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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.70/95.

Dated: 20/4/2000

Smt.Geetanjali D. Savarqaonkar.	Applicant.
Mr. B.Dattamurthy	Advocate for Applicant.
Versus	
Union of India & Ors.	Respondent(s)
Mr. S.S.Karkera for Mr.P.M.Pradhan	Advocate for Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, 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

(3) Library? Yes

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.70/95.

this the 20th day of April 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

Smt.Geetanjali Durgesh Savargaonkar,
C/o.B.Dattamoorthy,
Advocate,
47/4, Asmita, Tarun Bharat
Society, Chakala, Andheri (East),
Bombay - 400 099. ...Applicant.
(By Advocate Mr.B.Dattamurthy)

Vs.

1. The Union of India, through
the Director, Postal Services,
Pune Region,
Pune - 411 001.
2. The Senior Superintendent of Post
Offices, Pune City East Division,
Pune - 411 037.
3. The Senior Postmaster,
Pune Head Post Office,
Pune - 411 001. ...Respondents.

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

O R D E R

(Per Shri Justice 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 Mr.B.Dattamurthy, the learned counsel for the applicant and Mr.S.S.Karkera for Mr.P.M.Pradhan, the learned counsel for the Respondents.

2. The applicant was working in the Savings Bank Section of the Head Post Office at Pune during 1988. She came to be suspended on 16.6.1988 on ground of contemplated disciplinary enquiry. Subsequently, a charge sheet dt. 11.10.1989 was issued

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against the applicant alleging certain mis-conduct. The applicant filed a reply to the charge sheet denying the allegations. An Enquiry Officer was appointed. Eight witnesses were examined on behalf of the administration. The applicant examined four witnesses as defence witnesses on her behalf. Both the sides submitted their briefs. Then the Enquiry Officer submitted a report dt. 3.5.1991 holding that the charges are proved against the applicant. The Disciplinary Authority sent copy of the enquiry report to the applicant for her say. The applicant sent a detailed reply to the enquiry report asserting that she is innocent and that the charges are not proved. Then the Disciplinary Authority by order dt. 16.8.1993 accepted the enquiry report and held that the charges are proved and then imposed a penalty of reducing the pay of the applicant by three stages for a period of four years w.e.f. 1.9.1993 and that during that period, the applicant will not earn increments and on the expiry of that period the reduction will not have the effect of postponing future increments. Being aggrieved by this order the applicant preferred an appeal. The Appellate Authority by order dt. 30.6.1994 dismissed the appeal by concurring with the order of Disciplinary Authority.

3. Respondents in their reply have dealt with all the contentions urged in the application. It is stated that the enquiry has been done as required by rules. That the charges are duly proved against the applicant and does not call for interference by this Tribunal. They have explained the facts and circumstances of the case and the detailed procedure adopted by the Enquiry Officer and the Disciplinary Authority. It is

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therefore, stated that the application has no merit and is liable to be dismissed.

4. Mr.Dattamurthy has taken us through the pleadings and the materials on record and contended that the orders of the respective authorities from the Enquiry Officer to the Appellate Authority are vitiated due to violationof rules and principles of natural justice. He urged number of grounds, which are controverted by the learned counsel for the respondents. We will proceed to consider the grounds urged one by one. We have also perused the original enquiry file and the file relating to the subsistence allowance produced by the learned counsel for the respondents.

5. It was argued by the learned counsel for the applicant that the disciplinary authority forwarded the copy of the enquiry report with a covering letter dt. 11.10.1991 (page 87 of the paper book). It was therefore, argued that if the disciplinary aurthority has already decided about the findings, then sending of the copy of the enquiry report will be an empty formality. There is sufficient force in this contention. If the disciplinary authority has already formed an opinion, then it will be an empty formality to forward the copy of the enquiry report to the delinquent official. The findings at page 28 of the paper book are only in one word "proved against both the charges" no reasons are given. Then, in the covering letter, it is clearly stated that applicant must give reply to the enquiry report and then suitable decision will be taken after considering the report. Therefore, in our view, what is mentioned in page 88 is only a tentative finding and not a final finding. Even otherwise, this controversy is purely academic in nature since

