

Central Administrative Tribunal, Principal Bench

O.A. No. 1018/2004

New Delhi this the 16th day of November, 2004

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. Sarweshwar Jha, Member (A)

Shri Vichar Singh
Presently residing
In the house of
Shri Balbir Singh Khatri,
Village and Post Office Bankner,
Narela,
Delhi.
...Applicant

By Advocate: Shri S.K. Gupta, counsel for Shri B.S. Gupta.

Versus

1. Union of India
Through Secretary,
Department of Posts,
Dak Tar Bhawan,
New Delhi.
2. Chief Post Master General,
Haryana Circle, Ambala.
3. Director,
Postal Services,
Haryana Circle, Ambala.
4. Superintendent of Post Offices,
Sonapat Division,
Sonapat, Haryana.
5. Shri L.S. Chaudhary,
Inquiry Officer,
Assistant Superintendent of Post Offices,
Headquarter, Sonipat, Haryana.

....Respondents

By Advocate: Shri M.M. Sudan, Sr. Counsel.

M.M. Sudan

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant was removed from service by the disciplinary authority by an order dated 30.4.2001 in the disciplinary proceedings conducted against the applicant. The applicant has assailed the report of the Inquiry Officer dated 27.2.2001 (Annexure A-1), the orders of the disciplinary authority dated 30.4.2001 (Annexure A-2), the order of the appellate authority dated 26.12.2002 (Annexure A-3) and the order dated 21.5.2003 (Annexure A-4) whereby the revision against the order passed in appeal was rejected.

2. The short question that arise for determination in this OA is whether it was incumbent upon the disciplinary authority to have provided an opportunity of hearing to the applicant before passing the order dated 30.4.2001 (Annexure A-2) whereby the applicant had been removed from service.

3. The counsel for the parties agree that it is a settled preposition of law that if a disciplinary authority disagrees with the findings recorded by the inquiring officer and take a different view it is incumbent upon it to give an opportunity of hearing before taking a decision on the disciplinary enquiry report. The Hon'ble Supreme Court in **Yoginath D. Bagde Vs. State of Maharashtra and Another, JT 1999 (6) SC 62** has made the following observation on this question:-

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“ 28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, ‘an opportunity of hearing’ may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority’s report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be ‘not guilty’ by the Inquiring Authority, is found ‘guilty’ without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of ‘not guilty’ has already been recorded”.

4. Three Judges Bench of Hon’ble Supreme Court in **Punjab National Bank and Others Vs. Kunj Behari Mishra JT 1998 (5) SC 548** relying upon the earlier decision of the Apex Court in **State of Assam Vs. Bimai Kumar Pandit, AIR 1963 SC 1612, Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, JT 1986 SC 671** and a Constitutional

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decision in Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others, JT 1993 (6) SC 1 and the decision in Ram Kishan Vs. Union of India, JT 1995 (7) SC 43 has held as under:-

“29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of ‘hearing’ in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the ‘tentative’ reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of ‘not guilty’ already recorded by the Inquiring Authority was not liable to be interfered with”.

5. The counsel for the respondents has fairly and candidly submitted that in case the view of this Tribunal is that the disciplinary authority has disagreed with the findings of the Inquiry Officer and has taken a different view in this case, the principles of law laid down in the above cited judgments would squarely cover this OA. However, his contention is that the

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disciplinary authority could not, in the peculiarity of the facts, be held to have disagreed with the findings of the Inquiry Officer and opportunity of hearing was not imperative before the decision was taken by the disciplinary authority on the report of the Inquiry Officer in the instant case.

6. Briefly the facts are that the applicant was working as Extra Departmental Post Master (EDPM), Village Mundaure, District Sonapat, Haryana. On 2nd March, 2000, disciplinary proceedings were initiated against him and he was served the Articles of Charge which are extracted below:-

“ **Article - I**

Shri Vichar Singh, while working as EDBPM Mandaura EDBO w.e.f. 21.10.86 did not incorporate the amount of Rs. 16800/- (Sixteen thousand eight hundred only) into Govt. accounts handed over by Sh. Dewan Singh @ Rs. 800/- per month for the months of 2/98 to 10/99 for deposit in Mandaura RD Account No. 1128040 of Den.500/- & RD A/c No. 1128042 of Den. 300/- as required vide Rule 133(2) of Rules for Branch Post Offices, seventh edition (reprint) corrected up to 31st March, 1986 and as such the said Shri Vichar Singh failed to maintain absolute integrity and devotion to his duty as required under Rule 17 of EDA's (Conduct and Service) Rules, 1964.

