

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

\*\*\*\*\*

Allahabad this the 8th day of August 1996.

Original application No. 698 of 1988.

Hon'ble Dr. R.K. Saxena, JM  
Hon'ble Mr. D.S. Baweja, AM

Ram Narain Prasad, S/o Bhulan,  
aged about 30 years, R/o Village  
Jawahi Malhi, Mustakeel, Post  
Jawahi Dayal, District Deoria.

..... Applicant.

C/A Sri D.C. Saxena

Versus

1. Union of India through Director  
Postal Services, Allahabad.
2. Senior Suptd. of Post Offices, Deoria.
3. Assistant Suptd. of Post Offices,  
Padrauna, Deoria.

..... Respondents.

C/R Km. S. Srivastava

O R D E R

Hon'ble Mr. D.S. Baweja, AM

Through this application filed under Section 19 of the Administrative Tribunals Act 1985, order dated 18.5.87 of the disciplinary authority imposing punishment of removal from service and order dated 1.9.87 of the appellate authority rejecting the appeal have been challenged with a prayer to quash the same

Contd...2....

and put back the applicant on the post of Extra Departmental Postman with all benefits.

2. The applicant while working as a Extra Departmental Postman at Jawahi Dayal, Branch Post Office District Deoria, was put off duty on 19.2.86. He was issued a chargesheet dated 26.4.86 under Rule 8 of Extra Departmental Agents (Conduct and Service) Rules 1964. The applicant submitted defence against the same dated 6.5.86. Sh. C.B. Tripathi, complaint Inspector was nominated as an inquiry officer. The inquiry officer submitted his report on 31.3.87. The disciplinary authority considering the inquiry report, imposed a penalty of removal from service vide order dated 8.5.87. The applicant made an appeal against the same and the appeal was also rejected vide order dated 18.5.87. The applicant also preferred another appeal to the higher authority, Director Postal Service, Allahabad on 29.2.87 which is stated to be pending.

3. The applicant has challenged the impugned orders on the grounds (a) the applicant has been deprived of the right of being represented through as defence assistant as the nominated defence assistant was not spared by the Department on the dates fixed for inquiry and thus there has been denial of principles of natural justice. (b) The inquiry officer concluded the report without corss-examination of the listed witnesses by the defence witness and without exchange of the written briefs by the presenting authority and the applicant as ordered dated 19.3.87. The presenting officer handed over the written brief to the applicant on 3.4.87

and the applicant send the written brief by registered post on 4.4.87. The inquiry was finalised without waiting for the briefs and handed over to disciplinary authority on 31.3.87. (c) The disciplinary authority has passed the impugned order dated 18.5.87 mechanically without considering the relevant facts and circumstances of the case and therefore the said order is wholly vitiated.

4. The respondents in the written statement have strongly refuted the averments made by the applicant. It is submitted that applicant has been chargesheeted for being absent from duty from 28.11.85 to 30.11.85 and 5.12.85 to 15.12.85 without submitting any information or leave application or providing any substitute for his absence, and therefore causing serious dislocation of the public work. The applicant had nominated Sh. Ramesh Chaturvedi as his defence assistant. The inquiry was commenced on 18.9.86 and further dates of hearing were fixed on 7.10.86, 17.10.86, 22.1.87, 25.2.87, and 19.3.87. Though the petitioner was present on each of these dates fixed for inquiry proceedings, but his defence assistant did not attend the inquiry. The applicant examined the relevant documents which were relied upon and in his presence the statement of the witnesses, Branch Post Master, Deorai was recorded on 25.2.87 and the applicant did not raise any objection and he also did not cross examine him. The inquiry was concluded on the same date. The applicant however moved an application dated 3.2.87 on the last stage of proceeding and another defence assistant Sh. Panch Deo Dwivedi was nominated by him. One more opportunity was given to produce his defence assistant on

