

**Central Administrative Tribunal
Principal Bench**

OA No. 502/2014
And
OA No.1352/2014

Order pronounced on: 01.08.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

OA No.502/2014

Sh. Gyan Singh Rawal
s/o Sh. Mohan Lal
(Ex Postal Asst. Kasimpur Post Office, Aligarh)
R/o H.No.Prem Nagar,
Nagla Masani Rd,
Aligarh.

- Applicant

(By Advocate: Sh. Deepak Verma and Sh. R.P.Sharma)

Versus

1. Union of India,
Ministry of Communication & I.T,
Through the Secretary,
Department of Posts,
Dak Bhawan,
New Delhi.
2. The Director Postal Services,
Agra Region,
Agra-282001.
3. The Senior Supdt. Of Post offices,
Aligarh Division,
Aligarh-202001.

- Respondents

(By Advocate: Sh. Satish Kumar)

OA No.1352/2014

Sh. Randhir Singh, Postman, Age-58 years
s/o Sh. Balkishan
R/o H.No.501/19 Anand Colony,
Old D.C.Road,
Sonapat, NCT Delhi.

- Applicant

(By Advocate: Sh. Deepak Verma and Sh. R.P.Sharma)

Versus

1. Union of India,
Ministry of Communication & I.T,
Through the Secretary,
Department of Posts,
Dak Bhawan,
New Delhi.
2. The Chief Postmaster General,
Delhi Postal Circle, Meghdoot Bhawan,
Link Rd., New Delhi-110001.
3. The Director Postal Services,
Meghdoot Bhawan,
Link Rd., Delhi Circle,
New Delhi-110001.
4. The Senior Supdt. Of Post offices,
Delhi North Div., Old Secretariat,
Civil Lines, Delhi-110054.

- Respondents

(By Advocate: Sh. Ashok Kumar)

ORDER**Hon'ble Mr. V.N.Gaur, Member (A)**

At the request of the learned counsel for the parties these two OAs were taken up together for hearing as the law points involved are common to both.

2. OA No.502/2014

2.1 This OA has been filed by the applicant with the following prayer:

- (i) Quash and set aside the Orders No.STA/44-1/55-2012 dated 18.1.2013, No. FV/1/08-09/D-6 dated 22.5.2012, Inquiry report dt. 7.4.2012, Memo dated 13.10.2009 impugned as Annexure-A1 to A4.
- (ii) direct the respondents to re-instate the applicant w.e.f. date of compulsory retirement (22.5.2012 with all consequential benefits as if no impugned orders were issued.
- (iii) Any other or further directions the Hon'ble Tribunal may deem fit in the interest of justice along with costs.

2.2 The facts in brief as available in the OA are that the applicant was given a show cause notice under Rule 14 of CCS (CCA) Rules, 1965 on 13.10.2009 with certain allegations pertaining to the period when he was posted as Assistant Post Master at Aligarh from 26.07.2007 to 15.11.2007. It was alleged that he connived with Shyam Babu, Sub-Post Master at Pali Razapur and Laxman Singh, Postal Assistant at Medical College Post Office, Aligarh in manipulating Kisan Vikas Patra valued at over Rs.1 crore and fraudulent encashment of the same which was followed by a departmental inquiry. The applicant gave a letter to the Inquiry officer (IO) requesting copies of 58 documents and 16 additional witnesses for effectively defending his case. According to the applicant, the IO denied access to

additional documents, except one, without assigning any reason. Similarly the IO did not allow additional witnesses except one less important witness i.e. APM, Aligarh Division. The IO conducted the Inquiry in the absence of these vital additional documents and witnesses and in his report dated 07.04.2012 concluded that the charges levelled against the applicant were proved. The respondents furnished a copy of the Inquiry report to the applicant and the applicant submitted his representation on 25.04.2012. Thereafter by order dated 22.05.2012 the Disciplinary Authority (DA) imposed the penalty of compulsory retirement and allowed only 2/3rd of pension and gratuity. The statutory appeal submitted by the applicant was also rejected on 18.01.2013. The applicant has challenged the impugned orders mainly on the following grounds:

- (i) Denial of additional documents and evidence of additional witnesses vitiated the entire Inquiry.
- (ii) Some other persons involved in the same scandal were either given cosmetic punishment or were let off without any action which is discriminatory.
- (iii) No senior officer was adequately punished.
- (iv) The punishment of compulsory retirement is at par with removal from service, and therefore, complete thorough Inquiry should be held as per the procedure laid down in CCS (CCA) Rules, 1965.

