

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE 7 DAY OF X 2009)

***Hon'ble Mr. A.K. Gaur, Member (J)***

***Hon'ble Mr. D.C. Lakha Member (A)***

**Original Application No.1014 of 2005**

(Under Section 19, Administrative Tribunal Act, 1985)

Vikramajeet Yadav son of Sri Late Jakandu presently posted as Gramin Dak Sweak Packer Kutir Chakke, Kerakat, Jaunpur.

..... ***Applicant***

***Versus***

1. Union of India through it's Secretary Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Superintendent of Post Offices, Jaunpur Division, Jaunpur.
4. Sub-Divisional Inspector of Post Offices, Kerakat, District-Jaunpur.

..... ***Respondents***

*Present for Applicant :* Shri Avnish Tripathi

*Present for Respondents :* Shri R.K. Srivastava

**ORDER**

**(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)**

By means of the aforesaid OA the applicant has claimed following main relief/s:-

- i. to issue writ, order or direction for quashing and setting aside the impugned orders dated 21.04.2004, 11.06.2004 and 05.05.2005 passed by respondent 4,3, and 2 by which the respondent no.4 dismissed the applicant from the service an the respondent no.3 rejected the appeal of the applicant and the respondent no.2 rejected the revision petition of the applicant (Annexure No. A-1, A-2 and A-3) to the compilation no. and part 1 to this original application.)

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- ii. *to issue writ, order or direction in the nature of mandamus directing the respondents to reinstate the applicant on the said post of Gramin Dak Sewak, Pacher, Kutir Chakke, Kerakat, Jaunpur and also allow all the consequential service benefits since the date when the applicant was put of from duty.*

2. The brief facts of the case are that the applicant was appointed as Gramin Dak Sewak (Packer), Kutir, Chekka, Kerakat, Jaunpur. It is alleged that while working in the Post Office, the applicant was involved in the racket of payment of 43 bogus money orders, which were allegedly issued from Jaunpur, Head Post Office, in the name of his family members & neighbours. It is also alleged that the applicant had misappropriated the amount of the aforesaid bogus money orders, which were remitted by the District Social Welfare Officer, Jaunpur. In fact the family members and neighbours of the applicant had never applied for any type of Pension or scholarships in the office of District Social Welfare Officer, Jaunpur.

3. According to the applicant the Senior Post Master, Kerakat after receiving the aforesaid money orders directed the applicant to inform the respective recipient to collect the money order amount from the Post Office and respective receiver received the amount of money orders from the office of S.P.M. Kerakat. The payment of money order was made after proper verification by the S.P.M. Kerakat and as such the allegation that the applicant by using his pressure of the post distributed the money orders among his family members and intimate is not convincing and trust worthy.

4. The case relating to bogus money order came into the knowledge of the respondents in the year 2000 and a preliminary enquiry was held in

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the matter. As a consequence of preliminary enquiry, the applicant has been found responsible for the alleged misconduct of misappropriation of the amount of money orders to the tune of Rs.64000/-. Consequently, vide order dated 23.08.01 (Annexure A-4) the applicant was ordered to be put of duty. According to the applicant no enquiry was held in the matter and he has completely been denied the opportunity of hearing. The applicant was not afforded any opportunity of hearing during the course of preliminary enquiry, if any conducted by the respondents.

5. The respective receiver of the money orders stated during the course of preliminary enquiry that they have received money orders amount and affixed their signature and thumb impression in the money orders receipt. The respondents put the applicant back in duty on 01.12.2000 (Annexure A-5). Disciplinary proceedings were initiated against the applicant and major penalty charge sheet under Rule 8 of the E.D.As. (Conduct and Service) Rules, 1964 were initiated against the applicant. The applicant submitted his reply against the charge sheet. During the course of enquiry all the prosecution witnesses (28) in number, appeared before the Enquiry Officer, and were examined and cross examined by the Presenting Officer as well as the defence helper. Most of them specifically admitted that they have received the amount of the money order and affixed their thumb impression as well as signature, which is available on the postal receipt. It is also alleged that the prosecution has miserably failed to establish any charge or produce any document to support their charges against the applicant. In the report submitted by the enquiry officer dated 21.03.2003, it is clearly mentioned that the prosecution has failed to establish the charges levelled against the applicant vide charge-sheet dated 14.08.2000, and

