

Central Administrative Tribunal
Principal Bench

O.A. 199/94

New Delhi this the 29th day of July, 1999

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Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Sudama Ram,
S/o late Shri Atma Ram,
Postal Assistant,
Onkar Nagar (Delhi) Post Office,
R/o B-397, Bhajanpura,
Delhi-110053.

... Applicant.

None for the applicant.

Versus

1. Union of India through
Secretary,
Ministry of Communication,
(Dept. of Posts), Dak Tar Bhawan,
Parliament Street,
New Delhi.
2. Sr. Supdt. of Post Offices,
Delhi North Division, Civil Lines,
Delhi-11054. ... Respondents.

By Advocate Shri S.M. Arif.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

None has appeared for the applicant even on the second call and none had appeared even on the previous date when the case was listed. This case has been listed at Item No. 2 in today's cause list. We have accordingly perused the pleadings and considered the submissions made by Shri S.M. Arif, learned counsel for the respondents.

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2. The applicant is aggrieved by the order passed by the respondents dated 30.11.1992 imposing on him a punishment of reduction of pay by four stages w.e.f. 1.12.1992 and the appellate authority's order dated 26.4.1993 in which the reduction of pay has been modified to a period of two years. The appellate authority has modified the disciplinary authority's order stating that although the official deserves no leniency yet considering the prayer and pleadings of financial hardships, it would be proper to reduce the period of reduction of pay to two years instead of four years.

3. One of the main grounds taken by the applicant in the O.A. is that once the Inquiry Officer had arrived at a conclusion that the charges were/proved against him, and the disciplinary authority had disagreed with the findings of the Inquiry Officer and had arrived at his own conclusion that the charges stand proved, then the disciplinary authority ought to have communicated the reasons to him and asked for his comments, which admittedly has not been done in the present case. He has relied on the judgement of the Supreme Court in Narayan Mishra vs. State of Orissa (1969 SLR 657) to support his contention that there has been violation of the principles of natural justice in so far as the disciplinary authority had not given him an opportunity to make his comments¹⁸ on the reasons of disagreement with the findings of the Inquiry Officer. On this issue, learned counsel for the respondents has very vehemently submitted that this was not necessary as the disciplinary authority has given detailed reasons as to his disagreement with the conclusion of the Inquiry Officer with regard to all the charges where he has differed from the Inquiry Officer.

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4. In a recent judgement of the Supreme Court in Punjab National Bank and Ors. Vs. Sh. Kunj Behari Mishra, (JT 1998(5) SC 548), the Supreme Court has after referring to a number of relevant judgements of the Apex Court, held that the principles of natural justice require the authority to pass a final order after giving an opportunity to the officer charged to file a representation before him before he records his findings on the charges. The Supreme Court in Kunj Behari Mishra's case (supra) had after considering a number of earlier judgements, which were admittedly conflicting ^{with} each other, laid down the principles as follows:

"...It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority".

This judgement has also referred to the reasoning in the earlier judgement in Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors. (JT 1993(6) SC 1). The same principle had also been held by the Supreme Court as early as in 1969 in Narayan Mishra's case (supra). The

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observation of the Supreme Court is that the report of the Inquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry Officer. However, in the present case, while no doubt the disciplinary authority has given reasons as to why he disagrees with the conclusion of the Inquiry Officer, no such opportunity had been afforded to the delinquent official to persuade him to agree with the findings of the Inquiry Officer which was in his favour.

5. In the facts and circumstances of the case and following the judgement of the Supreme Court in Kunj Behari Mishra's case (supra), the O.A. partly succeeds and is allowed. The impugned punishment order of the disciplinary authority dated 30.11.1992 and the appellate authority's order dated 26.4.1993 are quashed and set aside. However, in the facts and circumstances of the case, the case is remitted to the disciplinary authority who is directed to afford reasonable opportunity to the applicant to make his comments on the reasons of disagreement with the findings of the Inquiry Officer and thereafter proceed with the ^{D.P.} ~~inquiry~~ in accordance with law, rules and instructions. This shall be completed as expeditiously as possible. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Ramakrishnan

(R. Ramakrishnan)
Vice Chairman (A)

'SRD'