

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-804/2015

Reserved on : 07.09.2017.

Pronounced on : 13.09.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Ravi Shankar Kumar Sinha,
Aged 36 years,
S/o Sh. Arvind Kumar Azad,
R/o Village Shankarpur Jhawa,
PO Daruwara, Distt. Nalanda,
Bihar.

Presently residing at

WZ-49B, 3rd Floor,
Naraina Village,
New Delhi-110028.

..... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief Post Master General,
Department of Posts,
Delhi Circle, Meghdoot Bhawan,
New Delhi.
3. Director Postal Services,
Goal Dakkhana, Ashok Road,
New Delhi.
4. Sr. Sepdt. of Post Offices,
New Delhi Central Division,
Meghdoot Bhawan,

New Delhi-110001.

.... Respondents

(through Sh. Acharya S.P. Chaurasiya, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as Postal Assistant in IPHO, New Delhi when on 06.09.2010 he received a charge sheet in which it was alleged that the applicant had secured appointment as Postal Assistant under OBC category by submitting a false and fabricated mark sheet showing his total marks as 835/900 in the Intermediate Examination of Science held in the year 1995 by Bihar Intermediate Education Council (BIEC) Patna. The applicant denied the charge and an enquiry was held. The Enquiry Officer (EO) submitted his report on 10.10.2011 in which he held that the charge was not proved. The Disciplinary Authority (DA), however, disagreed with the enquiry report and issued a disagreement note on 29.02.2012. The applicant was asked to submit his written representation against the same. After considering the applicant's representation, the DA passed an order on 20.04.2012 dismissing him from government service with immediate effect. The applicant preferred an appeal against the same, which was rejected by the Appellate Authority (AA) vide order dated 24.01.2013, communicated to the applicant vide communication dated 06.02.2013. A revision preferred against

this order was also dismissed on 26.08.2014. Hence, the applicant has approached this Tribunal seeking the following relief:-

- “(i) quash and set aside disagreement note dated 29.02.2012 (Annexure-A-1), order of punishment dated 20.04.2012 (Annexure-A-2), appellate authority's order dated 24.01.2013 (Annexure-A-3) and the order of revisionary authority dated 26.08.2014 (Annexure-A-4).
- (ii) direct the respondents to reinstate the applicant forthwith with all consequential benefits like salary seniority etc.
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. In their reply the respondents have stated that a confidential letter dated 24.09.2009 was received from Circle Office by which it was brought to their notice that the applicant had secured Government job on the basis of a fake mark sheet. The matter was got enquired into by Assistant Superintendent of Posts, New Delhi Central Dn. The report confirmed the allegation. On verification from BIEC, it was revealed that the applicant had got a total of 559 marks instead of 835 marks out of 900. Consequently, the applicant was placed under suspension vide Memo dated 20.10.2009 and ASP(II) Sub Division, New Delhi was again deputed to Patna for verification of the mark sheet. She submitted report on 11.05.2010 along with which was attached a copy of letter written by Dy. Secretary, BIEC, which stated that the marks obtained by the applicant were 559. Major penalty proceedings under Rule-14 were thereafter initiated against the applicant. An FIR No.140 dated 25.08.2010 was also registered at Mandir Marg Police Station, New

Delhi. The EO submitted his report on 17.10.2011 in which the charge was found not to have been proved. A disagreement note was, therefore, issued by the DA and it was sent to the applicant along with the enquiry report asking him to submit his defence. The applicant submitted his representation on 13.04.2012. After considering the same and keeping in view the seriousness of the charges levelled against the applicant, a penalty of dismissal from service was imposed upon him vide Memo dated 20.04.2012. An appeal preferred by the applicant against this penalty order was rejected by the AA i.e. Director Postal Services on 24.01.2013. Thereafter, the applicant filed a revision petition under Rule-29 of CCS (CCA) Rules, 1965. This was also rejected by Chief Postmaster General, Delhi Circle on 26.08.2014.

3. We have heard both sides and have perused the material placed on record. Learned counsel Sh. S.K. Gupta appeared for the applicant and pressed only the following two grounds before us:-

(i) The disagreement note issued by the respondents reveals that the disagreement of the DA with the report of the EO was not tentative. Sh. Gupta drew our attention to following observations made by the DA in the disagreement note:-

"It was also found that neither any defence witness nor any defence document was further produced by the CO.

As discussed above, the charges framed against Sh. Ravi Shankar Kumar Sinha are fully proved.