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Mr.P.K.Sarvade the Senior Superintendent of Post Offices who forwarded copy of the enquiry report along with his findings at page 88 of the paper book has not passed the final order. He retired from service and therefore, another ad hoc disciplinary authority was appointed, he again simply forwarded the copy of the enquiry report without any findings. Then, what is more, before the disciplinary authority passed any order, the regular Senior Superintendent of Post Offices took charge and therefore he again sent one more copy of the enquiry report to the applicant and after getting reply, he passed the impugned order. The third disciplinary authority is the one who has passed the impugned order and he has not formed any such opinion before sending the enquiry report. Therefore, even if we accept that there is some defect in the first disciplinary authority forwarding enquiry report with his finding, it is of no consequence since subsequent additional disciplinary authority and later the regular disciplinary authority have not recorded any such findings, but they have simply forwarded the enquiry report to the applicant and on getting her reply the impugned order is passed. Therefore, no prejudice is caused to the applicant and the regular disciplinary authority who has passed the impugned order had not formed any opinion prior to the date of impugned order.

6. It was argued that the enquiry officer allowed additional documents inspite of being objected by the delinquent and these documents were not listed in the charge sheet and therefore, the enquiry officer should not have allowed these documents. We find no merit in this submission.

Rule 14(15) of the CCS (CCA) Rules clearly enables the

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enquiry officer to permit additional evidence on behalf of the disciplinary authority. It was argued that as per the note under Rule 14 (15) no additional evidence can be allowed to fill up lacuna or gaps. In our view, this question does not arise since before commencing of the enquiry itself additional documents were allowed and applicant had right of inspection of those documents. It is not a case where some witnesses had already been examined cross-examined and some defects or lacuna have been brought on record and to fill up those gaps additional documents are sought to be produced. This is a case, where, at the very threshold even before commencement of the regular enquiry additional doucments have been permitted and the enquiry officer has powers under the rule to permit additional evidence and applicant had prior notice of the documents before recording of the evidence and hence there is no merit in this contention.

7. Then, it was argued that applicant wanted some additional documents and they were not produced.

Reliance was placed on applicant's letter dt. 30.4.1990 which is at page 73 of the paper book. The applicant wanted six documents. The order sheet dt. 30.4.1990 (page 77 of the paper book) shows that applicant produced his letter asking for six documents. The enquiry officer passed an order that the presenting officer should send copy of the applicant to the disciplinary authority for doing the needful. The enquiry officer has dealt this point in his enquiry report which commences from page 89 of the paper book and onwards. The relevant portion for our present purpose is para 7(c) at page 94 and 95 of the paper book. The enquiry officer has stated that out of six documents, three documents pertain to statement of Shri

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R.V.Pathak, but no such statement of Shri Pathak has been recorded. Two other documents are concerned, they are Pass Books and that they are not available with the administration, but they are with the original depositors of the Recurring Deposit Account. Another (i.e. last) document asked for by the applicant was stated to be not in existence. Therefore, we find that out of six doucments four documents are not in existence and two documents viz. Pass Books are not with the disciplinary authority or the administration, but they are with the original Depositors who have in fact been examined as Prosecution Witnesses in this case.

Therefore, we find that it is not a case of administration not producing the required documents, but the administration is not in possession of two documents and theother four documents are not in existence at all. Hence, the question of administration supplying six documents does not arise at all.

8. The next submission is that applicant wanted additional witnesses and they are not produced. Again reliance is placed on applicant's letter dt. 30.4.1990 which is at page 75 of the paper book. Items (i) to (vi) pertain to documents which we have already discussed in the above para. Item (vii) is that the applicant wanted the UDC concerned dealing with R.D. Account. Item No.8 is about investigating officers who recorded the statements of State witnesses to be produced for examination.

Applicant is not calling each witnesses as her defence witnesses. She wants the administration to produce these witnesses for her cross-examination. She never gave names of the

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witnesses and the particulars and never asked them to be examined as defence witnesses.

