

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

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Judgment reserved on: 06.03.2012
Judgment pronounced on: 14.03.2012

+ **W.P.(C) 1072/2012**

V.D.SHARMA

... Petitioner

versus

UOI AND OTHERS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Gagan Mathur

For Respondent : Mr. D.S.Mahindru & Mr. M.P.Singh for UOI

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This Writ Petition is directed against the order dated 2.12.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) whereby OA No. 1836/2002 filed by the petitioner was dismissed. The brief facts giving rise to filing of this petition are as follows:

The petitioner was working as Sub-Post Master (SPM) in Subroto Park Post Office. 08 Indira Vikas Patras for a total maturity value of Rs 40,000/- were received by the Post Office from State Bank of Bikaner and Jaipur, C Block, Community Centre, Janakpuri with a request that the amount of Indira Vikas Patras be paid to the bank through bearer. The petitioner was charge-sheeted on the allegations that instead of making payment of the said Indira Vikas Patras to the bank or to the

bearer, who had brought those Indira Vikas Patras along with two covering letters from the bank, the Indira Vikas Patras were encashed by him, after obtaining signature of one Jagannath on the pretext of completion of the formalities. This was also the allegation that the petitioner did not obtain signature of the payee on the back side of Indira Vikas Patras in token of receipt of full payment. Yet another allegation against him was that though the payment was required to be made by cheque only, he made the same in cash, thereby violating the instructions issued on the subject.

The Inquiry Officer vide his report dated 15.2.1999 held the Articles of Charge to be proved. Vide order dated 24.7.2000, the Disciplinary Authority compulsorily retired the petitioner from service. The appeal filed by the petitioner was dismissed vide order dated 2.4.2002. The order of penalty was challenged by the petitioner in OA No.1260/2002. At the time of filing of said OA his appeal was still pending. The OA was disposed of with a direction to decide the appeal within two months. Consequent to dismissal of his appeal on 2.4.2002 the petitioner filed OA No. 1836/2002 challenging the order passed by the Disciplinary Authority as well as the order passed by the Appellate Authority. The said OA was allowed by the Tribunal vide order dated 20.4.2004. Aggrieved from that order, the respondent filed a Writ Petition being WPC No.13115/2004 in this Court. The Writ Petition was disposed of vide order dated 31.8.2010, with a direction to the

Tribunal to decide whether denial of the documents sought by the petitioner vide application dated 19.6.1998 was correct and whether the aforesaid denial had resulted in a prejudice being caused to him in making his defence. This Court also directed that all the issues which had arisen for consideration before the Tribunal should be decided instead of deciding only one or two of them.

2. Three contentions have been raised before us by the learned Counsel for the petitioner. The first contention is that the denial of documents sought vide application dated 19.6.1998, which were relevant for the purpose of inquiry, had resulted in prejudice being caused to the petitioner in defending himself during the inquiry. The second contention is that the petitioner was proceeded ex parte during pendency of his application for change of the Inquiry Officer, though it was obligatory for the Inquiry Officer to stay the inquiry till the application for change of the Inquiry Officer was decided by the Disciplinary Authority. The third contention is that the copy of the report of the Preliminary Inquiry and the Statements of Witnesses examined during the course of Preliminary Inquiry were not supplied to the petitioner, which vitiated the disciplinary proceedings.

3. The Tribunal extracted the documents sought by the petitioner and the response of the respondents thereto as follows:

Document No. I: Copy of Preliminary Inquiry Report

It is stated by the respondents that Preliminary Inquiry Report is usually confidential and intended to satisfy the

competent authority whether further action in the nature of regular departmental enquiry or any other action is called for

Document No. II: Copy of report of hand-writing expert for ascertaining applicants hand-writing if any, on the payment-receipt portion of the questioned IVPs.

The respondents have indicated that copy of handwriting expert was not available because no such opinion of hand writing expert was sought in the matter.

Document No. III: Copy of Establishment of Subroto Park, New Delhi-110010 P.O. for March, 1996 particularly for the date of payment.

The respondents hold the view that copy of establishment of Subroto Park PO for the month of March, 1996 was not relevant as the IVPs were fraudulently encashed by the applicant and he was very much aware of the establishment of the post office in the capacity of in-charge to defend his case.

