Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 19th Day of September 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (A.)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.445 of 2010
(U/S 19, Administrative Tribunal Act, 1985)

N.K. Saxena, S/o late Sri Brij Mohan Sahai Saxena, R/o 1/204, Awas Vikas Colony, Lohia Puram, Farrukhabad.

..... Applicant

By Advocate: Shri Pankaj Srivastava

Versus

1. Union of India through the Secretary, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Kanpur Region, Kanpur.
4. The Superintendent of Post offices, Fatehgarh Division, Farrukhabad.

.... Respondents

By Advocate: Shri V.S Sisodia.

O R D E R

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

1. The applicant seeks quashing of order dated 14.10.2008 (Annexure A1) whereby punishment of recovery of Rs. 229920/- was ordered to be effected from the applicant by the Disciplinary Authority (DA) and order dated 26.3.2009 (Annexure A2) whereby his appeal against the order of punishment was dismissed by the Appellate Authority (AA).

2. The brief facts of the O.A. filed by applicant N.K. Saxena are that initially applicant was appointed as Postal Clerk and after completion of 16 years of service, he was promoted on the post of L.D.C. Thereafter applicant was promoted on the post of Sub Post Master, Farrukhabad. On 11.11.2006, a theft took place in which an amount of Rs.4,59,840/- was stolen after breaking the lock of Strong Room as well as Iron Almirah. At that time, Shri Sukhdeo Mishra was posted as Chowkidar. On 13.11.2006, applicant lodged the F.I.R. in the Police Station Kotwali Farrukhabad. After enquiry Police arrested Shri Devi Sahai Bajpayee, who was working on the post of Treasurer at the same Post Office. Police submitted chargesheet against Shir Devi Sahai Bajpayee and thereafter Shri Devi Sahai Bajpayee was bailed out. Respondents issued a charge-sheet on 01.07.2007 (Annexure A-3) under Rule 14 of CCS (Conduct) Rules against Shri Devi Sahai Bajpayee, Shri Sukhdeo Mishra and the applicant. During the enquiry, Shri Devi Sahai Bajpayee, who is the main culprit has retired from service on 31.8.2008. Respondents conducted an enquiry against Sukh Deo Mishra (Chowkidar) and exonerated him from the charges leveled against him. Applicant filed his reply to the chargesheet and denied the charges leveled against him. Applicant received enquiry report and against enquiry report, applicant filed representation on 6.5.2008 (Annexure A-5). On 14.10.2008, the respondents without giving any opportunity of hearing and without application of mind, passed the impugned order dated 14.10.2008 and imposed the penalty of recovery. The recovery to be affected in following manner:-

> Rs.2,29,920/- may be recovered from the pay, D.C.R.G and leave encashment of applicant and an amount of Rs.84,000/- may be recovered in 21 monthly installments of Rs.4000/- each from the pay of the applicant.

3. Applicant preferred an appeal before the Appellate Authority on 06.11.2008 and Appellate Authority rejected the appeal of applicant on 26.3.2009 (Annexure A-2) by unreasoned and cryptic order. Hence applicant filed this O.A.

4. Applicant has challenged the order of recovery and order of appellate authority (AA) on the following grounds:-

   (i) Rule 11 of the CCS (Conduct) Rules clearly provides that imposition of penalty of recovery can be awarded only if the lapse on the part of the employee either led to commission or fraud or misappropriation are frustrated as a result of which it is not possible to locate the real culprit.

   (ii) Respondents illegally imposed the penalty against the applicant as the real culprit has already been located.

   (iii) The impugned orders are wholly illegal, arbitrary and without application of mind as no modus operandi of the fraud or misappropriation was indicted by the respondents.

   (iv) As per enquiry and charge-sheet submitted by the Police, it is clear that no theft took place and whole amount was stolen by Shri Devi Sahai Bajpayee (the Treasurer).

   (v) While passing the impugned orders, the Disciplinary Authority as well as Appellate Authority has directed to recover the amount from the DCRG of the applicant, which is totally illegal because applicant has not yet been retired from service.