The disciplinary authority has met this point in his enquiry report in para 7(c), at page 95 of the paper book.

It is stated that Shri A.V.Pathak is already examined as prosecution witness and he has already been cross-examined by the applicant. As far as other officials viz. B.G.Joshi, N.M.Chivte, B.V.Kulkarni and B.A.Javli are some of the officers who are already examined as defence witnesses. As far as investigating officers are concerned, the enquiry officer observed that there presence is not necessary since all the witnesses have accepted their statements.

In our view, the order of the enquiry officer is perfectly justified. For one thing, the applicant did not give names of additional witnesses, the officials doing certain work to be examined. We have shown above that five witnesses were examined, one on behalf of the administration and four on behalf of the defence. The investigating officers were stated to be not relevant since the statement of the witnesses have been accepted by the witnesses. Therefore, we find no merit in this contention.

9. Then, it was argued that applicant's statement dt. 12.1.1989 has been taken due to pressure or threat and it is not a voluntary statement. There is no material to substantiate the contention that the statement was taken by pressure or force. At any rate, it is a question of fact whether particular statement should be believed or not. It is for the domestic Tribunal to decide this question. This Tribunal while exercising judicial review cannot go into the question of appreciation of evidence.

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This point, whether statement of the applicant dt. 12.1.1989 should be accepted or not is in the realm of appreciation of evidence. At any rate, there is no material produced before us or produced during the enquiry to show that this statement was taken due to pressure or force.

10. Then, it was argued that the order of the Appellate Authority is bad since he has not written a speaking order and further he has not given a personal hearing to the applicant. The learned counsel places reliance on the judgment of the Apex Court in Ramchandra's case (1986 (1) A.T.C. 47). It is true, in that case the Supreme Court held that the Appellate Authority should give personal hearing and then remand the matter to the Appellate Authority for giving personal hearing to the appellant and pass a fresh order. In this case also we posed a question question to the learned counsel for the applicant that we are inclined to remand the matter to the Appellate Authority to give a personal hearing to the applicant and pass a fresh speaking order, but The learned counsel for the applicant Mr.Dattamurthy fairly submitted that it will not serve any purpose and he does not want remand of the case and he would like the Tribunal to dispose of the case on merits.

In the circumstances, therefore, there is no necessity of remanding the matter to the appellate authority to pass a fresh speaking order after hearing the applicant.

11. Then, some submissions were made on merits of the case. The first charge framed against the applicant is that during 1987-88 while she was working as R.D. Counter Clerk she has committed serious irregularity in making payment in respect of a closed account viz. R.D. Account No. 344035 standing in the name

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of Smt. Carolina Coelho and thereby caused loss to the government to the extent of Rs. 7,868/-.

The second charge is that during the same period of 1987-88 she committed another irregularity in making another payment in respect of an earlier closed R.D. Account No.343153 standing in the name of Smt. Shubhada Khedkar and thereby caused loss to the government to the extent of Rs.3,934/-.

The materials on record show that the two depositors had drawn the full amount and the account had been closed. Subsequently, a duplicate payment is made in respect of a closed account with the collusion of different postal officials including the applicant. It is the applicant who has made the payment as a Counter Clerk. She has compared the signatures of the deposit-holder by comparing the specimen signatures in a duplicate form which did not have a postal seal or the signature of the Post Master.

To prove the above charges, the prosecution examined eight witnesses viz. N.H.Koli, R.E.Pillai, Smt.Carolina Coelho, S.B.Parkhe, Smt.S.A.Kokane, B.Y.Lanke, Smt. S.N.Khedkar and R.V.Pathak.

The applicant examined four witnesses in her defence and they are B.G.Joshi, B.A.Javli, B.V.Kulkarni and N.M.Chivate.

The Administration also relied on 26 exhibits to prove its case.

The Enquiry Officer by a very lengthy report running into 16 pages discussed all the relevant points, the evidence, and considered the contentions of the applicant and then recorded the findings that both the charges are proved against the applicant. The report is a well reasoned report.

