

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

OA No.434/2008

Order Reserved on:04.05.2016

Pronounced on:11.05.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

Deoki Nandan, S/o late Har Prasad,  
Retd. Postal Asstt. Agra, HO,  
Jewan-GPO Compound,  
Agra (UP).

-Applicant

(By Advocate Shri S.K. Gupta)

**-Versus-**

1. Union of India through Secretary  
Ministry of Communication and I.T.  
Deptt. of Posts,  
Dak Bhawan  
Sansad Marg,  
New Delhi.
2. The Director Postal Services,  
O/o the Postmaster General,  
Agra Region,  
Agra.
3. The Sr. Supdt. of Post Offices,  
Agra Division,  
Agra.

-Respondents

(By Advocate Shri R.V. Sinha)

## **ORDER**

**Mr. K.N. Shrivastava, Member (A):**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985. The main relief prayed for in the OA reads as under:

“That the impugned punishment orders Annexure- A-1 and Annexure-A-2 may kindly be quashed and set aside with all consequential benefits of pay and allowances and retirement benefits. The amount of Rs.50000/-recovered as penalty from the pay of the applicant may kindly be ordered to be refunded to the applicant with interest @12% per annum.”

2. The brief facts of the case are as under.

2.1 The applicant while working as Postal Assistant SB counter-II Agra HO from 28.8.2000 to 4.12.2000, 16.12.2000 to 7.2.2001, 9.2.2001 to 9.3.2001 and 13.3.2001 to 17.4.2001 is alleged to have committed the following irregularities:

- i) Allowed withdrawal of Rs.44,17,778/- through fake cheques from some SB accounts.
- ii) Failed to put SSC or SSD on withdrawal forms when identification was obtained on different dates which facilitated withdrawal of deposits on the strength of fake

cheques clearance/vouchers causing a loss of Rs.45,69,900/- to the department.

iii) Failed to check and challenge the deposit over one lakh in a single SB account on different dates which facilitated withdrawal of heavy amounts.

iv) Failed to follow the prescribed procedure and instructions in respect of deposit by cheque which facilitated opening up of some SB accounts through fake cheque clearance voucher/pay-in slip. Thus, the department has sustained a loss of Rupees four lakhs due to his gross negligence, carelessness and non-observance of rules.

2.2 Accordingly, Annexure A-3 charge-sheet dated 23.09.2002 was issued to the applicant. With the charge-sheet, the list of documents relied upon and the list of prosecution witnesses were also enclosed. Applicant, however, vide his Annexure A-5 (colly.) letter to the EO demanded production of some 14 additional documents by the respondents during the enquiry. He also furnished a list of three defence witnesses.

2.3 The EO, however, permitted only 10 additional documents from the list of the applicant at Annexure A-5, which were at serial no.2,4,5,7,8,9,10,12,13 and 14. The EO did not permit the additional documents at serial no.1,3,6

and 11 in the ibid list. The EO ordered that the Presenting Officer (PO) to make available the permitted documents on the next date of hearing. The applicant participated in the enquiry. The EO submitted his enquiry report on 17.08.2006 (Annexure A-6) wherein he concluded that **all the charges against the applicant are proved.** The applicant submitted his representation against the EO's report vide his Annexure A-7 letter dated 23.05.2007. The Disciplinary Authority (DA), after considering the EO's report and Annexure A-7 representation of the applicant against the EO's report, passed the A-1 penalty order dated 10.11.2006 imposing the following penalties:

a) Recovery of Rs.50,000/- to be recovered in 09 instalments commencing from November, 2006 to July 2007 @Rs.5500/- per month and Rs.6,000/- from the pay of July 2007 of the applicant (pertinent to be noted that the applicant was due for superannuation on 31.07.2007).

b) Reduction by three stages in the time scale of pay of Rs.4000-100-6000 from Rs.5500/- to Rs.5200/- for a period of nine months w.e.f. 1.11.2006 till the date of retirement of the applicant on 31.07.2007.

2.4 The Appellate Authority (AA) viz. Director, Postal Services in the office of Post Master General, Agra Region felt

that the punishment awarded to the applicant by the DA was very light in comparison to the offence committed by the applicant. Consequently, the AA issued a memorandum dated 03.05.2007 to the applicant stating therein that it is proposed to revise the punishment awarded by the DA to the dismissal from service with immediate effect. He was provided an opportunity to make a representation against the said proposal. The applicant submitted his representation on 23.05.2007 praying therein to drop the proposal as the same was not justified for the reasons given in the representation.

2.5 The AA, not satisfied with the representation of the applicant, vide impugned Annexure A-2 order dated 06.07.2007 enhanced the punishment of reduction in pay by three stages for a period of nine months with cumulative effect awarded by the DA to that of **penalty of compulsory retirement with immediate effect with reduction in pension and gratuity both by 1/3<sup>rd</sup> of what was admissible to the applicant on the date of compulsory retirement on permanent basis.** In addition to it, the AA also confirmed the penalty of recovery of Rs.50,000/- from the applicant as awarded by the DA.

