

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00918/2011

Jabalpur, this Wednesday, the 10th day of July, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Moh. Ibrahim Khan,
S/o Late Shri Safi Khan,
Aged about 60 years,
R/o 417 Madina Nagar,
Near 2nd Gate,
Indore-452001 (MP)

-Applicant

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. The Union of India,
Through its Secretary,
Ministry of Communication & IT
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi 110001

2. Chief Post Master General,
M.P. Circle Hoshangabad Road
Bhopal 462012 (M.P.)

3. Senior Superintendent of Post Offices,
City Division
Indore-452007 (M.P.)

- Respondents

(By Advocate –**Shri Manish Chourasia**)

(Date of reserving the order: 16.01.2019)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant challenging the order dated 08/10.04.1989 (Annexure A-1), whereby he was dismissed from service. The applicant has also challenged the order dated 13.09.2011 (Annexure A/2) whereby the respondent No.2 has refused to review the order dated 08/10.04.1989 in spite his acquittal from the criminal case.

2. The applicant in the present Original Application has sought for the following reliefs:-

“8.1 Summon the entire relevant record from the respondents for its kind perusal;

8.2 Set aside the order dated 8/10.4.1989 Annexure A-1 and the order 13.09.2011 Annexure A/2 with all consequential benefit including arrears of pay and allowance.

8.3 Direct the respondents to pay retiral dues and pension to the applicant as if the order dated 08/10.4.1989 has never been passed.

8.4 Any other order/orders, direction/directions may also be passed.

8.5 Award cost of the litigation to the applicant.”

3. The brief facts of the case are that the applicant was initially appointed as Mechanic in Mail Motor Unit vide order dated 14.03.1980. The applicant was issued a charge sheet dated 17/09.05.1988 (Annexure A/3). The applicant denied all the charges in toto. Department enquiry was conducted against the applicant. The inquiry officer has submitted his report to the disciplinary authority who imposed a punishment of dismissal from service against the applicant vide order dated 08/10.04.1989 (Annexure A-1). The applicant submitted that for same set of allegations a criminal case was lodged against the applicant before the Special Judicial Magistrate whereby the applicant was convicted with three months rigorous imprisonment with Rs.1000/- fine vide order dated 20.01.2010 (Annexure A/4). The applicant being aggrieved by the said order preferred a criminal appeal under Section 389 of Cr.P.C. before the Sessions Judge, Indore which was decided on 19.03.2010 (Annexure A-5) exonerating the applicant from criminal charges.

Thereafter the applicant preferred a revision petition dated 19.06.2010 (Annexure A/6) to the Chief Post Master General, M.P. Circle Bhopal. On non receipt of any response, the applicant sought information through Right to Information Action whereby the applicant received information vide letter dated 15.12.2010 (Annexure A/7) that the revising authority has not received revision petition through proper channel therefore it could not be decided. The applicant thereafter sent the revision petition to the Senior Superintendent of Post Office on 24.12.2010. The applicant thereafter filed an Original Application No.518/2011 before this Tribunal which was disposed of vide order dated 11.07.2011 to decide the revision petition of the applicant. On compliance of the said order of this Tribunal, the revising authority rejected the said petition of the applicant vide order dated 13.09.2011 (Annexure A/2). Hence this Original Application.

4. The respondents in their reply have submitted that the applicant was a Mechanic in Mail Motor Unit at

Indore, G.P.O. On 16.04.1988 when Departmental Vehicle No.C.I.I. 7132 returned garage on completion of last schedule of transportation of mails, the applicant forced the driver to driven out the vehicle and intimated watchman Shri Shamim Qureshi that the vehicle was to be sent for some repairing work and he did not made the entry of the vehicle in gate pass register and took away the vehicle unauthorizedly out of city and reached at Bagli. The applicant was accompanied by Cleaner, Driver and Postman. Enroute, while the said vehicle was checked by the Forest Checking squad there were pieces of Teak Wood found inside the vehicle without any documents relating to transportation of Teak Wood. On unauthorized and illegal transportation of teak wood, the vehicle was seized by the Forest Checking squad (Department of Forest M.P.) and charge sheet was filed before the court of law under Section 41 and 26 of the Indian Forest Act 1927 and under Section 05 and 11 of Madhya Pradesh Lghu Upaj Act 1969. A charge sheet was issued under Rule 14

of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for violation of Rule 3 (1)(i) (ii) (iii) was issued, imposing charges for taking the vehicle out of city unauthorizedly and using transportation of teak wood. After conducting inquiry, the applicant was dismissed from service vide order dated 08/10.04.1989. Respondents further submitted that the applicant was bound to keep the vehicle fit for next scheduled of mails transmission but the applicant forcible used the said vehicle in illegal work. This act was published in the local news papers which defamed the image of the department. It has been specifically submitted by the respondents that the departmental enquiry was conducted for misuse of departmental vehicle while the criminal case was based on violation of rules of Indian Forest Act. Hence, there was no need to wait for the outcome of criminal proceedings. The respondents submitted that the respondent-department has dismissed the applicant from service after conducting an open inquiry and reasonable opportunities were offered

to defend himself. No charges of violation of Indian Forest Act were imposed in charge sheet issued by the Department of Post. Therefore, it is quite clear that the ground and facts of both the cases were different and no relevancy to each other.

