

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 581/2003
T.A. No.

200

DATE OF DECISION 10.4.05

Shri Shankar Lal Meena Petitioner

Shri C.B. Sharma Advocate for the Petitioner(s)
Versus

Union of India & ORS. Respondent

Mr. T.P. Sharma (R-1 to 4) & Advocate for the Respondents(s)
Mr. A. Kulshrestha (R-5 to 6)

CORAM:

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. A.K. Bhandari, Administrative ~~Member~~ Member

A.K. Bhandari
Adm. Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Original Application No. 581/2003.

Jaipur, this the 18th day of April, 2005.

CORAM :

HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER .

HON'BLE MR. A. K. BHANDARI, ADMN MEMBER

Shanker Lal Meena, S/o Shri Salla Ram Meena,
Aged about 61 years, R/o Village & Post Bohraj via
Phulera District Jaipur.

.... Applicant.

By Advocate : C. B. Sharma.

Vs.

1. Union of India Through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi 110 001.
2. Director, Postal Services, Jaipur Region, Jaipur 302 007.
3. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur 302 006.
4. Director, Postal Accounts, Tilak Nagar, Jaipur 302 004.
5. Dr. S. D. Kulshreshtra, B-33, Sethi Colony, Jaipur 302 004.
6. Smt. Smita Kulshreshtra C/o Dr. S. D. Kulshreshtra, B-33, Sethi Colony, Jaipur 302 004.

 ... Respondents.

By Advocate : Shri Tej Prakash Sharma for R-1 to 4.
Shri Anurag Kulshrestha for R-5 to 6.

: O R D E R :

By J. K. Kaushik, Judicial Member

Shri Shanker Lal Meena has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, wherein he has prayed for the following reliefs :-

“i) That the entire record relating to the case be called for and after perusing the same appellate order dated 13.8.2003 (Annexure A/1) and punishment order dated 21.7.2001 (Annexure A/2) with the charge memo dated 5/3/2001 (Annexure A/5) be quashed and set aside with all consequential benefits.

ii) That the respondents may be further directed to refund the amount so recovered with interest at the rate of 12% p.a. with the further direction to extend all retiral benefits after recalculation of the same by way of revising pension etc. and also to release difference of pay and allowances to the post hold by the applicant on officiating basis.

iii) That the respondents may be further directed either to regularized the deposits or to recover the amount of so called excess payment on account of interest from respondent No.5 and 6 as the case may be.”

2. The brief facts of this case are that the applicant served the respondents department and retired on attaining the age of superannuation on dated 31.3.03 while he was holding the post of Sub Post Master, Tripoliya Bazar Post Office at Jaipur. The

applicant was issued with a charge sheet under Rule 16 of CCS (CCA) Rules 1965 (hereinafter called as Rules) vide memo dated 5.3.01 alleging therein that the applicant failed to take follow up action to get recovered the amount paid to the depositor on account of interest despite that irregularity was got noted to APM, SP, SB of Jawahar Nagar, HO. He has alleged to have violated Rule 3 (i) (ii) and 3 (2) (1) of CCS Conduct Rules 1964. The applicant submitted the statement of defence denying the allegations and submitted that at the relevant time he was on leave and every effort was made to recover the amount but the depositor happened to refuse to refund the over payment and his written reply was forwarded to the Divisional Office for further necessary action. He also submitted that he has not committed laxity in discharging his duties. Thereafter, the Disciplinary Authority has imposed the penalty of reduction by one stage from Rs.8000/- to 7850/- for one year from 1.8.01 to 31.7.02 without cumulative effect and adversely affecting his pension. In addition to this, an amount of Rs.47,000/- i.e. 50% of the loss in cash is to be recovered from his pay in 20 instalments of Rs.2350/- per month from the month of August 2001 vide order dated 31.7.01. Thereafter an appeal was preferred and in the appeal the Appellate Authority, while upholding the punishment of reduction has reduced the amount of recovery to that of Rs.26,044/- vide order dated 13.8.03. The OA has been filed on adverse grounds mentioned in Para 5 and its sub paras, which we shall deal a little later in this order.

