

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 11th 2001
See Dhankar
HVC

O.A. No. O.A.No.192/2001
T.A. No.

199

DATE OF DECISION _____

Prem Prakash Tiwari

Petitioner

Mr. S.K.Jain

Advocate for the Petitioner (s)

Versus

Union of India and 3 others

Respondent

Mr. N.C. Goyal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. H.O.Gupta, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not? *Y/N*

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?

(H.O.Gupta)
Administrative Member.

(G.L.Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

O.A. No. 192/2001.

Date of decision:

21.03.03

Prem Prakash Tiwari
S/o Shri Gajanand Tiwari,
r/o Ward No. 13, Post Srimadhopur,
Sikar Dist.

: Applicant.

-versus-

1. Union of India through
the Secretary to the Government of
India, Department of Posts,
New Delhi.
2. The Director of Postal Services,
Rajasthan Region,
Jaipur.
3. Smt. Sarita Singh,
Ex. Senior Superintendent of Post Offices,
Jaipur City Division,
Jaipur
at present M.D. Warehousing Corporation,
Bhawani Singh Road, JAIPUR
4. Shri B.L. Bhamhi, Enquiry Officer,
A.D.P.S.(I), Office of PMG,
Southern Region, Ajmer.

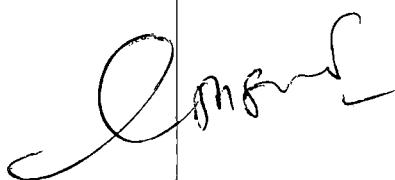
: Respondents.

Mr. S.K.Jain : Counsel for the applicant.
Mr. N.C.Goyal : Counsel for the respondents.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. H.O.Gupta, Administrative Member.



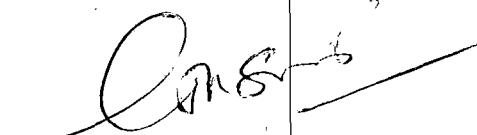
ORDER

Per Mr. Justice G.L.Gupta:

Through this O.A. the applicant seeks quashment of the charge sheet dated 11.10.91 (Annex. A.1), the order imposing penalty dated 24.12.92 (Annex. A.2) and the Appellate Authority's order dated 4/7.3.2001. (Annex. A.3).

2. The relevant facts are these. The applicant while working as Postal Assistant, was holding the charge of the post of Sub-Post Master VKI area, road No. 9, Jaipur City. Vide order dated 19.9.2001 and Mr. Bhanwar Singh Nirwan, was posted in his place and the applicant was directed to hand over charge of the office of Sub-Post Master. When Shri Nirwan, went to take charge from the applicant on 20.9.91, he refused to hand over the charge to Shri Nirwan. The applicant was, therefore, placed under suspension vide order dated 20.9.91. The applicant refused to take a copy of the suspension memo.

2.1 The Senior Superintendent of Post Offices, (SSPO for short), therefore, served a charge sheet dated 11.10.91 (Annex. A.1) on the applicant. It contained two charges. One, the applicant refused to hand over charge to Shri B.S.Nirwan and two, he refused to receive the suspension order issued by the competent authority. Nine witnesses were examined by the department in support of the charges. The applicant examined 3 witnesses in his defence. The inquiry Officer, on 21.8.92, directed the parties to give written statement/brief on the next date of hearing. The Presenting Officer submitted his brief on 7.9.92. The Disciplinary Authority imposed the penalty of removal vide order dated 24.12.92. The applicant submitted his brief on



29.12.92 i.e. after the Disciplinary Authority passed the order of penalty.

2.2 That order came to be challenged before this Court by way of O.A No. 556/93. The same was disposed of directing the applicant to avail the remedy of appeal available under the Rules. The applicant, whereupon, preferred appeal to the Appellate Authority which was dismissed as barred by limitation. That order was challenged before this Tribunal by way of O.A. No. 408/95. The O.A was dismissed vide order dated 28.2.2000. The applicant preferred Writ Petition before the High Court of Rajasthan. The High Court vide order dated 6.9.2000, upheld the order of this Court. However, the S.L.P submitted before the Supreme Court was allowed vide order dated 12.2.2001, whereby the Appellate Authority was directed to decide the appeal on merits. Thereafter, the Appellate Authority passed the order on 4/7.3.2001 rejecting his appeal. Hence this O.A.

