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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No.350/01026/2011

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE DR (SMT) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Sri Biswajit Naskar
Son of Late Gobinda Ch. Naskar
Aged about 50 years
Working as Senior Accountant/PA(M)-II (Postal)
Office of the General Manager
(Postal Accounts & Finance)
West Bengal Circle, Kolkata
Residing at Nabin Chandra Road
Baruipur, Dist: South 24 Pgs.
Kolkata-700144.

... Applicant

Versus -

1. Union of India
Through the Secretary
To the Government of India
Ministry of Communications
& Information Technology
Department of Posts, Dak Bhawan
New Delhi-110 001.
2. The Chief Post Master General
West Bengal Circle
Yogayog Bhawan
C.R.Avenue
Kolkata-700 012.
3. The General Manger
(Postal Accounts & Finance).



West Bengal Postal Circle
P-36, C.R.Avenue, Yogayog Bhawan
Kolkata-700 012.

4. Director of Accounts (Postal), Kolkata
Office of the General Manager
(Postal Accounts & Finance)
West Bengal Postal Circle
P-36, C.R.Avenue
Yogayog Bhawan
Kolkata-700 012.
5. Senior Accounts Officer (Postal)
Office of the General Manager
(Postal Accounts & Finance)
West Bengal Postal Circle
P-36, C.R.Avenue, Yogayog Bhawan
Kolkata-700 012.
6. Senior Accounts Officer (Admn)
Office of the General Manager (PA & F)
West Bengal Postal Circle, P-36
C.R.Avenue, Yogayog Bhawan
Kolkata-700 012.

.. Respondents

For applicant (Adv):

Mr.S.K.Dutta

For respondents (Adv):

Mr.L.K.Chatterjee &
Mr.T.K.Chatterjee

Heard on: 27.03.2018

Date of order: 19.08.2018

ORDER

MANJULA DAS, MEMBER (J):

In this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following relief(s):-

"a) An order quashing and/or setting aside the impugned charge memo dated 10.6.2009, the communication dated 23.11.2009, the impugned memo dated 14.5.2010 and the Memo dated 11.3.2011.

b) An order directing the respondents to grant all consequential benefits to the applicant.

c) An order directing the respondents to produce/cause production of all relevant records."

3. The facts, in brief, are that the applicant is working as Senior Accountant in the office of the General Manager (Postal Accounts & Finance), West Bengal Postal Circle, Kolkata. He was charge sheeted on 10.06.2009 (Annexure A-1) under Rule 16 of CCS (CCA) Rules, 1965 on the allegation of misconduct. The basic allegation raised there was that objection memo was drawn up improperly as it was raised without furnishing the office wise break-up of the objected amount for which no effective action can be taken on such objections. Applicant, being the supervisor, approved such faulty without examining it. On receipt of the same, applicant vide his representation dated 19.06.2009 (Annexure A-2) requested for supply of ten documents to give effective reply. Vide communication dated 08.09.2009 (Annexure A-3), the applicant was asked to inspect only three documents out of ten documents. By representation dated 22.09.2009

(Annexure A-4), the applicant informed the authorities that only three documents were allowed to inspect and the other seven documents were not made available to him, but vide letter dated 23.11.2009 (Annexure A-5), he was asked to submit his representation against the charge sheet. Applicant submitted his representation on 30.11.2009 (Annexure A-6) praying for exoneration from the charges levelled against him. According to the applicant, a detailed investigation was made in respect of Raniganj Head Post Office Fraud case and a report dated 15.05.2009 (Annexure A-7) was submitted which would show that no loss was caused to the department in respect of NSC VIIIth issue. However, vide impugned memo dated 14.05.2010 (Annexure A-8), the disciplinary authority found the applicant guilty and imposed a penalty of withholding of one increment for three years without cumulative effect. Applicant submitted appeal dated 16.06.2010 (Annexure A-9) followed by corrigendum dated 25.06.2010 (Annexure A-10), but the appellate authority, vide its memo dated 11.03.2011, upheld the order of the disciplinary authority.

4. According to the applicant, the disciplinary authority as well as the appellate authority held the allegations against the applicant to be very serious and major, but the authority chose to initiate minor penalty charge sheet against him which is totally inconsistent. According to the applicant, the AAO never raised any objection and he passed the same and the AAO has not been proceeded against. Applicant further submitted that the entire proceeding was held in clear violation of fundamental principles of natural justice and fair play and the disciplinary authority and the appellate authority acted in a close, bias and prejudiced mind. The appellate authority failed to appreciate the fact that due to such delayed proceeding the applicant was seriously prejudiced and it was a harsh punishment. As such, the applicant prayed for setting aside the charge sheet dated 10.06.2009, communication dated 23.11.2009 and the impugned orders dated 14.05.2010 and 11.03.2011.

