

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 593 of 2005

Allahabad this the, 26th day of November, 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. B. Bhamathi, Member (A)**

Ram Sewak Ram aged about 45 years, Son of Sri Damodar, Resident of Village Bhagwat (Chiraiya Kot), District Mau.

Applicant

By Advocate: Sri B.N. Singh

Versus

1. Union of India through its Secretary, Ministry of Communication (P&T), Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Gorakhpur Region, Gorakhpur.
4. The Director, Postal Services, Gorakhpur Region, Gorakhpur.
5. The Senior Superintendent of Post Offices, Azamgarh Division, Azamgarh.

Respondents

By Advocate: Sri Himanshu Singh

Reserved on 07.11.2013

O R D E R

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

The applicant has prayed for the following relief(s): -

(i) *to issue writ, order or direction in the nature of certiorari quashing and setting aside the impugned order dated 22.03.2000, 25.4.2001, 30.4.2002 and 18.05.2004 (Annexures A-1, A-2, A-3 and A-4 to compilation No. 1 to this application).*



(ii) to issue writ, order or direction in the nature of mandamus directing the respondents to reinstate the applicant in service forthwith with all consequential benefits.

(iii) any other or further suitable order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) to award the cost of the petition to the applicant."

2. The brief facts, giving rise to this O.A., are as follows: -

The applicant was working as Extra Departmental Branch Post Master (for short E.D.B.P.M.), Bhagwat, B.O. Chiraiya Kot, Azamgarh. He was served with a charge sheet dated 12.04.1999 issued by the Senior Superintendent of Post Offices, Azamgarh. He denied the charges levelled against him. The Inquiry Officer was appointed to inquire into the matter. He completed the inquiry and he found the charge No. 1 and charge No. 2 partly proved against the applicant. The applicant submitted his representation against the inquiry report. The Disciplinary Authority without considering the inquiry report and the reply furnished by the applicant imposed upon the applicant the punishment of removal from service. The applicant submitted an Appeal to the Director, Postal Services, Gorakhpur Region, Gorakhpur against the aforesaid order. The Appellate Authority allowed the appeal and punishment of removal from service was modified to the punishment of stopping of promotion of the applicant



for five years. The applicant joined the duty on 28.10.2001.

3. The respondent No. 3 issued a show cause notice to the applicant disagreeing with the punishment awarded by the Appellate Authority without disclosing any reason under Rule 19 of the GDS to submit reply within 10 days. The applicant submitted his reply against the show cause notice. The Revisional Authority confirmed the removal order passed by the Disciplinary Authority. The applicant submitted a Revision Petition on 01.08.2002 against the aforesaid order to respondent No. 2 who in turn rejected the petition, filed by the applicant, on 18.05.2004 by a cryptic and non-speaking order.

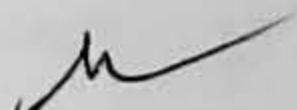
4. On the facts of the case, it is submitted by the applicant that he has not committed any wrong or embezzlement of the Government money. The depositor who has deposited Rs.2000/- on 15.06.1998 in his Savings Bank Account 609331 in the morning had taken away that amount from the applicant in the evening at about 04.00 p.m.. This fact has been admitted by the depositor himself before the Inquiry Officer. The Disciplinary Authority placed his reliance on the preliminary statement of the witnesses and he did not consider the inquiry report properly. There is no financial loss to the Government. At

the most, charge of negligence can be imputed on the applicant and not of embezzlement. The punishment of removal from service awarded to him is too harsh. Accordingly, this O.A. was filed mainly on the grounds that the Disciplinary Authority did not again issue any show cause notice to the applicant while disagreeing with the findings of the Inquiry Officer, which is a violation of principle of natural justice. After admission of the depositor regarding taking back of the amount of Rs.2000/- in the evening on the same day, no charge of embezzlement could be made against the applicant. The Disciplinary Authority has utterly failed to consider this aspect. The punishment of removal from service has been awarded to the applicant without disclosing the facts available on record and without giving sound reasons for the same. Considering the past career and conduct of the applicant, no such punishment could be imposed. The punishment awarded to the applicant is wholly illegal, arbitrary and with malafide intention hence, not sustainable in the eye of law.

