

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH,C UTTACK

O.A.No.260/979/2012

Date of Reserve:30.01.2019
Date of Order: 28.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Dilip Kumar Garnaik, aged about 37 years, S/o. SriKabiraj Garnaik, Vill/PO-Sanjapada, PS-Balini, Dist-Dhenkanal, Ex-BPM of Sanjapada.

...Applicant
By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through:

1. The Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 016.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda-751 001.
3. Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur, Odisha-768 001.
4. Director of Postal Services, Sambalpur Regional, At/PO/Dist-Sambalpur, Odisha-768 001.
5. Superintendent of Post Offices, Dhenkanal Division, At/Po/Dist-Dhenkanal-750 001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing Annexure-A/1, A/5, A/7, A/9 and A/11 and to direct the Respondents to reinstate him in service with all consequential benefits.

2. The sequence of events runs thus: While working as GDS BPM, Sanjapada Branch Office, applicant was issued with a Memo No.F4-4/2003-04

dated 7.11.2005 (A/1) whereby the Superintendent of Post Offices, Dhenkanal Division (Res. No.5) in the capacity of Disciplinary Authority proposed to hold an inquiry against him under Rule 10 of GDS(Conduct & Employment) Rules, 2001, enclosing thereto the six Articles of Charges, *inter alia*, with an instruction to the applicant to file statement of defence stating whether he desired to be heard in person. Since the inquiry was inevitable, the applicant cooperated with the inquiry. During the course of inquiry, applicant submitted a letter dated 27.1.2006(A/2) to the Inquiry Officer for supply of seven additional documents, which according to applicant, were relevant for the purpose of his defence. However, out of the seven, applicant was provided only three documents without however, assigning any justifiable reasons for non-supply of the rest of the documents. On conclusion of the inquiry, the applicant was supplied with copy of inquiry report vide letter dated 4.10.2007(A/4). The applicant submitted his representation to the report of the I.O. on 26.10.2007 and in consideration of the same, the disciplinary authority vide Memo dated 29.11.2007 (A/5) imposed punishment of removal from service. The applicant thereafter preferred an appeal dated 8.1.2008 to Respondent No.4 and the appellate authority vide order dated 24.08.2009 (A/7)upheld the punishment of removal from service as imposed by the disciplinary authority, thus rejecting his appeal. Being aggrieved, the applicant preferred a petition to Respondent No.3 and the revisionary authority rejected the petition vide order dated 24.12.2009(A/9). Thereafter, the applicant submitted a mercy petition to Respondent No.2 which was rejected vide order dated 8.6.2011 on the ground that there is no such provision in the CCS(CCA) Rules for submission of mercy petition. Hence, the applicant has approached this Tribunal praying for the reliefs as mentioned above.

3. The grounds taken by the applicant are that by non-supply of documents he has been deprived of a reasonable opportunity and thereby he has been prejudiced. The IO was biased since during the course of inquiry, he acted as a prosecutor than a judge. For similar misconduct, the respondents taking a lenient view have exonerated many officials but in case the applicant, he has been awarded with extreme punishment of removal from service which is disproportionate to the gravity of offence committed.

4. Rebutting the averments made in the O.A., the respondents have filed a detailed counter. Respondents have submitted that the applicant while working as GDSBPM, Sanjapada BO perpetrated fraud in SB/RD transactions from 18.05.1998 which came to light during October, 2003 and after investigation, he was put under off duty with effect from 30.12.2003. During investigation, it was found that the applicant had committed permanent fraud of Rs.4700/- and temporary fraud of Rs.37,900/- before he was put under off duty and had committed permanent fraud of Rs.33,570/- and temporary fraud of Rs.4000/- even after he was put under off duty since the post office was functioning at his verandah and the officiating BPM had made over the key of Sanjapada Branch Post Office to the applicant. According to respondents, the applicant had committed permanent fraud of Rs.38,270/- and temporary fraud of Rs.41,900/- from 11 RD Pass Books and 9 SB Pass Books during the period from 15.05.1998 to 18.11.2004. Respondents have pointed out that the applicant having denied the charges framed against him, inquiry was proposed to be conducted in which one Shri A.Behera Ex-IPO(PG), Dhenkanal was appointed as I.O. to enquire into the charges and Shri Niranjan Mohanty, IPOs Angul (East) Sub Division was nominated as Presenting Officer to present the case on behalf of the disciplinary authority. The I.O. submitted his