Article - 2

Shri Vichar Singh, while working as EDBPM Mandaura EDBO during the month of 2/98 to 10/99 did not incorporate the amount of Rs. 16800/- (Rs. Sixteen thousand eight hundred only) into Govt. accounts handed over by Smt. Om Kumari w/o Sh. Dewan Singh r/o VPO-Mandaura @ Rs. 800/- per month for deposit in Mandaura RD Account No. 1128041 of Den.500/- & RD A/c No. 1128043 of Den. 300/- as required vide

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Rule 133(2) of Rules for Branch Post Offices, seventh edition (reprint) corrected up to 31st March, 1986 and as such the said Shri Vichar Singh failed to maintain absolute integrity and devotion to his duty as required under Rule 17 of EDA's (Conduct and Service) Rules, 1964."

7. After holding enquiry, the Inquiry Officer submitted his report dated 27.2.2001 (Annexure A-1). The findings on the two Articles of Charge were as under:-

10. **Findings:-**

In nutshell the findings on the basis of records, evidences produced by both sides – oral and documentary and in the light of the arguments and reasoning as given above. I am of the opinion and have reached the following conclusions:

Article No. 1

FULLY PROVED for non devotion, but the component of disintegrity has not been fully proved.

Article No. 2

FULLY PROVED for non devotion, but the component of disintegrity has not been fully proved."

8. The disciplinary authority upon consideration of this report, made the following observation, which to the extent they are relevant for deciding the controversy, are extracted below:-

" The Inquiry Report of the I.O.. is now before me along with records of the case. I have gone through them very carefully and has given my thoughts to them. The learned IO has made similar observations in respect of both the articles No.I and II, fully proved for non devotion to duty and the component of disintegrity has not been fully proved. From the records of the enquiries and the statements of various witnesses recorded during the



prolonged enquiry, I find that both the components viz. non devotion to duty and the doubtful integrity stand fully proved against the charged official beyond any iota of doubt. Language used by the Inquiry Officer viz., "The component of disintegrity has not been fully proved". This is not at all clear. Firstly, perhaps there is no word viz. disintegrity in the English Dictionary and this word appeared to have been coined by the learned IO and similarly the word not fully proved is also confusing. This does not in any way give the clear picture about the mind of the IO. He should have been very clear on this point that what has been proved making his integrity doubtful and what is left to be proved. This type of vague observations are not available and not admissible under the CCS (CCA) rules. The charges are either proved or disproved. There is no midway. Hence, as already discussed above, both the charges stand fully proved against the charged official on the basis of records and the deposition of the various witnesses".

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Both the charges have been fully proved against the official. This has made the charged official quite unsuitable and unfit to be retained in Govt. Service. I, R.P. Sandhu, Supdt. Of Post Offices, Sonipat Division, Sonipat, having been authorized under the ED (Conduct & Service) Rules 1964, hereby orders that Shri Vichar Singh, EDBPM (Put off duty) Mandaura (Nahri SO) be removed from Govt. service with immediate effect."

9. In appeal, the Director, Postal Services, did not find any infirmity in the order of the disciplinary authority and dismissed the appeal (Annexure A-3). A revision filed against the order also met the same fate (Annexure A-4).
10. The only ground pressed by the learned counsel for the applicant for challenging the orders of the disciplinary authority impugned in the OA is that the disciplinary authority before taking a view different from the view of the Inquiry Officer in the order dated 30.4.2001 (Annexure A-2), was

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required to provide an opportunity of hearing to the applicant. He has argued that the orders suffered from legal infirmity as much as principles of natural justice has been violated, therefore, the order passed in appeal and the revision also suffers from the same vice and should not stand.

11. The relevant portion of the order of the disciplinary authority has already been extracted in the forgoing paragraph. The question is whether the disciplinary authority had disagreed with the findings of the Inquiry Officer on the Articles of Charge. If the answer is in affirmative, the order of the disciplinary authority was unsustainable since it was passed without following the principles of natural justice and providing an opportunity of hearing to the charged delinquent. Both the Articles of Charge were of similar nature and the imputation was that the delinquent has shown lack of devotion to duty and lack of integrity in discharge of his official functions. As regards lack of devotion to duty, both the Inquiry Officer and the disciplinary authority were in agreement. There was no difference or disagreement in their findings on this charge. However, the Inquiry Officer did not find the second Imputation of charge, i.e., lack of integrity having been "fully proved" against the delinquent. The finding of the disciplinary authority, on the other hand, is that this imputation of charge has also been "fully proved". The disciplinary authority made light of the observation of the Inquiry Officer for using of the word "disintegrity" and "not fully proved" while recording the findings on the second imputation in both the Articles of Charge. We need not go in the jugglery of word whether

