



CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

Original Application No.886 of 1997

Monday, this the 2nd day of June, 2003

Hon'ble Maj. Gen. K.K.Srivastava, A.M.  
Hon'ble Mr. A.K.Bhatnagar, J.M.

Radha Kant Awasthi,  
son of Late Jagannath Awasthi,  
r/o village and post Dudwa-Jamoli,  
Distt. Kanpur Dehat

....Applicant.

(By Advocate : Shri G.P.Tripathi)

Versus

1. The Union of India,  
through the Secretary,  
Ministry of Post and  
Telegraph, Government  
of India, New Delhi.
2. The Post Master General,  
Kanpur.
3. The Director,  
Postal Services  
Kanpur Zone, Kanpur.
4. The Superintendent of Post Offices,  
Mufassil Prakhand, Kanpur. .... Respondents.

(By Advocate : K.M.S. Srivastava)

ORDER (ORAL)

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this OA filed under Section 19 of A.T. Act, 1985,  
the applicant has prayed for quashing the impugned order  
dated 24.7.1997 (Annexure-6) passed by respondent No.3 and  
has also prayed for direction to the respondents to take him

  
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in job and accord him all service benefits including the continuity of service.

2. The facts, in short, are that the applicant was working as EDBPM Dundwa, Kanpur. The disciplinary proceedings were initiated against the applicant and a charge sheet dated 6.2.1995 was served on him. One Shri B.L.Kuril was appointed as the Enquiry Officer. The applicant requested for change of the Enquiry Officer on 16.6.1995. However, the respondent No.3 did not take any notice on request made by the applicant. The Enquiry Officer proceeded ex-parte in the matter and submitted his inquiry report on 20.3.1996. The Disciplinary Authority did not agree with the inquiry report and exonerated the applicant of the charges levelled against him vide order dated 7.6.1996 ~~mark~~ with the direction to the applicant to make the financial loss <sup>if</sup> caused to the Government. The respondent No.3 suo moto reviewed the case and re-opened the matter of his own <sup>and</sup> vide letter dated 24.7.1997 removing the applicant from service. Aggrieved by this the applicant has filed this OA which has been contested by the respondents by filing the counter. The applicant has pleaded that no fresh inquiry was conducted. Besides the action of the respondent No.3 in reviewing the matter was time barred. The applicant has also pleaded that respondent No.3 has no authority or jurisdiction to take any suo moto decision in the matter. Once he was exonerated by respondent No.4 i.e. Superintendent of Post Offices, Mufassil, Kanpur, the charges levelled against him did not stand and, therefore, the action of the respondent No.3 is illegal and arbitrary.

The applicant has further pleaded that he was not given <sup>in reasonable</sup> <sup>in principles of</sup> legal opportunity to defend himself in violation of natural Justice and Article 311 (2) of the Constitution of India.

3. Km. S.Srivastava, learned counsel for the respondents, opposing the claim of the applicant, submitted that the applicant was given full opportunity to defend himself. Learned counsel submitted that while the inquiry was conducted, the <sup>in due</sup> request <sup>with his</sup> for <sup>not</sup> participation by the applicant in the inquiry on the ground that Shri Kuril Enquiry Officer was not changed, will not help the applicant. The applicant should have attended the inquiry but he failed to do so and now at this juncture this plea cannot be taken. The learned counsel for the respondents further submitted that a fresh inquiry was not required. The respondent No.3 has the powers to review the disciplinary cases under provisions contained in Rule 16 of E.D.A. (C&S) Rules, 1964. The review was made within a time as specified. Full opportunity was given to the applicant to project his side of the case and after considering the plea of the applicant, the respondent No.3 has passed the impugned order dated 24.7.1997. No irregularity/illegality has been committed by the respondents.

4. We have heard counsel for the respondents considered the pleadings of the applicant and submission of the counsel for the respondents and perused records.