report on 01.10.2007 holding the charges proved against the applicant. The applicant was supplied with copy of the report of the IO to which he submitted his representation on 26.10.2007. In consideration of this, the applicant was imposed punishment of removal from service vide order dated 29.11.2017 of the disciplinary authority. Appeal preferred against the order of punishment having been turned down by the appellate authority vide communication dated 24.08.2009, the applicant preferred a revision petition to the Post Master General, Sambalpur Region. The said revision petition was rejected vide communication dated 24.12.2009. Being aggrieved, the applicant submitted a mercy petition to the Chief Post Master General, Odisha Circle, which was disposed of vide order dated 8.6.2011 with an observation that there is no provision in GDS (Conduct & Employment) Rules, 2011 for preferring a mercy petition.

5. Respondents have pointed out that the charges on misappropriation having been proved against the applicant, he was rightly removed from service by the orders of the disciplinary authority, which was confirmed by the appellate authority and by the revisionary authority. Respondents have pointed out that the proceedings against the applicant have been conducted by adopting the due procedures of rules on the subject and at all stages the applicant has been afforded reasonable opportunity to defend his case. In view of this, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Heard the learned counsels for both the sides and perused the records. We have also perused the Articles of charges framed against the applicant vis-a-vis the report of the I.O. All the six Articles of Charges relate to temporary and permanent misappropriation of Government money. The report of the IO

also vividly establishes that all the charges have been proved against the applicant. The imposition of punishment of removal on the applicant, in our considered opinion, does not shock the judicial conscience in view of gravity of offence committed and proved against the applicant. It is the case of the applicant that out of the seven documents called for by him, he was supplied only three documents and rest of the four documents were not supplied and, thus, there has been violation of the principles of natural justice. We have considered this aspect of the matter. Applicant has nowhere stated as to how those documents were relevant to defend the charges and as to how he has been prejudiced by non-supply of those documents. Therefore, this ground falls to the ground.

7. We have also gone through the other grounds urged by the applicant in support of his case. His contention is that the IO was biased since during the course of inquiry as he acted as a prosecutor than a judge. If that be so, he ought to have brought this fact to the notice of the Disciplinary Authority alleging bias on the part of the I.O. But there is no such representation made by the applicant. Further, the applicant has pointed out that in many other cases, the respondents taking a lenient view have exonerated officials committing this type of misconduct whereas he has awarded extreme punishment of removal from service which is disproportionate to the gravity of offence committed. We have considered this submissions and given our anxious thoughts to the arguments as advanced. As already mentioned above, this argument does not hold any water inasmuch as in the capacity of GDSMPM, it was the joint and several responsibility of the applicant to bring about transparency in all spheres of his activities and to discharge his duties with absolute integrity and devotion to duty. It is not a case of combined or

contributory negligence wherein a common proceedings have been drawn up. Even if the respondents have exonerated officials committing misconduct of the type which the applicant has, the same cannot confer any right on him to claim equity, simply because, each case has to be governed under its own facts and circumstances. Therefore, the similar treatment claiming similarity in the matter of imposition of punishment herein is out of place. Before parting with this matter, we would like to note that the Hon'ble Supreme Court in a number of cases has emphatically defined the scope of judicial interference in a disciplinary matter. *In Surender Kumar vs. Union of India (2010) 1 SCC 158*, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

8. In *Hombe Gowda Educational Trust vs. State of Karnataka (2006) 1 SCC*, the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

9. In *Coal India Ltd. vs. Mukul Kumar Choudhury (2009) 15 SCC 620*, the Hon'ble Apex Court made the following observations.

"13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision, but is confined to the decision-making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference".

10. In *Bank of India vs. Degala Suryanarayana (1999) 5 SCC 762*, the Hon'ble Apex Court had laid down an important principle:

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such

evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of the fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or where a finding is not that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained".

11. Similarly, in *B.C.Chaturvedi vs. Union of India (1995) 6 SCC 749*, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings 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. 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 or 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 reappreciate 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 whether 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.

12. For the reasons discussed above, we are of the view that there has not been violation of any of the procedure and/or principle of natural justice by the respondents during the course of disciplinary proceedings nor the punishment imposed is excess to the gravity of offence committed and proved against the applicant. We, therefore, hold that the applicant has not been able to make out a case calling for interference by this Tribunal and for any of the reliefs sought for by him. In the result, the O.A. is dismissed being devoid of merit. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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