Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This is the 13th day of September, *2018*.

ORIGINAL APPLICATION NO. 509 of 2013

Present:

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

Om Prakash son of Shri Gama Prasad, Gramin Dak Sewak (Dimissed), Branch – Chakedhi, Malwa Post Office, District Fatehpur, R/o Village Karanpur (Sukhal Nakher), Post Madokipur, District Fatehpur.

……Applicant

Applicant in person.

Versus.

1. Union of India through its Secretary, Ministry of Communication, Department of Posts Dak Bhawan, Sansad Marg, New Delhi.
2. Union of India through Director General of Posts, New Delhi.
3. Post Master General, Head Office, Kanpur Region, Kanpur.
4. Superintendent of Post Office, Head Office, District Fatehpur.
5. Post Master, District Fatehpur.
6. Sub Divisional Inspector (Postal, Bindki Fatehpur, (U.P).

……..Respondents

By Advocate: Shri Himanshu Singh

O R D E R

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. Applicant Om Parkash in the instant O.A. seeks the following reliefs:-

"(i) to issue a writ, order or direction in the nature certiorari quashing the impugned order

dated 26.07.2012 passed by respondent No.6-Sub Divisional Inspector (Postal), Bindki Fatehpur (U.P) and the appellate order dated 23.01.2013 passed by the respondent No.4 Superintendent of Post Office, Head Office, District Fatehpur.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents department to reinstate the applicant as Gramin Dak Sewak and further extend all the consequential benefits flowing after the impugned orders dated 26.07.2012 and the appellate order dated 23.01.2013 are set aside, otherwise the applicant shall suffer irreparable loss.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents department to pay the entire salary for the period to the applicant during which he was under 'Put of Duty'.

(iv) To issue such other and further orders/direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case which the applicant is found entitled to and.

(v) To award cost".

2. The brief facts of the case as coming out in the pleadings are that applicant was working as Officiating Branch Post Master, Chakhendi since 17.05.2002 in addition to his own duty and during this period he was found to have indulge in payment of bogus money order to the tune of Rs. 1100500/- on different dates from 06.09.2004 in connivance with SPM Malwan R.S and Manoj Kumar, Baldeo Sharma and other persons. During the investigation, it was found that applicant has deserted his duty since 25.04.2006 and, therefore, he was 'put off duty'.

3. As per the O.A., the applicant was found guilty of the charges levelled against him by the department as per the enquiry dated 10.05.2012. Applicant received the report of the Enquiry Officer along with show cause notice and thereafter the Disciplinary Authority in absence of his reply passed order of punishment i.e. dismissal from service order dated 26.07.2012. His appeal to the Appellate Authority (Respondent No. 4) against the order of the Disciplinary Authority was dismissed by the Appellate Authority by order dated 23.01.2013 and which order was an unreasoned order.

4. Applicant attacked the enquiry report on a number of grounds but strangely enough, applicant has not asked for any relief regarding the Enquiry report. And again, except for averring in the O.A. that the order of the Appellate Authority is without any reasons, no other ground has been urged by the applicant in the O.A. challenging the correctness of the orders of the Disciplinary Authority and the Appellate Authority.

5. As per the counter affidavit, the same gives the details of the two charges framed against the applicant i.e. (1) fraudulent payment of money on bogus money orders; (2) absent from duty since 25.04.2006. It has been further averred in the counter affidavit that copy of enquiry report dated 10.05.2012 was sent to applicant for his defence representation and the same dated 05.06.2012 was duly submitted by the applicant.

6. Applicant filed the rejoinder affidavit. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record.

7. It is no more res integra that 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. It is settled law that the Tribunal should not enter into the arena of facts which tantamount to re-appreciation of evidence.

8. In State Bank of Bikaner & Jaipur v/s Nemi Chand Nalwaya, (2011) 4 SCC 584, it has been held by the Hon'ble Apex Court that "It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

9. 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".

10. 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."

11. From the above observations of the Apex Court, it is clear that the scope of judicial review is limited to the deficiency in decision-making process and not the decision. The deficiency in decision – making process is whether the inquiry was held by a competent officer; whether rules of natural justice are complied with; whether the findings or conclusions are based on some evidence; whether the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion; and that the 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. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge as the disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere only 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 or 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.

12. In the instant case, the charge against the applicant being that he was engaged in payment of bogus money orders to the tune of Rs.1100500/- and also remained absent from duty stand proved. The applicant submitted his written defence note to the Disciplinary Authority.

13. Strangely enough, in his relief the applicant has not made any prayer regarding the report of the Inquiry Officer. 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 orders 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.

14. 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 26.07.2012 imposed upon applicant the penalty ‘removal from service’. Again the appeal against the order of Disciplinary Authority, the Appellate Authority disposed of the appeal by a reasoned and speaking order dismissing the appeal vide order dated 23.01.2013. Applicant has been unable to show any infirmity in these orders.

15. 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. 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.

16. 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.

17. 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.

18. 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.

19. The contention of the learned counsel for the applicant that the inquiry suffers from manifest errors is a general statement. As noticed hereinabove, all these contentions are also otherwise not required to be gone into for the simple reason that there is no prayer for quashing the inquiry report and/or the findings therein.

20. 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.

21. 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.

(Mohd. Jamshed)
Member (A)

(Rakesh Sagar Jain)
Member (J)

Manish/-