

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 13th Day of September 2018)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

Original Application No.1347 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Ramu Singh Yadav S/o Sri Dharam Deo Singh Yadav R/o Village and
P.O Bauri (Nonahara), Ex. G.D.S. B.P.M. Bauri, District Ghazipur.

..... Applicant

By Advocate: Shri S.S Yadav

Versus

1. Union of India through Secretary, Ministry of Communication,
Department of Post Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Division, Allahabad.
3. Director Postal Services, Allahabad Region, Allahabad.
4. Superintendent of Post Offices, Ghazipur Division, Ghazipur.

..... Respondents

By Advocate: Shri R.K. Srivastava

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. The following reliefs are sought by applicant Ramu Singh
Yadav in the present O.A.:

“(i) To issue an order, or rule or direction for quashing
and setting aside the impugned orders of punishment,
Appellate Order as well as Revisionary order passed by
the respondent No.4, 3 and 2 (Annexure No. A-3, A-2

and A-1 to the Compilation No. & Part 1 to this O.A) respectively.

(ii) To issue an order, rule or direction in the nature of mandamus directing the respondents to reinstate the applicant on the post of G.D.S. B.PM Bauri (Nonohar) District Ghazipur as consequent of the first reliefs.

(iii) To issue an order, rule or direction in the nature of mandamus directing the respondents to allow the wages for the intervening period of put off duty to the date of reinstatement.

(iv) To issue any other, rule order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the case.

(v) Award the cost of the applicant in favour of the applicant".

2. The brief facts of the case are that in 1980, applicant was appointed as Extra Departmental Branch Post Master (hereinafter referred to as the 'BPM') at Bauri Branch Post office in district Ghazipur and put up duty on 17.04.2000 by respondent No. 4 after cancelling the sanctioned leave from 15.02.2000 to 31.05.2000. Previously, E.D agents in postal department were granted leave on condition they would provide substitute in their place at their own risk and responsibility and if fraud committed or loss caused by the substitute, the agent had to make good the loss but no criminal proceedings were permissible.
3. Being BPM, applicant had to provide accommodation for post office at his place and maintain it. Santosh Kumar, family member of applicant used to look after the premises and also worked as substitute BPM as leave vacancy in place of applicant and so, the villagers used to deal with Santosh Kumar as BPM.

4. During this period, Santosh Kumar substituting for the applicant and otherwise also accepted deposit but did not enter them in the record. During 03.12.1999 to 22.12.1999 and 15.02.2000 to 15.03.2000, Santosh Kumar while officiating as BPM accepted deposit and also made fraudulent withdrawal entries in the record of the depositors (details given in the O.A.) which came to loss of Rs.60000/-. The illegal actions came to light when applicant was on leave from 15.02.2000 to 31.05.2000 and the leave of applicant was cancelled and he was put of from duty. To mitigate the loss, applicant deposited Rs.60000/- and also Rs.37333/- as directed by respondent No.4.
5. Applicant's further case is that in violation of rules which lay down that he cannot be punished again, respondent No. 4 issued charge sheet dated 12.09.2000 and thereafter punishment of removal from service was imposed on the applicant from 23.11.2001 which was set aside in appeal by respondent No. 3 and direction for fresh enquiry was ordered vide order dated 28.06.2002.
6. That respondent No. 4 vide order dated 19.08.2002 continued his put of duty and issued fresh charge sheet dated 01.10.2002. Mr. S.R.Singh who was the earlier enquiry officer was again appointed as enquiry officer and despite his request to hold the proceeding till the decision is made to replace him or not. Vide order dated 10.09.2003, respondent No. 4 changed the Enquiry officer who proceeded from the stage of cross-examination of the State witnesses.
7. It is the further case of applicant that the stages and denial of opportunities (infirmities by the previous enquiry officer remained intact. Respondent No. 4 sought representation against the enquiry report dated 30.12.2003 and thereafter respondent No. 4 awarded punishment of removal from

service and the appeal against the punishment order was rejected by respondent No. 3 and so was his revision petition to respondent No. 2 rejected vide order dated 26.10.2005.

8. Applicant has challenged the orders of punishment, order of appellate authority (AA) and order passed in revision on the following grounds:-

- i. The illegalities were committed by his substitute.
- ii. As per the D.G. Postal and Telecommunication instructions before Rule - 5 of P&T E.D.A's (Conduct and Service) Rules, 1965 in swamy's Service Rules for Postal E.S. Staff, no criminal proceeding or imposition of departmental punishment on the applicant is permissible other than his civil liability to make good the loss suffered by the department on account of his substitute.
- iii. Initiation of recovery of the disciplinary proceedings is double jeopardy as held by C.A.T. Bangalore Bench in the case of Boraiah, Major Vs. D.P.S. Bangalore and others (1989) 11 A.T.C. 561.
- iv. Appeal against the appointment of Inquiry Officer was pending before the Appellate Authority but Appellate Authority continued to enquire into the case despite prohibition by the Government of India, Cabinet Secretary (D.O.R) and D.G.P. & T. Comm. No. 7/28/72 Disc. I dated 19.3.1973.