You are directed to submit your written representation within 15 days from the date of receipt of this letter failing which it will be presumed that you have no representation to make and the case will be decided on merits."

(ii) This was a case of no evidence and the finding arrived at by the DA, AA and RA could not have been arrived at on the basis of evidence available.

4. We have considered each of these grounds. As regards first ground Sh. Gupta stated that in the case of **Yoginath D. Bagde Vs. State of Maharashtra & Anr.**, 1999(7)SCC 739 Hon'ble Supreme Court has laid down that if the DA disagreed with the findings of the EO then it was incumbent on him to issue a disagreement note giving tentative reasons for disagreement. Sh. Gupta submitted that in this case a reading of the disagreement note itself would reveal that the disagreement of the DA was not tentative. In fact, she had already made up her mind to punish the applicant thereby reducing the whole process of asking the applicant to submit a representation against the disagreement note and passing an order thereon is a mere post decisional formality. In this regard, besides relying on the judgment of Hon'ble Supreme Court in the case of **Yoginath D. Bagde** (supra), the applicant has also relied on the judgment of a Co-ordinate Bench of this Tribunal in the case of **Satish Pal Singh Vs. UOI & Ors.** (OA-3706/2011) dated 28.10.2014. In this case, this Tribunal after finding that the disagreement note revealed that the

DA had already made up his mind regarding imposing penalty on the applicant had allowed the OA and set aside the orders passed.

5. The respondents, on the other hand, relied on another judgment of this Tribunal in **OA-1779/2015** (Deepak Vs. UOI & Ors.) dated 07.09.2015 wherein it was held that merely because the word tentative was not used in the disagreement note, it cannot be held that the enquiry proceeding has been vitiated. This decision has also been followed in another judgment in the case of **Sudhir Kumar Vs. UOI & Ors.** (OA-2411/2014) dated 13.05.2016.

6. We have considered the submissions of both sides and have also perused the judgments relied upon by them. In our opinion, Hon'ble Supreme Court in the case of **Yoginath D. Bagde** (supra) has clearly laid down the law that if the DA was disagreeing with the EO, then it was incumbent on him to issue a disagreement note showing tentative reasons for disagreement and giving an opportunity to the delinquent to represent against the same. Hon'ble Supreme Court has ruled that if this procedure is not followed then it would constitute violation of principles of natural justice and would vitiate the proceedings. The emphasis is on furnishing to the delinquent the reasons why the DA was disagreeing with the EO and also giving him an opportunity to represent against the same. Thereafter, the DA is required to consider the representation so received with an open

mind. If such a representation is considered with a pre-determined mind, then no useful purpose would be served by giving an opportunity to the delinquent to represent against the same. Thus, Hon'ble Supreme Court had ruled that the representation received against the disagreement note must be considered in a fair and judicious manner.

6.1 In the instant case, we notice that the DA has issued a detailed disagreement note, which contains the various reasons on the basis of which the DA has disagreed with the EO. The applicant has also been given an opportunity to submit written representation against the same. Extension of time asked by the applicant for submission of such a representation was also allowed. However, we find from the impugned order dated 20.04.2012 passed by the DA that the grounds raised by the applicant have been dismissed summarily. In this connection, the following extract from the penultimate para of the order of the DA is relevant and reads as follows:-

".....The defence representation against the disagreement note dtd 09-04-12 was received by this office on 13-04-12. The defence representation was gone through thoroughly which is not at all convincing & the charged official has no point to defend other than referring to other case but the merit of case differs from case to case."

From the above, it is evident that although the DA had passed a detailed order, yet the representation of the applicant received against the disagreement note has been dealt with in a cursory manner. The applicant had submitted a detailed representation

(pages 95 to 111) in which several issues were raised. However, leave aside considering these issues with an open mind, the DA has dismissed them summarily. It is, therefore, clear that the DA has not applied her mind to the arguments raised by the charged officer against the disagreement note, thereby, revealing that she had already made up her mind to punish the applicant reducing the whole exercise to a mere post decisional formality. The mere omission of the word "tentative" in the disagreement note would not have proved fatal, but the fact that the representation has not been considered by the DA with an open mind vitiates the proceedings as this amounts to denial of opportunity to the applicant and violation of principles of natural justice.