   (vi) The real culprit being located and police filing the charge sheet against that person as such there was no occasion for the department to serve a charge sheet against the applicant

(vii) Charge sheet under Rule 14 of CCS (Conduct) Rules was issued against applicant, Devi Sahai Bajpayee (Treasurer) and Sukhdeo Mishra (Chowkidar) but the department deliberately did not take any steps against Devi Sahai Bajpayee to complete the enquiry and he retired on 31.8.2008 whereas Sukhdeo Mishra was exonerated from the charges levelled against him despite his being the real culprit and has been charge sheeted by the police.

(viii) Directing recovery of the amount from DCRG of applicant is illegal and since applicant has not retired no recovery can be made from the DCRG.

5. In the counter affidavit, respondents have stated that disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 was initiated on 01.02.2007 for the theft taken place on 12/13.11.2006 during the incumbency of applicant as Sub Post Master, Farrukhabad. After providing opportunity of hearing to the applicant, the case of the applicant was decided on 14.10.2008 and passed recovery order. Against the punishment order, applicant filed appeal, which was rejected by the Appellate Authority.

6. In the rejoinder, the applicant reiterated the averments made in the O.A. and further stated that the applicant has not been given full opportunity of hearing while passing the recovery order. As per F.I.R. lodged by the applicant, the police have already enquired the matter and submitted chargesheet against Shri D.S. Vajpayee. Shri D.S. Vajpayee was arrested and bailed out and as such action against the applicant is totally illegal, arbitrary and bad in law.

7. In the supplementary counter affidavit, it is submitted that as per Rule 84 of Postal Manual Volume VI Part III, the applicant

being the SPM of Farrukhabad S.O. was the joint custodian of the office cash balances for the overnight safe custody along with treasurer. Hence, the applicant is also responsible for the loss caused to the Government.

8. Heard Shri Pankaj Srivastava, learned counsel for the applicant and Shri V.S. Sisodia, learned counsel for the respondents and gone through the pleadings.

9. It is no more res integra that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.

10. In B.C. Chaturvedi v. Union of India, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under: "12. 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 eye of the Court. When an inquiry is conducted on charges of a 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 be complied with. Whether the findings or 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 proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings 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 of 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.

11. In R.S. Saini v. State of Punjab and ors, (1999) 8 SCC 90, the Hon'ble Apex Court has observed as follows: "We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. 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. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

12. In Government of Andhra Pradesh v. Mohd. Nasrullah Khan, (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of 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....."

13. The learned counsel for the applicant has cited a decision of CAT, Chandigarh Bench delivered on 24.08.2009 in OA No. 459/PB/2009 Smt. Veena Mahay vs. Union of India and others alongwith some other OAs. In the said OA the only charge against the applicants was that they have not followed the procedure and were negligent in performing their duties as they had not compared the balance of SB ┬ 7 with that of SB-3 and verified the signatures of depositors. It has been held that unless the person concerned is directly responsible for misappropriating any amount or for causing any pecuniary loss to the Government, no recovery can be made from the applicants. The facts of the said case are entirely different from the facts of the case and it was held that unless person concerned is directly responsible for misappropriation, no

recovery can be effected from him. The said case pertained to misappropriation whereas in the present case, the charge is of negligence of applicant which resulted in loss of Government money.

14. Reliance in this regard has been placed on a decision delivered by CAT, Allahabad Bench on 22.09.2011 in OA No. 497/09 – Shiv Bhushan Singh vs. Union of India and others it was held that the applicant for being negligent and not careful of his duties due to which SPM PAC Lines, PO succeeded in committing fraud in different accounts, a penalty of recovery from the applicant could not have been imposed on him. Again this decision was with regard to commission of fraud in different accounts whereas in the present case, there is no allegation of fraud but of nelgience and therefore of no avail to the applicant.

15. It has also been held by CAT, Ahmedabad Bench in OA 750/98 – J.M. Makwana vs. Union of India and others decided on 04.09.2001 that the applicant cannot be made responsible for the criminal act of somebody else and the order of recovery of the loss to the Government, from the salary of the applicant cannot be sustained. The facts of the present case are that applicant was also responsible for safe keeping of the government cash which he did not do so and therefore his negligence caused loss to the government. Therefore the decision in said citation is based on facts which are entirely different from the facts of the present case.

16. In O.A. Anandi v/s Union of India decided on 17.1.2014 by Tribunal, Allahabad, the case was based on misappropriation of money and it was held that loss of money ought to have been made from the persons directly responsible for misappropriation. The present case is not based on

misappropriation but loss suffered by the Government on account of negligence of applicant.