19.3.87. When the inquiry date was fixed, on this date also his defence assistant did not come and the inquiry was concluded. Thereafter he was asked to file his defence statement by 30.3.87 even that was not filed. The presenting officer also did not file any written brief and after waiting, the inquiry officer finalised the inquiry on 30.3.87 and submitted his inquiry report. As per the inquiry report, the charges levelled against the applicant were proved and agreeing with the inquiry officer's findings, the disciplinary authority has passed the order dated 18.5.87 imposing punishment of removal from service after due application of the mind. The respondents have also submitted that it was ~~duty~~ of the applicant to produce his defence assistant nomination of which had been approved. He never made any application to the inquiry officer as to why his defence assistant has not come to defend his case. Charge of nomination of defence assistant was <sup>also</sup> allowed but he also did not attend the inquiry. The respondents have strongly contended that it is not the responsibility of the inquiry officer to seek relieving of defence assistant. It is for the applicant to take help of the defence assistant. It is also denied that ~~any~~ <sup>any</sup> written brief was handed over to inquiry officer. The disciplinary and appellate authority have passed the orders considering all the aspects with due application of mind. As regards the submission of 2nd appeal, it is submitted that as per the Extra Departmental Agents (Conduct and Service) Rules, there is no provision of any further appeal after disposal of first appeal. In view of the above facts

Contd...5....

brought out in the counter, the respondents contend that none of the grounds taken by the applicant are sustainable in the eye of the law and as such the application is devoid of merits and deserves to be rejected.

5. Heard the learned counsel for the parties. The applicant has filed the rejoinder affidavit in reply to the counter affidavit refuting the contentions raised in the counter and reiterating the submissions made in the original application. We have also gone through <sup>the material on record and</sup> the arguments advanced during the hearing.

6. The main grounds advanced by the applicant and reiterated during the hearing <sup>in</sup> assailing the impugned orders are detailed in para 3 above. Before we consider the first ground with regard to denial of assistance of the defence assistant in defending his case, we will deliberate on the other grounds taken. One of the contentions of the applicant is ~~to~~ finalisation of the inquiry report without waiting for the oral or written briefs of the presenting officer and the delinquent employee. It is accepted by the applicant that the inquiry officer had given date of 30.3.87 for exchange of written briefs by the presenting officer and the applicant. However no written brief was submitted till 30.3.87 and the inquiry officer finalised the inquiry report and submitted the same to the disciplinary authority. The applicant has contended that he received the written brief from the presenting officer only on 3.4.87 and thereafter he sent his written brief to the inquiry officer on 4.4.87 by the registered post. This contention does not appeal. If the applicant was serious to file his written brief and he had not received the brief from the

(13)

A2  
6

:: 6 ::

presenting officer according to the time allowed, he should have brought to the notice of the inquiry officer well in time that he is not able to submit his written brief and some more time should be allowed before finalisation of the inquiry. There is no averment to this effect in the application or in the rejoinder. This shows that the time allowed upto 30.3.87 by the inquiry officer was not taken seriously. If both the presenting officer as well as the applicant do not submit the written briefs as per the targeted date and also do not indicate the reasons for delay, then the inquiry officer is not expected to wait or check with regard to submission of the written briefs. It was for the presenting officer and the applicant to avail this opportunity to defend their cases. We are, therefore, unable to find merit in this argument of the applicant that he has been denied to defend his case through submission of written brief before finalisation of the inquiry.

7. The next pleading made by the applicant is that the order by the disciplinary authority has been passed in a mechanical way and the same does not show the application of mind. We have gone through the order of disciplinary authority and do not find any infirmity in the same. If the findings are positive establishing the charges and disciplinary authority after going through inquiry report endorses the same then it certainly indicates the application of mind.

8. Now we take up the pleading of denial of defence assistant. It is admitted fact the defence

Contd...7...

