CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 675 of 2001

....., this the 29 day of August 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER

Banshi Dhar Pandey,
Son of shri Pingal Prasad Pandey,
R/o. Village Basdila P.O.,
Sihari Sardaha, District Basti ... Applicant.

(By Advocate Shri G.D. Misra)

versus

1. Union of India through its Secretary,
Post and Telegraph Department,
New Delhi.

2. Assistant Director General (ED),
Dak Bhawan, Sansad Marg, New Delhi.

3. Postmaster General Allahabad and Gorakhpur
Kshetra, Allahabad.

4. Director Postal Services, Gorakhpur.

5. Superintendent of Post Offices, Basti Mandal,
Basti. ... Respondents.

(By Advocate Shri S. Srivastava)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Certain fundamental features of disciplinary proceedings are essential to be set out at the very outset. These are as under:-

(i) *principles, laid down by the Apex Court, for holding of inquiry proceedings can be summarized as under:-*

The proceedings in question are quasi-judicial in nature. In the case of ***Nand Kishore Prasad Verma Vs. the State of Bihar*** *(reported in AIR 1978 SC 1277), the Apex Court held that "the disciplinary proceedings before a domestic Tribunal are of a quasi judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence i.e. to say such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicious cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer will be perverse".*

(ii) *In the case of* ***Jagannath Prasad Sharma Vs. State of U.P*** *(1962) I SCR 151, the Apex Court while reiterating the same principle held that "the enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the material placed before the enquiring body should be judicial".*

(iii) *In the case of* ***Canara Bank Vs. Debasis Das (2003) 4 SCC 557*** *of page 570, the Apex Court further held that in such proceedings "Principles of Natural Justice would be fully followed and principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the Individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority, while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.*

(iv) *The third principle enunciated by the Apex Court in* ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.,*** *(reported in (1999) 3 SCC 679) is that "...in departmental proceedings the standard of proof is one of preponderance of probabilities". The Apex Court reiterated the same principles in* ***State of Rajesthan Vs. B.K. Meena and others*** *(reported in 1997(1) SLJ 86 SC).*

(v) *The fourth principle enunciated by the Apex Court in the case of* ***Vijay Kumar Nigam Vs. State of Madhya Pradesh****, 1996 (11)*

SCC 599, is that non supply of report of preliminary enquiry conducted against the delinquent officer does not violate the principles of natural justice. It observed in the aforesaid judgment that, "the preliminary report is only to decide and asses whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee.....".

(vi) *Similarly in the case of* ***Narayan Dattatraya Ramteerthankhar Vs. State of Maharastra and others*** *(reported in 1997 (1) SCC 299) Apex Court reiterating its earlier view held that "...The Preliminary enquiry has nothing to do with the enquiry conducted after issue of the chargesheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full fledged enquiry was held, the preliminary enquiry had lost its importance, SLP dismissed."*

(vii) *Apex Court has also held that Disciplinary Authority can disagree with the findings of the inquiry officer, on perusal of the inquiry report and can arrive at his own finding or conclusion on proper appraisal and evaluation of evidences recorded in the enquiry report. In the case of* ***State of Rajasthan Vs. M.C Saxena*** *(1998 SCC (L&S) 875), the Apex Court held as under:-*

"6.3.....The Disciplinary Authority can disagree with the findings arrived at by the enquiring official and act upon his own conclusion. The only requirement is that the Disciplinary Authority must record reasons for his disagreement with the findings of the enquiry. If the Disciplinary Authority gives reasons for disagreeing with the findings of the enquiring Officer, the Court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said findings. The Disciplinary Authority was, therefore, well within its powers to award punishment on the basis of findings arrived at by him...".

The enquiry in its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial.

-Jagannath Prasad Sharma v. State of U.P.,(1962) 1 SCR 151

2. Now the facts of the case.

The applicant was appointed as Extra Departmental Branch Post Master w.e.f. 22-10-1975. He was put off duty w.e.f. 22-05-1995 and later was issued with a charge sheet 18-07-1995 to which he submitted his reply 29-09-1995. An inquiry was conducted and the inquiry officer submitted its report on 26-10-1995, rendering his findings that the two charges framed against the applicant stood proved. Against the inquiry report the applicant submitted his representation on 23-11-1995. However, upholding the inquiry report, the disciplinary authority inflicted upon the applicant the penalty of dismissal from service vide order dated 29-12-1995. Appeal filed by the applicant was also not successful, vide appellate authority's order dated 22-07-1996. The applicant had then filed a review application, which was also rejected vide order dated 04-03-1997, Memorial to the President was also rejected vide order dated 11-10-2000. It is the above orders that have been assailed in this O.A. The main grounds of challenge are as under:-

(a) Violation of Principles of Natural Justice, as the I.O. did not give sufficient opportunity to the applicant to defend himself and disbelieved the defence witness on insufficient grounds and the inquiry is based on surmises and conjectures.