Document No. IV: Copy of document proving that the applicant received in presence of P.O. staff, contents of DESU Colony, Pankha Road, PO R.L.No.4268 dated 4.3.1996 showing the date of receipt.

Respondents hold the view that the said document is not relevant with the facts that RL under reference was received by the receipt clerk and thereafter processed. The documents were usually placed before the applicant by the concerned staff in a routine system for action. However, Shri Ram Kishan, receipt clerk (PA) and Sh. J.C. Sharma (PA), working under the applicant being the prime witnesses, their statements were supplied to the applicant together with charge sheet.

Document No. V: Copy of complaint of Shri Sunder Singh, resident of R-2/F-55, Mahabir Enclave, Palan, if any, made to the Postal Authorities regarding

I.V.Ps in question, and any information from him that he pawned his IVPs to any Bank.

Respondents have stated that Shri Sunder Singh, the investor of IVPs was not a complainant of the IVPs fraudulently encashed. The complainant was the State Bank of Bikaner and Jaipur. Since, as the IVPs were pledged in the said bank by investor.

Document No. VI: Copy of statement of Shri Ram Sawaroop Meena, H.C. Narang, Shri G. Murahari, Shri Surender Kumar, Shri Sunder Singh and Shri J.P. Rajour.

It is stated by the respondents that Shri H.C. Narang, G. Murahari, Sunder Kumar and J.P. Rajour were enquired by the IA as they were witnesses to identify/authenticate the documents during the course of enquiry proceedings. In fact their written statements are not in existence and therefore couldn't have been supplied.

Document No. VII: Orders of Departments of Posts that IVPs the payment of which duly receipted by someone on its payment portion, may be paid to Bank or other body.

Respondents submitted that the applicant was in-charge of the post office and he was conversant with the rules of sales and discharge of IVPs. So, it was irrelevant on his part to call such rulings. The said information was in public domain.

Document No. VIII: Copy of objection raised by S.O. Section of Head Post Office. Since every payment and paid vouchers on receipt from S.O., are examined in H.O. for determining whether the payment has been made by S.O., is regular and O.K. and the paid voucher is governed by said rules for this purpose, was it so or the payment was irregular?

It is submitted by the respondents that no objection is raised by S.O. section of Head Office because IVPs can be paid to bearer on the spot in the post office under the authority of SPM. Applicant was well aware of these facts. Hence, no question arises to supply the copy of objection of SO Section.

Document No. IX: Copy of charge-sheet issued to Shri Ram Kishan, P.A.

It is submitted by the respondents that the copy of charge sheet issued to Shri Ram Kishan, PA, was not relevant as the same was issued on the ground of negligence, while performing duty in Subroto Park PO. He failed to hand over the letter/Regd. Letter containing IVPs under acquaintance to the applicant which fact was well known to him.

4. With respect to supply of documents to an employee subjected to a Departmental Inquiry, Supreme Court in **Chandrama Tewari v. Union of India (UOI) (through General Manager, Eastern Railways): 1987 (Suppl.) SCC 518**

inter alia held as under:

x x x x Principles of natural justice require that the copy of the document, if any, relied upon against the party charged, should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need

not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him.

In **State of Madhya Pradesh v. Chintaman:** AIR 1961 SC 1623, the respondent who had been dismissed from service sought quashing of order of dismissal on the ground that the Inquiry was held in violation of principles of natural justice inasmuch as the statements of witnesses recorded in the Preliminary Inquiry were not supplied to him as a result of which he could not effectively cross examine the witnesses produced before the Inquiry Officer. It was held that right to cross examine the witnesses, who gave evidence against the delinquent is a very valuable right and if effective exercise of that right is prevented on account of denial of documents to which the delinquent is entitled, the Inquiry cannot be said to have been held in accordance with the principles of natural justice. In **State of Punjab v. Bhagat Ram:** (1975) 2 SCR 370, copies of Statements of Witnesses

recorded during investigation and produced at the Disciplinary Inquiry in support of the charges framed against the delinquent were not supplied. Instead, a synopsis of the statements was supplied to him. Supreme Court held that it was unjust and unfair to deny copies of statements of witnesses recorded during investigation and produced in support of charges leveled against the Government Servant. The Court felt that in absence of copies of Statements of Witnesses the Government Servant could not have opportunity of effective and useful cross examination of the witnesses produced during the Disciplinary Inquiry.