2.6 Aggrieved by the impugned Annexure A-1 and A-2 orders, the applicant preferred OA No.434/2008 before this Tribunal on 21.01.2008. The said OA was disposed of by the Tribunal on 17.07.2008. The operative part of the order reads as under:

“7. As regards the original punishment passed by the disciplinary authority, the penalty imposed recovering Rs.50,000 is set aside but the penalty of reduction by 3 stages is maintained. As a result, thereof, the applicant shall be refunded Rs.50,000/- recovered from him and shall also be entitled for realize of all the consequential benefits within a period of two months from the date of receipt of a copy of this order. No costs. OA is partly allowed.”

2.7 Aggrieved by the Tribunal's order, the respondents filed Writ Petition (Civil) No.9066/2009 before the Hon'ble High Court of Delhi challenging the order of the Tribunal. The said Writ Petition along with a few other Writ Petitions was disposed of by the Hon'ble High Court on 15.09.2010 with the following observations:

*“6. All of them have been withdrawn today. The Tribunal will take cognizance of the fact that till today it remained undetected that the contention sought to be urged in the writ petitions were not placed for consideration before the Tribunal.*

*7. Noting that the directions issued by the Tribunal for reinstatement have been stayed by this Court, we extend the stay granted for another period of 45 days from today.*

*8. We have extended the stay to enable the petitioners to file application seeking review before the Tribunal. Needless to state, it would be for the petitioners to seek further stay from the Tribunal pending disposal of the Review Application.”*

Thus the case has got remitted back to the Tribunal.

3. Pursuant to the notices issued the parties entered their appearance. The case was taken up for hearing the arguments of the parties on 04.05.2016. Shri S.K. Gupta, learned counsel for the applicant and Shri R.V. Sinha, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that the applicant had demanded presentation of 14 additional documents during the course of enquiry but the EO did not permit presentation of four of them, viz. documents at serial no.1,3,6&11 in the list at Annexure A-5. Elaborating further, the learned counsel stated that these documents were preliminary enquiry (PE) report (serial no.1) which in fact formed the very basis of the charge-sheet, order book of Agra HO containing all inspection and visit report and audit IR on Agra HO for the period from 28.8.2000 to 17.4.2001 (serial no.3) to know whether any irregularity relating to SB branch was noted, cheque register of SB branch of Agra HO for the period from 28.8.2000 to 17.04.2001 (serial no.6) to confirm whether any cheque was collected at SB counter and Treasury receipt and Treasury vouchers of Agra HO for the period from 28.8.2000 to 17.4.2001 (serial no.11) to confirm the transactions mentioned in the charge-sheet. He stated

that non-supply of these documents has prejudiced the cause of the applicant. In this connection, the learned counsel drew our attention to the order of this Tribunal in the case of **Munna Lal Sharma v. Union of India & Another**, OA No.2303/2008, decided on 17.11.2009 wherein the Tribunal has held that “*The inquiry officer denied the access to three of these documents but without recording any reasons therefor.*” and for the said reason the OA was allowed. He further said that the order of the Tribunal in **Munna Lal Sharma** (supra) was challenged by the respondents before the Hon’ble High Court of Delhi in Writ Petition (Civil) No.5165/2010, which was dismissed in *limine* with the observation that the Tribunal has succinctly brought out that in the instant case, the relevance of documents in respect of the defence stood established before the EO and thus non-supply of five out of 12 documents held to be relevant would certainly operate to the prejudice of the respondent (applicant in the OA). The learned counsel emphasized that the instant case is exactly similar to that of **Munna Lal Sharma** (supra) in so far as denial to access to certain documents is concerned. The learned counsel also placed reliance on another judgment of the Tribunal in the case of **Manik Chand v. Union of India & Others**, OA No.3218/2009 decided on 15.4.2011 wherein the same view



was taken that non-supply of documents has prejudiced the case of the applicant.

5. Proceeding ahead with the arguments, the learned counsel for the applicant submitted that the AA has erred in imposing minor and major penalties in the same order, which is contrary to the ratio laid down by the Hon'ble Supreme Court in the case of **Union of India & Another v. S.C. Parashar**, [(2006) SCC (L&S) 496] in which it has been held as under:

*“The disciplinary authority in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.”*

The learned counsel also submitted that even from the list of additional documents permitted by the EO, three documents at serial no.9, 12 and 13 were not made available during the course of enquiry. The learned counsel further submitted that as per Rule 14 (15) of the CCS (CCA) Rules, 1965, *“the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall or re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced....”* The inquiring authority shall give Government

servant an opportunity of inspecting those documents before taking on record. However, the note below this Rule states that “*new evidence shall not be permitted or called for or any witness shall not be recalled **to fill up any gap in the evidence.** Such evidence may be called only when there is inherent lacuna or defect in the defence which has been produced originally*”. He said that in the instant case the Inquiring Authority vide para-9 of reply brief permitted additional documents at serial No.Ex-KA-139/1 to 139/65, 142, 142/1 and 143 by the prosecution to fill up the gap in the evidence surprisingly. These documents were produced by the prosecution during the course of enquiry on 04.12.2005. He said that this act of the EO was against the rules.