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the none of the charges were found to be proved against the applicant. The Enquiry was completed on 10.01.2003. The Enquiry Officer submitted its report dated 10.01.2003 and the same has been filed as Annexure A-8. The copy of the report of Enquiry Officer was sent to the applicant on 01.04.2003 and he was directed to submit his reply, but he did not submit any reply within time and submitted his reply on 12.04.2003 which was duly received in the office of the respondent no.4 on 17.04.2003. After receipt of the reply of the Enquiry Officer came to the conclusion that none of the charges were found to be proved against the applicant. The Disciplinary Authority disagreeing with the report of the enquiry officer imposed the penalty of the dismissal from service to the applicant and accordingly punishment of dismissing from service was imposed upon the applicant by the respondent no.4. As per D.G. instruction, the proceedings under Rule 8 E.D.As. (Conduct and Service) Rule 1964 are the same, as laid down in Rule 14 of C.C.S. C.C.A. Rule 1965 and according to Rule 15 of the C.C.S. C.C.A. Rules, 1965 and Sub Rule 15(2) it is clearly provide ***"if Disciplinary Authority disagreeing with the enquiry report submitted by the Enquiry Officer, then it is binding on the part of the Disciplinary Authority to give the tentative reasons for his disagreement and records his own finding and also issue the show cause notice of disagreement by mentioning the reasons of his disagreement of the enquiry report by which none of the charges were found to be proved against the applicant. But in the instant case, respondent no.4 did not issue any disagreement note (Show Cause Notice) and also did not give any reasons or his disagreement and imposed the penalty of dismissal from service to the applicant."*** It is argued by Sri A. Tripathi, learned counsel for the applicant that the action taken by the

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respondent no.4 is illegal, arbitrary and without jurisdiction. The appeal dated 16.07.2003 and revision filed before the respondent no.3 has also been decided by a most cryptic and non speaking order and in utter violation of following decisions of Hon'ble Supreme Court:-

- (i) **AIR 1986 SC 1173: Ram Chand Vs. U.O.I. and Other.**
- (ii) **2006 (11) SCC 147: Director IOC Vs. Santosh Kumar.**
- (iii) **2005 (7) SCC 597: National Fertilizer Vs. P.K. Khanna.**
- (iv) **2006 SCC(L&S) 840 : N.M. Arya Vs. United Insurance Co.**
- (v) **2008(1) Supreme today, 617:DFO Vs. Madhusudan Rao.**
- (vi) **2008(8) SCC 236 State of Uttranchal Vs. Kharak Singh.**
- (vii) **JT 2009 (4) SC-519 Chairman Disciplinary Authority Rani Laxmi Bai Gramin Bank Vs. Jagdish Vashney & Ors.**

6. In the counter reply filed by the respondents, none of the averments contained in the Original Application have been denied by the respondents. In reply to paragraph no.4.17 of the Original Application, the respondents have given their reply in Para-21 of the Counter Reply as Follows:-

**Para-21:** *That the contents of paragraph no.4 (17) of the original application are not admitted as stated therein. As the petitioner was deeply involved in the fraudulent payment of bogus Money Orders, as such, he was rightly dismissed from service.*

7. Applicant has filed Rejoinder Affidavit and submitted that applicant is not at all involved in the fraudulent payment of bogus money orders and he has nothing to do with the payment of the aforesaid bogus money orders. The charges have not been proved by the Enquiry Officer, after holding due and regular enquiry and the respondents have failed to produce any evidence regarding the involvement of the applicant in the racket of payment of bogus money orders. The respondents have arbitrarily dismissed the applicant from service, without issuing any show cause notice, (disagreement note) or tentative reason for disagreeing with the Enquiry Officer report, which is required under the

rules as well as law. All these issues have been raised by the applicant before the Appellate Authority as well as revisionary authority, but neither of them have passed order according to law.

