

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1027 of 2011

This is the 31st day of October 2018.

HON'BLE MR. GOKUL CHANDRA PATI, ADMINISTRATIVE MEMBER
HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

O.P. Rana aged about 56 years, S/o Sri Balram Singh, V&P – Jattari, District Aligarh, UP.

.....Applicant

By Advocate: Shri Bhagirathi Tiwari

Versus.

1. Union of India through Secretary, Ministry of Communication, Deptt. Of Postal, Dak Bhawan, Sanshad Marg, New Delhi.
2. Post Master General, Agra Region, Agra.
3. Director of Postal Services, Agra Region, Agra.
4. Superintendent of Post Offices, Bulandshahar.

..... Respondents

By Advocate : Shri Ravi Prakash Singh.

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. The present OA. has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-

"(i) To issue direction/order writ in the nature of certiorari quashing the order dated 31.03.11 (A-1) and dismissal order dated 29.6.10 (A-2).

(ii) To issue directions/orders/writ in the nature of mandamus commanding the respondents to set aside the order dated

29.6.2010 (A-2) including setting aside the irregular inquiry report and order dated 31.3.11 (A-1).

- (iii) to consider any other relief which the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
- (iv) To award the cost of the application throughout".

2. Facts of the O.A. filed by applicant O.P.Rana is that a charge sheet was served upon him through memo dated 24.12.2008 alleging therein that applicant while posted as Sub-Postmaster, Jahangirpur during the period 16.4.2007 to 3.5.2008 made fraudulent payment of stolen/lost KVPs worth Rs.2638709/- and on 19.4.2008 made payment of lost/stolen NSCs worth Rs.176520/- by not verifying the genuinity of KVPs/NSCs from office of issue, verifying the local address of holders and by not consulting the negative list of lost/stolen NSCs/KVPs/IVPs circulated from time to time, as per, the details given and thereby infringed Rule 2, 11 and 37 of PO SB Manual Volume – II and violated Rule 3 (1) (i) (ii) (iii) of CCS (Conduct) Rules 1964 (hereinafter referred to as the 'Rules').

3. Applicant was found guilty on both counts and punished for the same. He seeks the quashing of Appellate Order dated 31.3.2011 (Annexure-A1) passed by respondent No.3 and Order dated 29.6.2010 of the Disciplinary Authority imposing the penalty of 'Dismissal from Service which shall be disqualification for his further employment under the Government' passed by respondent No.4 and the irregular inquiry report.

4. It is the case of applicant that during the inquiry, the inquiry officer did not consider regarding additional documents and defence witness and also refused to produce the basic record i.e. negative list. The inquiry officer in violation of Rule 14 of the Rules completed the inquiry (Annexure- A4).

5. In support of the reliefs claimed, the applicant has pleaded the following grounds:

- 1) The penalty order is based on unreasonable, arbitrary, irregular and illegal findings.
- 2) The respondent No.4 has violated the provision Article 311 (2) of the Constitution of India regarding natural justice and also violated Articles 14, 16, 21 and 311 (2) of the Constitution of India.
- 3) The order issued by respondent No.4 is arbitrary, irregular and the respondents No.4 has not considered the submissions of the applicant made in the representation against the inquiry report.
- 4) The findings of the Inquiry Officer are imaginary and not based on factual position.
- 5) The respondent Nos. 3 & 4 have not considered the fact that double punishment cannot be imposed and as such the impugned orders are illegal. Arbitrary and irregular.
- 6) The submissions at serial No. 13, 14, 15, 16 and 17 of the appeal were summarily rejected without any reasons in a very casual manner, overlooking the specific averments and also the rules.
- 7) The respondents have not followed the mandatory provisions Rule 14, 15 and 27 of the CCS (CCA) Rules, 1965

6. Reference, in brief, may also be made to the counter affidavit filed by respondents wherein it has been stated that:-

The applicant while working as Sub Post Master Jahangeerpur S.O. under Khurja Head Office during the period from 16.04.2007 to 03.05.2008, made the fraudulent payment of lost/stolen KVPs worth Rs. 26,38,709/- (Rs. Twenty Six Lax Thirty Eight Thousand Seven Hundred Nine only) and NSC worth Rs.1,76,520/- (Rs. One Lac Seventy Six Thousand Five Hundred Twenty only) by not verifying the genuineness of these KVPs and NSCs from office of issue. The applicant also did not get verified local addresses of holders and did not consult the negative list of lost/stolen KVPs/NSCs circulated from time to time. In this way, the applicant caused a departmental loss of Rs.28,15,229/- (Rs. Twenty Eight Lac Fifteen Thousand Two Hundred Twenty Nine only). The applicant was charge sheeted under Rule 14 of CCS

(CCA) Rules, 1965, for the above mentioned departmental lapses vide SPOs BSR memo No. F-5/3/O.P. Rana/2008-09 dated 24.12.2008 (Annexure A-3). On denial of charges by the applicant vide his application dated 09.01.2009, IO/PO were appointed vide memo No. F-5/3/OP Rana/2008-09 dated 24.09.2009. IO submitted his enquiry report on 28.05.2010, which was received in SPOs BSR office on 31.5.2010, wherein the charges levelled against the applicant were held proved. The copy of enquiry report was sent to the applicant on 31.5.2010 with direction to submit his representation. The applicant submitted his representation on 18.06.2010 which was received in the office of SPOs Bulandshahr on 23.06.2010. The applicant was awarded punishment of "Dismissal from Service" vide memo No. F-5/3/OP Rana/2008-09 dated 29.6.2010 (Annexure A-4) which was delivered to him on 03.07.2010.