3. The grounds stated in the O.A are these:

- i) the Inquiry Officer refused to examine Smt. Sarita Singh, SSPO, who was cited as a defence witness by the applicant.
- ii) the Inquiry Officer submitted his report without waiting for written brief of the applicant. It is stated that there was curfew in the city of Jaipur and therefore the applicant could not submit his written brief, within the time prescribed.
- iii) the Inquiry Officer did not examine the applicant under Rule 14(18) of the CCS(CCA)Rules, 1965. However, this ground was given up by Mr. Jain during the course of arguments.



iv) on the basis of the evidence produced in the inquiry, the finding of guilt could not be recorded.

v) the punishment is too harsh looking to the misconduct alleged.

4. In the counter, the respondents' case is that the inquiry was conducted as per the procedure laid down in the rules. It is averred that the applicant had not submitted his reply to the charge sheet within the prescribed period but the evidence was recorded in the presence of the applicant. It is pointed out that the applicant did not choose to appoint defence assistant and he conducted the case himself. It is stated that the applicant had inspected all the documents mentioned in his application and participated in the inquiry. It is the further case for the respondents that the request of the applicant for examining Smt. Sarita Singh, SSPO, was rejected by the Inquiry Officer for valid reasons vide order dated 20.8.92(Annex. R.2). It is stated that the applicant did not submit his written brief by 25.11.92 though he had been directed to do so by letter dated 14.10.92, issued by the Inquiry Officer. It is pointed out that the Inquiry Officer submitted his report on 25.11.92 and a copy of the inquiry report was sent to the applicant on 30.11.92, which was delivered to him on 3.12.92. It is stated that the applicant sent an application seeking extension of time of 10 days on 23.12.92, by posting a letter at Shastri Nagar, Head Post Office, which was received by the SSPO on 28.12.92, whereas the Disciplinary Authority had already imposed the penalty vide order dated 24.12.92.



5. In the rejoinder dated 11.9.2002, the applicant, while reiterating the facts mentioned in the O.A. says that the witnesses have admitted that they had not seen any incident. It is averred that the facts which have come in the cross examination of the witnesses, have not been considered by the Inquiry Officer and the Disciplinary Authority, and those facts prove the innocence of the applicant.

6. In the reply to the rejoinder filed on 17.1.2003, the respondents have reiterated the facts stated in the reply. It is averred that the applicant, by refusing to carry out the orders of the superiors, committed gross in-subordination and he is guilty of disobedience of lawful and reasonable order of the superiors, which misconduct is of grave nature.

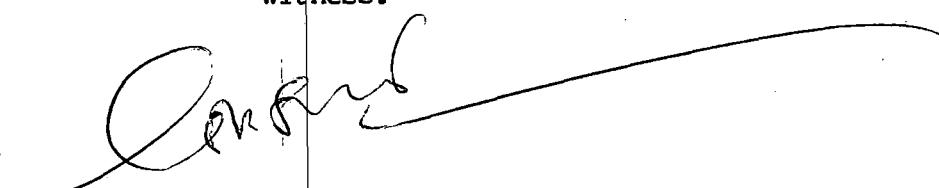
7. We have heard the learned counsel for the parties and perused the documents placed on record. We have also gone through the written arguments submitted on behalf of the applicant. No written arguments have been filed on behalf of the respondents.

8. The contentions of the learned counsel for the applicant may be summarised as follows:

i) the reply to the rejoinder should not be considered since no permission was obtained to file reply to the rejoinder.

ii) Smt. Sarita Singh, SSPO, was the complainant and hence she could not be the Disciplinary Authority and she could not have issued charge sheet to the applicant.

iii) Smt. Sarita Singh was the complainant hence the Inquiry Officer committed error in not examining her as a defence witness.



iv) Officiating arrangement for short duration ought to have been made from the senior persons having experience in the branch where the vacancy arose and not by persons from out side. This was not done by respondent No. 3.

v) The Inquiry Officer did not properly assess the evidence and the evidence does not prove the charges against the applicant.

vi) The inquiry is vitiated because the evidence recorded in the preliminary inquiry has been brought on record.

