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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.446 of 1986

Ashok Kumar Pathak ..... Applicant

Versus

The Senior Supdt.of Post Offices,
Gorakhpur and Others. .... Respondents.

Hon.S.Zaheer Hasan,V.C.
Hon.Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

This is a petition under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner Ashok Kumar Pathak was an Extra Departmental Branch Post Master at Barper Mafi District Gorakhpur. He has challenged the order of his removal dated 4.10.1985 and the order dated 31.3.86 rejecting his appeal on the grounds that the removal order violates Article 311 (2) of the Constitution due to an incomplete and vitiated enquiry and the appellate order is a non-speaking order. The petitioner worked as EDBPM from 3.11.1977 to 4.8.1984. He was put off duty w.e.f. 3.8.1984 by an order which he received on 1.9.1984. He was given a chargesheet on 25.11.1984 alleging that he charged payment in account by forgery of signatures of payee and the witness on Money Order paid voucher. According to the petitioner the payee and the witness were allowed to remain together on 9.5.85 and deposed in consultation with each other which

was against principles of Deposition. Since the applicant's defence counsel was not present on 9.5.85 he could not cross examine the witnesses and thereafter the enquiry was finalized without presentation of the case by the defence. Inspite of these lacunae the petitioner was removed from service on 4.10.85. He has therefore prayed for quashing the punishment and appellate order and for declaration that he is continuing on duty since 3.8.1984 with all consequential benefits. He has also prayed for compensation with interest at 16.5% on it and any other reliefs.

2. The respondents' case is that the petitioner was taken up under Rule 8 of the P & T EDA(Conduct and Service) Rules, 1964 for misappropriation of certain moneys by making forged signatures. The petitioner did not file any reply to the charge sheet. The enquiry was held and the petitioner was given all reasonable opportunity. The disciplinary authority after examining the report removed the petitioner from service. Appeal submitted by him was also considered and rejected on 30.3.86. According to the respondents the petitioner did not submit any reply against the chargesheet, therefore, his contention that he denied the charges is not supported by facts. The payee and witness on Money Order paid voucher were examined separately. The petitioner

was asked to ~~re~~ cross-examine them but he expressed his inability to do so in the absence of the defence counsel. The defence coulsel remained absent. The petitioner was supplied the statements but he never made any request subsequently for cross-examining the witnesses though the proceedings continued. The petitioner also did not ask for postponement of the enquiry. Since the grounds taken by the petitioner are wholly unsustainable he is not entitled to any relief.

3. We have heard the learned counsel for both sides. The contention of the learned counsel for the petitioner was that since cross-examination of witnesses was not done, opportunity was denied to the petitioner. Also the other E.D.D.A. to whom the petitioner gave the money order for delivery had not been called as a witness. These contentions have been repelled by the learned counsel for the respondents on the point that nothing has been put up to show that the other EDDA who was arrested has not been taken up and that the petitioner did not re-examine the witnesses on his own.

4. We have seen the order of the appellate authority. This order is a speaking order. The appellate authority has considered the issues raised by the petitioner. There is nothing to show

that there is any prejudice or malafides in the appellate order. It is a speaking order and the appellate authority has considered the point raised by the petitioner regarding cross examination of the witnesses and the reliance placed on certain statements of witnesses. The appellate authority has not acted arbitrarily or without considering the petitioner's point of view.

5. We will not like to comment on the merits of the case. One thing is clear. The petitioner did himself admit fault in his letter to the Enquiry Officer sent on 8.7.1984. He has thereafter taken a plea that he had been deceived by his co-worker who has taken advantage of the confidence reposed by the petitioner in him. As admitted by him he violated the rules. Whether the punishment is adequate or not is not a subject of his petition. His grounds for request for quashing the punishment and appellate order are that the enquiry was finalized without the presentation of the defence case. He has all along participated in the enquiry proceedings. He was allowed to cross-examine the witnesses but he did not do so because his defence counsel was not there. That could not be a sufficient reason for not participating in the proceedings. There was no attempt on the part of respondents to deny him any opportunity. It was he himself who did not avail of them.

6. The contravention of the principles of natural justice cannot be presumed in a case if in actuality there has been no injustice or the procedure adopted is such that having regard to circumstances of the case there is no real likelihood of any injustice in the case. Principles applied will depend upon the circumstances of the case. When a finding is primarily based on evidence then the failure to give proper opportunity for defence could not have made any difference. "Natural justice is not a set of dogmatic prescriptions available without reference to circumstances." There is no strait-jacket formula in which it can be fitted. Mere generalities and sentiments cannot form a base for assertions of denial of justice. We do not find that the course of justice has in any way been allowed to suffer in the petitioner's case.

7. The petitioner has mentioned that the witnesses should not have been allowed to remain together. This has prejudiced his case. What is important is that the witnesses should be examined in front of the delinquent. They should not be examined in his absence unless a copy of the statement has been given to the delinquent to help him in cross-examination of the witnesses. A departmental enquiry is not a judicial enquiry in the strict sense of the word. The principle of judicial process is not required to be applied to a departmental enquiry. There is nothing to suggest that the witnesses had consultation inter se leading to any prejudice to

the petitioner. The delinquent has to be given full opportunity to cross examine them and the same was available to the petitioner.

8. After the 42nd Amendment of the Constitution, it is no more necessary for the delinquent to be given a second show cause notice. In Tulsi Ram Patel's case the Hon'ble Supreme Court had held that the appellate authority must not only give a hearing to the Govt. servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. In this case we do not find anything wrong with the appellate order but at the same time the appellate authority has not given a hearing to the Govt. servant and therefore an objective consideration could not have been possible as the delinquent has not been given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. The Hon'ble Supreme Court had held that considerations of fair play and justice require that such a hearing should be given (Ram Chander Versus Union of India - 1986(2)SLR 608). In keeping with the ratio of the Supreme Court Judgement we direct the appellate authority to hear the delinquent and then ~~reconsider the appellate~~ pass appropriate order. ~~That has been passed by it after affording the delinquent a chance to put before the appellate authority the circumstances which led to the issue of the chargesheet.~~ The petition is disposed of accordingly. Parties will bear their own costs.

V.C.

A.M.

Dated the 24th Apr., 1987

RKM