17. Our attention has also been drawn to a decision delivered by CAT, Jabalpur Bench in OA Nos. 344/03, 353/03, 354/03, 355/03 and 357/03 – Smt. Kalpana Shinde vs. Union of India and others. In the said case the applicant was not directly responsible for misappropriation of any amount, but the applicant was negligent in not posting the entries of the pass books in the error book and was also negligent and it has been held that the recovery, if any, was to be made for the loss of amount ought to have been made from the person directly responsible for misappropriation.

18. In the instant case, the charge against the applicant stands proved that the negligence of applicant afforded an opportunity to the thieves to steal the cash when he did not keep the cash in more secure Godrej burglar safe custody and the theft resulted in loss of Government money to the tune of Rs.459840/- and therefore, the DA under the provisions of Rule 106/107/111 of Postal Manual Vol. III imposed monetary liability upon the applicant to the extent of Rs.229920/- (50 % of loss sustained by the Government. The applicant duly participated in the enquiry and cross-examined the witnesses examined on behalf of the prosecution. The applicant also submitted his written defence note to the Inquiry Officer. After analyzing the evidence and materials available on record, the Inquiry Officer submitted the inquiry report, vide his report dated 7/15-4-2008 finding the charges against the applicant as proved.

19. Strangely enough, in his relief the applicant has not made any prayer regarding the report of the I.O. During the course of hearing, learned counsel for the applicant laid much emphasis on the findings of the inquiry. However, from the

relief claimed, we find that the inquiry report and the findings recorded therein are not under challenge. The applicant has only sought quashment of the order of penalty and the order passed by the appellate. In absence of there being any challenge to the inquiry report and the findings recorded therein, it is not permissible in law to examine the validity of the findings of the inquiring authority.

20. The record more particular the report of DA reveals that after considering the materials available on record including the applicant's representation made against the inquiry report, the Disciplinary Authority, vide order dated 14.10.2008 imposed upon applicant the penalty of recovery. Again the appeal against the order of Disciplinary Authority, the Appellate Authority disposed of the appeal by a reasoned and speaking order dated 26.03.2009. Applicant has been unable to show any infirmity in the order of respondent No. 4 upholding the order of punishment.

21. The observations/findings recorded by the Disciplinary Authority and Appellate Authority are based upon evidence/materials, and it cannot be said that there was no evidence before the Disciplinary Authority and Appellate Authority to arrive at the above findings/ conclusions against the applicant. The applicant, in discharge of his duties, was required to discharge his duties with utmost sense of integrity, honesty, devotion and diligence, and to ensure that he did nothing which could result in loss to the Government. The applicant was incharge of Sub Post office Farrukhabad and whatever may be the criminal liability in the criminal case filed in the Magisterial Court, the applicant in the present case was also jointly responsible for safe keeping of the government money and therefore cannot escape the charge of negligence which led to loss of money of the Government.

22. Though the inquiry report and the findings recorded have not been challenged, however, the learned counsel for the applicant having argued that the findings are without any evidence, we did peruse the inquiry report. The charge of causing loss of Government money due to his negligence has been proved against the applicant.

23. At risk of repetition, it may be stated that it is settled law that the Tribunal cannot sit as a court of appeal over the findings of the inquiring authority. The conclusions derived by the inquiring authority are based upon evidence. The adequacy of the evidence cannot be looked into by the Tribunal so long the view of the inquiring authority is one of the possible views. The argument of the applicant's counsel that the findings are perverse cannot be accepted.

24. Insofar as the appellate order is concerned, it is said to be without reasons. We have perused the orders. The appellate authority has recorded sufficient reasons in its order and considered the stand of the applicant as per his memo of appeal. The contention of the learned counsel for the applicant that the orders are without reasons is not correct. Suffice it to say that the administrative authority is not required to write a judgment, as is written by a court of law. The administrative authority, particularly when exercising appellate jurisdiction, is only required to disclose due application of mind to the issues raised, which has been done in the present case.

25. After having given our thoughtful consideration to the materials available on record and the rival submissions, in the light of the decisions referred to above, we have found no substance in the submissions of learned counsel for the applicant to allow the O.A.

26. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

[Rakesh Sagar Jain]
Member-J

[Gokul Chandra Pati]
Member-A

Manish/-