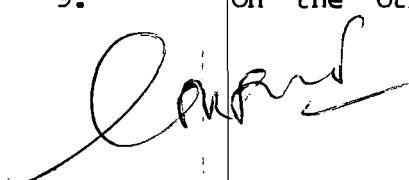
vii) the applicant was not given reasonable opportunity to file written brief.

viii) The penalty of dismissal is harsh and ought not to have been imposed on the applicant for the alleged misconduct.

8.1 Mr. Jain relied on the following cases in support of his contentions:

State of West Bengal vs. Atul Krishna Shaw and another [AIR 1990 SC 2205 (Supreme Court); Tulsidas vs. Union of India and others [1997 LAB IC 2494] (Rajasthan High Court); Arjun Chaubey vs. Union of India and others [1984 (1) SLJ 654] (Supreme Court); S.Pushpa Raj vs. Depot Manager APSRTC Nizambad and others [1996 (8) SLR 402] (Andhra Pradesh High Court); The State of Punjab and others vs. Bawa Ram [1996 (6) SLR 775] (Punjab and Haryana Court); Mahesh Chandra vs. the Union of India and others [1993 (3) ATJ 512] (CAT Jodhpur Bench); Om Kumar and others vs. Union of India [2001 LAB IC 304] (Supreme Court); Gafoor Khan vs. Union of India and others [2000 (3) ATJ 312] (CAT-Jaipur Bench) Jeeven Khan vs. Union of India and others [2000 (3) ATJ 267] (CAT Jodhpur Bench); Muneshwar Dayal Misra vs. Union of India and others [2000 (3) ATJ 509] (CAT Lucknow Bench).

9. On the other hand, the learned counsel for the



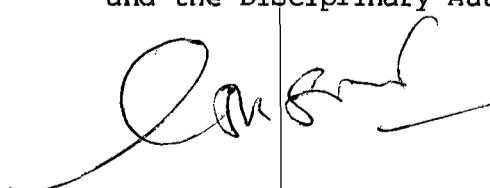
respondents contended that the inquiry was conducted following the procedure prescribed under the Rules, and therefore this Court should not interfere in the matter. It was canvassed that the scope of judicial review in such matters is very limited and the Court cannot be justified to overturn the findings of the Disciplinary Authority, and affirmed by the Appellate Authority. His contention was that the charges were amply proved by the statements of the witnesses recorded in the inquiry. He canvassed that keeping in view the gross in-subordination, the Court should not interfere in the matter of penalty.

10. We have considered the above contentions.

11. It is true that the respondents have filed reply to the rejoinder on 17.1.2003 without seeking permission of the Court. However, a copy of the reply had been delivered to the applicant's counsel on the same date. Since some new facts were stated in the rejoinder, the reply dated 17.1.2003 is taken on record. As a matter of fact, the learned counsel for the applicant has himself argued the matter on the basis of rejoinder and the reply.

12. Smt. Sarita Singh was the Senior Superintendent of Post Offices. She was the Disciplinary Authority of the Postal Assistants and when the applicant had refused to carry out the order issued by her there was no illegality when she issued the charge sheet.

12.1 The fact situation in Jeewan Khan's case was that a telephonic conversation had taken place between the delinquent and the Disciplinary Authority himself on which the charges were

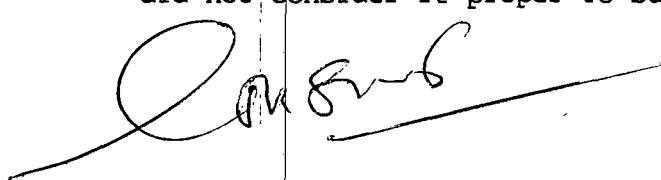


framed. It was natural that in that fact situation, the Disciplinary Authority himself was the complainant and he ought not to have acted as Disciplinary Authority. The instant case is not of that type.

12.2 In the case of Arjun Chaubey (supra) the fact situation was that the employee was dismissed from service under Rule 14 (ii) of the Railway Servants Discipline and Appeal Rules, 1968, read with proviso (b) to Art. 311 (2) of the Constitution of India. It was noticed by the Supreme Court that 3 out of 12 charges referred to in the misconduct related to the respondent No. 3, who had passed the order. In these circumstances, it was observed that the authority concerned assessed the weight of its own accusations, and the dismissal was set aside.

