

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.7867/2010**

% ***Date of Decision: 24.02.2011***

UOI & Anr. *Petitioners*
Through Mr.M.K.Bhardwaj, Advocate

Versus

Sh.M.S.Saini *Respondent*
Through Mr.S.K.Das, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners, Union of India and ors have challenged the order dated 26th May, 2009 passed by the Central Administrative Tribunal, Principal Bench in O.A No.1737/2007 titled as 'M.S.Saini v. UOI & Ors' allowing the original application of the respondent and setting aside the order passed by the disciplinary authority dated 8th July, 2005 imposing a penalty of reduction by one stage for a period of two years, without cumulative effect and the order of the appellate authority modifying the penalty to that of a censure.

2. Relevant facts to comprehend the controversies are that the respondent was posted as Assistant Engineer (Elect.) at Almora, as in charge of Almora Electrical Sub Division under the Central Electrical Division, Bareilly when he was transferred to Delhi circle by office order dated 23rd December, 1997. Subsequently by office order dated 7th January, 1998, the Executive Engineer (Elect.) Central Electrical Division, Bareilly had directed Mr. Ram Khilawan, A.E (Elect.) who was posted in Electrical Sub Division-II to take over the charge from the respondent of Almora Sub Division in addition to his existing charge.

3. According to the respondent the order of transfer dated 23rd December, 1997 was never served upon him either officially or otherwise and he was ignorant of such a transfer order. Consequently when Mr. Ram Khilawan reached the Almora Sub Division office on 9th January, 1998 to take over the charge from the respondent, he was not aware of it. Mr. Ram Khilawan, however, went back to Bareilly, even though the respondent had yet to complete the formalities for handing over the charge. Despite the request of the respondent to allow him to complete the process of handing over the charge which according to him would have taken at least 5 days as he was in charge of the three offices that is AE (E), JE (E) and SDC of the Sub Division, Mr. Khilawan did not take the complete charge from him.

4. According to the respondent Mr.Ram Khilawan distorted the facts and reported to the Executive Engineer of Central Electrical Division, Bareilly giving an impression that the respondent had refused to hand over the charge. The respondent, however, was agreeable to hand over the charge of his office, but for the reasons known to the officials, the sub divisional office and the stores were locked and sealed and by office order dated 21st January, 1998 and the respondent was relieved and even the outstanding salary and TTA were not paid to the respondent despite request by him for time to complete the formalities of handing over the charge in the proper and prescribed manner. The respondent also clarified by his letter dated 21st January, 1998 that he had never refused to hand over the charge of Almora Sub Division Office and that he only wanted to complete the process as per the prescribed procedure as the interest amount lying in his custody was to be settled along with materials lying in the stores which required the counter signatures of the reliever, Mr.Ram Khilawan. The respondent joined the posting at Delhi Central Electrical Circle-V, CPWD, New Delhi and the Executive Engineer (Elect.) Bareilly division by his order dated 24th January, 1998 constituted a board of two officers for opening the seal of the office and stores to hand over the things to Mr.Ram Khilawan without any intimation to the respondent.

5. Later on the respondent was asked to hand over the log books, history books, registration, batteries, keys of the doors and the ignition of the office jeep, though the possession had already been forcibly taken over and handed to Mr.Ram Khilawan, Assistant Engineer (Elect.).

6. The respondent submitted a detailed reply dated 15th March, 1998 denying that he had the custody of the articles which were demanded from him as according to him the same were lying in the office which was forcibly taken over and locked without allowing the respondent to hand over the same to the reliever. Thereafter by order dated 5th June, 1998 the respondent was asked to submit his reply to the show cause notice for departmental action on the allegation that he had refused to hand over the charge to which reply dated 23rd June, 1998 was filed on behalf of respondent denying the allegation.

