CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 78 of 2016

Present : Hon'ble Mr. Gokul Chandra Pati, Member(A)
Hon'ble Mr. Swarup Kumar Mishra, Member(J)

Panchanan Swain, aged about 64 years, S/o late Dhadi Swain, resident of At-Haridaspur, PO-Naharkanta, Via-Balianta, Dist-Khurda, Odisha, Pin-752101.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Postmaster General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Director Accounts (Postal), Mahanadi Vihar, Cuttack-753004.

.....Respondents

For the applicant : Mr.C.P.Sahani, counsel

For the respondents : Mr.S.B.Mohanty, counsel

Heard & reserved on : 7.11.2019 Date of Order : 21.11.2019

O R D E R

PER MR. GOKUL CHANDRA PATI, MEMBER(A) :-

The applicant was posted as Deputy Manager, Postal Printing Press at Bhubaneswar when he was served with a charge-sheet dated 19.10.2010 (Annexure-A/1) before his retirement on 31.5.2011. He submitted a representation dated 24.12.2010 (Annexure-A/6), stating as under:-

> "I also admit the allegations brought against me in the above charges in full and I have also deposited the loss amount to the Dept. Which occurred due to my laxity in supervision which I performed under good faith and utmost honesty and did my duty best upto limit of my ability and experience my revered CPMG can realistically assess from my humble submission that the errors which I have committed were purely unintentional and without a motive behind it. As such I would request my CPMG who is the Disciplinary Authority in this case to magnanimous in realizing my present financial constraints and mental agony which I am undergoing at present due to a similar case is pending at Postal Directorate not being decided for over last two years."

2. The Inquiry Officer (in short IO) was appointed and he submitted his report dated 21.1.2011 which was sent to the applicant vide letter at Annexure-A/8. After he represented on the IO's report on 2.3.2011, the matter was sent to the UPSC by the DG on 4.9.2013 for advice after applicant's

retirement on 31.5.2011. The UPSC sent his advice on 14.11.2013 (Annexure-A/10), copy of which was not sent to the applicant before the impugned punishment order dated 24/27.12.2013 (Annexure-A/11) was passed by the competent authority. On receipt of the said order, the applicant submitted a mercy petition to Hon'ble President of India on 28.12.2014 (Annexure-A/13). When no decision was taken, the applicant filed the OA No. 37/2015 which was disposed of with direction to dispose the mercy petition of the applicant. Thereafter, the impugned order dated 22.9.2015 (Annexure-A/14) was passed rejecting his mercy petition. Being aggrieved, the applicant has filed this OA with prayer for following reliefs:-

> "(i) Admit the Original Application, and
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> (ii) After hearing the counsels for the parties be further pleased to quash the order No.36-18/2009-Vig dated 24/27.12.2013 at Annexure A/11 and order No.32-06/2015-Vig dated 22.9.2015 at Annexure A/14 and direct the Departmental respondent(s) to refund the amount deducted from the pension of the applicant.
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> And/or
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> (iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow the OA."

3. Four main grounds have been advanced in the OA. First ground is non-supply of the UPSC advice prior to passing of the punishment order as required as per the judgments of Hon'ble Apex Court in the case of UOI & others vs. S.K. Kapoor in Civil Appeal No. 5341/2006, UOI & others vs. R.P. Singh in Civil Appeal No. 6717/2008 and SN Narula vs. UOI, 2011 4 SCC 591. Second ground is that the charges are trivial in nature with no loss to government after applicant deposited suo motu the amount of loss as stated in the charge-sheet. The applicant cited the provisions in the "Disciplinary Proceeding-A Digest" and the following judgments in support of this ground taken by the applicant:-

> (i) K.S.Srinivasan –vs- Union of India [AIR 1958 SC 419]
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> (ii) Natavarbhai S.Makwana –vs- Union Bank of India & Ors. [1985 II LLJ 296]
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> (iii) Thotapalli Radhakrishna Murthy –vs- The Divisional Manager, United India Ijnsurance Co. Ltd. [1982 Lab IC 1745]
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> (iv) Jagdish Prasad Saxena –vs- State of M.P. [AIR 1961 SC 1070]

4. Third ground in the OA (para 5.12) is that the punishment imposed is "totally disproportionate to the misconduct proved". The applicant cites the judgment of Hon'ble Apex Court in the case of Devi Singh vs. Punjab Tourism Development Corporation, (2003) 8 SCC 9 in support of this ground. Fourth

ground taken in the OA (para 5.13) is the delay of about two and half years in forwarding the matter to UPSC by the respondent no.1 for which the applicant was harassed and he suffered.

