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

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DECIDED ON: 28.11.2014

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W.P. (C) 2612/2014

C.M. Nos.5562 & 7618/2014

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. M.K. Bhardwaj, Advocate.

versus

KUSHAL PAL SINGH

..... Respondent

Through: Mr. V.K. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

S.RAVINDRA BHAT, J.

1. The Union of India has preferred this petition under Article 226 of the Constitution of India questioning the order of the Central Administrative Tribunal (hereafter referred to as 'CAT') dated 10.01.2014 in OA 3569/2012. By the impugned order, the CAT set aside the penalty of dismissal imposed upon the respondent/applicant on 25.09.2009 (hereafter called the "penalty") and directed his reinstatement with 50% back wages. The CAT also issued other directions with regard to the period of services between the penalty order and date of its order.

2. The applicant at the relevant time in 2007 was working as Saving Bank Counter Assistant at the Head Post Office, Saharanpur. A joint account operated by Late Angoori Devi and one Ms. Kumud Gupta, her

daughter in law (hereafter referred to as 'complainant') had been opened on 22.7.2000 in that branch. On 23.7.2003, a sum of Rs.79,000/- was withdrawn from that joint account. Later another amount of Rs.1,45,000/- was withdrawn - on 23.12.2005. The applicant was charged by memo dated 31.8.2007 stating that these withdrawals were impermissible and that Angoori Devi, the joint account holder had died on 16.7.2003. The applicant denied the charges on 14.9.2007. On 11.12.2007, the Department of Posts rejected his explanation and appointed an Enquiry Officer. The enquiry report dated 14.2.2009 exonerated the applicant. The reasons for Enquiry Officer's findings were that the complainant had neither furnished the death certificate of her mother in law at the time of complaint nor during the enquiry and that her statement showed that she was aware of the death of Angoori Devi only six months later. The Enquiry Officer also accepted the explanation of the applicant that he did not make the payment unauthorizedly but under directions of Assistant Post Master after satisfying the formalities which included identification of the person who claimed the amount by the concerned small saving agent.

3. The applicant was furnished with a copy of the Enquiry report. He was issued a disagreement note on 26.2.2009. To this, the charged employee i.e. the applicant replied through his representation dated 13.3.2009. Thereupon, the disciplinary authority i.e. Senior Superintendent of Posts, Saharanpur issued the order of penalty. The relevant discussion in the penalty order dismissing the applicant reads as follows: -

"I have pursued the charge-sheet dt. 31.8.2007, issued to the charged-employee, his Defence Statement dt. 14.09.2007, the

Inquiry Report dt. 14.02.2009, of the Inquiry Officer, Disagreement letter dated 26.02.2009 of the Disciplinary Authority and representation dt. 13.03.2009 of the employee in its defence, received on 16.03.2009, and found that the said arguments of the charged employee in his defence are not acceptable. In his defence representation he relies on the facts:

(i) That the department could not furnish Death Certificate of Co-Depositor Smt. Angoori Devi.

(ii) He made cash payment as per the directions of Asstt. Post Master, there was only one cheque book. The cheque is issued on request. Thus, on this plea he want to distract the attention from main issue or intend to mislead. The main charge is whether on receipt of pass-book with the withdrawal form on the counter in respect of Death of co-Depositor on 17.07.2003, he examined the case on the given points or not. He did not sign withdrawal form. He did not notice earlier withdrawal of Rs.79,000/- on 23.07.2003, even though there was no entry of it in the pass book. In violating the departmental instructions he made cash payment of Rs.1,45,000/-. Even if it is admitted that Asstt. Post Master, directed him for cash payment. This was wrong. The matter ought to have been brought to the notice of Sr. Post Master or Dy. Post Master. The violation of departmental procedure go against the interest of department and the public. This go against the credibility of the department and caused a loss of Rs.1,45,000/- . I have observed the Exhibit-4, the withdrawal form, Exhibit-6, the Ledger Card. I observed the statement of charged employee dt.05.12.2006 at Exhibit-9, that in the Exhibit-4 withdrawal, he only relied on said Prashant Tyagi, Agent and the A.P.M. also relied upon him.

CONCLUSION

I have arrived at this conclusion in the matter that both A.P.M. and charge employee were in collusion with Sh. Prashant Tyagi, Agent and three of these Dead or Alive Account Holder's account defrauded an amount of Rs.1,45,000/-. Therefore, the

charge is fully proved. The charged employee deserves strong punishment.

ORDER

There, I Janardan Sharam, Sr. Supdt. of Post Offices, Saharanpur, impose on said charged employee, Sh. Kushal Pal Singh, Postal Asstt Head Post Office, Saharanpur, impose on him punishment of Dismissal from Service under Rule-11 (Sub-Rule IX) of CCS (CCA) Rules, 1965. This order will take effect immediately from the date of its issue.”