6.2 The next ground taken by the applicant was that the charge against him of securing appointment on the basis of a fake mark sheet was essentially to be sustained on the basis of letters dated 15.02.2011 and 13.05.2011 written by Dy. Secretary of BIEC. These letters were also listed in the documents supplied by the respondents to the applicant. The Dy. Secretary of BIEC, Patna Sh. Om Prakash Sinha also figured in the list of witnesses, who were to be produced in the enquiry to sustain the charge. However, Sh. Sinha was not produced in the enquiry. Sh. Gupta argued on behalf of the applicant that by not producing Sh. Sinha in the enquiry, the respondents deprived the applicant of an opportunity to cross

examine him. Consequently, the letters written by him cannot be read as part of evidence in the enquiry. In absence of this vital evidence, no conclusion can be drawn against the applicant regarding furnishing of fake mark sheet. Sh. Gupta submitted that even the EO in its report has observed as follows:-

“....But since the said state witness Sh Om Prakash Sinha Dy Sec BSES Patna did not attend the inquiry in person to confirm the genuineness/contents of this letter and no opportunity whatsoever was provided to the CO to cross-examine the ibid SW in the inquiry, then it will be against the interest of Justice to consider such statement of state witness/document and also will be prejudice to the fundamental principle of inquiry to consider the statement of any witness without providing an opportunity to CO to cross-examine the said state witness in his defence. Therefore, the ibid letters/statements/documents were not considered as part/record of inquiry. Moreover, the signature of Sh Om Prakash Sinha Dy Sec BSES Patna available on both ibid letters were also quite distinct from the one available on SD-1 & SD-12. Therefore, the presence of the prosecution witness, Sh Om Prakash Sinha becomes very crucial and material to confirm the credibility of the ibid letters as well to through light on the clear facts of the case, but the prosecution failed to do so. And, in light of above, the case loses its strength in absence of material witness/documental to establish the charges leveled against the charged official.”

6.3 In response Sh. Chaurasiya submitted on behalf of the respondents that the letter written by Dy. Secretary, BIEC was collected by Smt. Aparna Sandilya by hand from the office of Bihar Vidyalaya Shiksha Samiti, Patna. Smt. Aparna Sandilya was produced as a witness in the enquiry and in her deposition had confirmed this fact. Thus, there is no merit in the applicant's contention that letters received from BIEC do not form part of the evidence.

6.4 We have considered the submissions of both sides. There is no denial that Smt. Aparna Sandilya had collected the aforesaid letters from Bihar Vidyalaya Shiksha Samiti, Patna. However, Smt. Sandilya can only certify to the genuineness of those letters but not to their content. It was the content of those letters, which was important and material. Since Sh. Sinha did not appear as a witness, the content of the aforesaid letters remains unproved. Consequently, the applicant is right in asserting that these letters cannot be read as part of evidence. If these letters are excluded from evidence, the conclusion drawn by the DA regarding the guilt of the applicant could not have been drawn.

6.5 After receiving the report of the EO, it would have been appropriate for the DA in this case to remit the case back to the EO for conducting further enquiry by making another effort to summon Sh. Om Prakash Sinha, who was a material witness in this case. If Sh. Sinha was himself declining to appear, efforts should have been made to write to his seniors for procuring his attendance. Instead of doing so, the DA chose to issue a disagreement note without realizing that in absence of evidence of Sh. Om Prakash Sinha, it would not be possible to sustain the charge levelled against the applicant.

6.6 While, it is true that in judicial review the Courts cannot re-appraise the evidence, yet, if it is found that the conclusion arrived at by the DA was perverse or was such, which no reasonable person could have arrived at, the Courts would be justified in interfering in such matters. In this regard, we are fortified by judgment of Hon'ble Supreme Court in the case of **Allahabad Bank & Ors. Vs. Krishna Narayan Tewari** (Civil Appeal No. 7600/2014) dated 02.01.2017 wherein in para-7 the following has been observed:-

"7....But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment."

The instant case also falls in this category warranting interference by us.

7. In this view of the matter, we find merit in the contention of the applicant. We, therefore, allow this O.A. and quash the disagreement note, orders passed by the DA, AA and RA. Consequently, the applicant shall be reinstated in service forthwith. The respondents shall, however, be at liberty, if so advised, to order further enquiry against the applicant and thereafter proceed according to the rules in the light of observations made above. In

case the respondents decide to proceed against the applicant by ordering further enquiry, orders regarding the consequential benefits shall be passed after culmination of proceedings. If the respondents decide not to proceed against the applicant afresh then they shall pass appropriate orders granting consequential benefits like salary and seniority etc. The O.A. is allowed to the extent mentioned above. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/