5. It is thus, settled proposition of law that the Statements of Witnesses recorded in the Preliminary Inquiry or during investigation are required to be supplied to a delinquent if such statements are relied upon in the course of the Inquiry or such persons are sought to be produced as witnesses during the course of the Inquiry. Denial of statements of such witnesses would result in prejudice being caused to the delinquent in making his defence since in the absence of a copy of the previous statement being available to him he would not be in a position to effectively cross examine the witness when he/she appears in the course of the Inquiry. If however, a person is not sought to be examined during the course of Inquiry nor is his statement, recorded during the course of Preliminary Inquiry or during investigation, sought to be relied upon, to prove the charge against the delinquent, he is not entitled to copies of such statements, since absence of copies

of such statements will not prejudice him in making his defence during the course of Inquiry.

6. In **Chandrama Tiwari** (supra) Supreme Court found that the report submitted by CBI in respect of a criminal case of theft, in which final report had been submitted, had not been supplied to the delinquent after submission of final report in the criminal case and Disciplinary Inquiry was initiated against him. The report of CBI however, was not considered or relied by the Inquiry Officer in recording finding against the delinquent. It was held that the report was not a material or a relevant document and denial of its copy could not and did not prejudice the delinquent and consequently there was no violation of principles of natural justice. In **Ranvir Singh v. Union of India (UOI) And Others: WP(C) No.7875/2003** decided on 7.9.2009, a Division Bench of this Court noticing that the Preliminary Inquiry Report was not relied upon as a document, held that in such a case its non-supply would not violate the principles of natural justice. A similar view was taken by this Court in **Kishan Lal v. Govt. of NCT of Delhi And Others: (2005) 84 DRJ 588**. In taking this view this Court relied upon the decisions of Supreme Court in **Kishan Chandra v. Union of India: AIR 1974 SC 1589** and **T.B.Sanatorium v. Jay Srivivasan: (1999) III LLJ 352 (SC)**.

In the case before this Court, this is not the case of the petitioner that the Preliminary Inquiry Report was a document relied upon by the respondents in order

to prove the charge against him. This is also not the case of the petitioner that he has not been supplied with a copy of the statement recorded during the course of Preliminary Inquiry in respect of a person who was examined as a witness during the course of the Inquiry. This is also not his case that any statement, made during the course of the Inquiry, was used against him without supplying a copy of that statement to him. Therefore, it was not necessary for the respondents to supply either a copy of the Preliminary Report or copies of statements recorded during the course of the Preliminary Inquiry in respect of those persons, who were not examined as witnesses in the course of the Departmental Inquiry. No prejudice to the petitioner has been caused on account of non-supply of these documents.

7. As regards the copy of the report of the hand-writing expert, there was no question of supplying any such document to the petitioner for the simple reason that no such opinion had been obtained. As regards a copy of the complaint of Shri Sunder Singh, to whom the Indira Vikas Patras, in question were issued, it was pointed out by the respondents that he was not a complainant since the complaint was made by the State Bank of Bikaner And Jaipur. Hence, there was no question of supplying copy of any such complaint to the petitioner. As regards statements of S/Shri Ram Swaroop Meena, H.C. Narang, G.Murahari, Surender Kumar, Sunder Singh and J.P.Rajor, it was pointed out that no written statements of these persons were recorded hence, there was no question of supplying them to the petitioner. As

regards the other documents mentioned in the application dated 19.6.1998, the Tribunal has found, on a consideration of the response of the respondents that they were not relevant and the respondents were justified in denying the same to the petitioner. The petitioner has not been able to show to us as to how any of these documents had prejudiced him in making his defence during the course of the Inquiry. We, therefore, find no merit in the contention that the Inquiry was held in violation of principles of natural justice on account of copies of certain documents being denied to the petitioner.