4. The CAT by its order, impugned in the present case, after referring to the facts relied upon the judgment of the Supreme Court in *Punjab National Bank & Ors. v. Kunj Bihari Mishra*, 1998 (7) SCC 84 and *State Bank of India v. Arvind Kumar Shukla*, AIR 2001 SC 2398, held that the denial of opportunity to the applicant to present his views to the disciplinary authority vitiated the disciplinary proceedings. After holding so, instead of relegating the matter for reconsideration to the disciplinary authority with the direction to give appropriate hearing, the CAT went ahead and re-appreciated the evidence and arrived at the conclusion contrary to the disciplinary authority in the following terms:

“But there are other illegalities in the disciplinary proceedings which are in violation of the principle of natural justice. According to the Article of Charge, as per the statement of Smt. Kumud Gupta and Death Certificate of Smt. Angoori Devi, Smt. Angoori Devi expired on 16.07.2003 and, therefore, not making said payment through cheque was wrong and the cash payment of Rs.1,45,000/- was made fictitiously. But the Inquiry Officer held in his order in clear terms that the said death certificate was never produced during the enquiry proceedings. Therefore, the charge based on the said certificate cannot be sustained. Further, it has been stated

in the statement of imputation of misconduct against the applicant that Shri Raj Kumar, Small Saving Agent, Saharanpur, stood witness to be thumb impression of Smt. Angoori Devi and such witness was accepted by Shri Parmal Singh, Asstt. Post Master, Head Post Officer, Saharanpur. But, the said Shri Raj Kumar or Shri Parmal Singh have not been made a witness in the case. Of course, it is not necessary for us to go into those aspects in this order as the Enquiry Officer himself held that the Article of Charge has not been proved during the enquiry.

29. We, therefore, allow the OA and quash and set aside the Disciplinary Authority's order dated 25.09.2009 dismissing the applicant from service as confirmed by the Appellate and Review Authorities vide their respective orders dated 28.03.2011 and 25.07.2012. Consequently, the applicant shall be reinstated in service with all consequential benefits expect full back wages. However, in the facts and circumstances of the case, he shall be paid 50% of the back wages. The respondents shall also treat the entire suspension period of the Applicant prior to his dismissal from service as duty for all purposes. As far as the payment of pay and allowances for the aforesaid period of suspension is concerned, the Respondents may take appropriate decision and convey the same to the Applicant at the earliest.

5. The Union of India urges that the CAT fell into error and that the procedure prescribed by law i.e. issuing the disagreement note eliciting the response of the employee and considering it before the penalty order is made, was duly followed. In effect, there was due compliance with the requirements spelt out in *Kunj Bihari Mishra (supra)*. It was contended that more importantly the CAT erred in re-appreciating the materials on record in order to consider the sufficiency of evidence or otherwise. Learned counsel placed emphasis on the fact that whether

Kumud Gupta was aware of the death of her mother in law immediately or became aware of it later was not of much significance and that what was important was that materials on record suggested that the other joint account holder i.e. the deceased had in fact died on 16.7.2003 – after which the two suspect withdrawals were made. Contending that the charge of not verifying the prescribed conditions by counter signing in the withdrawal form coupled with the failure to examine Raj Kumar, a small saving agent who had stood witness to the thumb impression of the person who withdrew the amount- were aspects which the CAT ought not to have ignored. Learned counsel submitted that this clearly related to appreciation of evidence and consequently beyond the domain of the CAT.

6. Counsel for the respondent/applicant urged that this Court should not interfere with the findings of the CAT. He highlighted that the Enquiry Officer noticed that the death certificate had not been adduced. Counsel relied upon the judgment reported as *Kashi Nath Dikshit v. Union of India*, AIR 1986 SC 2118 to submit that the absence of a relevant document can vitiate the findings in enquiry proceedings. It was lastly argued that the applicant was exonerated in respect of the very same allegations by the criminal court. In fact, in the criminal proceedings, a closure report filed on 31.1.2008 indicated that no evidence or material to sustain the allegations existed and consequently the applicant stood discharged.

7. As may be seen from the above discussion, the charge against the applicant centres around his being complicit in the withdrawal of amounts from a joint account after one of the account holders Angoori Devi had died on 16.7.2003. The Enquiry Officer held that the charges

against the applicant could not be established in the absence of the death certificate. He also surmised that the complainant's deposition indicated that she became aware of Angoori Devi's death only six months after the death. On the basis of these inferences – drawn from her testimony – the Enquiry Officer held that the allegations were improbable. That apart, the omission to examine the Assistant Postmaster and more crucially Small Saving Account Agent Raj Kumar was held to be fatal to the disciplinary proceedings. The disciplinary authority, on the other hand, while seeking to disagree with the findings of the Enquiry Officer, no doubt did not attach much weight to the absence of the death certificate of Angoori Devi. However, the disciplinary authority – who had furnished the disagreement letter with the note to the petitioner on 26.2.2009, had indicated briefly the reasons why he proposed to disagree. The relevant extracts of the said notice/note dated 26.2.2009 is as follows:

“The conclusion of Inquiry Officer that the charge leveled on the employee that payment was made after death of Smt. Angoori Devi and violation of Post Office Saving Bank Rule Part-I (Rule-113 (3) (ka) were not proved in the inquiry. The Undersigned is not in agreement with this conclusion of the Inquiry Officer, because the complainant Smt. Kumud Gupta, in her complaint dt. 03.10.2008, has stated that Smt. Angoori Devi, died on 16.07.2003. That Exhibit-3 (Ka) has not been rejected. The conclusion of the Inquiry Officer that charge of making payment of Rs.1,45,000/- on 23.12.2005, not be cheque is not proved, is also not accepted, because Rs.20,000/- or payments exceeding to it, not paying through cheque, the charge employee is equally responsible with the Asstt. Post Master.

The Disciplinary Authority will take decision after considering the Inquiry Report. During this period if you are interested to

make your representation or submission, the same in original, may be sent by you to the Disciplinary Authority – means the undersigned within 15 days of receipt of this letter. In case your representation is not received within the prescribed period, it will be understood that you have nothing to state in this respect and the matter will be decided ex-parte.”

8. It is thus clear that the first part of the finding, that the Enquiry Officer did not give a disagreement note and denied the applicant an opportunity to represent against the hearing, arrived at by the CAT, is in fact without foundation. What *Kunj Bihari Mishra* and subsequently *Arvind Kumar Shukla (supra)* require is that as a matter of course, if the disciplinary authority proposes to arrive at a finding contrary to that of Enquiry Officer, a disagreement note spelling briefly the reasons why the contrary opinion is to be formed, has to be given to the charged officer. The reasons are that the charged officer should be given an opportunity to air his views on the proposed opinion and the reasons in support of it. Like in the case of an enquiry report which does not exonerate but records findings of guilt (where the officer is given a copy of the report to elicit his response), equally when a contrary view which seeks to override findings of the Enquiry Officer and arrive at a findings of guilt is proposed, the same standard i.e. granting opportunity to the charged officer is insisted upon. Although, the observations in *Kunj Bihari Mishra and Arvind Kumar Shukla (supra)* and *Yoginath D. Bagde v. State of Maharashtra & Anr.*, 1999 (7) SCC 739 appear to be broad and general as to the nature of hearing, this aspect was clarified in the ruling reported as *J.A. Naiksatam v. Prothonotary & Senior Master*, (2004) 8 SCC 653. It was held that the nature of the opportunity need not necessarily comprehend a mandatory personal hearing but an opportunity to represent against the proposed findings. This, in the

opinion of the Court, is in line with the logic of providing an opportunity. Whenever a finding of guilt based upon materials discussed in the course of the enquiry proceedings are recorded, the final order is to be made after considering the representation of the charged officer. The hearing, therefore, extends only to the grant of opportunity to represent against the proposed contrary findings and not to the extent of a compulsory personal or oral hearing in every case, as has been held by the CAT in the present case.

9. As far as the second part of the impugned order, i.e., reappraisal of evidence goes, the CAT was largely influenced by the reasoning of the Enquiry Officer i.e. lack of the death certificate, lodging of complaint after six months of the death of the joint account holder and the failure of the department to examine others. The Disciplinary Authority, however, disagreed with these findings by stating that the complaint itself was never discarded. Furthermore, the substance of the complaint never appears to have been rejected.

10. Although the Enquiry Officer considered the reply of Kumud Gupta to the question posed on behalf of the applicant, yet, apparently it was never suggested to her that date of Angoori Devi's death attributed by her was false. Likewise, in the enquiry proceedings, the applicant did not make any effort to summon the concerned Small Saving Agent in his defence. The materials on record made available also showed that first withdrawal on 23.7.2003 had not been reflected in the passbook or ledger card and was apparently later recorded. In view of this first withdrawal, the subsequent withdrawal of 23.12.2005 was not permissible because the amount had been kept in an account or deposit which did not permit such withdrawal. The most important fact is that

even if there was some doubt as to the date of death - in 2003 - there was no attempt to explain why two years late in 2005 when the account was again operated, and another clearly impermissible withdrawal was sanctioned by the applicant.

11. The decision of a *quasi judicial* administrative body such as the disciplinary authority cannot be tested for adequacy of materials. So long as certain materials to support the conclusion are available on the record, the adequacy of such material cannot be gone into by the courts in judicial review. In other words, the sufficiency of evidence is not a ground for judicial review.

12. Having regard to the above discussion, this Court is of the opinion that the CAT fell into error in interfering with the penalty of removal or dismissal imposed upon the applicant. The impugned order is accordingly set aside. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

NOVEMBER 28, 2014
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