9. In the counter affidavit, the respondents have pleaded that while working as Branch Post Master, Bauri (Nonhara), he was granted leave without allowances. However, during the leave

period, the son of applicant was engaged as Substitute on the risk and responsibility of the applicant. While working as Substitute, some cases of misappropriation of amount of money orders came into light and as such an enquiry was made by the S.D.I. (P), Mohammadabad. After enquiry, applicant was held guilty of misappropriation of government money and as such there was no option but to remove him from service vide memo dated 23.04.2001. Against the said order, applicant preferred appeal, which was decided and give a direction to initiate DENOVO proceedings. Therefore, fresh chargesheet was supplied to the applicant. In pursuance of said chargesheet, Inquiry Officer and Presenting Officer were appointed but applicant submitted a representation dated 5.11.2002 requesting to change the inquiry officer. On submission of defence representation, Disciplinary Authority had gone through the entire enquiry report, statement, relevant oral and documentary evidences, passed the order of removal of the applicant from service vide order dated 26.02.2004. Against the order of Disciplinary Authority, applicant preferred an appeal dated 29.3.2004 before the Appellate Authority and after consideration of all the points raised by the applicant, the Appellate Authority rejected the appeal of the applicant. Respondents further submitted that all action taken by the respondents are in conformity with the relevant rules and instructions on the subject and the very impugned orders are self explanatory.

10. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record more specifically the memo of appeal and the orders of the appellate authorities while dealing with the contentions raised by the applicant/appellant.
11. At this stage it would be worthwhile to take note of the arguments of learned counsel for applicant that the Appellate

authorities while disposing off the appeal and the revision petition has dealt with the appeal in very cursory manner without considering the pleas both factual and legal raised by the applicant. The appeal/revision have been dismissed without undertaking any appreciation of evidence, dealing with various issues arising in the case and discussing the arguments raised by the parties in support of their case. In other words, the disposal of the two first appeals could not be said to be in conformity with the requirements of the legal principles laid down while disposing of an appeal.

12. Applicant seeks quashing of the following orders:-
 - a. Enquiry report dated 30.12.2003
 - b. Order dated 26.02.2004 of Disciplinary Authority;
 - c. Order dated 23.09.2004 passed by Appellate Authority;
 - d. Order dated 26.10.2005 passed by Revisional Authority
13. It would be profitable to look into the settled principles of law regarding the manner in which appeals should be disposed of as under :
 - I. C. Venkata Swamy v/s H.N. Shivanna decided on 04.12.2017 by Hon'ble Apex Court that: "The jurisdiction of the first Appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference."

II. Kurian Chacko vs. Varkey Ouseph, AIR 1969 Kerala 316, reminded the first Appellate Court of its duty to decide the first appeal. as under: "1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation....."

III. Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179: ".....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its

conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.....”

- IV. B.V Nagesh & Anr. vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530 :“3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:
- (a) the points for determination;
 - (b) the decision thereon;
 - (c) the reasons for the decision; and
 - (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.
4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put

forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179 at p.188, para 15 and Madhukar v. Sangram, (2001) 4 SCC 756 at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

14. The Learned counsel for applicant has strenuously argued that the order of the appellate authorities are not in accordance with law and vitiated by total non-application of mind and placed reliance on **Director (Marketing), Indian Oil Corpn. Ltd. v/s Santosh Kumar, (2006) 11 SCC 147.**

15. In Director (Marketing), Indian Oil Corpn. Ltd. v/s Santosh Kumar (Supra), on similar facts and non-application of mind by the Appellate Authority as that of the instant O.A., the Hon'ble Apex Court, while setting aside the impugned orders of the Disciplinary Authority and Appellate Authority remanded the case to said Authority for deciding it afresh.
16. In the present case, applicant has not placed on record, the representation made by him in response to the enquiry report as desired by the Disciplinary Authority, so there is no way of knowing what pleas, he had raised before the Disciplinary Authority. Therefore, in the light of foregoing discussion and settled law, looking to the cursory manner in which the appeal/revision have been decided, we set aside the Order dated 23.09.2004 passed by Appellate Authority and Order dated 26.10.2005 passed by Revisional Authority and remand the case to the respondent No. 3 to decide the appeal filed by applicant within a period of two month from the date of receipt of the certified copy of this order after hearing the applicant and keeping in mind the points raised by the applicant in the memo of appeal. Nothing mentioned hereinabove shall affect the merit of the case which shall be decided by the authority on its own merits and in accordance with law. O.A. is accordingly disposed of with the above directions. No order as to costs.

(Mohd. Jamshed)
Member (A)

(Rakesh Sagar Jain)
Member (J)

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