

Central Administrative Tribunal  
Principal Bench

23

**OA No. 2574/2004**

New Delhi, this the <sup>27<sup>th</sup></sup> day of July, 2006

**Hon'ble Mr. Shanker Raju, Member (J)**  
**Hon'ble Mr. V. K. Agnihotri, Member (A)**

Hari Om Sharma  
S/o late Shri Raj Narain  
Postal Asstt.  
Head Postoffice, Mathura (UP)  
R/o Shivpuri Colony,  
Raya Distt. Mathura (UP).

...Applicant

(By Advocate: Shri D.P. Sharma)

-versus-

Union of India through

1. Secretary,  
Ministry of Communication and I.T.  
Department of Posts  
New Delhi – 110 001.
2. The Director Postal Services  
O/O the Postmaster General  
Agra Region – Agra (UP).
3. The Senior Supdt. Postoffices  
Mathura Division – Mathura (UP). ...Respondents

(By Advocate: Shri Rajeev Bansal)

**O R D E R**

**By Mr. V.K. Agnihotri, Member (A):**

The applicant has sought quashing and setting aside of the order of Disciplinary Authority dated 20.01.2004 through which, apart from recovery of sum of Rs.1097.50, his pay was reduced by three stages



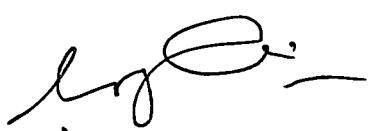


from Rs.5100/- to Rs.4800/- in the time scale of pay for a period of three years w.e.f. 30.09.2004 without cumulative effect, and its subsequent modification by the Disciplinary Authority through order dated 27.09.2004 by which the date 30.09.2004 was changed to 30.06.2004, as well as the order of the Appellate Authority dated 16.08.2004 by which the period of reduction in pay was scaled <sup>down &</sup> from three years to one year.

2. The brief facts of the case are that a charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 was served on the applicant alleging that he had misappropriated a sum of Rs.1097.50 showing deposit of lesser amount in the Government account than what actually was paid by the depositors in three cases. The Inquiry Officer concluded that charges no. 1 and 2 were not proved but the third one relating to misappropriation of funds of Rs.1097.50 was partially proved. The Disciplinary Authority disagreed with the findings of the Inquiry Officer and issued a Disagreement Note dated 11.09.2003 to which the applicant responded. Thereafter, the Disciplinary Authority issued the impugned order dated 20.01.2004. The applicant preferred an appeal against this order. The Appellate Authority modified the order of the Disciplinary Authority, as stated above.

3. The main arguments advanced by the applicant in support of the relief prayed for by him, are as follows:-

(i) The Disciplinary Authority, while disagreeing with the findings of the Inquiry Officer, issued a show cause notice of disagreement without providing tentative reasons for disagreement as required under Rule 15 (2) of the CCS (CCA)





Rules, 1965. The Disciplinary Authority also did not indicate the punishment he proposed to inflict on the applicant. In this context, the learned counsel for the applicant has relied upon the rulings of the Hon'ble Supreme Court in **Kalyani Sharp India Ltd v. Labour Court No. 1, Gwalior and Anr.**, 2002 SCC (L&S) 1101 and **Punjab National Bank & Ors. v. Sh. Kunj Behari Misra**, JT 1998 (5) SC 548.

- (ii) As per the order of the Disciplinary Authority, the reduction in pay by three stages was to bring down his pay from Rs.5100/- to Rs.4800/- w.e.f. 30.09.2004. However, since the pay of the applicant stood at Rs.5200/- as on effective date, the order of the Disciplinary Authority was revised *suo motu* through order dated 27.09.2004, which the Disciplinary Authority was not competent to do. In doing so, there was a further irregularity committed insofar as the corrigendum dated 27.09.2004 gave effect to the punishment from a retrospective date i.e. 30.06.2004.
- (iii) In the report of the Inquiry Officer as well as in the order of the Disciplinary Authority and the Appellate Authority, there is a reference to the statement of one Shri Bhim Singh Negi. However, the said witness was not produced or examined even though his name was mentioned in the list of witnesses in the Charge Memo.
- (iv) The Disciplinary Authority has relied upon the statement of the applicant made during the preliminary enquiry. It was not read over to him during the main enquiry nor was it admitted



nb

by him. This is in violation of Government of India's instruction No. 29, below Rule 14 of the CCS (CCA) Rules, 1965.

(v) The Disciplinary Authority's order to recover the sum of Rs.1097.50 was neither confirmed nor set aside by the order of the Appellate Authority.