7. By another office order dated 29th July, 1998 Executive Engineer, Bareilly directed the respondent to reach Almora to hand over the rest of the charge to Mr.Ram Khilawan. The respondent submitted his application dated 30th July, 1998 seeking sanction for his official tour to Almora and release of TA advance. However, by office memo dated 30th March, 2000 the petitioners decided to hold an enquiry against the respondent for his alleged lapses/imputations and served a memorandum stipulating the article of charges. The allegations imputed against the respondent were that he did not hand over the charge upto

21st January, 1998 and did not take timely action to take two consignments cleared from the Railway Out Agency, Almora resulting in the payment of demurrage and he submitted a fake voucher dated 2nd July, 1997 for Rs.1500/- towards cartage of 108 wooden boxes containing ceiling fans from Almora Railway Out Agency to SSB Campus, Almora. The respondent gave a detailed reply dated 8th April, 2000 and also requested for appointment of an enquiry officer through CVC as he was not expecting justice because of influence of the Executive Engineer, Bareilly division. The disciplinary authority however, conducted the regular enquiry despite the concerns and clarifications given by the respondent. The respondent participated in the enquiry and moved applications before the Inquiry Officer demanding additional documents for the purpose of his defence and he also lodged a written complaint dated 12th March, 2001 with the Secretary, Central Vigilance Commission against the misdeeds of the Executive Engineer, Bareilly Division, and two other officials of the petitioner's department requesting a detailed enquiry against them.

8. The enquiry officer submitted his report dated 1st December, 2004 finding the petitioner guilty of only one charge out of three articles of charges. A copy of the enquiry report was also given to the respondent.

9. The respondent requested the disciplinary authority for a copy of the CVC advice, which was supplied to him on 24th February, 2004 and also submitted a detailed representation against the findings of the Inquiry Officer. The disciplinary authority, however, by order dated 8th July, 2005 imposed a penalty of reduction of pay by one stage from Rs.10,100/- to Rs.9,900/- in the time scale of pay of Rs.6500-200-10500/- for a period of two years. Aggrieved by the order of punishment, the respondent submitted an appeal under Rule 25 of CCS (CCA) Rules. Since the appeal of the respondent was not taken up expeditiously, the respondent filed an original application being O.A No.508/2006 for expeditious disposal of his appeal. The original application being O.A No.508/2006 was disposed of by order dated 1st March, 2006 directing the appellate authority to decide the appeal within a period of three months.

10. The petitioners did not dispose of the appeal within the time granted by the Tribunal and sought further time to dispose of the appeal, which was allowed by order dated 6th July, 2006. The appeal of the respondent was disposed of by order dated 24th August, 2006 modifying the punishment of reduction of pay by one stage to that of censure relying on the advice of UPSC.

11. The respondent challenged the order of the disciplinary authority and the appellate authority by filing an original application being O.A

No.1737/2007 contending inter-alia that the disciplinary authority has not considered the facts and circumstances independently and has reached its decision solely influenced by the advice of the UPSC. According to the respondent there was no evidence that the log books and other materials were maintained by him and were in his possession which was requested to be delivered to the reliever. He contended that the transfer order dated 23rd December, 1997 was not communicated and intimated to him in any manner. Even when Mr.Ram Khilawan, the reliever reached on 9th January, 1998 to take over the charge, he never declined to hand over the charge, but instead he had opined knowing the extent of the work which was required for handing over the charge that it would take at least 5 days to hand over the charge as per the proper procedure. Mr.Ram Khilawan, however, instead of taking over the charge, left the place on his own and later the office and the stores were sealed. In the circumstances, it was contended that the findings of the enquiry officer and the disciplinary authority were perverse as there is no material to show that log books were maintained by him and that the materials as demanded by the petitioners were in his possession as the office and the stores had already been sealed and he had refused to hand over the charge and that it was ever intimated or communicated to him about the transfer by order dated 23rd December, 1997.. According to the respondent the entire disciplinary action against him was on account of ill will and ill motive of the Executive Engineer

