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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

O.A. No. 727 of 1987.

Brij Kishore SrivastavaApplicant.

Versus

Union of India & 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.)

Against the removal order, the applicant has approached this tribunal.

2. The applicant was working as Sub-Post Master, Swaroop Nagar, Kanpur. On 20.10.82, a charge sheet was issued for alleged forged withdrawal of Rs.4000/- from one particular Saving Bank account in the absence of the actual depositor namely Shri Arun Kumar Gaur. According to the charge sheet, mis-appropriation, if any, took place on 30.11.81 and the said irregularity was discovered on 22.12.81 and the applicant was suspended on 1.1.82 which took effect from 6.1.82. In the preliminary enquiry, the statement of Arun Kumar Gaur was recorded by the Enquiry Officer. According to the applicant, the Enquiry Officer during the preliminary enquiry, threatened him and used coercive measures with the result the applicant deposited a sum of Rs.4020/- on 28.12.81 along with interest because of the threats. The charge-sheet which was given to the applicant some nine months after the date of suspension. An enquiry was held and the acting Superintendent of Post Offices was appointed as Enquiry Officer. The Enquiry Officer after concluding enquiry, against which the applicant has raised a number of grievances, submitted his report to the Disciplinary Authority.

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One of the grievances is that during the course of enquiry, said Arun Kumar Gaur was not produced at all for proving the complaint as well as its correctness. In the report (Annexure V), the Enquiry Officer held that the charge that while functioning as Sub-Post Master the applicant made a fraudulent withdrawal of Rs.4000/- from the Swaroop Nagar Saving Bank Account and thus failed to maintain absolute integrity, was proved and there was violation of certain rules but it was not proved that the Saving Bank ledger of Swaroop Nagar SO contained the entries of correct balance and the charge for violation of Rule 425(I) of P & T Manual Vol.VI Part II and Rule 3-1(i), (ii) and (iii) of CCS(Conduct) Rules was also not proved, but the charge that he failed to maintain absolute integrity and devotion to duty was proved. The Disciplinary Authority, it appears, did not agree with the findings recorded by the Enquiry Officer in respect of charges in which the applicant was not held guilty and without issuing a show cause notice he held that all the charges were proved and consequently the Disciplinary Authority dismissed the applicant from service. The applicant filed an appeal against the same. In the appeal, the applicant raised a number of grounds including that there being difference in the opinion of Enquiry Officer and Disciplinary Authority, no opportunity, whatsoever, was given to the applicant and further no show cause notice was given to him against the proposed punishment. The appellate Authority dismissed the appeal vide order dated 30.1.86. Subsequently, the applicant took a ground that the Enquiry Officer's report was not given to him and it was supplied to him on 25.4.85 along with the punishment order with the result that he was disabled

from making any representation against the same. But as this amendment was made at a late stage in the year 1992 and the plea taken by him is that the entire proceeding is vitiated because of non-supply of Enquiry Officer's report, will not be a ground for setting aside the punishment order.

3. Learned counsel for the applicant seriously contended that the material used against him was not given to him and that he was deprived of the copies of various documents and the order has been passed by an authority which is not competent to do so. The Enquiry Officer was not a competent authority. In the absence of statement of the complainant who alone could have proved the complaint, the entire enquiry was vitiated and the finding so-recorded was not a finding in the eye of law. It has also been contended that he was not given second opportunity to call defence witnesses and a verbal request was made at the time of departmental enquiry. A great stress has been made on non-supply of certain documents to the applicant which would have enabled the applicant to defend himself. In support of his contention regarding non-supply of documents which prejudiced the case of the applicant, learned counsel for the applicant has made reference to the case of Triloki Nath Vs. Union of India & others ' 1967 SLR 659, wherein it has been held that if a public servant, facing an enquiry, was not supplied copies of documents, it would amount to denial of reasonable opportunity. Reference has also been made to the case of 'State of Punjab Vs. Bhagat Ram' AIR 1974 S.C.2335 wherein it has been held that " Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so by cross-examining the

witnesses produced against him. The object of supplying the statements is that the Government servant will be able to refer to the previous statements of the witnesses produced to be examined against the Government servant. Unless the statements are given to the Government servant, he will not be able to have an effective and useful cross-examination."

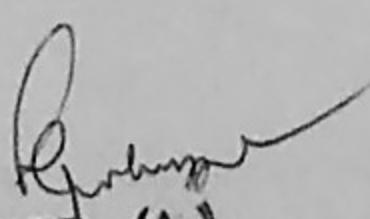
Reference has been made to the case of "Kashinath Dikshita Vs. Union of India & others" 1986 ATC 176 wherein it was held that in the absence of copies of documents, the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. The court in that case held that "appellant was prejudiced in regard to his defence on account of the non-supply of the statements and documents. The appellant would have needed those documents and statements in order to cross-examine the 38 witnesses and to make effective arguments. Although the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes, but even in this connection the reasonable request of the appellant to have the help of his stenographer was refused. Thus, the appellant had been denied reasonable opportunity to defend himself."

In the instant case, all such pleas were raised before the Appellate Authority and we have found that the statement of the witness recorded in the preliminary enquiry i.e. the complainant has been taken into account who has not been cross-examined and the applicant had no opportunity to cross-examine him and further the copies of the documents which the applicant had been demanding from the very beginning and which

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were available for the purpose of the case, were not supplied to him with the result that he was deprived of his right to cross-examine the witness effectively. The applicant had also made a request for cross-examining the witness but his request was not allowed. Thus, from these grounds, it is clear that a reasonable opportunity to defend himself was not given to the applicant and no show cause notice was given to the applicant. No version was taken on the question as to whether there was disagreement between the Disciplinary authority and the Enquiry Officer and which was the requirement of principle of natural justice, the absence of which vitiates the entire proceedings as has been held in the case of 'Narainii Mishra Vs. State of Orissa' 1969 SLR 697. The cumulative effect, coupled with the fact that the Enquiry Officer's report was not given to the applicant which would have enabled him to file an effective representation against the same at that stage to point out the various flaws, is that the applicant was not given reasonable opportunity to defend himself and in these circumstances the entire proceedings are vitiates. Accordingly, this application is allowed and the orders dated 28.3.85, 30.1.86 and 27.2.87 are quashed. However, it will be open for the Disciplinary Authority to go ahead with the enquiry in accordance with law after giving reasonable opportunity of hearing to the applicant. No order as to costs.


MEMBER (A)

DATED : DECEMBER 2, 1992.

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VICE CHAIRMAN.