5. We have heard the learned counsel for the parties and also perused the documents annexed with the pleadings.

6. From the pleadings it is clear that the charge sheet was issued against the applicant vide order dated 17/19.05.1988 and the applicant has made representation against the said charge sheet. The respondent-department has considered the same and has decided to conduct departmental inquiry against the applicant. The inquiry officer was appointed and after completion of said proceedings, the disciplinary authority vide Annexure A/1 dated 08/10.04.1989 has imposed the punishment of dismissal from service. Against the said order of punishment, the applicant has preferred a revision petition dated 19.06.2010 (Annexure A/6) to the Chief Post Master

General, M.P. Circle Bhopal. The revising authority has rejected the said petition of the applicant vide order dated 13.09.2011 (Annexure A/2).

7. The contention of the applicant is that a criminal case was lodged against the applicant before the Special Judicial Magistrate whereby the applicant was convicted with three months rigorous imprisonment vide order dated 20.01.2010 (Annexure A/4) and the applicant had preferred a criminal appeal under Section 389 of Code of Criminal Procedure before the Sessions Judge, Indore which was decided on 19.03.2010 and the applicant was acquitted from criminal charges. Though the applicant had preferred Revision Petition dated 19.06.2010 to the Chief Post Master General, M.P. Circle Bhopal, but the applicant did not receive any response. The applicant has filed Original Application No.518/2011 which was disposed of with a direction to decide the revision petition and in compliance of the said order the revisionary authority has rejected the said revision petitioner vide order dated

13.09.2011 (Annexure A/2). The applicant has submitted that the department should have waited for the outcome of the criminal case which was pending before the Special Judicial Magistrate. Though the applicant was convicted by the trial court but later on the first appellate court has acquitted the applicant from all the charges. Further the applicant has submitted that the punishment imposed by the disciplinary authority is extremely harsh, excessive and disproportionate in comparison to the alleged misconduct. The revising authority has totally ignored the crucial fact that criminal case and departmental inquiry both are arising out of same incident and both were grounded upon same facts.

8. On the other side, the respondent-department has clearly submitted in their reply that as applicant was working as Mechanic in Mail Motor Unit at Indore, G.P.O. On 16.04.1988 when Departmental Vehicle No.C.I.I. 7132 returned garage on completion of last schedule of transportation of mails, the applicant forced the driver to

driven out the vehicle and intimated watchman that the vehicle was to be sent for some repairing work and he did not make the entry of the vehicle in gate pass register and took away the vehicle unauthorizedly out of city and reached at Bagli. The applicant was accompanied by Cleaner, Driver and Postman. Enroute, while the said vehicle was checked by the Forest Checking squad there were pieces of Teak Wood found inside the vehicle without any documents relating to transportation of Teak Wood. So, the vehicle was seized by the Forest Checking squad. It has been specifically submitted by the replying respondents that a criminal case was registered against the applicant under Section 41 and 26 of the Indian Forest Act 1927 and under Section 05 and 11 of Madhya Pradesh Lghu Upaj Act 1969). A charge sheet was issued under Rule 14 of the CCS(CCA) Rules, 1965 for violation of Rule 3 (1)(i) (ii) (iii) was issued, imposing charges for taking the vehicle out of city unauthorizedly and using transportation of teak wood. It has been specifically

submitted by the replying respondents that the after conducting inquiry, the applicant was dismissed from service vide order dated 08/10.04.1989 and the applicant was bound to keep the vehicle fit for next scheduled of mails transmission but the applicant forcible used the said vehicle in illegal work which was published in the local news papers and defamed the image of the department. On the other hand, It has been specifically submitted by the respondents that the departmental enquiry was conducted for misuse of departmental vehicle while the criminal case was based on violation of rules of Indian Forest Act hence there was no need to wait for the outcome of criminal proceedings.

9. The disciplinary authority has discussed the matter and evidence in detail in Para No.4 and 5 of Annexure A-1 and has agreed upon the inquiry report by the inquiry officer. Furthermore the revisional authority has considered the grounds as put forth in the revision petition.

From Para 1 to 5 of Annexure A/2 the revisional authority

has discussed the grounds of revision petition and the reason has been recorded accordingly.

10. As per Annexure A/2 the revisional authority has also discussed the various contention of the applicant put forth before the said authority including the contention of the applicant regarding the criminal case. The revisional authority has specifically held that there is no nexus between the criminal case and the action of disciplinary authority in Para 5. The disciplinary authority has discussed the matter in detail and after going through the evidence and facts the disciplinary authority has passed punishment order of dismissal from service. The other contention of the applicant is that after acquittal the applicant had made a representation before the Chief Post Master General, M.P. circle and has not applied their mind is baseless. The revisional authority under Section 29 of the CCS (CCA) Rules, 1965 has passed the detailed order dated 13.09.2011 (Annexure A/2). Furthermore, if Annexure A/3 dated 17/19.05.14988 is seen, the applicant

has been charged under Rule 3(i) (ii) (iii) of Central Civil Services (Conduct) Rules, 1964. So, as per order passed by the revisional authority and also punishment passed by the disciplinary authority Annexure A/1, each aspect raised by the applicant has been dealt with in detail. So, the submissions made by the applicant in this Original Application are not tenable in the eyes of law.

11. The Hon'ble Apex Court in the matters of **B.C. Chaturvedi Vs. Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 has held:

“12. 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 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.

*13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose

appropriate punishment with cogent reasons in support thereof.”

12. In the instant case, learned counsel for the applicant has failed to show any prejudice caused to the applicant and the applicant has further not able to prove the fact that there is any violation of rules and principle of natural justice.

13. In view of the above, we do not find any reasons to interfere with the action of the respondent-department.

14. Resultantly, this Original Application is dismissed. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

**(Navin Tandon)
Administrative Member**

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