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Then the disciplinary authority has accepted the findings of the enquiry authority and this has been further confirmed by the Appellate Authority.

That means there is concurrent findings right from the Enquiry Officer to the Appellate Authority.

12. We find that applicant had fair and sufficient opportunity in defending herself in the enquiry case. She had the assistance of defence assistants, all prosecution witnesses have been cross-examined in detail. The applicant had the opportunity of producing her defence evidence. We are satisfied that the enquiry has been done as per rules and by observing the principles of natural justice.

The scope of judicial review is to find out the legality of the decision making process and not about the actual decision. When the domestic Tribunal has conducted the enquiry fairly and if some findings are recorded, a Court or Tribunal cannot act as an Appellate Court and discuss evidence and take another view, even if another view is possible. There are number of recent decisions of the Apex Court and it is not necessary to refer to all of them, but we refer only to one of the latest Judgment in Apparel Export Promotion Council Vs. A.K.Chopra (AIR 1999 SC 625).

To satisfy our conscience, we have gone through the materials on record and we are satisfied that the findings are justified and they are not open to challenge or review by this Tribunal.

13. The next contention of the applicant's counsel is that there was prolonged suspension of five years and this was unjustified. The applicant did not approach this Tribunal for quashing the order of suspension when she was under suspension.

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She has been reinstated in 1993. By filing OA in 1995 she cannot go into the legality or continuation of the order of suspension. Hence, some decisions relied on by the learned counsel for the applicant about continued suspension is not relevant for our present purpose since applicant has already been reinstated. Further, the enquiry was pending, then there was some allegation of similar incidents in the Postal Department. A complaint had also been lodged with the Police. The main culprit Mr.Koli has been dismissed from service. A criminal case against him is stated to be still pending. In these circumstances, we cannot say that the suspension or continued suspension was not justified.

14. The next submission is that applicant was entitled to be paid 50% of the pay and allowances as subsistence allowance for the first three months. The applicant was suspended by an order dt. 16.6.1988 and She was entitled for enhancement after three months. In this case, what has happened is that the Disciplinary Authority passed an order dt. 23.3.1989 instead of enhancing the subsistence, he reduced the subsistence allowance to 50% of the subsistence allowance, that means the subsistence allowance which was 50% of the pay was reduced to 25% of the pay and allowances.

The relevant rule is F.R.53. Sub-Clause (1) provides that during the first three months of suspension, the delinquent official is entitled to half pay in addition to admissible D.A. Then F.R. 53 (1) (a)(i) says that after three months the subsistence allowance shall be enhanced by 50% if the suspension is not prolonged due to any reason attributable to the government servant. F.R. 53 (1)(a)(ii) says that in case the prolonged suspension was directly attributable to the government servant,

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the subsistence allowance shall be reduced by 50% of the pay to 25% of the pay. The learned counsel for the applicant has questioned the correctness and legality of this order. The learned counsel for the respondents justified the order on merits and further submitted that the claim is barred by limitation and delay.

15. We can dispose of the objection regarding limitation by pointing out that applicant was making number of representations and the disciplinary enquiry was still pending and therefore, she might have waited till the disposal of the enquiry case before approaching this Tribunal. Even otherwise as pointed out by the Apex Court, in an identical situation, in P.L.Shah's case (1989 (9) ATC 627), that in a matter like this the cause of action arises every month to get correct subsistence allowance and it is a continued cause of action.

Therefore, in the facts and circumstances of the case and particularly in view of the fact that disciplinary enquiry was still pending, the applicant's claim cannot be rejected on the ground of delay and laches.