- (v) The reduction in pension and gratuity along with the punishment of compulsory retirement amounted to double jeopardy.
- (vi) The DA and AA have disposed of his representations without giving any cogent and substantial reasons.
- (vii) The penalty imposed on him was disproportionate.

3. OA No.1352/2014

3.1 The applicant was served with a charge memo on 13.07.2010 alleging that while working as Postal Assistant at RD Counter of Ashok Vihar, Head Post Office, Delhi during the period 05.09.2006 to 19.12.2006 except on 16.09.2006 and 13.10.2006, violated CCS (Conduct) Rules, 1964 in so far as he accepted amounts against certain RD accounts, repayment of loan and interest and made endorsement to that effect in the pass books but did not reflect the same in the official record and pocketed the money. He also unauthorisedly maintained RD long book to avoid detection of fraud in the specified RD accounts. On denial of the charges by the applicant the department conducted an enquiry under Rule 14 of CCS (CCA) Rules, 1965 in which the report was submitted on 21.09.2012. The applicant was furnished with a copy of the enquiry report for making representation. The

applicant in his comments, inter alia, pointed out that the Inquiry Authority (IA) did not conduct the enquiry in accordance with the Rule 14 of CCS (CCA) Rules, 1965 and particularly did not conduct the general examination of the charged officer in accordance with Rule 14 (18) of CCS (CCA) Rules which was a mandatory provision. On the direction of the Disciplinary Authority (DA) called the applicant for general examination, however, the applicant refused to answer any question and took a stand that the DA should have ordered a de novo enquiry. On finalisation of the report of the IA, the DA passed an order on 12.11.2012 after giving one more opportunity to the applicant to submit his representation. The penalty of dismissal from service was imposed on the applicant with immediate effect. The appeal against the order dated 12.11.2012 was rejected by the Appellate Authority (AA) vide order dated 18.04.2013 and the revision petition was also rejected by the revisioning authority on 27.11.2013. The applicant has filed the present OA with the following prayer:

- “(i) Quash and set aside Orders No. P.Cell/347/Delhi North/2013 dated 27.11.2013, No. Staff/H-1/05/P/13 dated 18.4.2013, Order No. F1/IV-1/07-08 dt. 12.11.2012, Inquiry report dated 21.9.2012, Charge Memo dt. 13.7.2010 (Impugned as Ann-A1 to A5).

- (ii) direct the respondents to re-instate the applicant w.e.f. date of dismissal (12.11.2012) with all consequential benefits as if no impugned orders were issued.
- (iii) Any other or further directions the Hon'ble Tribunal may deem fit in the interest of justice along with costs."

3.2 The applicant has challenged the impugned orders on the following grounds:

- (1) The right of defence of the applicant was seriously prejudiced by the refusal of the DA to the additional documents asked for by the applicant during the departmental enquiry.
- (2) In his statutory appeal the applicant has raised the issues of non-supply of essential documents, substitution of one of the prosecution witnesses, Smt. Shakuntla Aggarwal by her son Sh. R.K.Aggarwal and denial of right to cross examine the listed witnesses but the same have not been addressed by the AA.
- (3) The respondents adopted a selective approach to inflict extreme penalty of dismissal on the applicant while they did not punish his supervisory officers who were equally responsible for the lapses.

- (4) The penalty of dismissal from service was disproportionately harsh as compared to the charges proved against him.

4. Of the various grounds enumerated in the two OAs, the learned Counsel for the applicants confined his arguments to the prejudice caused by non-supply of additional documents demanded by the applicants for defending themselves, which according to him, vitiated the Inquiry and amounted to denial of natural justice to the applicant. Learned counsel referred to Government of India decision no.20 (the MHA OM No.F-30/5/61-AVD dated 25.08.1961) reproduced in the Swamy's CCS (CCA) Rules, 1965 below Rule 14, wherein there was a clear instruction that the question of relevancy should be looked into from the point of view of defence and as such request for access should not be rejected and where the authority decides to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing. In the present case the IO has not done any such thing. The learned counsel relied on the following judgments:

1. **Trilok Nath vs. Union of India**, 1967 SC SLR 759
2. **Azad Singh vs. Delhi Tourism and Transportation Development Corporation Ltd.**, 2012 (3) AISLJ 130
3. **Azmat Ali vs. Union of India & ors.**, 2008 (3) AI SLJ 42