12.3 In the instant case, the allegations were that the applicant had refused to accept the order issued by Smt. Sarita Singh, SSPO. Smt. Sarita Singh had passed the administrative order. The penalty has not been imposed without inquiry. A full fledged inquiry has been held.

13. As to the contention of non-examination of Smt. Sarita Singh as a defence witness it may be stated that she was the officer who had signed the transfer order. It is not the case for the applicant that Smt. Sarita Singh bore ill-will against him for any reason and she wanted to harass him. Smt. Sarita Singh had issued the order of transfer, in her official capacity. It is not understood how the examination of Smt. Sarita Singh could have helped the applicant in the inquiry. The Inquiry Officer has passed a reasoned order on 20.8.92 stating that he did not consider it proper to summon Smt. Sarita Singh SSPO as a

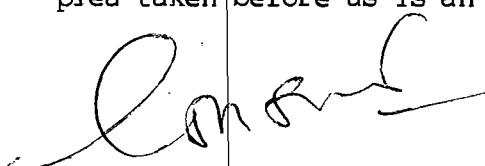


defence witness. The Inquiry Officer observed that it was not the case for the applicant(delinquent) that Smt. Sarita Singh could not issue the transfer order. Even before us, it was not argued that Smt. Sarita Singh SSPO who had signed the order of transfer was not competent to transfer. The request of the applicant for examining Smt. Sarita Singh was rejected for valid reasons. It cannot be said that the defence of the applicant was prejudiced by her non examination.

13.1 In the case of Bawa Ram (supra) relied on by the applicant's counsel the contention prevailed with the learned Single Judge of the Punjab and Haryana High Court on the ground that the delinquent had protested against the closure of the defence witness and the Inquiry Officer therein had not record satisfactory reasons for not examining the defence witness. It is in those peculiar circumstances, it was held that procedural lapse prejudiced the case of the delinquent. The instant case is not of that type.

13.2 In the case of State Bank of Patiala vs. S.K.Sharma (Supra) the Apex Court has clearly held that every procedural lapse does not vitiate the inquiry.

13.3 It is significant to point out that in the memo of appeal presented by the applicant against the order of the Disciplinary Authority, the point, that he wanted to examine Smt. Sarita Singh, was not taken by the applicant. This shows that prejudice was not caused by the non-examination of Smt. Sarita Singh and the plea taken before us is an after thought.



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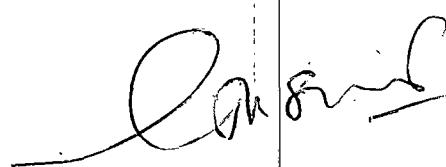
13.4 In our opinion, the non-examination of Smt. Sarita Singh SSPO in the circumstances of the case did not vitiate the inquiry.

14. The contention, that charge ought to have been directed to be given to an employee of V.K.I. Sub Post Office is based on Rule 50 of P & T Manual Vol. IV, wherein it is provided that short duration vacancy may be filled from the officials working in the same office or station. The object of the provision, which is obviously directory in nature, is that transfer from other station should be avoided for short duration vacancy.

14.1 In the instant case, Shri Nirwan was working at Jaipur in other Post Office. When he was asked to take charge of SPM, of VKI. Post Office there was no violation of Rule 50, rather it was followed.

15. Before we proceed to consider the contention of insufficiency or unreliability of evidence it is profitable to know the scope of judicial review in the matter of disciplinary proceedings.

15.1 In the case of B.C. Chaturvedi vs. Union of India and others [1996 SCC (L&S) 80] a three Judge Bench of the Apex Court observed that the Disciplinary Authority is the sole judge of facts and the Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The relevant observations appearing at para 12 and 13 of the report are reproduced hereunder:

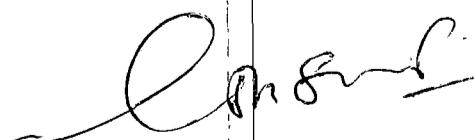


Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of Judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When inquiry is conducted on charges of misconduct by a public servant the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings of conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receives support therefrom the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may intervene where the authority held the proceeding against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached the Court /Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence is not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India vs. H.C. Goel this court held at p.728 that if the conclusion upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the fact of the record or based on no evidence at all a writ of certiorari could be issued.