(b) The Disciplinary Authority mechanically followed the I.O.'s report and passed the order of penalty, without considering the representation made against the Inquiry Report.

(c) Appellate Authority did not follow the prescribed procedure of Rule 15 of the Extra Departmental Agent Conduct and Service Rules, 1964 and he had failed to record specific finding by considering the materials on record, especially, as to whether the procedure was followed.

(d) Review application and the Memorial have not been considered in their proper perspective.

(e) The penalty is disproportionate to the gravity of the alleged misconduct.

(f) The appellate authority had taken into account the past conduct which is not permissible as no opportunity was given to the applicant to defend himself in this regard.

3. The respondents have contested the O.A. According to them, the impugned orders have been passed in accordance with the Rules and after due inquiry in which the charges of misappropriation of government money levelled against the applicant have been fully proved. The inquiry authority had given full opportunity while conducting the inquiry. The findings are based on evidence. The applicant has misappropriated Government money and it was after due consideration by the Disciplinary Authority that the the applicant was dismissed from service, which has been, after considering the appeal/review/Memorial as the case may be, upheld by three authorities above, and the penalty is commensurate with the gravity of the charge..

4. Arguments were heard and the documents perused. The applicant has filed written submission and has relied upon the decision of the Apex Court in the case of **Ram Chandar vs Union of India and others** reported in (1986) 3 SCC 103, wherein it has been held :

"the majority in Tulsiram Patel case unequivocally lays down that the only stage at which a government servant gets "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" i.e. an opportunity to

exonerate himself from the charge by showing that the evidence adduced at the inquiry is net worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-second Amendment as interpreted by the majority in Tulsiram Patel case that ***the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal.*** *We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.*

(Emphasis supplied)

5. The applicant has also relied upon the decision of the Apex Court in the case of ***Kailash Nath Gupta v. Enquiry Officer,(2003) 9 SCC 480*** wherein it has been held:

> *"The power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded."*

6. In any disciplinary proceedings, there are various authorities – Inquiry Officer, Disciplinary authority and the Appellate authority. Each one has two parties before it and each party presents its case. In so far as the Inquiry Officer is concerned, it is the Presenting Officer and the Charged Officer that form the

two parties. Their evidences, witnesses etc., are to be heard and at the conclusion of the Inquiry, the two parties are permitted to furnish written brief and it is on the basis of this written brief, read with the evidences and depositions that the findings are to be recorded by the Inquiry Authority. When a copy of the Inquiry Report is made available to the Charged Officer he prefers a representation and before the Disciplinary authority, it is the Inquiry Report and the representation against it, that form the two parties. The Disciplinary authority shall consider both dispassionately, meet all the points as contained in the representation and it is after the same that the disciplinary authority shall come to a conclusion. Non consideration of the points raised by the charged officer in his representation against the inquiry report would amount to non application of mind. Now the disciplinary authority passes the penalty order against which the applicant prefers an appeal. The appeal forms one party and the penalty order (with relevant records) another before the Appellate authority. It need not be that the appellate authority shall give an opportunity of being heard to the appellant. Consideration of the very grounds and other contentions raised in the appeal itself would satisfy the requirement of the Principles of Natural justice. Thus, at each stage there are two parties and in all these, all the points raised by the charged officer are expected to be met with by the respective authorities.

7. Now, the contention by the applicant against the Inquiry Authority: It has been contended that the inquiry authority has not given sufficient opportunity to the applicant and that deposition of defence witness had been ignored and

certain documents produced by the prosecution were entertained to fill up the gaps and holes. The entire inquiry report has been considered. The Inquiry Authority had, after narrating the facts framed three questions and started answering the said questions. As regards the loss of Insurance, he had stated that had the same been lost and later on found, no better opportunity would have been available to the applicant than to ensure delivery of the same to the Post Master or any other responsible person. This was not done. Thus the story of loss of the insurance and finding of the same is nothing but a concocted story. We are not prepared to find any fault in the finding of the Inquiry Officer. Similarly regarding the misappropriation of government money to the tune of Rs 4,480/- also detailed discussion has taken place and thus, the Inquiry Report cannot be faulted with.