5. Counter filed by the respondents highlighted that the applicant had admitted all the charges in his reply to the charge-sheet before the IO and due procedure has been followed in the disciplinary proceeding against the applicant. The representation submitted to Hon'ble President has also been disposed of as per the direction of the Tribunal. The contentions in the OA that the admission of the charges by the applicant was on the basis of some assurances of the CPMG, have been denied in the Counter. It is further averred that the DOPT's OM dated 6.1.2014 (Annexure-A/14) stipulated communication of the UPSC advice to the delinquent and before that date, there were clear guidelines in the DOPT OM dated 7.1.2008 (Annexure-R/1) not to supply a copy of advice of the UPSC. It is also stated in the Counter that the charges against the applicant cannot be considered trivial as it "involves embezzlement of public funds." The fact that the applicant deposited Rs. 1599/- to government account proves his misconduct "that he has utilised his official position to the advantage of others without exercising propriety measure." The contention in the OA that the rules 14(18) and 14(19) of the CCS (CCA) Rules, 1965 have not been followed has been denied in the Counter. Regarding non-consultation with the CVC, it is stated as per the guidelines of the CVC at Annexure-R/2, no consultation is necessary for Group-B officials.

6. Rejoinder has been filed reiterating the contentions in the OA. It is stated that the disciplinary authority failed to prove grave misconduct as the charges were framed on account of errors on the part of the applicant. He was forced by the respondent no.2 to admit the charges. He also did not consider the points raised by the applicant and passed order with pre-determined mindset.

7. We have heard learned counsel for both the parties who reiterated the contentions in their respective pleadings on record. Regarding supply of the UPSC advice prior to passing of the punishment order, the respondents have mentioned in the Counter that they have acted as per the DOPT OM dated 7.1.2008 (Annexure-R/1) which was valid at the time when the UPSC's advice was issued on 14.11.2013 (A/10). The said circular was modified vide the OM dated 6.1.2014 (Annexure-A/15), which was issued after the impugned order dated 24/27.12.2013 (A/11) was passed. The said order was delivered to the applicant on 29.1.2014 (A/2) after issue of the OM dated 6.1.2014. But since the order dated 24/27.12.2013 was already issued by the competent authority before issue of the OM dated 6.1.2014 (A/15) stipulating the provision for supply of UPSC advice prior to passing of the punishment order. Hence, the

ground of non-supply of the UPSC advice will not be helpful for the applicant's case.

8. Regarding the question of delay in sending his case by the respondent no. 1 to UPSC for advice, it is seen that the applicant has not mentioned how such delay has prejudiced him. In the representation dated 28.2.2014 to Hon'ble President (Annexure-A/13), he did not mention anything about such delay. The delay in the matter relating to the disciplinary proceedings will be an important factor if such delay is shown to have caused prejudice to the delinquent, without which such proceedings cannot be deemed to be vitiated on the ground of delay at any stage. Hence, the ground of delay to challenge the disciplinary proceedings as mentioned in para 5.13 of the OA is not convincing.

9. Regarding the grounds pertaining to the seriousness of the charges and the punishment being disproportionate, we take note of the following observations made by the UPSC on the charges as under:-

> "The commission conclude that a careful reading of the charges, defence arguments of the CO, IO's report and DA's comments, reveal that the CO has been utterly casual and negligent in dealing with important office matters including financial matters. The instances in each one of charges lead to an inescapable conclusion that the CO has been clumsy in the handling of these cases. The CO's argument that he was overburdened and could not scrutinize the bills properly, has no force because due diligence is always expected of an officer of his level. The episode of Shri Behera's case i.e. first recording an order in a disciplinary matter and then to suo motto recall the file and raise queries to cover up his mistake in the face of a missing portion of his own note is a glaring example of palpable mischief and dishonest handling of official matters. Similarly, his wrong TA claim and acceptance of payment for that is a serious irregularity committed by the CO. the issue is not whether the CO sanctioned the TA claims of his subordinates, namely, Shri B.K,.Kar, Inspector and Shri N.C.Das, ASPO Jagatsinghpur, without proper scrutiny, but that he chose to claim and accept payment for official journeys in contravention of the instructions contained in the General Financial Rules. The conclusion reached by the DA is perfectly in order as all the charges against the CO stand proved without any doubt. CO's own admission only reinforces this conclusion,. Even his voluntary act of depositing the amount on account of the loss caused to the government does not reduce the gravity of misconduct on his part. On the whole, the Charged Officer, Shri Panchanan Swain, since retired, is guilty of serious professional misconduct."

The applicant has not produced anything on record to contradict above conclusions of the UPSC in this case. From the observations of the UPSC as above, it is clear that the charges against the applicant cannot be considered as not serious and punishment imposed cannot be considered to be disproportionate taking into account the nature of misconduct as reflected in the UPSC's advice.

10. As per the settled law regarding disciplinary proceedings, the Tribunal can interfere only if there is violation of statutory rules or principles of natural justice or if the punishment order is not based on any evidence. Hon'ble Apex Court in the case of B.C. Chaturvedi vs. Union of India & others, reported in 1996 AIR 484 has 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. 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.
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> 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."