4. **Rajender Yadav vs. State of M.P. & ors.**, 2013 (2)
AISLJ 120

5. Learned counsel for the respondents, on the other hand, submitted that the applicant in the first case has been charged with serious allegations leading to a fraud of Rs.1,01,83,300/-. The applicant had approved opening of fake accounts by Shyam Babu in different fake names of depositors. The procedure for opening the new account was prescribed in Government of India, Ministry of Communication & I.T., Department of Posts letter dated 13.04.2007. The amount of Rs.1,01,83,300/- was defrauded from the eight accounts which were opened by the applicant with the connivance of counter clerk. The department had conducted an Inquiry in accordance with the procedure laid down in CCS (CCA) Rules, and the applicant was given full opportunity to defend himself. However, in order to delay the Inquiry and also to confuse the IO, the applicant had submitted a long list of additional documents and additional individual witnesses to be produced in his defence. The IO after considering the relevance of the request allowed the document and witness that was found relevant. Learned counsel pointed out that during the Inquiry the prosecution has placed reliance on 165 documents, copies of which were duly supplied to the applicant. The prosecution has also produced four State witnesses. The applicant had also produced one defence witness. The

frivolousness of the request of the applicant could be seen from the fact that in his request for additional witnesses he wanted to produce as defence witnesses, officers like Director General of Posts, Chief Post Master General, Post Master General and Director of Post Services etc. who were not even remotely connected with the charge levelled against the applicant. He also demanded documents like FIR which was actually lodged against a person who got cheques against the payment of lost/stolen Kisan Vikas Patra and National Saving Certificate. The charge against the applicant was that he did not follow the departmental rules and regulations by allowing the payments of cheques and by opening fictitious saving bank accounts, and therefore, copy of FIR was not relevant for his defence. He also pointed out that the other accused persons like Shyam Babu and Kamlesh Kumar had already been dismissed from service. Shyam Babu has also been convicted by CBI Court, Ghaziabad and sentenced to imprisonment for seven years and ten years with fine of Rs.one lac in one case, Rs. twelve lac in second case and Rs. twenty five lac in third case. Therefore, the allegation of the applicant that there is discrimination has no basis.

6. The reduction in pension and gratuity was also in accordance with the provision of Rule 40 (1) of CCS (Pension) Rules. Learned counsel referred to the judgments in **B.C.Chaturvedi vs. Union of India**, (1995) 6 SCC 749, **Apparel**

Export Promotion Council vs. A.K.Chopra, (1999) 1 SCC 759, **Union of India vs. Parma Nanda**, (1989) 2 SCC 177, **State Bank of India vs. Ram Lal Bhaskar & Anr.**, 2012 (1) AISLJ 108 to emphasize on the point that the scope of judicial review in disciplinary cases was limited and the Courts cannot re-appreciate the evidence that was produced before the IO. The Courts have only to ascertain whether the statutory procedure had been followed in the departmental proceeding and the delinquent was given full opportunity to defend himself in accordance with the rules and principles of natural justice.

7. In respect of the applicant in OA 1352/2014 also the learned counsel for the respondents strongly refuted the suggestion that there was any violation of CCS (CCA) Rules or the principles of natural justice. The applicant was given full opportunity at every stage of the disciplinary proceeding to defend himself, and once he pointed out denial of general examination by the IA in accordance with Rule 14 (18) of CCS (CCA) Rules, that opportunity was also provided to him. The applicant had asked for eight additional documents that were considered by the IA as well as DA. The documents that were available were provided to the applicant. The status in respect of each of the documents was made known to the IA in the presence of the Charged Official (CO) and the defence assistant and they did not raise any further objection. The prosecution witness Smt. Shakuntla Aggarwal had

in writing informed the IA that she was authorising her son Sh. R.K.Aggarwal in her place as she was indisposed, which was accepted by the IA. During the evidence Sh. R.K.Aggarwal had confirmed that an amount of Rs.12,000/- was deposited in RD account No.420146 dated 10.11.2006 and he also confirmed the statement of his mother dated 14.05.2008 stating that it was written by him under the signature of his mother. Other prosecution witnesses SW-3, SW-6 and SW-8, who were the actual accountholders whose deposited amount was not accounted for, were also produced during the enquiry and their evidence proved the charges against the applicant. These witnesses were not cross examined by the applicant on his own volition. The respondents had taken action against the other responsible officials separately. However, their enquiry showed that the applicant was the principal offender in the fraud. On proportionality learned counsel submitted that considering the gravity of charge against the applicant the penalty awarded was quite commensurate to the gravity of misconduct.