5. The order of disciplinary authority exonerating the applicant from charges is dated 7.6.1996. This order of the disciplinary authority i.e. respondent No.4 has been reviewed by respondent No.3. The main ground taken by the applicant is that this order is illegal because it has been passed after a period of six months. In order to appreciate this argument

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of the applicant, we would like to ~~code~~ Rule 16 of EDA (C&S) Rule 1964 :

**"Review of Orders**

Notwithstanding any thing contained in these rules :-

- (i) the Central Government, or
- (ii) (the Head of the Circle, or Postmaster-General (Region), the case may be ) of,
- (iii) an authority immediately superior to the authority passing the orders may, at any time, either on its own motion or otherwise, call for records of any enquiry or disciplinary case and review any order made under these rules, re-open the case and after making such enquiry as it considers necessary, any
  - (a) confirm, modify or set aside the order,
  - (b) pass such orders as it deems fit :

Provided that no case shall be re-opened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Government or by the Head of the Circle (or by the Postmaster-General (Region) and also before the expiry of the time limit of 03 months prescribed for preferring an appeal :

Provided further that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in (Clasuses (v) and vi) of Rule 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule 8 in case no such enquiry has already been held."

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The Rule 16 lays down two conditions. Firstly, that no case can be reopened under Rule 16 after the expiry of six months from the date of order to be reviewed. Secondly, that wherever it is proposed to enhance the penalty imposed by the order sought to be reviewed, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule 8 in case no such enquiry has already been held.

6. From the perusal of records we observe that the notice was issued to respondent No.3 on 4.12.1996 which was delivered of the applicant on 5.12.1996. Therefore, we have no doubt that the case was re-opened well before expiry of six months because the order of disciplinary authority to be reviewed is dated 7.6.1996. A notice was issued by respondent No.3 on 24.1.1997 which was regarding proposed punishment. The applicant submitted his reply to the notice dated 24.1.1997 on 3.2.1997 and thereafter respondent No.3 issued the punishment order dated 24.7.1997. Thus, in our opinion, the case was re-opened <sup>in</sup> <sup>in</sup> within a time prescribed.

7. Another ground taken by the applicant is that no fresh inquiry was conducted. We also do not find any substance in this argument of the applicant. The inquiry had already been conducted and as per the contention laid down in the Rule 16 there were no requirement for fresh inquiry.

8. On perusal of records, we find from CA-1 that in the preliminary inquiry the applicant himself <sup>had admitted to</sup> submitted that he did not take into account <sup>the government sum for which acquittance had been given to</sup> the following amount in respect of Savings <sup>h</sup> Bank Account No.2753008 because the money was not given <sup>was not accounted for</sup> by the depositer and it was only promised by the depositer

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that he would send the money. The details of such deposits as given by the applicant are as under :-

Date	Amount for deposite
21.7.1991	400/-
08.9.1992	500/-
16.1.1992	500/-
21.12.1992	400/-
15.7.1993	700/-
21.2.1994	1000/-

In the charge sheet dated 6.2.1995 other accounts of Saving Banck as well as Recurring deposit have <sup>been</sup> shown in which similar omissions as per the applicant have been made. We are not prepared to accept this argument of the applicant. Whatever little knowledge of post office and Government functioning we have, we are <sup>certain</sup> assure that any transaction <sup>in which</sup> to be taken place or any receipt granted in token of receipt of the same amount, the question of not taking <sup>the receipt of</sup> these amounts in the Government account does not arise. Therefore, we observe that the applicant is not proven <sup>to be</sup> ~~his~~ integrity, in a public utility department.

9. In the facts and circumstances and our aforesaid discussions, we do not find any illegality in the impugned order dated 24.7.1997, and, therefore, no good ground for calling for our interference. The O.A. is devoid of merit and is liable to be dismissed. The O.A. is accordingly dismissed. No order as to costs.

  
Member-J

  
Member-A

RKM