5. The respondents have filed the Counter Affidavit denying the allegations made in the O.A. by the applicant and contending that the applicant while posted as EDBPM on 15.06.1998 received an amount of Rs.2000/- from one



Sammi Ram-a depositor of Savings Bank Account No. 609331 along with pay-in-slip and concerned Pass Book for depositing the amount in his account. The applicant made entries of deposit into the said Savings Bank Account showing balance of Rs.4582.50, initiated the entry and affixed the date stamp in Savings Bank Pass Book but, he did not make any entry in the Savings Bank journal nor in BO account for taking this deposit in Government receipt. Similarly on 13.10.1998, the applicant applied for withdrawal of Rs.4000/- from S.B. Account No. 609331 making forged signature of depositor and submitted for withdrawal from Accounts Office, Chiraiyakote for sanction. He further received Rs.1500/- on 30.09.1998 but did not account the same in the Pass Book. On receipt of said withdrawal application, Sub Post Master, Chiraiyakot reported this case to higher authority. After such report of Sub Post Master, the applicant was put off duty on 26.12.1998 and served with a charge sheet. Since applicant denied the charges, an inquiry was conducted in the matter and after submission of inquiry report, applicant was removed from service vide Office Memo No. SB-17/19/98-99 dated 22.03.2000, against which he preferred an Appeal.



6. The applicant has been given proper opportunity through show cause notice by the Disciplinary Authority as well as the Revisional Authority before passing the impugned orders. The Revisional Authority has also given opportunity to the applicant to present his case before enhancing the punishment. The applicant has got no case and considering the charges levelled against him, the punishment awarded to him is just and proper and the O.A. deserves to be dismissed.

7. The applicant has filed the Rejoinder Affidavit mainly reiterating the earlier stands taken by him in the O.A.

8. The respondents have also filed the Supplementary C.A. repeating the stands already taken by them in the Counter Affidavit.

9. The applicant in addition to his pleadings has placed reliance on documentary evidence also which is annexure A-1 to annexure A-12 on record.

10. On the other hand, the respondents did not file any documentary evidence in support of their contentions. However, they have filed Written Arguments.

11. We have heard the arguments of learned counsel for the parties and perused the papers on record.



12. This fact is not disputed that the applicant while working as EDBPM received an amount of Rs.2000/- from one Sri Sammi Ram-depositor on 15.06.1998 along with his Savings Bank Account (No. 609331) Pass Book. It is also an admitted fact that he made an entry of the amount in the Pass Book of the depositor and returned the Pass Book to the depositor on the same day. Subsequently, it is said by the applicant that this amount was taken back by the depositor on the ground of his illness. The Inquiry Officer has partly relied on this statement of the applicant but the Disciplinary Authority after analyzing the facts and giving reasons did not accept this defence of the applicant and accordingly passed the impugned punishment order.

13. The only point raised by learned counsel for the applicant before the Bench is that the Disciplinary Authority after disagreeing with the report/finding of the Inquiry Officer did not give any opportunity of hearing or to give reply to the applicant before awarding punishment of removal from service and, according to him it is a violation of principles of natural justice and only on this basis the entire departmental proceedings and punishment awarded to the applicant can be thrown away. In support of his contention, he has placed reliance on the observation made by the Hon'ble Supreme Court in the case of '*Punjab*

National Bank Chief Personnel Disciplinary Authority Punjab

National Bank Vs. Kunj Behari Misra, Shanti Prasad Goel

1998 SCC (7) 84'. In this case the main contention of the respondents in the Writ filed by the petitioners was that the Disciplinary Authority who had chosen to disagree with the conclusions arrived at by the Inquiry Officer, could not have come to adverse conclusions without giving them an opportunity of being heard and the orders passed against them were liable to be quashed. The Hon'ble High Court accepted this contention and allowed the Writ Petition. The matter went before the Hon'ble Supreme Court. While dealing with the matter, the Hon'ble Supreme Court recorded its opinion as expressed in the case of 'Ram Kishan vs. Union of India (1995) 6 SCC 157', which is as follows: -

"The purpose of the show cause notice in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the findings by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him."