8. We have heard the learned counsels and perused the record. The thrust of the argument of the learned counsel for the applicant in the two OAs was on the issue of non-supply of additional documents. These requests were denied by the IO barring the exception of one document and one witness that were allowed at the request of the applicant in the first OA and the

status of the eight demanded documents was accepted by the applicant in the second OA. According to the learned counsel, the Government of India decision no.20 dated 25.08.1961 makes it incumbent for the DA to provide the documents that are considered relevant by the delinquent for his defence. The relevant portion of the instructions is reproduced below:

“2. The right of access to official records is not unlimited and it is open to the Government to deny such access if in its opinion such records are not relevant to the case, or not desirable in the public interest to allow such access. The power to refuse access to official records should, however, be very sparingly exercised. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way, be relevant, though the relevance is not clear to the Disciplinary Authority at the time that the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. Cases of the latter type are likely to be very few and normally occasion for refusal to access on the ground that it is not in public interest should not arise if the document is intended to be used in proof of the charge and if it is proposed to produce such a document before the Inquiry Officer, if an Inquiry comes to be held. It has to be remembered that serious difficulties arise when the Courts do not accept as correct the refusal by the Disciplinary Authority, of access to documents. In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing.

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5. If the officer requests for any official records other than those included in the list, the request should ordinarily be acceded to in the light of what has been stated in paragraph 2 above.”

9. We, however, do not agree with the interpretation of the counsel for the applicant that the above provision gives a totally free hand to the delinquent to ask for any document and the DA is bound to supply that to the delinquent officer. The above provision only states that the relevancy of the document has to be

determined from the view point of the defence of the delinquent, and therefore, the applicant has to establish the nexus between the document and the line of defence that he is taking. In other words, the relevancy is to be decided by the IO/DA and it is not the delinquent officer who has the final say about the relevancy. Having come to that conclusion, we find that the applicant in the first OA had been provided with 165 documents on which the case of the prosecution had been based. The applicant asked for 58 additional documents (Annexure A-5, OA 502/2014), in which the first eight documents are FIRs in connection with theft and loot of Kisan Vikas Patra against some individuals, namely, Shyam Babu, P.C.Dubey, P.K.Garg and R.K.Tiwari. In the context of the allegation that the applicant had allowed opening of new accounts in fictitious names, the FIR in connection with the theft of Kisan Vikas Patra and issuing of cheques by some other officials do not appear to be relevant to explain as to why the applicant did not follow the departmental procedure. Then there are other documents in the list like copy of certain rules that were not supplied to him. A perusal of the list of 58 documents and the relevance of each as mentioned by the applicant, do not reveal as to how the defence of the applicant has been prejudiced by non-supply of these documents. The purpose of these documents also does not tally with the defence taken by the applicant before the IO in his defence statement. He has nowhere stated in his

written defence that he could have better defended himself on certain allegations had those rules been supplied to him. No handicap or prejudice caused to the delinquent officer was mentioned. Similarly the list of additional witnesses submitted by the applicant does not appear to have been prepared to pursue any specific line of defence as he wanted to summon senior most officers the department starting from the Directorate General of Posts, who have no link with the day today functioning of savings banks located at Aligarh. The intention was apparently to delay the proceedings by putting it into a loop and confuse the issue. These pleas of the applicant was considered by the DA and AA in their respective orders and rejected by giving reasons.

10. In the second OA the charge sheet that was served to the applicant had listed 21 documents by which the articles of charge framed against the CO were proposed to be sustained. The applicant has not made any averment that any of these documents has not been supplied to him. He had submitted a list of eight additional documents to the IA indicating the relevancy and the custodian of each document. Later the applicant in the proceeding of the Inquiry dated 04.05.2011 accepted the position in respect of all the documents he had demanded additionally and did not raise any protest. In the enquiry report the account holder witnesses SW-3 to SW-6 and SW-8, leaving out SW-7 who could not be personally present had confirmed the fact that the

alleged amounts were deposited by them and confirmed the documents SD-5, SD-7, SD-12, SD-16 & SD-18 and the applicant himself did not choose to cross-examine these witnesses. Now, at this stage, he cannot question their statements or charges that have been proved by the IA based on their statements, on the ground that non-supply of certain documents which were peripheral in nature had vitiated the enquiry.