(emphasis supplied.)

15.2 In the case of R.S.Saini vs. State of Punjab and others [1999 SCC (L&S) 1424] a three Judge Bench held that if there is some evidence to reasonably support the findings of the inquiring authority, the Court should not exercise its writ jurisdiction and should not reverse it on the ground of



insufficient evidence. It was observed at para 16 of the report that adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings and if there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding.

15.3 In the case of Bank of India vs. Degala Suryanarayana [1999 SCC (L&S) 1036] it was held that strict rules of evidence are not applicable to departmental enquiry proceedings and the Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity. i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. Reiterating the observations of the Constitution Bench in the case of Union of India vs. H.C. Goel [AIR 1964 SC 364] it was observed as follows:

" The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the inquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. "

(emphasis supplied.)

15.4 In the case of Secretary to Government of Tamil Nadu vs. Thiru M.Sannasi. [2002 SCC (L&S) 902] their Lordships observed that the Tribunal is an institution created under the

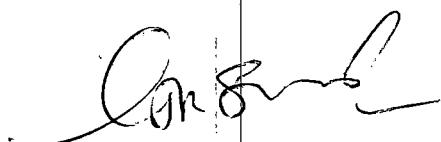


Act of 1985 and discharge the duties which were earlier being discharged by the High Court under Art. 226 of the Constitution of India. It was further observed that a finding of an inferior tribunal can be interfered with if a superior forum comes to the conclusion either that the inferior tribunal has allowed inadmissible evidence or has prevented the delinquent from adducing the admissible evidence or has based its conclusion on an erroneous view of law or that the conclusion is such which no reasonable man can come to on the existing material on record.

15.5 In the case of State of Tamil Nadu vs. Subramaniam, a Three Judge Bench of the Apex Court held that the Tribunal is devoid of power to re-appreciate the evidence and come to its own conclusion on the proof of the charge and the only consideration of the Court Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

15.6 Even in the case of Om Kumar(supra), cited by the learned counsel for the applicant, it has been laid down that in the matter of disciplinary proceedings, the Court has to apply Wednesbury principle and interference by the Court/Tribunal is not permissible unless one or other of the following conditions were satisfied namely, the order was contrary to law or relevant factors were not considered or irrelevant factors were considered; or the decision was one which no reasonable person could have taken.

15.7 In the case of State Bank of Patiala and others vs. S.K.Sharma (supra) their Lordships observed that the procedure

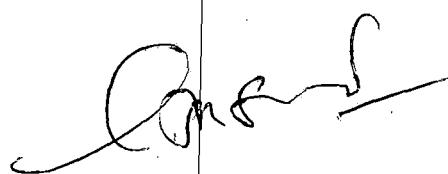


governing departmental inquiry is nothing but elaboration of the principles of natural justice and its several facets and that in case of violation of procedural provisions, the question of prejudice is to be seen.

16. Keeping in view of the aforesaid principles laid down in the various decisions of the Apex Court we now proceed to examine this case.

16.1 It is seen that the department has examined various witnesses to establish the charges. Shri B.S. Nirwan, who was directed to take charge from the applicant, has been examined. He states that he went to VKI Post Office at 7.30 AM on 20.9.91 and asked the applicant to hand over charge to him, but he refused to do so. He then says that on the refusal of the applicant to hand over charge, he went to the Office of SSPO and made a report to that effect, and thereafter he again went to the VKI Post Office along with Shri R.B.Goyal, Dy.S.P .O. and Shri K.C. Gupta, ASPO and Shri Shyam Singh SDI(P). According to him, those officers also tried, but the applicant refused to hand over charge to him.

16.2 The statement of B.S. Nirwan is supported by Shri Shyam Singh, Shri Goyal DY.SPO, and Shri Gupta. Shri Shyam Singh says that the Dy.SPO asked the applicant to hand over charge to B.S. Nirwan but the applicant refused to hand over charge and he stated that he could hand over charge to any employee posted in VKI Post Office itself. He also says that Shri Goyal had shown the order of transfer to the applicant which bore the signature of Smt. Sarita Singh SSPO and had asked the applicant to hand over



charge to Shri Nirwan, but the applicant refused to hand over charge.

