(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

29/04/2012
O.A. 224/2011

Present : Mr. C.B. Sharma counsel for the applicant.
Mr. Mukesh Agarwal counsel for the respondents.

This case has been listed before the Joint Registrar due to non-availability of Division Bench. Let the matter be placed before the Hon'ble Bench on 03/07/2013.

(Gurmit Singh)
Joint Registrar

rejoinder not filed.

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03/07/2013

OA No. 224/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Learned Counsel for the applicant does not wish to file any rejoinder.

Heard.

O.A. is disposed of by a Separate order on the separate sheets for the reasons recorded therein.

[S.K. Kaushik]
Member (J)

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 224/2011

DATE OF ORDER: 03.07.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER

Prem Prakash Tiwari S/o Late Shri G.N. Tiwari, aged about 59 years, R/o A-28, Sain Colony, Station Road, Jaipur. Presently working as Postal Assistant, Shastri Nagar, Head Post Office, Jaipur.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi – 110001.
2. Director Postal Services, Jaipur Region, Jaipur – 302007.
3. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur – 302006.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

By way of present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved against the order dated 26th of August, 2009 passed by the Disciplinary Authority and the order dated 15th of February, 2011 passed by the Appellate Authority rejecting his statutory appeal. The applicant also sought quashing of disagreement note dated 24th of June, 2009 and also charge memo dated 28th of November, 2006.

2. The facts apparent from a conjunctive perusal of the pleadings raised by the parties and uncontroverted during the course of hearing are as under:-

The applicant, who was working as Postal Assistant at Jawahar Nagar Head Post Office, was placed under suspension under Rule 10 (1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity, the Rules) on 10th of August, 2006 in contemplation of departmental proceedings. He was served with charge sheet under Rule 14 of the Rules on 28th of November, 2006 for major penalty. Before filing reply, the applicant submitted an application on 12th of January, 2007 demanding photocopies of certain documents for filing effective reply, which was made available to the applicant on 2nd of February, 2007. The applicant submitted reply to the charge sheet denying all the charges. The respondents appointed Inquiry Officer who after conducting an enquiry submitted his report on 18th of December, 2008 by holding the applicant not guilty of charges. It is submitted that the respondent No. 3 on 1st of January 2009 forwarded the copy of the enquiry report to the applicant for submitting his representation. On 29th of January 2009, the applicant submitted a request to the respondents for dropping the charges as charges have not been proved against him. It is on 24th of June, 2009, the respondent No. 3 again supplied the copy of the enquiry report with disagreement note to the applicant for submitting his

reply. The applicant stated to have filed his reply on 9th of July 2009. It is thereafter vide memo dated 26th August, 2009, the respondent No. 3 inflicted the punishment of reducing the pay of the applicant by two staged for one year with the further direction that the applicant will earn increment during the said period of reduction and after expiry of the said period, the reduction will not have effect on the postponement of his future increments. Aggrieved against this order, the applicant filed statutory appeal to respondent No. 2 on 1st October, 2009 which was dismissed vide order dated 15th February 2011. Hence, the present Original Application.

3. Pursuant to the notice, respondents resisted the claim of the applicant by filing detailed written statement. It is submitted that both the order that is of Disciplinary Authority and of Appellate Authority are legal and have been passed according to the rules and there is no illegality in the orders. It is submitted that the Disciplinary Authority disagreed with the finding of the Inquiry Officer and after recording disagreement note and after providing an opportunity to the applicant, punishment order was passed on 26th of August, 2009, which was upheld by the Appellate Authority by dismissing the statutory appeal vide order dated 15th of February 2011.

4. No rejoinder has been filed.

5. We have heard Shri C.B. Sharma, learned counsel for the applicant and Shri Mukesh Agarwal, Senior Central Government Standing Counsel, for the respondents.

Shri Sharma, learned counsel for the applicant vehemently argued that the impugned orders inflicting the punishment upon the applicant despite the fact that the Inquiry Officer did not held the applicant guilty and have exonerated the applicant are illegal, arbitrary and shows non-application of mind, thus, the same are liable to be set aside. To elaborate his argument, he urged that once he was not found guilty by the Inquiry Officer after examining the evidence then the Disciplinary Authority does not disagree with the findings of the Inquiry Officer. He argued that once earlier the applicant was supplied the copy of the enquiry report on 1st February 2009 then there was no occasion for the respondents to again issue another letter supplying the same enquiry report with the disagreement note on 24th June, 2009.

