

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

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Original Application No. 2 of 1998

this the 11th day of August 2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)  
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Vibhuti Prasad Chaubey, aged about 49 years, S/o late Sri Gaya Chaubey, R/o Village & Post Gopalpur, Tappa-Lehra, Pargana Haveli, Tehsil Pharenda, District Maharajganj.

Applicant.

By Advocate : Sri A. Tripathi.

Versus.

1. Union of India through the Secretary, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. SSPOS, Gorakhpur Division, Gorakhpur.
3. DPS, O/O PMG, Gorakhpur.
4. PMG, Gorakhpur.
5. Ziladikari, Maharajganj.
6. Tehsildar, Pharenda District Maharajganj.

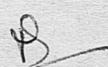
Respondents.

By Advocate : Km. S. Srivastava.

ORDER (ORAL)

BY MRS. MEERA CHHIBBER, MEMBER(J)

By this O.A., applicant has challenged the order dated 13.9.96 (Annexure-10) whereby his services were terminated with immediate effect. He has further sought quashing of the recovery certificate issued contrary to law, as a consequence of the first relief because the alleged amount of loss is only conjectured and does not exist in fact. He has also sought consequential benefits namely pay and allowances by treating the entire period from 12.10.96 onwards as duty.



2. It is submitted by the applicant that while working as Extra Departmental Branch Manager, Gopalpur, <sup>he was P</sup> District Manarajganj issued a chargesheet on 23.9.93, <sup>On his representation the B</sup> on the ground of ~~embezzlement~~ of Govt. money. After enquiry was concluded, Enquiry Officer gave his report holding therein the allegations to be baseless and not proved (Annexure-3). However, SSPO dis-agreed with the report given by the E.O. and gave a notice to the applicant on 6.4.95 calling-upon him to give his representation within 15 days, as according to him, the charge levelled against the applicant was fully proved (page 37). It is submitted by the applicant that he gave his representation (page 38) by explaining everything, but the disciplinary authority vide his order dated 27.7.95 directed that an amount of Rs.5220/- be recovered from his salary in easy instalment of Rs.145/- per month. He also directed that the applicant be taken back on duty with the condition that the applicant will be held responsible for remaining loss sustained by the department. Thereafter, by another order dated 27.7.95 the applicant was directed to be taken back on duty (page 45). It is submitted by the applicant that thereafter instalment of Rs.145/- was being deducted from his salary, but he was surprised when he received the notice dated 1.1.1996 issued by the Director, Postal Services under Rule 16 on the ground that the punishment given to the applicant is lesser as compared to the mis-conduct, therefore, proposing to terminate the services of the applicant (page 45). It is submitted by the applicant that he gave a detailed reply to the said show-cause notice (page 50), but vide order dated 13.9.96 by ignoring all the contentions raised by the applicant, Director, postal services modified the order dated 27.7.95 by removing him from service with immediate effect (page 49).



3. Counsel for the applicant submitted that show-cause notice is absolutely wrong, illegal and arbitrary inasmuch as no reason~~s~~ was stated therein as to why the appellate authority~~has~~ dis-agreed with the view taken by the disciplinary authority, therefore, it vitiates the penalty order passed by him being violative of principles of natural justice, therefore, the same is liable to be quashed and set-aside. He further submitted that relied-upon witnesses did not appear before the E.O., therefore, there was no material on the basis of which the appellate authority could have held the charges to be proved against the applicant. His next contention was that the appellate authority has relied on the statement which were given by certain persons in <sup>the</sup> preliminary enquiry without producing those persons at the time of enquiry for being cross-examined by the applicant, which violates his basic right to defend himself. He, thus, prayed that since none of the allegations were proved against the applicant, therefore, penalty order may be quashed and set-aside.

4. The respondents on the other hand submitted that while discharging the duties as Branch postmaster, Gopalpur, he mis-appropriated the amount of Saving Bank, Money orders and Insured letters to the tune of Rs.65680/- for which he was chargesheeted under Extra Departmental Agents (Conduct & Service) Rules 1964 vide memo dated 23.9.93. The E.O. gave his report holding therein that the charges were not proved. However, since the disciplinary authority did not agree with the E.O.'s report, he issued a show-cause notice to the applicant and after considering the reply given by the applicant, order for recovery of Rs.5220/- from his pay in equal instalment of Rs.145/- <sup>has passed</sup> per month and directed the applicant to be taken back on duty with the condition that the applicant will be held responsible for the remaining loss sustained by the department.