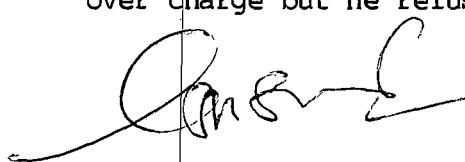
16.3 It is not the case for the applicant that the witnesses examined by the department had conspired and concocted a false case against the applicant. As a matter of fact, there is no suggestion in the cross examination of the witnesses that they had some cause to give false statements against the applicant.

16.4 Emphasise was laid down on this part of the statement of Shri Nirwan:

"Myne Koi Pathra Nahin Diya "

(I did not give any letter to Shri Tiwari) and it was argued that this part of the statement shows that no transfer order had been shown to the applicant. It is not borne out that the posting order had not been shown to the applicant. As a matter of fact, what Shri Nirwan has said is that he had asked the applicant to hand over charge, on the basis of the order with him, but the applicant refused to hand over charge, so he did not hand over the copy of the order to the applicant. It is seen that in his statement dated 22.8.92, ^{even} the applicant has stated that he had refused to hand over charge to Shri Nirwan because he did not know him. In that statement, the applicant also stated that Shri Goyal had insisted that he should give receipt of the letter and then he could get it.

16.5 The facts which have appeared in the statement of the applicant indicate that the posting order was available when Shri B.S. Nirwan and officers had asked the applicant to hand over charge but he refused to hand over charge under one pretest



or the other. First, he told that he did not know B.S. Nirwan and afterwards he refused to give receipt of the posting order. It is evident that the applicant was aware of the posting order issued by the SSPO.

16.6 By the evidence produced during the inquiry it is fully established that the applicant had refused to hand over charge to Shri Nirwan in compliance of the order issued by SSPO. It cannot be said that it was the case of no evidence or that on the basis of the evidence produced before the Inquiry Officer no reasonable man could come to the conclusion that the charge No. 1 was established.

16.7 The same is true for charge no. 2, When the Dy.SPO asked the applicant to receive the order of suspension, he refused to receive the same. On the basis of the evidence produced, the Disciplinary Authority was perfectly justified in holding that the charge no. 2 was also proved against the applicant.

16.8 The ~~xxxxxx~~ cases relied on by Mr. Jain do not assist the applicant. In the case of Atul Krishna Shaw (supra) the fact situation was that the Appellate Authority, who was a District Judge, in the matter had forsaken his salutary duty and by a criptic order reversed the order of the Assistant Settlement Officer. Therefore, the Apex Court interfered with the order . In the instant case, the Appellate Authority has passed a reasoned order.

16.9 The fact situation in the case of Tulsi Das(supra) which was decided by a Single Judge of Rajasthan High Court, was



very different. There, it was noticed that the reply of the petitioner to the show cause notice was not considered by the Disciplinary Authority, so it was held that principles of natural justice had been violated.

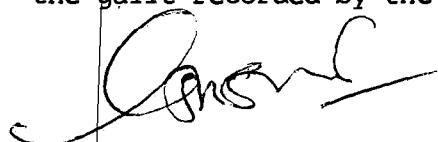
16.10 In the case of S.Pushparaj (supra) it was found that Charge No. 1 was vague and the facts stated in Charge No. 2 did not constitute misconduct.

16.11 In the case of Mahesh Chandra (supra) this Tribunal noticed that there was absolutely no evidence and therefore the applicant therein was exonerated of the charges.

16.12 In the case of Gafoor Khan (supra) the fact situation was that witnesses had not been examined in the presence of delinquent. Not only that, the Inquiry Officer was found to have put certain questions to the witnesses for the obvious purpose of removing the weakness in the case of the department. In those circumstances, the O.A was allowed.

16.13 In the case of Muneshwar Dayal Mishra (supra) it was found that there was no evidence to prove the mis-conduct. Not only that even there was no assessment of evidence by the Disciplinary Authority or the Appellate Authority. In those circumstances, the application was allowed.

16.14 For the reasons stated above, we find that the Disciplinary Authority did not commit any mistake when it held that both the charges were proved against the applicant. So also, the Appellate Authority rightly upheld the findings as to the guilt recorded by the Disciplinary Authority.