6. Per contra, Shri Agarwal appearing on behalf of the respondents vehemently argued that this court cannot sit over the findings recorded by the Disciplinary Authority, which was approved by the Appellate Authority as Appellate Authority over both the orders and to substitute their decision. In this regard, he placed reliance upon the case of B.C. Chaturvedi v. Union of India and Others reported in (1995) 6 SCC 750 and Chairman and Managing Director, United Commercial Bank and Others v. P.C. Kakkars, reported in 2003(4) SCC 364. He further urged that both the orders are self speaking and have been passed after applying the principle of natural justice and there is no

illegality pointed out by the applicant therefore also the Original Application be dismissed with costs. Lastly, he submitted that the earlier notice issued to the applicant on 1.1.2009 was not issued by the competent authority. When this fact came to the notice of the Disciplinary Authority then immediately on 24th of June, 2009 a letter was issued to the applicant along with copy of the enquiry report and disagreement note recorded by the Disciplinary Authority to enable the applicant to file reply. He submitted that on the notice issued on 1.1.2009, no order whatsoever has been passed.

7. On the basis of the submission of learned counsel for the applicant and from perusal of records, the question arises for consideration is that what is general idea and scope of judicial review in the matters pertaining to the disciplinary inquiry? In this connection it is necessary to point out that the question in issue is not res-integra, rather it has received consideration of Hon'ble Apex Court on numerous occasion. It would be useful to refer some decisions of Hon'ble Apex Court herein after:-

i). In State of A.P. v. Sree Rama Rao AIR 1963 SC 1723, a three Judges Bench of Supreme Court held as under:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the

enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

ii). In the case of B.C. Chaturvedi v. Union of India and Others reported as JT 1995(8) SC 65/(1995) 6 SCC 750 a three Judges Bench of Supreme Court, inter alia, observed as under:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial

review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(iii). Again in Government of Tamil Nadu v. A. Rajapandian the Hon'ble Apex Court reported as AIR 1995 SC 561 opined:-

"It has been authoritatively settled by string of authorities of this court that the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that o the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority."

(iv). In the case of Chairman and Managing Director, United Commercial Bank and Others v. P.C. Kakkars, reported as 2003(4) SCC 364, the Hon'ble Court on review of long line of cases and the principles of judicial review of administrative

action under English law summarized the legal position in the following words:

> "11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [(1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

(v). In Government of Andhra Pradesh v. Mohd. Nasrullah Khan, 2006 (2) SC 82, the Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if results in manifest miscarriage and justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

> "By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority."

(vi). In another case State of U.P. and Anr. v. Man Mohan Nath Sinha and Anr. AIR 2010 SC 137 The Hon'ble Supreme Court held as under:

> "The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to re- appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal."

vii). In a recent judgment the Hon'ble Supreme Court has reiterated his earlier view that the High Court as well Tribunal under Article 226 of the Constitution of India cannot sit as Court of appeal over, the decision of the authorities holding departmental proceedings against a public servant. After relying upon the judgment in case of State of Andhra Pradesh & Ors. Vs. Sree Ramarao reported in AIR 1963 SC 1723 dismissed the SLP in case of State Bank of India Vs. Ram Lal Bhaskar and anr. Reported in 2011 STPL (web) 904 para 8 of the judgment reads as under:-

> *"8.* Thus, in a proceeding under Article 226 of the Constitution of India, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has

> been reiterated in several decision by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against the respondent no.1 do not constitute any misconduct and that the respondent No.1 was not guilty of any misconduct."

8. In the light of the above authoritative judicial pronouncement, we now proceed to examine the case in hand. Neither the applicant pointed out any procedural irregularity in conducting the departmental proceeding nor shown any violation of any principle of natural justice. The only ground raised by the applicant that once earlier notice was issued on 1.1.2009 then subsequent notice issued on 24th of June 2009 is invalid and cannot be issued. The applicant has not shown any provision under the rules which debar the respondents from issuing the second notice. Moreover, perusal of the letter dated 24th of June, 2009 itself makes it clear that the respondents have recorded that the earlier order was issued by incompetent authority who is not the disciplinary authority, therefore, subsequently as per Rule 15 (2) of the Rules, the notice was issued and ultimately the Disciplinary Authority inflicted the punishment by the impugned order dated 26th of August, 2009. The relevant part of letter dated 24th of June, 2009 reads as under:

> "And whereas inquiry report is in receipt from the inquiry Officer vide his letter No. Enq./Rule-14/01 dated 19-12-2008, received in this office on 19-12-2008 itself. A copy of the same was served to you vide this office letter of even no. dated 01-01-2009 under the signature of Dy.

SPOs Jaipur City Dn. Jaipur who is not having disciplinary powers. As the Inquiry Officer has given his findings by not proving the articles of charge, but the undersigned, the disciplinary authority disagree with the findings of the Inquiry Authority. As such photo copy of the Inquiry Report dated 19-12-2008 along with a copy of disagreement statement on the Inquiry Report is sent herewith in pursuance of rule-15 (2) of CCS (CC&A) Rules, 1965."

9. In the aforementioned background, we are of the considered view that the applicant fails and, accordingly, the Original Application is dismissed being devoid of merit. No order as to costs.

(S.K. KAUSHIK)
JUDICIAL MEMBER

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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