(Elect.) Bareilly division which is also apparent from the material on record which categorically reflects that he was not allowed to hand over the complete charge of the Almora Sub Division by a pre meditated and pre planned action as on 21st January, 1998 his office and stores were sealed without any justifiable reason. The respondent also contended that he was virtually handicapped in handing over the charge officially to the reliever because of the non-payment of TA which is a condition precedent for transfer of the official according to rules, which fact has not been denied. Relying on the report of the forensic expert, the respondent contended that the office order dated 21st January, 1998 was typed from the typewriter lying in the Bareilly Sub Division Office and in the circumstances it was apparent that the relieving order and locking order were both prepared by the Executive Engineer (Elect.), Bareilly in a pre planned manner. The respondent's assertion is that by not allowing the time requested by the respondent to complete the formalities, and instead forcibly taking over the charge in his absence by locking the stores and his office, is reflective of the malafides on the part of the concerned officials and in the circumstances it could not be inferred that the materials as demanded by the petitioners were in his possession and were not handed over by the respondent.

12. The pleas and contentions of the respondent were contested by the petitioners by filing a counter reply dated 28th January, 2008

contending inter-alia that no cause of action had accrued to the respondent to file the original application against the punishment of censure granted by the appellate authority. The respondent also reiterated that the order No.246/1997 dated 23rd December, 1997 had been sent to the respondent. It was contended that the respondent/charged official did not sign the list of the charge he was to hand over on 9th January, 1998 which consequently led to sealing of the office and the store on 21st January, 1998. Though a detailed petition was filed by the respondent, however, in the counter affidavit on behalf of the petitioners the allegations have been simply denied. No particulars were given as to how the transfer order was intimated or communicated to the respondent nor anything was disclosed from which it could be inferred that the log books and other material was in possession of the respondent and were personally maintained by him.

13. The Tribunal by order dated 26th May, 2009 noted the observations made by the Union Public Service Commission on the appeal which was filed by the respondent before the appellate authority. The Tribunal also held that in a judicial review of the disciplinary proceedings the evidence is not to be re-appreciated nor the view of the Tribunal is to be substituted with the view of the disciplinary authority, however, if there is no evidence in support of the charge against the delinquent official, the findings based on no evidence shall be perverse

and the Tribunal shall be entitled to interfere with the findings and the punishment imposed. The Tribunal further held that if a trivial misconduct or a technical misconduct is made out that will not be sufficient to hold a person guilty in the disciplinary proceedings.

14. From the advice of Union Public Service Commission it was also noticed that from the record, the disciplinary authority has not been able to establish by producing any document that the log books were maintained by the respondent and not handed over by the respondent deliberately. This was also not disputed that the respondent had handed over a part of the charge and had promised to hand over the rest of the charge later which had not been disputed by the disciplinary authority. The observations and findings of the Tribunal are as under:-

“8. We have carefully considered the rival contentions of the parties and perused the material on record. It is trite law that in judicial review of disciplinary proceedings we cannot re-appraise the evidence and substitute our own view. The doctrine of proportionality has applicability, yet the Apex Court has laid down the methodology. However, the scope to interfere in disciplinary proceeding is when there is no misconduct against an employee and or a case of ‘no evidence’ with a pervert finding. Applying the test of a common reasonable prudent man if no evidence has come forth to establish the misconduct, mere trivial misconduct or technical misconduct cannot be sufficient to hold a person guilty in a disciplinary proceeding. A judgment of error or error by an authority is not misconduct, as ruled by the Apex Court in Reference under Article 317 of the Constitution of India, 209 (1) SCC 337. In a disciplinary proceeding EO has to discharge quasi-judicial functions, as ruled by the Apex Court in Roop Singh Negi v. Union of India, 2009 (1) SCC (L&S) 298. Reasoned orders are

expected in law to be passed both by the DA as well as the appellate authority.

9. In the above backdrop though against the applicant only charge-I is proved, i.e., non handing over the charge, including logbooks, it has been established that the logbooks was never in his possession. As regards other charges, we do not find any finding recorded by the EO as to what are those articles and parts of the charge, having not handed over, yet a clue has been taken from the imputation, which includes according to the respondents, the history book, registration, battery, keys and ignition etc. in this regard a specific plea taken by the applicant that these items were not in his custody and were lying in the office, which were forcibly taken from him and was locked, has not been rebutted by the respondents and is deemed to have been admitted. As such the part of the charge that applicant has not handed over parts of the charge other than logbook is not made out against him, yet he has been punished on the charge.