8. As regards the Inquiry being held *ex parte* during pendency of the application of the petitioner for change of the Inquiry Officer, there is no material on record to indicate that the petitioner had brought it to the notice of the Inquiry Officer that he had sought his replacement. It was obligatory for the petitioner to bring it to the notice of the Inquiry Officer that he had sought his replacement and to request him to stay the Inquiry till a decision was rendered on his application. Since the petitioner failed to bring this to the notice of the Inquiry Officer and he also absented on the date, which the Inquiry Officer had fixed in his presence, there was nothing wrong or illegal in the Inquiry Officer proceeding *ex parte* against him. If the petitioner willfully absented from the Inquiry proceedings without bringing it to the notice of the Inquiry Officer that he had sought his replacement,

he did so at his own peril and it is not open to him to say that the Inquiry Officer was not justified in proceeding ex parte against him.

9. With respect to the power of the Tribunal or for that matter this Court to interfere with the finding recorded in a Departmental Inquiry, this Court in a recent judgment dated 19.1.2012 in **WPC 2431/2011** *Ex. Head Constable Manjeet Singh v. Union of India & Ors* inter alia observed as under:

It is by now a settled proposition of law that the Court, while considering challenge to the orders passed in disciplinary proceedings does not act as an Appellate Authority and does not reassess the evidence led in the course of the inquiry nor can it interfere on the ground that another view in the matter is possible on the basis of the material available on record. If the Court finds that the inquiry has been conducted in a fair and proper manner and the findings rendered therein are based on evidence, the adequacy of evidence or the reliability of the evidence are not the grounds on which the Court can interfere with the findings recorded in the departmental inquiries. It is not open to the Court to interfere with the finding of fact recorded in such inquiries unless it is shown that those findings are based on 'no evidence' or are clearly perverse. A finding would be considered to be perverse if no reasonable person could have recorded such a finding on the basis of material available before him. Another ground on which the Court can interfere with the findings recorded in a disciplinary proceeding is violation of principles of natural justice or statutory rules or

if it is found that the order passed in the inquiry is arbitrary, mala fide or based on extraneous considerations. This proposition of law has been reiterated by Supreme Court in a number of cases including **B.C.Chaturvedi v. Union of India:** 1995(6) SCC 749, **Union of India v. G.Gunayuthan:** 1997 (7) SCC 463, **Bank of India v. Degala Suryanarayana:** 1999 (5) SCC 762 and **High Court of Judicature at Bombay v. Shahsi Kant S. Patil:** 2001 (1) SCC 416.

In the case before this Court, the Tribunal noted that the bank was holding the Indira Vikas Patras and had sent the same for encashment to the Post Office where the petitioner was posted as Sub Post Master. It was further noted by the Tribunal that though the normal procedure is to prepare a cheque and transfer the maturity amount to the bank, the petitioner had got the Indira Vikas Patras encashed and embezzled the said amount. The petitioner has failed to satisfy us that the findings recorded against him are passed on ‘no evidence’ or that no reasonable person, acting on the basis of the material produced during the course of the Inquiry, could have held the charges to be proved. We, therefore, find no ground to interfere with the findings recorded by the Disciplinary Authority which have been maintained by the Appellate Authority as well as by the Tribunal.

10. As regards the quantum of punishment, it is settled proposition of law that neither the Tribunal nor the Writ Court can interfere with the punishment awarded

in a departmental proceeding unless the same is shown to be so outrageously disproportionate to the charge held to be proved against the delinquent as to shock the conscience of the Court, nor can the same to be said to be illogical or wholly arbitrary and irrational. In our view, it cannot be said that no person acting as the Disciplinary Authority of the petitioner could have imposed penalty of compulsory retirement from service on a person who was guilty of encashing the Indira Vikas Patras which were sent to the post office for encashment and proceeds of which were required to be paid by way of a cheque to the bank. Such acts, committed by a public servant not only result in loss of money to the exchequer, they also bring disrepute to the institutions such as post offices and erode the faith of the public in the very credibility of these institutions. We find no reason to interfere with the punishment awarded to the petitioner.

For the reasons stated hereinabove, we hold that the Writ Petition is devoid of any merit. The Writ Petition is hereby dismissed without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MARCH 14, 2012

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