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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1330/89.

New Delhi, this the 4th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI S.R. ADIGE, MEMBER(A).

Raj Kumar Sharma,
aged about 34 years,
S/o Shri Shiv Kripal Sharma,
R/o Village & P.O. Arnawli,
Tehsil & District: Meerut.

...Applicant

By advocate : Shri K.B.S. Rajan, with applicant
in person.

Versus

1. The Union of India, through Secretary (Posts),
Ministry of Communications,
Govt. of India, New Delhi-110001.
2. The Postmaster General,
U.P. Circle, P.M.G. Office,
Hazratganj, Lucknow-226001.
3. The Director Postal Services,
Dehradun Region, Dehradun.
4. The Sr. Post Master, Meerut City,
Head Post Office, Meerut-250002.

...Respondents

By advocate : Shri J.C.Madan, for Shri
P.H.Ramchandani.

O R D E R (ORAL)

SHRI J.P.SHARMA:

At the relevant time, the applicant was working as as Extra Departmental Stamp Vendor (EDSV) at Head Post Office, Meerut City. He was proceeded with an inquiry under rule 8 of E.D. Agent (Conduct) Rules. The inquiry officer was appointed after the applicant was served with a memo of charges regarding misconduct of certain irregularities committed by him regarding the sale of postal stamps. The inquiry officer by his

report dated 7-2-87 gave the finding on both the article of charges in favour of the applicant that the selling of the used up postal stamps of Rs.3.25 cannot be taken to be true and further that postal stamps worth Rs.8.50 found in the stamp box were fictitious. The disciplinary authority, however, by the impugned order imposed the penalty of removal from service by the order dated 13-3-87 and gave reasons for disagreement with the findings of the inquiry officer. This order has been upheld by the appellate as well as revisional authorities by the orders dated 7-7-87, 23-4-88 and 12-11-88, respectively. The applicant, therefore, filed this application assailing all these orders praying for the grant of the reliefs that the punishment imposed upon the applicant be quashed and with an order and he be reinstated in service with all consequential benefits.

2. The respondents contested this application and stated that while the applicant was working as EDSV on 21-8-1985, the Deputy Post Master checked his stamp box on the complaint of Shri Amar Pal Singh that the applicant had been selling stamps of denomination of Rs.3.25 which was not received and supplied to the EDSV for sale. During this checking, used up stamps worth Rs.8.50 were found in his stamp box besides excess cash

of Rs.17.55. These irregularities, at the relevant point of time, when questioned by Deputy Post Master, were admitted by the applicant. The applicant was put off duty under rule 9 of E.D.A.(Conduct and Service) Rules, 1964 and a chargesheet dated 13-8-85 was issued. The Senior Post Master, Meerut City disagreed with the report of the inquiry officer and gave a number of points for disagreement and disagreeing with the report of the inquiry officer imposed the punishment of removal from service, which has been upheld, as said above, by the various departmental statutory representations by the competent authorities.

3. We heard the learned counsel for the applicant Shri K.B.S. Rajan who has undertaken to file his power in the course of the day. Earlier, the applicant has filed a memo of arguments as his original lawyer was not available, being stationed at Chandosi in U.P. Shri J.C. Madan as proxy counsel for Shri P.H. Ramchandani appeared on behalf of the respondents. We have perused the records and gone through the various annexures accompanying both the original application as well as the counter. The learned counsel for the applicant argued only one point attacking the impugned order of punishment passed by the disciplinary authority. Legal point taken by the learned counsel is that in case of disagreement with the finding of the

inquiry officer, the delinquent should have been furnished with a show cause notice along with the reasons of the disagreement arrived at by the disciplinary authority vis-a-vis the report of the inquiry officer. Though there is no statutory provision for issue of a show cause notice, yet he relied on the certain observations made by the Hon'ble Supreme Court in certain precedents. The learned counsel for the respondents did not contest this legal proposition enunciated in the precedents of the apex court. He, however, argued that since the applicant had ample opportunity in the administrative side and he has exhausted the same by filing appeal, review and revision and the competent authorities have considered all these aspects within the independent unbiased mind, in such a situation the requirement of principles of natural justice have been fully complied with. We have perused the order passed by the appellate and the revisional authority and we do agree that if higher administrative authorities/statutory authority have considered the points of disagreement observed by the disciplinary authority in the impugned order of removal from service of March, 1987, and upheld the same by giving their own reasons supporting the stand of the disciplinary authority as well as the reasons given by him. We are of the opinion that it is not fair to