17. It is seen that when the statements of the witnesses were recorded their earlier statements recorded during preliminary inquiry were shown to them and they were marked as exhibits. The applicant had been supplied copies of those statements and/or he had been allowed inspection. He has cross examined the witnesses. Therefore it cannot be said that the inquiry was vitiated by bringing the statements on record. No authority taking such a view has been brought to our notice.

18. It is noticed that after closure of evidences of both parties on 21.8.92, the Inquiry Officer asked the Presenting Officer to file written brief on the next date of hearing i.e. 5.9.92. On 7.9.92, the Presenting Officer, submitted his written brief and copy thereof was supplied to the applicant and he was asked to submit written brief, which he did not do. He did not file written brief upto 25.11.92 in spite of the letter dated 14.10.92 written by the Inquiry Officer. The Inquiry Officer therefore, submitted the Inquiry Report on 25.11.92.

18.1 Admittedly, a copy of the inquiry report was sent to the applicant on 30.11.92, by registered post which was delivered to him on 3.12.92. In the letter, the applicant was directed to submit his representation within 15 days. He did not do so. Instead he made an application for extension of 10 days on 23.12.92 which reached the office of SSPO on 28.12.92. Before that, the Disciplinary Authority had already passed the order.

18.2 The case for the applicant is that due to curfew order in the city, he could not submit his brief. The averments made in this regard para 4(VIII) of the O.A. are vague. It is not

A handwritten signature in black ink, appearing to read "Ganesh".

stated as to what was the period of curfew, much less that curfew was between the period 3.12.92 to 18.12.92, or that the area in which the applicant was living remained under curfew order for all the 15 days.

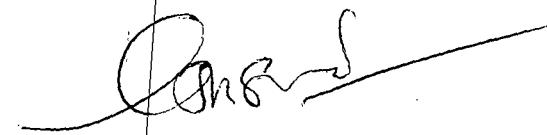
18.3 In any case, we have ourselves gone through the evidence produced in the Inquiry and we have taken the view that the charges are established. Therefore, on the ground that the Disciplinary Authority had decided the enquiry without written brief of the applicant, the findings are not liable to be set aside.

19. Now it has to be seen whether the penalty imposed is harsh and is not commensurate with the misconduct proved.

19.1 What was alleged and proved is that the applicant had refused to hand over charge to Shri B.S. Nirwan in compliance of the order and he also refused to receive the suspension order.

19.2 As to the order of suspension, it may be stated that it had become effective when the applicant was informed about the order. Therefore the non-receipt of the suspension order by the applicant was not of much significance.

19.3 The refusal to hand over charge cannot be said to be mis-conduct of grave nature, more so when it is not alleged that after the issuance of the order the applicant had misused his position as sub-Post Master or had caused pecuniary loss to the Department. In our opinion, the penalty of removal is harsh and not commensurate to the mis-conduct proved. It requires re-consideration.

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20. It has been held by the Supreme Court that the Tribunal/Court should not take upon itself to alter the penalty and the matter should be remitted to the Disciplinary Authority for imposing appropriate penalty.

20.1 In the case of Union of India vs. G.Gnanayutham [1997 AIR SCW 3464] it was observed that if the penalty imposed is found to be disproportionate to the charge proved the matter should be remitted back to the appropriate authority for reconsideration and the Tribunal should not substitute its view.

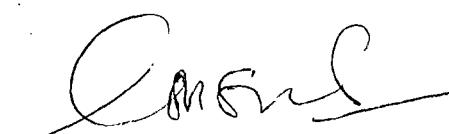
21. Keeping in view the legal position, we think it a fit case to remit the matter the Disciplinary Authority for reconsideration of the penalty.

22. Consequently, the application is partly allowed. While upholding the findings of the Disciplinary Authority and the Appellate Authority that the charges framed against the applicant are fully established, we set aside the order of removal and remit the matter to the Disciplinary Authority for imposing appropriate penalty. If the applicant is aggrieved by the penalty imposed, he shall be at liberty to challenge that order in accordance with law.

23. No order as to costs.


(H.O.Gupta)

Administrative Member.


(G.L.Gupta)

Vice Chairman.

jsv.