8. As regards the disciplinary authority's order, the applicant contends that the same has not considered the applicant's objection to the Inquiry Report. Further the Disciplinary authority has taken into account certain extraneous aspects (past misconduct). In so far as the first part of the contention is concerned, a perusal of the disciplinary authority's order reflects that he has considered the objections to the inquiry report and the same is evident from para 2 of page 2 of the Disciplinary Authority's order. It is settled law that when the disciplinary authority agrees with the views of the inquiry authority, detailed reasons of agreement need not be given. In this regard, a recent decision of the Apex Court in the case of ***National Fertilizers Ltd. v. P.K. Khanna,(2005) 7***

SCC 597 ~~the Apex Court~~ has held as under:-

> *"The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer. In this case the disciplinary authority had concurred with the findings of the enquiry officer wholly. In Ram Kumar v. State of Haryana[1] the disciplinary authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the enquiry officer, the finding of the enquiry officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the disciplinary authority in this case. Learned counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the disciplinary authority had, in Ram Kumar case[1] itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words: (SCC p. 584, para 8)*
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> *"8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the enquiry officer which means that he has not only agreed with the findings of the enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order."* *(emphasis supplied)*
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> *We respectfully adopt the view."*

9. The above judgment clearly spells out that if the entire case has been

considered by the disciplinary authority, and the disciplinary authority concurs with the inquiry authority's findings, no detailed discussion, giving reasons for agreement is required. In the instant case, enough proof is available that the disciplinary authority has considered the representation of the applicant. From that point of view, there can be no legal flaw. Another contention is that the disciplinary authority has fallen into a grave error when he has linked the past conduct of the applicant with the case while imposing the penalty of dismissal. The disciplinary authority has stated that this is the fourth misconduct. The question is whether this is fatal to the proceedings. When the findings are concurred in some penalty would be imposed. A decision for imposing of penalty is arrived on the basis of the very proved charges and if the charges are grave enough, penalty of dismissal etc., could be given. If the charges are not that grave, then it is to be seen whether the extreme punishment of dismissal commensurates with the gravity or is 'shockingly disproportionate' to the gravity of misconduct. To ascertain whether a penalty is shockingly disproportionate, what aspects are to be considered? The Apex Court in the case of ***Director General, RPF v. Ch. Sai Babu,(2003) 4 SCC 331*** has held as under:-

> *"Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, **after examining all the relevant factors including the nature of charges proved against, <u>the past conduct</u>, penalty imposed earlier**, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."*

10. Thus, consideration of the past conduct while awarding penalty cannot be held to be fatal to the disciplinary authority's order.

11. Before the Appellate authority, the applicant has raised point of non application of mind. In other words, according to him, the points raised by the applicant against the disciplinary authority's order of dismissal have not been considered properly. The appellate order is of four paragraphs of which first para states that it is an appeal preferred against the Disciplinary Authority's order. Para 2 describes the facts of the case which by and large borrowed the words from the order of the Disciplinary Authority itself. Para 3 (six lines in all) states that the appellate authority has considered the charge sheet, the inquiry report, the penalty order and the appeal and other documents and that the applicant has not brought in any new materials in the appeal. A perusal of the appeal shows that as many as 24 grounds were raised and none of the ground has been discussed in the appellate order. Here exactly is the stage where the error has occurred. The Apex Court's dictum in the case of Ram Chander (supra) based on the dictum of the Constitution Bench in the case of Tulsi Ram Patel is ***that the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal.*** Thus, crack in disciplinary proceedings has taken place at this stage and there is no option save to hold that the appellate order and the subsequent review order and order on memorial are to be quashed and set aside with liberty to the Appellate Authority to

consider the appeal in accordance with the law laid down by the Apex Court in the case of Ram Chandar, following Tulsi Ram Patel.

12. Thus, the applicant has made out a case right from the stage beyond the order of the disciplinary authority. The appellate order dated 22-07-1996, Review order dated 04-03-1977 and order dated 11-10-2000 are all hereby quashed and set aside. The O.A. is partly allowed. The appellate authority shall consider the appeal and if need be give a hearing to the applicant and dispose of the appeal meeting all the grounds and if according to the appellate authority the applicant has made out a case, suitable order quashing the disciplinary authority's order be passed with further direction regarding consequential benefit. If however, the order is to be upheld, the same shall be, as stated above, meeting all the grounds and expressing the decision on such grounds.

13. The appellate authority shall dispose of the appeal within a period of two months from the date of communication of this order.

14. Under the above circumstances, there shall be no orders as to costs.

A K SINGH
ADMINISTRATIVE MEMBER

K B S RAJAN
JUDICIAL MEMBER