comment on the various reasons for the reasons that after the constitutional amendment in 1976, an opportunity has still be given to the delinquent on the fresh material by way of documents or reasoning which has been considered against him in passing an order particularly of removal or dismissal from service. It is a fundamental law that an initial mistake/error committed cannot be cured by higher authorities by supporting the aforesaid order primarily based on such error/omission. We have gone through the authority of Narain Mishra Vs. State of Orissa 1969 SLR(3) page 657. where a similar point came before the Supreme Court and the case was decided with the observation that it is a violation of principles of natural justice in such a case where the disciplinary authority do not issue a show cause notice having disagreed with the findings of the inquiry officer. Similarly, another case has been cited by the learned counsel for the applicant which has been recently decided on December 30, 1993, arising out of Civil Appeal No.7487/93 in the case of UNION OF INDIA vs. S.C.JAIN. In this case also, the finding of the inquiry officer against the respondent of the case was not agreed to by the disciplinary authority and having differed passed the order of removal from service against the respondent. The respondent Shri S.C. Jain challenged the matter before the Tribunal and the Tribunal quashed the order of removal from service

only on the short ground that the disciplinary authority should have afforded an opportunity of hearing to the respondent before passing the order holding him guilty of the charges. The Hon'ble Supreme Court held as follows :-

" This order of the Tribunal is unacceptable to that extent. We are, however, of the view that the Tribunal should have remanded the case back to the disciplinary authority to give a notice to the respondent and pass fresh order after hearing the respondent. We order accordingly. "

It is amply clear from the above that the principles of natural justice have to be followed during the proceedings of the inquiry and before passing an order imposing penalty on the basis of findings of the report of the inquiry officer. Any subsequent consideration by the higher appellate or revisional authority will not compensate the violation of principles of natural justice that has occasioned before the passing of the order of punishment. We have also been taken towards the note given by the applicant on 21-5-87 where he has pleaded mercy and also that he should be forgiven at this time giving certain reasons and explanation for the aforesaid mistake alleged to have been committed by him in the course of sale of postal stamps. This explanation by itself has come before any departmental inquiry under rule 8 of the aforesaid rules was initiated against him. This could at the most be a piece of evidence to be considered and cannot conclusively

establish the charges framed against him.

4. The learned counsel for the applicant, however, also argued that the applicant may be ordered to be reinstated pending the proceedings of the inquiry in case the matter is remanded to the disciplinary authority. We are unable to agree with this contention. Firstly, it is an extra departmental employee where a person is put off duty. It may be synonymous with the term of suspension but it is not material ~~as~~ ^{whether} a suspended employee gets ^{/subsistence allowance} while holding a civil post under Union of India. An employee put off duty is not entitled to any allowances during this period.

5. Considering all these aspects of the matter, we are of the view that it is not in the fitness of things and that the principles of natural justice have not been fully complied with.

6. The application is partly allowed. The impugned order of punishment of removal from service passed by the disciplinary authority on 13-3-87 is set aside, so also the orders passed by the appellate authority, reviewing and revisional authority dated 7-7-87, 23-4-88 and 17-11-88. The case is remanded to the disciplinary authority Senior Post Master, Meerut City to give a show cause notice to the applicant along with the reasons of the disagreement with the finding of the inquiry officer. The applicant may give ^{/a} representation

to the aforesaid show cause notice within a period of two weeks from the date of receipt of the notice and thereafter the disciplinary authority, if any representation is made, consider the same and pass final order on the basis of the departmental inquiry initiated against him. It is made clear that no observation made in the aforesaid order will affect the appreciation of evidence either way of the parties. The disciplinary authority to dispose of the matter expeditiously within a period of four months from the date of the receipt of the copy of this order. It is made clear that the applicant shall not be reinstated and his reinstatement in service will be governed by the orders to be passed in the aforesaid inquiry. The applicant shall be entitled to avail of the statutory remedies, if he is aggrieved against any order passed by the disciplinary authority and if he is still aggrieved and if so advised, seek judicial review, if he is aggrieved by the final orders to be passed by the disciplinary authority. Costs on parties.

Andige
(S.R.ADIGE)
MEMBER (A)

J. P. Sharma
(J.P.SHARMA)
MEMBER (J)

'KALRA'