8. The respondents have filed Supplementary Counter Reply but the specific facts enumerated in the Rejoinder Affidavit have not been denied by them.

9. We have heard Sri Avnish Tripathi, learned counsel for the applicant and Sri R.K. Srivastava, learned counsel for the respondents.

10. Learned counsel for the applicant vehemently argued that this is a case of gross discrimination. All the similarly situated persons have been awarded punishment of censure whereas the applicant has been awarded punishment of dismissal from service. Learned counsel for the applicant would contend that charges have not at all been proved against the applicant and this is a case of no evidence. No show cause notice has been issued to the applicant by the Disciplinary Authority before disagreeing with the findings and report of the Enquiry Officer.

11. We have carefully perused the enquiry report and we are firmly of the view that the conclusion arrived at by the Disciplinary Authority is wholly arbitrary and perverse. We have also seen that no show cause notice was given by the Disciplinary Authority before disagreeing with the report of the inquiry officer. Learned counsel for the applicant would contend that the present case is squarely covered by the decision of Hon'ble Supreme Court reported in **1998 SCC (L&S) 1783 Punjab National Bank & Ors. Vs. Kunj Bihari Misra**. In order to buttress his



contention he has placed reliance on paragraph nos. 17, 18 and 19 of the said decision which are being reproduced hereunder:-

**"17.** These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at first stage itself. The aforesaid passage clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusion, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

**18.** Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry 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 officer succeeds before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

**19.** The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry 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 enquiry 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 enquiry officer. The principles of natural justice, as we have already observed, required the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

12. We have carefully considered the arguments advanced by Sri A. Tripathi, learned counsel for the applicant and we are firmly of the view that when the disciplinary authority differs with the view of the enquiry 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 officer succeeds before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in the case of **Managing Director, ECIL Vs. B. Karunakar, 1993 SCC (L&S) 1184**, relied upon by their lordships in the case of Kunj Behari Mishra (Supra).

13. We have also considered that the order passed by the Appellate Authority and Revisional Authority is cryptic and non-speaking and the same deserves to be quashed and set aside. The remand of case to the Revisional Authority at this belated stage would be violative of the Principle of Natural Justice and fair play. We may observe that more than Eight Years have already elapsed since the punishment was awarded to the applicant. It will, therefore, not be in the interest of

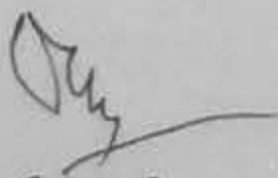


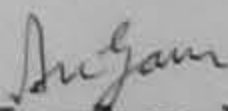
justice that at this stage the case should be remanded back to the Revisional or Appellate Authority for the start of another innings.

14. Having given our anxious thought to the pleas advanced by the parties' counsel, we are firmly of the view that the orders dated 21.04.2004/Annexure A-1, passed by the Disciplinary Authority and the order dated 11.06.2004/Annexure A-2 passed by the Appellate Authority and Revisional Authority order dated 05.05.2005/Annexure-3 are liable to be quashed and set aside.

15. Having given our thoughtful consideration to the pleas advanced by the parties counsel and in our opinion that the interest of justice will be sub-served if the matter is remitted to Disciplinary Authority to consider the matter afresh after giving the applicant a show cause notice and to consider the matter afresh in the light of reply filed by the applicant herein before him. We make it clear that though we are setting aside the order of Disciplinary Authority and consequently all the orders, we direct that the applicant shall be deemed to be under suspension till an appropriate order is passed by the Disciplinary Authority. **The question of payment of back wages, it is directed, would depend upon the ultimate order that may be passed by the Disciplinary Authority.**

16. In view of the above discussions, the O.A is allowed. Orders dated 21.04.2004/Annexure A-1, 11.06.2004/Annexure A-2 and 05.05.2005/Annexure-3 are hereby quashed and set aside. Respondents are directed to follow the direction contained in Para-15 of this judgment within a period of three months from the date of receipt of copy of this order. No cost.

  
Member-A

  
Member-J

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