6. Per contra, the learned counsel for the respondents submitted that the applicant has caused huge loss to the Organization by indulging into myriad irregularities and malpractices. A thorough disciplinary enquiry was held against the applicant by following the laid down procedure. The applicant has participated in the enquiry. The EO has found that all the four charges against the applicant are proved. At every stage of the enquiry principles of natural justice have been duly followed.

7. Regarding the respondents' failure to make available certain permitted documents during the course of enquiry the learned counsel explained that the documents at serial no.9,12 and 13 in the list at Annexure A-5 could not be produced as they were not available. He further stated that these documents were not relevant and the respondents have not placed any reliance upon these documents in the DE proceedings. Concluding his arguments, the learned counsel submitted that the applicant has been given appropriate punishment by the AA commensurate with the grave offence that he had committed which has entailed into huge loss to the respondent department and as such the prayers made in the OA deserve to be rejected.

8. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. We have also kept in view the observations made by the Hon'ble Delhi High Court in their order dated 15.09.2010.

9. The scope of judicial intervention in a departmental enquiry is highly limited. Judicial intervention can be done only in the following situations:

i) If the enquiry has not been conducted as per the laid down procedures.

ii) If the principles of natural justice have not been followed in the conduct of the enquiry.

iii) If the punishment awarded is disproportionate to the offence committed so as to shock conscience.

10. In the instant case we find that the enquiry has been conducted by the respondents in the prescribed manner observing the principles of natural justice at every stage. The main contention of the applicant is that certain additional documents were not made available to the applicant during the course of enquiry by the respondents which has prejudiced the case of the applicant. We do not agree with this contention of the learned counsel for the applicant. The documents not permitted by the EO are listed at serial no.1,3,6 and 11 of the Annexure A-5. These documents are PE report, order book of Agra post HO containing Audit and Inspection report, cheque register and Treasury receipts. We fail to understand as to how these documents could have helped the applicant in furtherance of his case. The charges against the applicant are very specific and for substantiating those charges the respondents have presented all the relevant documents. The PE report was just a trigger point. It has not been used as an evidence by the respondents and as such we do not feel that non-

production of the PE report in any way has been prejudicial to the interest of the applicant. Regarding other documents, again we do not find their relevance to the enquiry. As such we feel that the decision of the EO in regard to these four documents was quite appropriate. The respondents have very candidly admitted in the reply that the documents at serial no.9, 12 and 13 could not be produced as they were not available. From the list we find that these documents are Special Error Book of SB Group II Agra HO from 28.8.2000 to 17.4.2001, SB Account of some individual. Here again we fail to understand as to how these documents were relevant to the charges levied against the applicant and in what way they were relevant to the enquiry *per se*. For all these reasons, we are of the view that the contention of the learned counsel for the applicant regarding non-production of certain documents is absolutely non-convincing.

11. We now deal with the other issue raised by the learned counsel for the applicant regarding imposition of minor and major penalties in the same order by the AA. We take cognizance of the ratio laid down by the Hon'ble Apex court in the case of **S.C. Parashar** (supra) that minor and major penalties cannot be levied against a Government servant in the same order. As such we feel that the order of the AA needs to be interfered with. At the same time, we have to

also keep in mind the enormity of irregularities committed by the applicant as established during the course of the enquiry and consequent to which the respondents' department had suffered enormous loss. We note that the applicant was due to retire from service on 31.07.2007 when the Annexure A-1 punishment order was passed by the DA on 10.11.2006. The applicant was left with hardly 09 months service to go. It got further reduced to hardly one month when Annexure A-2 order dated 06.07.2007 was passed by the AA. For the offence committed by the applicant, he deserved major penalty. The AA undoubtedly has imposed a combination of minor penalty, i.e., recovery of Rs.50,000/- and major penalty of compulsory retirement from service with cut in pension and gratuity by 1/3<sup>rd</sup>. As per the ratio laid down by the Hon'ble Apex Court in **S.C. Parashar** (supra), minor and major penalties cannot be imposed in the same order. Hence we set aside the minor penalty of recovery of Rs.50,000/- from the applicant and we also order that the amount already recovered should be returned back to the applicant by the applicant. Considering the gravity of offence we feel that the major penalty of compulsory retirement from service with immediate effect and imposition of 1/3<sup>rd</sup> cut in gratuity and pension of the applicant, as imposed by the AA vide

Annexure A-2 order is perfectly justified and the same is accordingly upheld.

12. OA is accordingly disposed of.

13. No order as to costs.

**(K.N. Shrivastava)**  
**Member (A)**

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

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