

(6) (A2)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

O.A.No.660 of 1987.

Krishan Mohan Ram TripathiApplicant.

Versus

Director Postal Services, Allahabad &
othersRespondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicant while working as Branch Post Master, Basawanpur, was ordered to be put off duty vide S.D.I(P), Kauri Ram's order dated 7.12.82 because of alleged mis-appropriation of Rs.2000/- from a particular account and refusing to show the relevant record pertaining to the said account. The order was given to the Mail Overseer for effecting its service on the applicant and he was also ordered to take charge of Branch Post Master from him. According to the applicant, no such notice was ever served upon him. According to the respondents, the applicant did not take delivery of put off duty memo dated 7.12.82 and also did not handover charge and absconded with P.O. cash/ stamps balance worth Rs.2333-4)P and postal records with the result that a parallel office had to be opened. The record was subsequently recovered on 24.3.84 with the assistance of police and 12 M.O paid voucher for Rs.2217-30, one warrant of payment for Rs.100/- and stamps for Rs.16-10P i.e. total Rs.2333-40P were also recovered on 24.3.84. After confirmation of this order regarding put off duty, a charge sheet was served on the applicant under Rule 8 of EDA's (Service & Conduct) Rules. * enquiry Officer was appointed and the applicant denied the charges. After enquiry, the Enquiry Officer submitted his report to the Disciplinary Authority

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holding that the charges against the applicant were proved and the Disciplinary Authority i.e. the S.S.Ps agreed with the finding of the Enquiry Officer and passed an order of dismissal from service w.e.f. 13.8.84. The applicant filed an appeal against the said order which also dismissed on 21.1.85. Although the appeal was dismissed on 21.1.85, the applicant has approached the tribunal as late as on 27.7.87 and he has explained the delay in his application for condonation of delay stating that he was never informed about the appellate order till 12.7.86. It is only when he enquired, he learnt that his appeal has been dismissed and as the applicant was not given the order passed by the Director, Postal Services dated 21.1.85 before 12.7.86, as such the limitation would start from that date and the application has been filed within that year. The explanation so-given by the applicant is not a very convincing explanation and it may be that the applicant after filing appeal became dis-interested and subsequently he woke up but even on merit, the applicant has challenged the said order on the ground that the order is not a speaking order and suffers from the vice of violation of principle of natural justice. The Enquiry Officer should belong to another arm of service and not the same arm and his appointment was illegal and the applicant was not allowed to have the assistance of another Government servant to defend himself and the charge sheet was also not in respect of this particular charge which is said to have been proved and there is no evidence to prove his guilt.

2. The respondents have refuted the claims made by the applicant and have pointed out that full opportunity of hearing was given to the applicant

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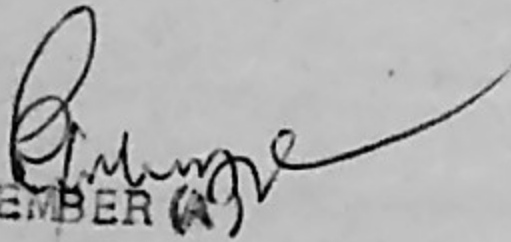
although it has been admitted that he did file an objection regarding appointment of Shri A.W.Beg as Enquiry Officer. But as the Disciplinary Authority had found that the grounds, which were taken by him, were not tenable, that is why the Enquiry Officer was not changed. Merely because Shri A.W.Beg was appointed as Enquiry Officer, his appointment cannot be said to be in violation of the rules and which may vitiate the enquiry. It was within the jurisdiction of the Disciplinary Authority to change the Enquiry Officer but as no good ground for the same was found, he was within his right to reject the said application. The applicant was intimated that after having considered the application, there was no justification for change of the Enquiry Officer and the pleas, which were raised by the applicant, were even considered by the Director, Postal Services. The applicant failed to participate in the enquiry proceedings and pleaded before the Enquiry Officer that he has applied to the Senior Superintendent of Post Offices for change of the Enquiry Officer and he will not participate in the enquiry proceedings unless the Enquiry Officer is changed. -d- It was in these circumstances that there was no option before the Enquiry Officer but to proceed ex parte, though in between also information was given. As a matter of fact, these pleas were taken into consideration by the appellate authority but it appears that the appellate authority passed the order without giving personal hearing to the applicant and as such the appellate order is quashed and the appellate authority is directed to decide the appeal after taking into consideration the pleas of the applicant after giving personal hearing to him. Let the appeal

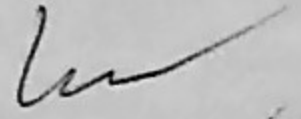
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be decided within a period of three months from the date of communication of this order. With these observations, the application stands disposed of. No order as to costs.


MEMBER (A)



VICE CHAIRMAN.

DATED: DECEMBER 4, 1992.

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