3. Per contra, the respondents have filed a detailed reply to the OA countering the facts and grounds raised in the OA. It has been averred that the Audit Report was received on 12.12.99 on the day when the applicant was on leave but it was only one day Casual Leave and being in charge of the office, it was his responsibility to go through Audit Report received from Divisional office and obtain report of various Branches of office-office as the Audit Report pertains to objective of various branches office-office but he did not take any follow up action and this resulted in closing of regular account with full payment without recovering the irregular interest paid to the depositor. Had the applicant discharged his duties properly being Supervisor of the office. The irregular payment of interest would have been recovered from the irregular account before its closure. The applicant was fully responsible for non recovering the amount from the irregular account. The punishment has been rightly imposed and the same is commensurate with the misconduct. After due application of mind, the penalty was modified/revised as regards the recovery made by the Appellate Authority. The grounds have been generally denied. The averment to the effect that the excess payment was sought to be recovered from Respondent No.5 & 6 from their another account which was not allowed by Respondent No.3 is not sustainable, since the applicant was required to recover amount excess payment from the outstanding irregular account before the closure of the

account instead of the other account of the depositor. The action of the applicant to recover the amount from another account was irregular. The official respondents cannot go beyond the rules prescribed in the interest of applicant. The contention of the applicant that the punishment imposed on him is against the provisions of Rules is not admitted. He has been rightly punished.

4. Separate reply has been filed on behalf of Respondent No. 5 & 6, wherein it has been submitted that these respondents are not the necessary party in this litigation and the relief as claimed against them cannot be granted to the applicant. It has been submitted at the time of opening the account by Respondent No. 5 with Respondent No. 6 no objection was raised by the applicant regarding maintainability of the said account according to MIS Rules and, therefore, the answering respondents are neither liable for any alleged recovery nor the punishment inflicted on the applicant. A notice was issued to them which was replied. Subsequently, they were informed that there was irregularity in the account and they sought to make recovery from the 3rd account against which a legal notice was submitted to the official respondents.

5. We have heard all the Learned Counsel representing the contesting respondents at a great length and have very carefully perused the records and pleadings of this case.

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6. Learned Counsel for the applicant has vehemently submitted that the impugned order of the penalty issued by the Disciplinary Authority itself is void-ab-initio and without jurisdiction inasmuch as the very penalty imposed is against the Rule 11 of Rules. He has submitted that the penalty which affects the pensionary benefits adversely affect the pension cannot be imposed under Rule 16 without conducting a detailed and exhaustive inquiry. He has submitted that the procedure as outlined in Rule 14 of Rules is required to be adhered to. Learned Counsel for the applicant has made us to travel through the imputation of charges, the statements of defence, the penalty order and as well as the appellate order in addition to his appeal. He has tried to persuade us that on face of it the very order indicates that the same shall affect his pension and an order which affects the pension could only be made as a measure of major penalty or at least after conducting a detailed confronted inquiry as per procedure laid down in Rule 14 of the Rules. He has also endeavored to demonstrate that the applicant was not at all responsible in the matter inasmuch as even the Audit Report was not received in his presence. Learned Counsel next contended that despite this the applicant made ample efforts to get the recovery made but it is the very Disciplinary Authority who did not allow him; rather he obstructed the recovery himself. The applicant has been made escape goat in the whole episode. Learned Counsel for the

applicant has also submitted that nothing prevented the respondents to regularise the very account by converting the earlier account into a dual account. He next contended that as a matter of fact, even the respondents did not suffer practically any loss. Otherwise also, he submitted that the applicant was only working in a supervisory capacity and no such loss can be recovered from him and in support of his contention he has placed reliance on the judgement of the Coordinate bench of this Tribunal at Jabalpur Bench in case of **Smt. Kalpana Sindhe and Ors. vs. Union of India & Ors.** reported in 2005 (1) ATJ 45 and has submitted that his case is squarely covered with the ratio laid down therein.

7. Learned Counsel for the applicant has also submitted that the penalty, in proportion to the charges of the alleged supervisory negligence is quite disproportionate. He has also submitted that the Appellate Authority also did not pay any heed to the fact that the penalty himself is going to affect the pensionary benefits of the applicant and such penalty could not have been imposed as a minor penalty without following the due procedure established by law. He has lastly contended that nothing prevented the official respondents to take recourse to the proper forum to get the amount recovered from Respondent No. 5 & 6 but such course of action has not been found expedient for them and the applicant has been victimised. Learned Counsel for the respondents has reiterated the facts and

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grounds raised in the pleadings. He has submitted that the scope of judicial review in the disciplinary proceedings is quite limited and the present one is not a fit case where any such judicial review is warranted.