4. The respondents' case is that the applicant, while he was working as Postal Assistant, RD Counter, Mathura Head Post Office, Mathura, accepted on 07.05.1994 a sum of Rs.1010/- to be deposited in Mathura HPO RD A/c No. 24423 from the messenger of the depositor, being amount of two instalments of Rs.500/- each, along with amount of penalty of Rs.10/-. He date-stamped the RD pass book and made entry of two deposits and raised the balance of said RD account by Rs.1000/-. But he accounted for Rs.510/- only in Government account. Similarly, on 11.10.1994, he also accepted Rs.1010/- to be deposited in Mathura-HPO RD account No. 24423 being the amount of two monthly instalments of Rs.500/- each, along with amount of penalty of Rs.10/- from the messenger of the depositor. He made entries of two deposits in the relevant RD pass book, date-stamped it and raised the balance of this RD account by Rs.1000/-. But he accounted for only Rs.510/- in the Government account. Thus, he misappropriated Rs.500/- each on 07.05.1994 and 11.10.1994 respectively. Apart from this, the applicant also accepted Rs.2597.50 being the instalments of five monthly instalments with penalty from the depositor of Mathura-HPO RD Account No. 23016. He made five entries of deposits with its penalty against each deposit in the RD pass book. But he took into account





only Rs.2500/- in the Government account. Thus on the whole he misappropriated a sum of Rs.1097.50.

5. In response to the various issues raised in the OA, the respondents have given the following explanation:-

- (i) As regards the Disciplinary Authority disagreeing with the Inquiry Officer, it is open to the Disciplinary Authority to agree with the findings of Inquiry Officer or not.
- (ii) The change in date, from which the reduction to lower stage in the time scale of pay will take effect, was undertaken in order to correct a mistake for the implementation of the punishment order. There is no provision in the CCS (CCA) Rules, 1965 to communicate the proposed punishment to be inflicted upon the charged official.
- (iii) The fact that the Appellate Authority did not mention the point regarding recovery of Rs.1097.50, means that the punishment of recovery stood as it is. The recovery of Rs.1097.50 has since been made from the applicant.
- (iv) The written statement of the applicant recorded during the course of the preliminary enquiry was confirmed by the Inquiry Officer, who had recorded it at that time. There is no violation of CCS (CCA) Rules, 1965 in this regard.
- (v) The applicant has not preferred any revision petition to the revisional authority and, thus, without exhausting all the departmental remedies, he has approached this Tribunal.





6. An amendment to this OA was allowed through an order of this Tribunal dated 05.04.2005 in MA No. 206/2005. Counter to the amended OA was also filed by the respondents. The applicant has filed a rejoinder in which he has reiterated the stand taken by him in the OA.

7. We have heard the learned counsels for the parties and carefully considered the relevant records, citations and other material pertaining to the OA.

8. Of the two Apex Court's rulings cited in the pleadings, the one relating to **Kalyani Sharp India Ltd v. Labour Court No. 1, Gwalior and Anr.** (supra) is not relevant to the present OA insofar as it pertains to termination of services of a probationer without notice in an industrial undertaking.

9. As regards **Punjab National Bank & Ors. v. Sh. Kunj Behari Misra** (supra), it mandates that when Disciplinary Authority disagrees with the findings of the Inquiry Officer, it must record the tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before recording its findings. In the present OA, such an opportunity was admittedly given to the applicant, but recording of tentative reasons for disagreement has been disputed.

10. We do not agree with the submission of the learned counsel for the applicant that the statement of the applicant recorded during the preliminary enquiry was not made available to him. In the inquiry report (Annexure A-3) in para 2, the list of exhibits brought on record includes 'Previous statement of Shri Hari Om Sharma (EXS-9)'. The applicant has also not taken the plea that this admission was recorded under duress. We also do not agree with the learned counsel for the





applicant that in the show cause notice of the Disciplinary Authority the proposed punishment should have been communicated, as that requirement has gone out with the 42<sup>nd</sup> amendment.

11. However, upon overall evaluation of the material before us, we find the following significant procedural deficiencies in the disciplinary enquiry:-

- (i) Non-examination of the material witness, viz, the messenger Shri Bhim Singh Negi, whose statement has been relied upon by the Disciplinary Authority, is indeed a major flaw. As a matter of fact, the non-appearance of Shri Negi weighed with the Inquiry Officer in his finding that charges no. 1 & 2, in which Shri Negi was the material witness, are not proved. Further, the Apex Court in ***Ministry of Finance and Another v. S.B. Ramesh***, 1998 SCC (L&S) 865 has *inter alia* held that the delinquent officer must be given an opportunity to cross-examine the witnesses whose statements are relied upon.
- (ii) We also agree with the learned counsel for the applicant that in terms of sub-rule (2) of Rule 15, it was mandatory on the part of the Disciplinary Authority to give tentative reasons for his disagreement with the findings of the Inquiry Officer.
- (iii) As pointed out by the learned counsel for the applicant, the *suo motu* revision of its own order by the Disciplinary Authority awarding the punishment from a retrospective date is not in consonance with the spirit of the procedure for disciplinary enquiry prescribed in the CCS (CCA) Rules, 1965.

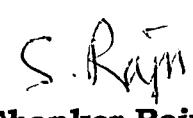


250

12. In the result, the OA is partly allowed and the impugned orders are quashed and set aside. The matter is remanded back to the Disciplinary Authority for taking up further disciplinary proceedings afresh from the point of the receipt of the report of the Inquiry Officer, in the light of our findings and observations recorded above. There will be no order as to costs.



**(V.K. Agnihotri)**  
Member (A)



**(Shanker Raju)**  
Member (J)

/na/