found that the charges are established on the admissions of the applicant in his previous two statements dated 13.06.1990 and 12.07.1990. Hence, in the circumstances, there is no merit in the submission that the Disciplinary Authority should have held a regular enquiry.

7. Now we are only concerned with the merits of the case.

The charge against the applicant is that, while he was working as a Postal Assistant in Parleshwar Head Post Office, by his conduct of negligence, he has also contributed in the loss of 100 National Saving Certificates. It is not disputed that the applicant was one of the Clerks in that particular section dealing with the issuance of National Saving Certificates. The applicant has admitted in his earlier two statements dated 13.06.1990 and 12.07.1990 about the mistake committed by him in making wrong entries in the Stock Register. But he gave an explanation that he did it on the oral instructions of the Assistant Post Master. There is no material on record to suggest that such a oral instruction was given by the Assistant Post Master. Even if the Assistant Post Master gives such an oral instruction, how could the applicant make an ante-dated entry in a Government register. When the loss of National Saving Certificates were noticed on 22.12.1989, instead of making entries in the Stock Register on that date, he makes entries in the Stock Register on 21.06.1989 by inserting an entry in between Sl. Nos. 612 and 613. The applicant could not have made such an ante-dated entry about six months later and that too, by inserting an entry between two earlier entries, even if the Assistant Post Master had given such an instruction. However, at any rate, by his conduct and act, he has directly or indirectly helped suppression of the missing National Saving Certificates. It may be a deliberate act of commission or omission, but still, the applicant has contributed his help in the loss of National Saving Certificates or non-detection of loss of National Saving Certificates at the appropriate time. Though 100 National

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Saving Certificates were missing, 10 National Saving Certificates came to be encashed by issuance of fake identity slip in the name of fake persons. This could have been avoided if the missing of the National Saving Certificates had come to light at an earlier date.

8. The Disciplinary Authority, namely - the Senior Superintendent of Post Offices, has written a well reasoned order referring to all the circumstances including the admissions of the applicant in coming to the conclusion that the applicant has, by negligence and conduct, is also responsible either for the missing of the National Saving Certificates or for its non-detection at an earlier stage. We do not find any illegality or infirmity in the reasoning or findings of the Disciplinary Authority.

9. Then we find that the applicant preferred an appeal before the Post Master General of Bombay, who by an considered order held that the charges are proved and confirmed the order of the Disciplinary Authority and dismissed the appeal.

It is now fairly well settled by a catena of decision of the Apex Court that the Tribunal or Court cannot sit in judgement over the factual findings recorded by the Competent Authority in a domestic Tribunal. It is well settled that the Tribunal cannot sit in appeal over the findings of the Disciplinary Authority or Appellate Authority. This Tribunal cannot re-appreciate

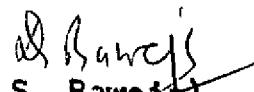
the evidence and take a different view, even if another view is possible. A judicial review cannot be treated as an Appellate forum for dealing with disciplinary cases. In a judicial review, the Tribunal is only confined to find out whether the enquiry has been done according to law and whether there is any violation of principles of natural justice and whether any prejudice is caused to the delinquent. The Tribunal or Court cannot act as a appellate court while exercising judicial review

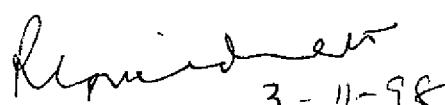
- i. 1998 (1) SC SLJ 74 (Union Of India & Others V/s. B. K. Srivastava).
- ii. 1998 (1) SC SLJ 78 (Union Of India & Others V/s. A. Nagamalleswar Rao)
- iii. 1996 SCC L&S 1280 (State of Tamil Nadu V/s. Thiru K.V. Perumal & Others).

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10. After going through the materials on record and the enquiry file produced by the Learned Counsel for the respondents, we are satisfied that the findings of the Disciplinary Authority and the Appellate Authority are based on proper appreciation of the materials on record and their orders do not call for interference by this Tribunal. Infact, the authorities have only ordered recovery of a portion of the loss to Government from the applicant and no other penal action is taken against the applicant.

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

  
(D.S. Bawej)  
Member (A).

  
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(R.G. Vaidyanatha)  
Vice-Chairman.