5. The respondents had filed their written statement denying and disputing the claim of the applicant. In the written statement it was stated that the applicant while performing the duties in CC IV Section the period from 1992 to 17.02.2006

checked NSC VIII issue discharge return from the month of 01/1998 before preparing Objection Memo bearing No.UNP/Obj/6NS/CC IV-151 dated 30.08.2004 which was issued to Rajganj Head Office. The objection memo was not drawn up properly and the applicant working as Supervisor, approved the faulty objection memo without examining properly and failed to check item of the objection memos drawn by the checker working under his supervision and thereby violated the provisions of Paras 2.6(b)(i) and 2.7 of Postal Accounts Manual, Volume II. The applicant had shown lack of devotion to duty and acted in manner which is unbecoming of Government servant and thereby has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. The respondents denied that the proceeding was conducted in violation of principle of natural justice as opportunity was given to submit representation against the charge sheet and he was allowed to inspect the records. Non availability of some documents did not change the factual position that the objection memo was prepared without carrying out the prescribed checking on the basis of which charges were framed and no miscarriage of justice was caused to the applicant. Applicant was supposed to file representation within ten days



from the date of inspection of records which he did not do and the applicant had to be reminded for doing so vide letter dated 23.11.2009. On the basis of available documents and after considering the representation, the disciplinary authority correctly imposed the punishment. The concerned AAO has also been punished for his negligence, thus the contention of the applicant in this regard is not correct.

6. The respondents submitted that identification and issue of objection is a critical function related to accounts checking. Settlement of objection is the objective of subsequent checks, reviews and maintenance of registers etc. If the objection statement is not correctly prepared all future exercise would become futile. The issue of a faulty objection memo is a testimony to the failure of the supervision work of the applicant. But only a minor penalty of withholding one increment for 3 (three) years without cumulative effect was imposed contrary to the allegation of the applicant that he was imposed harsh punishment. According to the respondents, it was open for the applicant to prefer revision petition against the appellate order but he straightway approached this Tribunal. For the forgoing

contentions, the respondents submitted that OA may be dismissed being devoid of merit.

7. The applicant filed rejoinder in the lines of contentions made in the OA.

8. We have heard the learned counsel for the parties.

9. Learned counsel for the applicant reiterated the grounds taken in the appeal. Learned counsel stressed upon the fact seven documents were not made available to the applicant which were vital for his defence. Further since no loss was caused to the Govt. exchequer the penalty imposed upon the applicant was harsh.

10. Learned counsel for the respondents submitted that imposition of penalty upon the applicant has no relevance with any loss sustained by the Government due to his action. According to the learned counsel, punishment was awarded for procedural lapses and non-observance of procedures as laid down in Postal Accounts Manual, Volume II in course of performance of his supervisory duties. Learned counsel for the respondents produced before us the decision dated 30.08.2013 in OA.863/2011 (Saroj Kr Roy vs UOI & Ors) and submitted that the

concerned checker had also been punished and assailing the punishment he had filed the said OA which had been dismissed by the Tribunal.

11. We have gone through the pleadings, the documents and the decision relied upon. From the perusal of memorandum dated 10.06.2009 it is observed that the imputation of misconduct against the applicant is specific that objection memo was not properly drawn up and the applicant approved the same without examining it. The defect in the objection memo is proven from the records. The stand of the applicant is that seven documents were not made available for making his defence. Those documents were not available and the memorandum was issued on the basis of available documents. As per para 2.7 of the Postal Accounts Manual, Volume II, Supervisor has a vital role to maintain/prepare all the registers/records as mentioned. For the same incident, the concerned checker (applicant in OA.863/2011) and the AAO had also been punished. The concerned checker Sri Saroj Kr Roy had filed OA.863/2011 challenging the charge memorandum and the punishment. After hearing both sides, this Tribunal dismissed the OA vide order dated 30.08.2013 holding that the disciplinary proceeding was



conducted in accordance with rules. We are of the considered view that the orders dated 14.05.2010 and 11.03.2011 passed by the disciplinary authority and the appellate authority respectively were passed with due application of mind and there was no material defect in the same.

12. In the case of **B.C.Chaturvedi vs. UOI & Ors, AIR 1996 SC 484**, the Hon'ble Supreme Court held as under:-

"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."

It was further held therein as under:-

"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."

In the case of **Tata Cellular vs. Union of India, (1994) 6 SCC 651**, the Hon'ble Supreme Court has held that in judicial review Court/Tribunals are not sitting as Appellate Authority, what is to be looked into is not the decision, but the decision making process to be correct or not.

13. From the materials placed on record and on consideration of the arguments advanced on behalf of the parties, we have noticed no infirmity in the disciplinary proceeding which had been completed in accordance with the rules. We are of the considered view that the orders passed by the disciplinary authority and the appellate authority has been passed with due application of mind.

14. In view of the above, and the law noticed hereinabove, we are not inclined to interfere with the matter. Accordingly, OA is dismissed. There shall be no order as to costs.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

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