11. Learned counsel for the applicant has submitted a copy of the judgment of Hon'ble High Court of Gujarat in Special Civil Applicati9on No. 5228/83 in the case of Natavarbhai S.Makwana –vs- Union Bank of India & Ors. In that case, the petitioner was punished solely on the basis of his confession without any evidence or proof of the alleged misconduct. It was held that the punishment cannot be imposed only on the basis of confession without establishing the factum of misconduct.

12. Learned counsel for the applicant had submitted a written note broadly reiterating the contentions in the OA. Non-compliance of the rule 14(18) and 14(19) of the CCS (CCA) Rules, 1965 by the IO has been stressed by learned counsel for the applicant. Provisions under these rules stipulate that the IO will question the charged officer to explain the circumstances appearing against

him in evidence and may permit him to file written briefs. Regarding deviations from the rules/procedures in a disciplinary proceeding, it is held by Hon'ble Apex Court in the case of State Bank of Patiala & Ors. –vs- S.K.Sharma [1996 SCC (L&S) 739 as under :

> "33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :
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> (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
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> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
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> (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self- evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.
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> (4)(a) In the case of a procedural provision which is not of a mandatory character the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.
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> (b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him,

> then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunakar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called."

13. In this OA, the applicant has not demonstrated in what manner he was prejudiced by the action of IO not to follow the rule 14(18) and 14(19). The applicant has not mentioned in his pleadings if he had requested the IO for taking action under the Rule 14(18) and 14(19). The respondents including IO proceeded with matter assuming that the applicant had admitted the charges. The applicant has mentioned in the OA that he had admitted the charges in order to expedite conclusion of the inquiry/disciplinary proceedings. Under the circumstances, non-compliance of the Rule 14(18) and 14(19) by the IO will not be helpful for the applicant's case.

14. Learned counsel for the applicant has cited judgment in the case of Jagdish Prasad Saxena –vs- The State of Madhya Brarat, [AIR 1961 SC 1070] in support of his argument that the provisions of the rules have to be followed in a disciplinary proceeding. It is seen that in the case of Jagdish Prasad Sharma (supra), no formal inquiry was held and punishment order was passed based on admission only. In this OA, the inquiry was conducted by the IO. Hence, the cited judgment will not be applicable for the present OA.

15. In the case of K.S.Srinivasan –vs- Union of India & Ors. [AIR 1958 SC 419], it was held that admission is not a conclusive proof of the misconduct. As discussed earlier, in the OA, there is clear evidence to prove some of the charges against the applicant as observed in UPSC advice also and the admission is not the only basis for the findings of the respondents in this proceeding. Hence, the cited case is factually distinguishable.

16. The grounds of non-communication of UPSC's advice prior to passing of punishment order the punishment imposed is disproportionate to the charges have been discussed in paragraphs 7 and 9 respectively of this order. It is not the case of the applicant that there is no evidence of misconduct on record apart from the admission of the applicant. The fact that the disciplinary matter referred in the charge sheet has been handled in a manner not permissible under law and there is evidence on record to establish the allegation, have been discussed in the advice of UPSC as extracted paragraph 9 of this order. It is also seen that in paragraph 4.4, the applicant has stated that the manipulation in note sheet of the disciplinary proceeding file in question was done by one Sri K.C.Ghadei who had allegedly torn the note sheet. If Sri Ghadei was found to be at fault by the applicant, nothing prevented the applicant to initiate disciplinary action as per the rules against Sri Ghadei. There is nothing on record to show that the applicant had taken any action in this regard or

reported about alleged misconduct of Sri Ghadei to higher authorities. It is not known if he recorded his findings about the alleged manipulation by Sri Ghadei in the file as stated in para 4.4 of the OA. Passing the blame to a subordinate employee at this stage will not be of any assistance to the applicant. All these facts clearly show that the applicant has handled the matter in a negligent manner and the findings of the respondents in this regard cannot be faulted. As discussed in paragraph 11 of this order, the judgment in the case of Natavarbhai S. Makwana (supra) cited by the applicant's counsel is factually distinguishable because as stated in para 23 of the cited judgment, no evidence with regard to threat or intimidation was there on record and sufficient details are not mentioned in the charge sheet in the cited case, whereas in this OA, there is evidence on record to support some of the charges against the applicant in this OA.

17. Applying ratio of the judgment of Hon'ble Apex Court in the case of B.C.Chaturvedi (supra), absence of strict proof on the basis of evidence cannot be advanced as a ground before Tribunal to challenge the disciplinary proceedings. In this case, the opinion/advice of the UPSC clearly shows seriousness of misconduct on the part of the applicant. It also shows that some evidence is available on record to justify the findings of the respondents on the charges framed against the applicant.

18. In the circumstances, we are of the view that on the basis of the materials available on record, the applicant has failed to make out a case in this OA so as to justify any interference in the matter. Accordingly, the OA, being devoid of merit is dismissed. Under the circumstances, there will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath