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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

.....

Registration O.A. No. 263 of 1988

Thakur Prasad Dwivedi Applicant.

Versus

Senior Superintendent Posts
Gorakhpur and another Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

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

The applicant who was a Branch Postmaster at Shikargarh Branch Post Office and was removed from service on 31.12.1986. In between 17.10.1978 and 31.12.1986 one F.I.R. was lodged against the applicant at Police Station Purenderpur and according to the F.I.R., the applicant was charged on 4 counts ;

- (a) Misappropriation of Rs. 634/- deposited by one Smt. Shobha Devi for opening a new Savings Bank Account.
- (b) Mis-appropriation of Rs. 700/- and Rs. 1295/- deposited on 13.7.1978 and 20.5.1978.
- (c) Misappropriation of Rs. 100/- deposited on 1.11.1977 another Rs. 100/- and Rs. 50/- on 27.7.1978.
- (d) Misappropriation of Rs. 94/- deposited by Shri Satya Narayn Head Master Primary School Bandha.

A departmental enquiry was instituted against the applicant and a charge-sheet was given to him on 25.11.1985 containing two charges. The enquiry officer held that the first charge was proved and the second charge was not proved and submitted his report to the disciplinary

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authority, the disciplinary authority disagreeing with the findings recorded by the enquiry officer held that both the charges were proved and consequently passed an order removing the applicant from service. The applicant has approached the Tribunal and according to him the finding was not based on the relevant evidence and the enquiry officer has acted as hand writing expert which he should not have. The main emphasis has been drawn on the ground that he was not given full opportunity to defend himself in as much as he prayed that he may be allowed to look into 12 additional documents but 11 were not shown to him and the enquiry officer did not discuss the reason for the non-supply of the documents requisitioned by the applicant. So far as the charge is concerned, it was not also speaking order but it has been contended that the applicant was deprived of an opportunity to defend himself and the learned counsel for the applicant tried to elaborate his arguments by contending that when the disciplinary authority was of the view that both the charges against him were proved and, an opportunity should have been given to him and without taking his explanation, in respect of the same, no finding could have been recorded against him. The learned counsel contended that as the enquiry officer exonerated the applicant in respect of one charge, the applicant should not have been given this punishment and in case, an opportunity would have been given to him, he would have explained that the charge has not been proved or that he was not responsible for the same, the same should not have been looked into for awarding the punishment to him. In this connection a reliance has been made on the case of Narayan Mishra Vs. State of

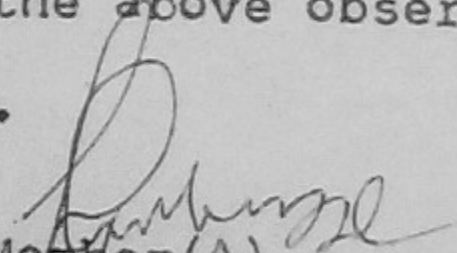
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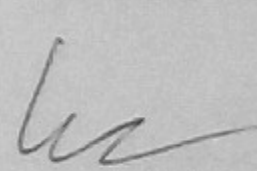
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Orissa (S.C.), 1969 S.L.R. 657, wherein it has been said that whenever the principle of natural justice is enjoined, the duty upon the disciplinary authority to give an opportunity to the delinquent employee in case he disagrees with the findings recorded by the enquiry officer and award with the findings recorded by the enquiry officer and award a punishment and practically the same thing arises in this case. Accordingly, this application deserves to be allowed in part and so far as the punishment order is concerned, the same is quashed and the enquiry shall be deemed to be continued. It will open for the disciplinary authority to give a notice to the applicant and take his version in arriving at a finding as to whether both the charges against the applicant are proved or not, and after taking the version of the applicant if the charges were proved against him, it will be open for the disciplinary authority to pass any order or to award any punishment against the applicant within the ambit of law. The applicant has not worked during all the period, as such, he will not be entitled to emoluments. So far as the salary and emoluments from this date is concerned, the same shall follow the result of the order passed by the disciplinary authority. The application is disposed of with the above observations. Parties to bear their own costs.


Member (A)


Vice-Chairman

Dated: 28.3.1992

(n.u.)