16. The order of reducing the subsistence allowance cannot be supported on merits. We have perused the concerned file produced by the learned counsel for the respondents and disciplinary authority as observed that since the applicant has not cooperated, the subsistence allowance is reduced. No particulars or incidents are are given to show as to what is meant by non-cooperation of the applicant. A bald or vague statement of non-cooperation cannot be a ground to reduce the subsistence allowance to the applicant. Even in the reply filed in this case nothing is brought to show as to what is meant by non-cooperation

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and how that has prolonged the suspension. Even granting for a moment that in the beginning the applicant did not cooperated, a charge sheet was issued on 11.10.1989 and it was pending for four years and final order was passed on 16.8.1993. There is nothing on record to show that during those four years delay was caused in conduct of the enquiry at the instance of the applicant. On the other hand, applicant had been sending representations after representations for revoking the suspension, for payment of full subsistence allowance etc. Even the enquiry officer does not say anywhere in his lengthy report that applicant delayed the enquiry or obstructed the enquiry etc. We have gone through the order sheet of the enquiry case and find that there was no delay in the conduct of the enquiry attributable to the applicant.

Therefore, in the facts and circumstances of the case, we are constrained to hold that the order of the disciplinary authority dt. 23.3.1999 reducing the subsistence allowance from 50% to 25% of the salary was unjustified, illegal and arbitrary and without any reason. Therefore, in the circumstances of the case, we are hereby quashing the order dt. 23.3.1989. As a result, applicant is entitled to 50% of the basic pay and permissible allowances under F.R. 53 for the period from 16.6.1988 till the date of reinstatement viz. 16.8.1993 less whatever payments applicant has already received in this behalf.

17. Next argument is that, after the first three months, the subsistence allowance should have been enhanced to 75% of the basic pay plus permissible allowances under F.R. 53. This is a matter which the Competent Authority has to decide. The concerned file produced by the learned counsel for the respondents does not show that the Competent Authority had

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applied his mind at any time for increase of subsistence allowance and then came to a conclusion that it is not a fit case for enhancement within the meaning of F.R. 53. Probably the Disciplinary Authority never applied his mind to this question since he had already reached the conclusion that the subsistence allowance should be reduced to 25%. Now, we have held that reduction of subsistence allowance to 25% is arbitrary and we have already indicated that the said decision must be set aside. Now, it is for the disciplinary authority to go through the entire case papers and then decide that after the first three months whether applicant is entitled to enhancement of subsistence allowance from 50% of the pay to 75% of the pay within the parameters mentioned in F.R. 53. He must pass a speaking order on this point within a period of three months from the date of receipt of copy of this order. Needless to say that if any adverse order is passed by the competent authority, it is open to the applicant to challenge the same according to law.

18. The next and the last submission made on behalf of the applicant is that no decision is taken by the competent authority as to how the period of suspension should be treated. There is a duty cast on the competent authority to apply his mind and pass a specific order under F.R. 54B as to how the period of suspension is to be treated. Even, the learned counsel for the respondents fairly conceded that the competent authority has not passed any such order and a direction may be given for passing appropriate orders according to rules.

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19. In the result, the application is partly allowed as follows:

(1) The order dt. 23.3.1989 reducing subsistence allowance from 50% to 25% of the salary is hereby quashed. As a result, the applicant is entitled to get subsistence allowance at 50% of the ~~subsistence allowance~~ and permissible allowances under F.R. 53 from 23.3.1989 till 16.8.1993, less whatever amount that has already been paid to the applicant.

(2) The competent authority is directed to apply his mind to the facts of the case and then decide whether after the expiry of first three months from 16.6.1988, the applicant is entitled to enhancement of subsistence allowance from 50% of the salary to 75% of the salary and permissible allowance as provided in F.R. 53 and pass a speaking order to that effect within a period of three months from the date of receipt of copy of this order.

(3) The competent authority shall give an opportunity to the applicant to make a representation as to how the period of suspension is to be treated and then apply his mind and then take a decision under F.R.54B, as to how the period of suspension from 16.6.1988 till 16.8.1993 should be treated and then pass a speaking order to that effect as early as possible and preferably within a period of three months from the date of receipt of copy of this order.

(4) Needless to say that if any adverse order is passed by the competent authority, it is open to the applicant to challenge the same according to law.

(5) All other prayers in the OA, except as mentioned above, are rejected.

(6) In the circumstances of the case, there will be no order as to costs.

(D.S.BAWEJA)
MEMBER(A)

20/4/2000
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.