11. We have considered the judgments cited by the learned counsel for the applicant. In the Full Bench judgment of Hon'ble Supreme Court in **Trilok Nath** (supra) it was held that if the public servant so required for his defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry Officer or required by the public servant for his defence. The appellant had made a request for supply of copies of documents as provided in the CCS (CCA) Rules, but the same was denied to him. The relevant extracts from the judgment are reproduced below:

“10. We shall assume for the present that r. 55 of the Civil Services (Classification, Control and Appeal) rules applies to this case. But this rule requires that the public servant concerned must be afforded an adequate opportunity of defending himself. It is for this reason that it is obligatory upon the Inquiry Officer not only to furnish the public servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take action against him. Further, if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry Officer or required by the public servant for his defence. That the appellant had made a request for the supplies of copies of documents is clear from the following passage in the report of Shri Sharma.

“He further pointed out that even the provisions of Civil services (Classification control and Appeal) Rules had not been complied with and said that he should have been given a statement of allegations, the grounds on which each charge was based, any other circumstances which it was proposed to take into consideration, a list of the prosecution witnesses and copies of the documents on which the prosecution case rested.”

In spite of this complaint the documents upon the perusal of which alone the Inquiry Officer has based his report were not furnished to him.”

12. It is quite obvious that the Hon'ble Supreme Court was examining the matter in the context of supply of all relevant documents on the basis of which the IO had based his report but not supplied to the appellant. In the present case, the aspect of relevancy had been examined by the IO, DA and AA and has also been discussed in this order. There is no force in the argument that the relevant documents were not supplied to the applicant.

13. Taking a similar view Hon'ble Delhi High Court in **Azad Singh** (supra) held that it is for the department to satisfy the Court that in fact, reasonable opportunity was given to the petitioner. Providing of reasonable opportunity to the servant does not depend upon the servant asking for it. In **Azmat Ali** (supra) also the Hon'ble High Court of Delhi relying on **Trilok Nath** (supra) took a view that the relevancy of document is to be judged from the point of view of the defence and not the DA. It was held that where charge-sheet is issued and documents are proposed to be utilized against the person, are indicated in the charge-sheet but the copies thereof are not supplied and he is at the same time

called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him.

14. In the present OAs the applicants have been supplied the documents relating to the opening of account in fictitious names, crediting the amounts in those accounts, allowing cash payments without comparing signatures etc., on the basis of which the charges have been levelled. The aforementioned judgments are of therefore, of no help to the applicants.

15. In **Rajender Yadav** (supra) it was held that there were other persons involved in the same incident but they had been given any other cosmetic penalty but in the case of applicant one of the severest penalty of compulsory retirement has been imposed. It was also held that the Doctrine of Equality applied to all who are equally placed even among persons who are found guilty. The ratio of this judgment will also not be applicable in the present case as the respondents have pointed out that some of the other accused persons in the matter of fraudulent withdrawal of huge sum from the fictitious accounts have been dismissed from the service by the respondents and one of them has been sentenced to imprisonment and fine in the criminal case as well. The applicants' claim of parity with other accused persons has no basis.

16. With regard to the scope of judicial review in disciplinary cases the Hon'ble Supreme Court in **B.C.Chaturvedi** (supra) held:

“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 the eye of the Court. When an inquiry is conducted on charges of 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 are 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 officer is guilty of the charge. 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 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, and mould the relief so as to make it appropriate to the facts of each case.”

17. In **Apparel Export Promotion Council** (supra) the Hon'ble Supreme Court after considering **B.C.Chaturvedi** (supra), **Parma Nanda** (supra) and a number of other judgments on the subject, reiterated the law laid down in **B.C.Chaturvedi** (supra).

18. The applicant has also alleged that granting of reduced pension to him amounted to dual penalty. The rule 40 of the CCS (Pension) Rules reads as follows:

40. Compulsory retirement pension

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than ¹[full compensation pension] or gratuity or both admissible to him on the date of his compulsory retirement.

19. The rule quoted above comes into operation only after a Government servant has been compulsorily retired as a penalty. The competent authority is empowered to grant reduced pension to such an employee. The applicant has not challenged the vires of this rule. The plea of the applicant has therefore, no justification.

20. Considering the entire conspectus of the two cases, arguments of the two sides and the case law cited, we do not find any merit in the OAs and the same are dismissed.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

August , 2016

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