

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.241/92

New Delhi, this the 24th day of August, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Lal Singh
s/o Shri Kanhaiya Lal,
r/o village & Post Office Janaula,
Distt. Gurgaon. ...Applicant
(By Advocate: Shri Sant Lal)

Versus

Union of India through

1. Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi.
 2. The Senior Superintendent of Post Offices,
Gurgaon Division, Gurgaon.
 3. The Director Postal Services,
Haryana Circle, Ambala Cantt. ...Respondents
- (By Advocate: Shri M.M. Sudan)

O R D E R

[Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)]

The petitioner was working as Extra Departmental Branch Post Master (for short EDBPM) of Janaula Branch Post Office in Gurgaon Postal Division with effect from 19.9.1990. While working as EDBPM, a chargesheet was issued against him with an allegation that the petitioner had misappropriated Rs. 1,600/- by obtaining bogus thumb impression of the payees and false signatures of witnesses on the money order forms in question and thereby failed to maintain absolute integrity in contravention of the provisions of Rule 17 of P & T EDA's (Conduct & Service) Rules of 1964. It was alleged that he did not make the payment of amount of Rs. 800/- each as old age pension Money Order No. 6949/22 and 6949/7 dated 17.12.1988 to its payees namely Smt. Anchai w/o Sh.

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Richpal and Smt. Gindori Devi w/o Shri Chandagi Ram who charged the amount of said money orders of Rs. 800/- each as paid on 14.1.1989 in BO Account incorporated in the account of Pataudi S.O. on 16.1.1989. A departmental inquiry was conducted after issuing a charge-sheet on 15.3.1990 and the Inquiry Officer had given the petitioner benefit of doubt.

"On the basis of evidence produced and documents exhibited before me during the enquiry it is proved that the amount of old-age pension money orders were paid to Smt. Anchai w/o Shri Richhpal and Smt. Gindori w/o Shri Chandgi on 11.11.1989 under the witness of Shri Gaj Raj Singh Sarpanch Rampura village (S/Ex-2). But it is also not disproved during the enquiry that MO No. 6949/7 and 6949/22 both dated 17.12.1988 for Rs. 800/- each payable to Smt. Gindori Devi w/o Sh. Chandgi Ram and Smt. Anchai w/o Shri Richhpal were not paid on 14.1.1989 on the identification of Shri Ram Avtar s/o Shri Hira Lal VPO Janaula. Shri Ram Avtar has clearly accepted his signatures of witness on the M.Os No. 6949/7 and 6949/22 dated 17.12.1988 for Rs. 800/- each. Prosecution has not been able to foil the witness of Shri Ram Avtar during the enquiry. But there is a doubt of wrong payment made under the identification of Shri Ram Avtar as he did not see the faces of both the ladies as these were covered with their veils while taking the payment on 14.89 as stated by him during his cross examination by the prosecution on 27.10.90. Thus the doubt remains there and the benefit of doubt goes to the SPS."

The disciplinary authority considered the representation of the petitioner which he had made after the receipt of enquiry report and proceeded to pass an order of removal from service under Rule 7 of EDA's (Conduct & Service) Rules, 1964 after disagreeing with the conclusion arrived at by the Enquiry Officer and formulating his own conclusion from the evidence available on the record.

The petitioner filed an appeal before the appellate authority stating that he has been wrongly removed from service by the order of the disciplinary authority even though the Enquiry Officer, in his findings, had held that the charges are not proved and that the order of the disciplinary authority is not a self-contained speaking order. The appellate authority went through all the objections raised by the petitioner in the appeal and found that the disciplinary authority had gone through the entire merit and demerits of the case before passing the punishment order and the appellate authority proceeded to state his own reasons and dismissed the appeal by order dated 7.11.1991. Aggrieved by these orders, the petitioner has approached this Tribunal by way of this OA.

The petitioner had advanced various grounds, most of which were already dealt with by the appellate authority, and we find no reason to interfere with these orders on any of those grounds advanced. One of the main grounds advanced needs to be discussed in detail. It was stated by the petitioner that since the Enquiry Officer has not held the charges levelled against the applicant as proved and when the disciplinary authority had disagreed with the findings of the Enquiry Officer, the petitioner was entitled to a show cause notice before the disciplinary authority proceeded to pass the final order of punishment. In support of his case the petitioner relied on the decision of Hon'ble Supreme Court in Narain Mishra vs. State of Orissa reported in 1969 SLR p.657 SC wherein it was held that :

"8. Now if the Conservator of Forests intended taking the charges on which he was acquitted, into account, it was necessary that the attention of the applicant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fairplay and natural justice. If the Conservator of Forests wanted to use them, he should have apprised him of his attitude and given him an adequate opportunity. Since that opportunity was not give, the order of Conservator of Forests modified by the State Govt. cannot be up-held.....".

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Counsel for the petitioner also relied upon a similar case of the Ernakulam Bench of this Tribunal namely K.Thulaseedharan vs. Sub-Divisional Inspector of Post Offices, Neyyatinkara & Ors. [1991(1) ATJ-79] and also the decision of the same Bench in C.R. Raju vs. Sub Divisional Inspector of Post Offices Muvattupuzha [1991(15) ATC-229 CAT EK]. vs.

We have considered the arguments advanced by the counsel and gone through the decisions cited above, but we are unable to agree with the contention of the petitioner that in the circumstances of the case, the absence of a show cause notice goes to the root of the case for the reason the appellate authority had elaborately dealt with the issues raised by the petitioner against the impugned order. However infraction of the principles of natural justice that has been taken place at the level of the disciplinary authority, has been made good by the appellate authority while passing a speaking and reasoned appellate order and we are reminded of the decision of the Hon'ble Supreme Court in case of Menka Gandhi vs. UOI reported in 1978 (1) SCC 248, wherein it has been held that it is sufficient to grant a "post-factum- hearing" i.e.

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the opportunity subsequent to the passing of the order can also be given in certain circumstances to protect the rights of the petitioner arising out of the principle of natural justice. We do not find, in the facts and circumstances of the case, that principle of natural justice in any way has been violated especially in view of the detailed appellate order meeting all the issues raised by the petitioner against the order of disciplinary authority.

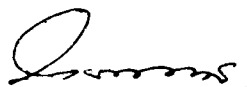
This issue also had come up before a Division bench of the Hon'ble Supreme Court in a subsequent case namely in the matter of State Bank of India, Bhopal vs. S.S. Koshal reported in 1994 Supp (2) SCC P. 468. It was stated by the Apex Court that a failure to give fresh notice to the petitioner when the authority disagreed with the findings of the Enquiry officer on some charges need not necessarily require the disciplinary authority to issue show cause notice in order to fully comply with the principles of natural justice. Para No. 6 of the said judgement is relevant and reproduced hereinbelow:-

So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officers's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of

the Andhra Pradesh High Court in Mahendra Kumar vs. Union of India. The second contention accordingly stands rejected".

The petitioner has cited the case of Narain Mishra, reported in 1969 and we find that the decision in State Bank of India, Bhopal' case being later one is squarely applicable to the issue at hand and on the basis of the ratio of this case, we are not in agreement with the petitioner that the principle of natural justice has suffered for want of issuing a show cause notice to the petitioner by the disciplinary authority when he proceeded to issue the punishment order after disagreeing with the findings given by the Enquiry Officer.

In the circumstances, this OA is dismissed as devoid of merits. There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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(Dr. Jose P. Verghese)
Vice-Chairman (J)