7. Whereas, applicant filed the rejoinder to the counter affidavit wherein it has been averred that:-
 - (i) Negative list of lost/stolen KVPs/NSCs was not available at the time of payment of payees. As per Rules the genuineness and addresses are to be verified from the records and previous payments in the matter as such order for dismissal from service was passed without holding proper enquiry and the appeal was not considered violating the Rules.
 - (ii) There is no recitals by the respondents why no FIR and no recovery was initiated against the persons who received the payments which was allowed as per records of the Post Office.
 - (iii) As per Rules, the signatures and addresses of the payees were recorded and verified already by the concerned officials and as such there was no irregularity on the part of the applicant and the payments were made as per

rules in the absence and negative list of 10 years back, stolen/lost KVPs/NSCs.

(iv) Non-payment of proper subsistence allowance to the applicant submitted proves arbitrary and ill-will action of the respondents. It is submitted that the competent authority has not passed any orders violating the rules, regarding the subsistence allowance.

8. We have heard and considered the arguments of the learned counsel for the parties and gone through the material on record.

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. (Read with advantage B.C. Chaturvedi v. Union of India, AIR 1996 SC 484).

10. We may also refer to the law laid down by the Hon'ble Apex Court in:

A. R.S. Saini v. State of Punjab and ors, (1999) 8 SCC 90, that: "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."

B. 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....."

11. Now keeping in view the aforesaid principles in mind, after considering the materials available on record including the applicant's representation made against the inquiry report, the Disciplinary Authority, vide order dated 29.6.2010 imposed upon applicant the penalty 'Dismissal from service'. The appeal against the order of Disciplinary Authority, Appellate Authority disposed of the appeal by a reasoned and speaking order dismissing the appeal vide order dated 31.3.2011. Applicant has been unable to show any infirmity in these orders.

12. The above observations/findings recorded by the Inquiry Officer, Disciplinary Authority and Appellate Authority are based upon evidence/materials, and it cannot be said that there was no evidence before the Inquiry Officer, Disciplinary Authority and

Appellate Authority to arrive at the above findings/ conclusions against the applicant.

13.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 was unbecoming of an employee/officer of the respondent-department more so, when he was entrusted with public money. However, as proved by the disciplinary proceedings, the applicant in complete violation of rules and regulation made the payment of various KVPs and NSCs and thereby the respondent-department incurred a loss of government money.

14.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 authorities dealing with disciplinary proceedings. 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. It is sought to be argued that the defence was not furnished documents. In this regard, it is pertinent to note that the charged officer has to establish that the documents asked for by him are relevant to the issues involved in the inquiry and non-furnishing of such documents has caused prejudiced to him. Learned counsel for the applicant has not been able to point out any document, was asked for and was relevant to the controversy, and its non-production has caused prejudice to the delinquent officer. These findings do not come to the rescue of the applicant, particularly when the inquiry report is not under challenge.

15.The applicant has neither pointed out the relevancy of the documents not any prejudice having been caused to him. We do not find any violation of the statutory rules. There is no

specific allegation of bias against any person warranting interference in the impugned penalty order.

16.Insofar as the appellate order is concerned, it is said to be without reasons. We have perused the order. The appellate authority has recorded sufficient reasons in its order. 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. Rather, the impugned orders passed in the present case are lucid, detailed and reasoned and have met every contention raised by the applicant. The contention of the learned counsel for the applicant that the inquiry suffers from manifest errors is a general statement.

17.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.

18.In the present case, we find that the enquiry was conducted, as per, the provisions of law. The charge against the applicant that due to his handling of the business of the post office, payment of the KVPs and NSCs were made in violation of the rules and regulations of the post office manual. 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 (Annexure-A4) dated 28.5.2010 finding the charge against the applicant as proved. Applicant's case that he was proceeded ex parte by the inquiry

officer is squarely met by the stand of the respondents that the inquiry was to be finished within the time frame set by the Hon'ble High Court and applicant at the fag end of the inquiry to delay the proceedings took the pretext of illness and when he was directed to get himself examine by the Medical Board in District Hospital Bulandshahr, did not comply with the orders and therefore the inquiry proceedings were completed in compliance to the orders of the Hon'ble High Court.

19. Looking to the nature of the charge against the applicant and the material on record, the allegations against the applicant become all the more damaging when we see that infraction of rules for making payments of KVPs/NSCs was not a onetime aberration but that the violations were committed repeatedly during a course of period, therefore, the punishment of 'dismissal from service' imposed on the applicants by the disciplinary authority and confirmed by the Appellate Authority also does not appear to be disproportionate to the misconduct committed by him.

20. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties. 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/-