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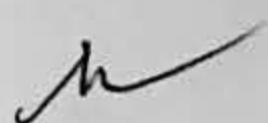
The Hon'ble Supreme Court after discussion of several cases on the point finally observed as follows: -

"As a result thereof 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.

In the result, the view expressed by the Hon'ble High Court in that case was accepted by the Hon'ble Supreme Court.

14. Learned counsel for the applicant has placed reliance on the case of '*Yoginath D. Bagde vs. State of Maharashtra Laws (SC) 1999-9-164*'. In that case also the Hon'ble Supreme Court expressed the view that the principles of natural justice would demand that the authority which propose to decide against the delinquent officer must give charges against the appellant which related to the demand of bribe for the acquittal of complaint.

15. Similarly, applicant's counsel has placed reliance on the findings of Central Administrative Tribunal, Principal Bench, New Delhi in the case of '*Raja Ram & Anr. Vs. Government of NCTD & Ors. decided on 08.10.2010 in O.A. No. 577 of 2009 (M.A. No. 391 of 2009)*', in which the Hon'ble Principal Bench, New Delhi has held that the Rules



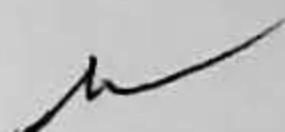
provide that where the Disciplinary Authority disagrees with the Enquiry Officer's report. It has to record a tentative note of disagreement and communicate to the delinquent for his representation. The Disciplinary Authority should not record its findings or conclude his decisions at this stage.

16. A perusal of the aforesaid Judgments and Order would go to show that when the Disciplinary Authority disagrees with the findings/report of Inquiry Officer and is of the view that the punishment should be enhanced then, it is the requirement of law that a reasonable opportunity by means of show cause should be given to the delinquent so as to enable him to make representation against the show cause notice.

17. Now we come to the present case, before us, in which it has been submitted by the learned counsel for the applicant that the Disciplinary Authority before imposing the punishment of removal from service, disagreed with the finding of Inquiry Officer did not give a show cause notice or reasonable opportunity to the applicant to explain the position. A perusal of annexure A-1 shows that the Inquiry Officer submitted his report on 15.12.1999 which was received in the office of Disciplinary Authority on 16.12.1999. The Disciplinary Authority while disagreeing

with the findings of the Inquiry Officer sent a letter to the delinquent (applicant) making mention of the reasons for his disagreement and giving reasonable opportunity to the applicant to submit his defence version by his letter dated 07.01.2000 and the applicant submitted his explanation/ defence dated 18.01.2000, which was received in the office on 24.01.2000. This defence version of the employee was also considered by the Disciplinary Authority while coming to the conclusion for imposing the punishment of removal from service. This annexure A-1 has been filed by the applicant himself hence, on the basis of this specific fact mentioned in it, it cannot be said that no opportunity was given to the applicant by the Disciplinary Authority while disagreeing with the report of the Inquiry Officer.

18. Similarly, the Revisional Authority-Post Master General, Gorakhpur while disagreeing with the punishment awarded to the applicant (stopping promotion for five years awarded by the Appellate Authority) did not agree with the punishment awarded to the applicant also sent a show cause notice to the applicant on 07.02.2002 to show cause against the proposal of enhancing the punishment of removal from service. This fact has not been challenged or denied by the applicant. It is apparent from a perusal of annexure A-3.



19. In view of the above discussions, facts and circumstances, we are of the view that the applicant could not substantiate his contention. O.A. is devoid of merit and deserves to be dismissed. Accordingly, O.A. is dismissed. No order as to costs.

B. Bhamathi
(Ms. B. Bhamathi)
Member - A

S. S. Tiwari
{Justice S.S. Tiwari}
Member - J

/M.M/