8. We have considered the rival submission made on behalf of both the parties. Before proceeding further in the matter we would like to ascertain the scope of judicial review by this Tribunal. It is the settled legal position that strict rules of evidences are not applicable to the departmental inquiries and every violation of procedure does not vitiate the inquiry. See **R.S.Saini vs. State of Punjab [1999 SCC (L&S) 1424]** **K.L. Shinde vs. State of Mysore [AIR 1976 SC 1080];** **Rae Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and others [AIR 1997 SC 1908];** **Bank of India and another vs. Degala Suryanarayana [1999 SCC (L&S) 1036];** **Inspector General of Police vs. Thavasiappan [JT 1996 (6) SC 450].** The Apex Court in case of AIR 1999 SC 677 **Kuldeep Singh v. Commissioner of police** has lucidly illustrated the scope of judicial review. The following paras are relevant:

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well

servant under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

10. Now applying the principle of judicial review and the relevant rules to the facts of this case we find that the applicant has admittedly been imposed the penalty of reduction by one stage from Rs.8000 to Rs.7850 in the pay scale of Rs.5000-150-8000 for one year viz. August 2001 to 31 July 2002 without cumulative effect and adversely affecting his pension. In addition to an amount of Rs.47,000 was to be recovered which has been reduced by appellate authority to that of Rs.26,044. The applicant retired on superannuation on dated 31.3.03. The pension is reckoned by taking half of the average of emoluments drawn during last 10 months of service. Thus keeping in view the tone and tenor as well as the actual effect, the pension of the applicant is adversely affected. Admittedly no inquiry as envisaged under rule 16 (1 A) has been conducted under rules 14 of the rules. Therefore, we have no difficulty in construing that the penalty imposed on the applicant is without jurisdiction and the same cannot be sustained in the eye of law being void



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and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" were based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

9. We also find it expedient to extract the relevant portions of the rule 11 and 16 of Rules for better appreciation of the controversy as under:

11. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties-

- i. censure;
- ii. withholding of his promotion;
- iii. recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- iii. (a) reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.
- iv. Withholding of increments of pay;

16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after-

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government

servant under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

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ab initio and the impugned order of penalty deserves to be set aside on this ground itself.

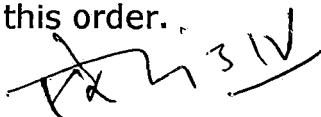
11. Now as regards the other contention of the applicant regarding the imposition of penalty of recovery is concerned, we find that the ratio of the decision relied upon on behalf of applicant in case of **Smt. Kalpana Sindhe** supra fully applied to the facts and circumstances of this case. In that case there was no charge on misappropriation of amount nor that of doubtful integrity against the applicants, no inquiry was conducted, the Hon'ble Tribunal quashed the recovery of loss. Similar are the facts here in the instant case. Thus, the penalty of recovery ought not have been imposed on the applicant and the same is ex facie uncalled for.

12. We may notice that in normal course, we have permitted the respondents to conduct fresh proceedings into the allegation and conduct the detailed inquiry, but the applicant has already retired from service and he was issued with a minor penalty charge sheet, no proceedings can be continued in such cases after retirement. In this view of the matter we are required to put the complete disciplinary case to a quietus.

13. The upshot of the aforesaid discussion leads us to an irresistible conclusion that this Original Application and ample merits and the same must succeed and stands allowed



accordingly. The impugned orders dated 21.7.2001 A/2 and order dated 13.8.2001 A/1, are hereby quashed. The applicant shall be entitled to all the consequential benefits including the refund of any amount recovered on account of penalty as well as revision of pensionary benefits and arrears thereof along with 8 % pa interest on the same. This order shall be complied within a period of three months from the date of receipt of a copy of this order.


(A. K. BHANDARI)

ADMN MEMBER



(J. K. KAUSHIK)

JUDICIAL MEMBER

P.C.I