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“disintegrity” is a correct dictionary word or not since the finding of the Inquiry Officer clearly spelled out that so far the imputation of charge against the delinquent official, i.e., applicant, was that he showed lack of integrity in discharge of his official functions, the findings unambiguously declared that the charge was not proved fully. One way of interpreting this observation of the Inquiry Officer may be that in his view the imputation regarding ‘lack of integrity’ was not proved. The other way may be to interpret it that the Inquiry Officer found some substance in the imputation but not the clinching evidence. Interpreted either way the fact remains that the findings of the Inquiry Officer did not unequivocally, clearly and unambiguously held imputation of charge regarding lack of integrity established completely. The order of the Superintendent of Post Offices, the disciplinary authority dated 30.4.2001 extracted in this order would manifestly disclose that he differed from the above findings of the Inquiry Officer and took a view that the evidence and material on record established the imputation of lack of integrity against the charged official, the applicant herein, as “fully established”. There is a clear disagreement and difference in the view taken by the disciplinary authority and the Inquiry Officer on this question.

12. The enquiry in this case was conducted under EDA (Conduct and Service) Rules, 1964. The procedure for imposing penalty has been provided in Rule 8 (Extract Annexure R-I to the counter). The learned counsel for the respondents was fair enough to submit that although the rules did not provide grant of opportunity of hearing to the delinquent official by the disciplinary

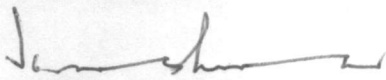
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authority if it had recorded a finding on the Articles of Charge different from the finding of the Inquiry Officer but in view of the judgment of the Hon'ble Supreme Court in Yoginath D. Bagde (Supra) and Punjab National Bank & Others (Supra), the principles of natural justice are enshrined in the Rules and in the case of disagreement by the disciplinary authority with the findings recorded by the Inquiry Officer in the disciplinary enquiry report, it is necessary for the disciplinary authority to give an opportunity of hearing to the charged official. In our view, the disciplinary authority before imposing penalty on the applicant was in disagreement with the findings of the Inquiry Officer. We do not know but the disciplinary authority may have taken a different view while deciding about the quantum of punishment had it been in complete agreement with the finding of the Inquiry Officer on the second part of imputation, i.e., lack of integrity. The judgments of the Hon'ble Supreme Court cited above would cover the present case. So we are constrained to hold that the order of the disciplinary authority dated 30.4.2001 (Annexure A-2) is illegal as much as it was passed in violation of the principles of natural justice by not providing an opportunity of hearing to the delinquent official, the applicant herein. The order dated 30.4.2001 (Annexure A-2) cannot be sustained. The orders of the appellate authority dated 26.12.2002 (Annexure A-3) and of the revisional authority dated 21.5.2003 (Annexure A-4) would also fall.

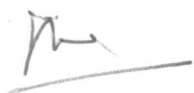
13. For the reason stated above, the orders of the Superintendent of Post Offices dated 30.4.2001 (Annexure A-2 to the OA), the order dated



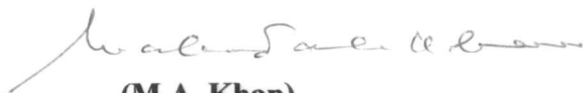
26.12.2002 (Annexure A-4) passed by the Director Postal Services, Haryana Circle, Ambala in appeal (Annexure A-3) and the order dated 21.5.2003 passed Chief Postmaster General, Haryana Circle (Annexure A-4) are set aside. We direct the Superintendent of Post Offices, Division Sonipat, Sonipat, to decide upon the enquiry report dated 27.2.2001 (Annexure A-1 to the OA) afresh by a speaking order after serving a disagreement note on the applicant with findings of the Inquiry Officer and providing an opportunity of hearing to the charged official, i.e., the applicant. We direct the Superintendent of Post Offices to complete the proceedings within 3 months from the date on which the copy of this order is received by him. In the peculiarity of facts and circumstances, we are not inclined to grant other relief/consequential relief to the applicant at this stage but leave it open to the applicant to approach this Tribunal in accordance with law, if necessary and so advised, after the exhausting the statutory remedies available against the order of the disciplinary authority. The parties, however, shall bear their own costs.



(Sarweshwar Jha)
Member (A)



Rakesh



(M.A. Khan)
Vice Chairman (J)