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5. It is submitted by the respondents that the order dated 27.7.95 was reviewed by the Director, Postal Services and since he did not agree with the penalty imposed by the disciplinary authority, he gave a show-cause notice for enhancing the punishment, which is very much permissible under the rules, therefore, there is no illegality in the order passed by the DPS. He has further submitted that against the order passed by the appellate authority enhancing his penalty to removal from service, he preferred an appeal to the PMG, Gorakhpur, which is still pending. It was for the adjustment of loss sustained by the department, Collector, Mahajganj was addressed vide letter dated 23.5.97 to recover the loss of Rs. 68196.75/- under Public Accountant Default Act, 1950 from the petitioner's property as arrears of land revenue. For this purpose, necessary orders were issued by the Collector, Mahajganj to Tehsildar, Pharenda to recover the amount on the strength of recovery certificate of the postal department by letters dated 30.9.97 and 21.11.97. They have, thus, submitted that since the orders have been passed in accordance with law, it calls for no interference and the O.A. is liable to be dismissed with costs.

6. We have heard both the counsel and perused the documents as well.

7. Perusal of the relief(s) sought by the applicant shows that he has challenged only the appellate order by which his punishment was enhanced to removal from service. Counsel for the applicant submitted that since the appellate authority had modified the order passed by the disciplinary authority, disciplinary authority's order got merged with the appellate authority's order, as a result of which when he says quash the order dated 30.9.96 (page 51) it would automatically include the order dated 27.7.95 passed by the disciplin

authority as well. We have applied our mind to the contention raised by the applicant's counsel and do not find force in his arguments. It is seen that the order passed by the disciplinary authority was not challenged by the applicant at all. On the contrary, he has himself stated that the order passed by the disciplinary authority was already given effect to inasmuch as the applicant was taken back on duty and the amount of Rs.145/- was started to be recovered from his salary every month. Therefore, as far as the order of the disciplinary authority is concerned, that was accepted by the applicant. Therefore, now we cannot be allowed to turn-around and allowed to challenge the order passed by the disciplinary authority as well.

8. As far as the order passed by the appellate authority is concerned, there is no doubt that under rule 16 of EDA (Conduct & Service) Rules, 1964 Head of the Circle or PMG (Region) as the case may be or an authority immediately superior to the authority passing the orders is well within his right at any time either on its own motion or otherwise <sup>to</sup> call for records of any enquiry or disciplinary case and review any order made under these rules reopen case and after making such enquiry as it considers necessary may confirm, modify or set-aside order or pass such orders as it deems fit, but there is a proviso which states that no order imposing 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. We have seen that the DPS issued a show-cause notice to the applicant on 1.1.96 (page 46) but it simply states that he proposes to modify the <sup>by changing to B</sup> order ~~of~~ removal from service, but no reasons ~~are~~ given in the said show-cause notice, as to why he has come to this conclusion. Therefore, according to us, this

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cannot be said to have given a proper opportunity to defend to the applicant, when the rule says that a show-cause notice is required to be given, it is not a mere formality and the ideal is to inform the person concerned the reasons due to which the appellate authority thinks it is necessary to modify or enhance the punishment. On this point, it would be relevant to quote the judgment given by the Hon'ble Supreme Court in the case of Punjab National Bank Vs. Kunj Behari Misra reported in JT 1998 (5) SC 548 wherein it was held as under :

"When the disciplinary authority differs with the view ~~xx~~ of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and while recording a finding of guilt, imposes punishment on the officer.

principles of natural justice have to be read into Regulation 7(2). Whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer."

This was a case where the disciplinary authority had dis-agreed with the report given by the E.O., but the same principle would apply in the present case before us as well. It is seen that after applying his mind and considering all the evidence, which were on record, the disciplinary authority had decided to take back the applicant in service by recovering the loss caused to the Government, in equal instalments. The said punishment was already given effect to. It was subsequently when the appellate authority dis-agreed with the penalty imposed on the applicant, that he gave a show-cause notice to the applicant on his own motion, but neither gave any reason nor discussed any evidence to show as to why he feels the punishment awarded to the applicant is not commensurate with the mis-conduct alleged against the applicant, therefore, to that extent, show-cause notice, according to us, cannot be sustained in law. After all, if he was to take a different view, he ought to have given the reasons for dis-agreement in the show-cause notice itself so that the applicant could have given a proper reply to satisfy the appellate authority, but since the show-cause notice is



absolutely silent and does not give any reasons, therefore, we hold show-cause notice to be bad in law, ~~and is not sustainable~~, The same is accordingly quashed and set-aside. The respondents have themselves stated that the appeal filed by the applicant was still pending, therefore, the higher authority had not yet applied his mind in the present case. Since we are holding that the show-cause notice was itself bad in law, it automatically makes the order dated 1.1.96 passed <sup>also</sup> by the appellate authority, as not sustainable in law, The same is also quashed and set-aside. However, since we are quashing this order on a technical ground and without dealing with any other points raised by the applicant on merits of the case, we are remitting back this matter to the authorities with a direction to pass appropriate order in accordance with law after following the due process of law, ~~if they so feel~~.

9. With the above directions, the O.A. is partly allowed with no order as to costs.



MEMBER (J)



MEMBER (A)

GIRISH/-