10. From the advice of Union Public Service Commission taken in appeal, it is clearly observed from the record that the DA has not produced any document to prove that logbook was handed over to the appellant. However, it is acknowledged that the appellant handed over part of the charge to his successor stating that he would hand over rest of the charge later for which no comments have been offered by the DA. Accordingly, what has been left out to be handed over are the items which were not in possession of the applicant, which is not refuted by the respondents. As such, the only article of charge of logbook, having not found in his possession, could not be handed over, yet the appellate authority instead of quashing the punishment, mechanically accepted, without recording reasons, the advice of the UPSC and on proportionality reduced the punishments. It is trite that the DA has to pass a speaking order, being a quasi-judicial authority, as ruled by the Apex Court in Roop Singh Negi (Supra). The order passed by the DA also does not deal with these contentions.”

15. We have heard the learned counsel for the parties in detail. The contentions raised on behalf of the petitioners before the Tribunal has

been agitated again by the learned counsel for the petitioners. We asked the learned counsel for the petitioner to show any evidence which will establish that the order dated 23rd December, 1997 transferring the petitioner was intimated or communicated or served upon him. From the record no such evidence has been shown which will establish that the order of transfer dated 23rd December, 1997 was served upon the respondent. Also on 9th January, 1998 when the reliever Mr. Ram Khilawan had to come to Almora to take over the charge, there is no evidence to show that the respondent refused to hand over the charge. Rather part of the charge was handed over and what was demanded by the respondent was also to pay him the TA which appears to be a requirement in accordance with the rules for handing over the charge. This has not been established by the petitioners that log books, history books and some other articles remained in his possession despite the office and the store being locked and sealed by the petitioners. This is not disputed that the part of the charge had been handed over by the respondent. This is also not disputed that the respondent was holding the charge of three offices. This has not been denied specifically that the handing over the charge would have taken considerable period, as suggested by the respondent that it would have taken at least five days. In the circumstances why the reliever returned back on the same day has not been explained nor there is any evidence that the respondent refused to hand over the charge. If the intention of the respondent had

been not to hand over the charge, even part of the charge would not have been handed over by him. If it has not been established that the log books were maintained by the respondent and were in his possession and were not locked and sealed, no action could be taken against the respondent for not handing over the log books and some other material. This is also established that the presence of the respondent was not sought when the seals of the office were opened and the office record and the material were taken over later on. If that be so the appellate authority was not justified in imposing any punishment on the respondent and consequently the observations and the inferences of the Tribunal cannot be held to be illegal or unsustainable or suffering from any such perversity which shall entail any interference by this Court while exercising its writ jurisdiction.

16. This has also been established that the respondent handed over a part of the charge to his successor stating that he would hand over the rest of the charge. This has also not been disputed that the entire charge could not be handed over in a single day. If that be so, there is no justification especially for locking and sealing the office and the store and then imputing charges of not handing over the stores and material to the petitioners. The Tribunal has also noted that the disciplinary authority has not dealt with some of the relevant pleas raised on behalf of the respondent. The learned counsel for the petitioners is also unable

to show as to how the pleas and contentions specifically raised have been dealt with by the disciplinary authority. Non consideration of the material pleas which were raised and in respect of which there had been evidence before the disciplinary authority will also make his order unsustainable. In the circumstances, the undeniable inference is that the order of the Tribunal setting aside the decision of the disciplinary authority as well as the appellate authority, cannot be termed to be illegal or perverse so as to entail any interference by this Court.

17. In the totality of the facts and circumstances we do not find any ground to interfere with the order of the Tribunal dated 26th May, 2009 setting aside the order of the disciplinary authority dated 8th July, 2005 and of appellate authority and the order dated 10th December, 2009 passed by the Tribunal in review application of the petitioner being R.A No.222/2009 dismissing the same. Resultantly the writ petition is dismissed. However, considering the facts and circumstances the parties are left to bear their own cost.

ANIL KUMAR, J.

February 24, 2011.
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VEENA BIRBAL, J.