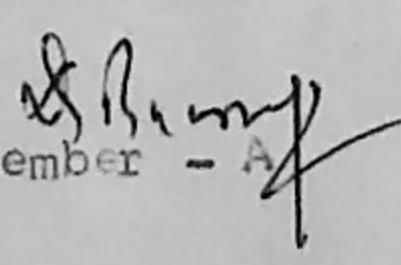
assistant was nominated by the applicant and the same was advised to the inquiry officer. The main issue is about the non-sparing<sup>of</sup> him by the Administration. The applicant has contended that Sh. Ramesh Chaturvedi Postal Assistant Seorahi Sub Post Office who was nominated as his defence assistant, was not spared by the Administration on any of the dates fixed for the inquiry. The applicant then changed his defence assistant and nominated Sh. Panch Deo Diwedi, Postal Assistant of Gauri Bazar Sub Post Office. Even he was also not spared. The applicant has further averred that no reasons were communicated either to the inquiry<sup>officer</sup> or the applicant for non-sparing<sup>of</sup> the defence assistant by the controlling authority for any of the dates of inquiry. The respondents on the other hand strongly refuted these contentions stating that it is for the applicant to take help of the defence assistant. Once the name has been accepted by the inquiry officer, it is for the applicant to arrange his presence on the dates fixed for the inquiry. The inquiry was fixed on several dates successively but the defence assistant did not turn up and the applicant at no stage brought to the notice of the inquiry officer that his defence assistant was not attending the inquiry on account of not being spared by the controlling authority. We are not in agreement with this stand taken by the respondents. Though it is agreed that the applicant should have brought to the notice of inquiry officer about his defence assistant being relieved but the primary responsibility of sparing is that of the controlling officer. The delinquent employee is free to secure assistance of any other Government servant but it is necessary for the latter to obtain the permission of the controlling authority to absent himself from the office on the dates fixed for inquiry. When the delinquent employee

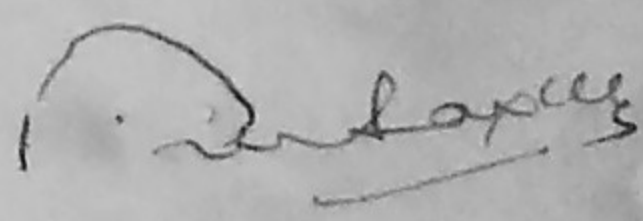
informs the inquiry officer of the nomination of his defence assistant, then it is incumbent on the part of the inquiry officer to inform the concerned controlling authority. If however the controlling authority is not able to release the nominated defence assistant on account of compelling reasons, he should advise so to the inquiry officer so that the delinquent employee can be asked to nominate another defence assistant. The inquiry officer is also required to intimate the date and place of the inquiry to the controlling authority as well as the defence assistant well in time. In case the controlling authority is not able to release the defence assistant due to administrative exigencies on a particular date fixed for the inquiry, it is incumbent on the part of the controlling officer to intimate the reasons for not sparing to <sup>the</sup> inquiry officer as well as the delinquent employee. From the averments made in the counter, it is clear that no intimation for any of the dates had been sent by the controlling authority for non sparing of the defence assistant. Counter reply is also <sup>silent</sup> relevant with regard to informing the controlling authority about the nomination of the defence assistant, endorsing the copy of the letter fixing the date of inquiry to the controlling authority and the defence <sup>assistant</sup> witness. There is also no averment to the effect whether the controlling authority had any objection to the appointment of the defence assistant on the administrative exigencies. The respondents have simply evaded these aspects which were required to be kept in view for compliance to ensure that there is no denial of principles of natural justice. From the stand taken by the respondents, the only inference that can be drawn is that neither the inquiry officer nor the controlling officer

have bothered to ensure the release of the defence assistant on the dates, inquiry was fixed and the inquiry was mechanically being postponed and fixed on the successive dates by the inquiry officer. In consideration of this background, we are compelled to conclude that the applicant has been denied the facility of taking the assistance of defence assistance and thereby causing denial of principles of natural justice.

9. From the above discussions, we find that none of the grounds taken by the applicant other than the denial of defence assistant based on which the impugned orders have been challenged, have any merit. However the denial of the assistance of defence assistant infringes the principles of natural justice and the impugned punishment orders passed based on <sup>such an</sup> inquiry report, are not sustainable in law and therefore deserve to be quashed.

10. In the result of the facts detailed above, the application is allowed quashing the inquiry report and the impugned orders dated 18.5.87 and 1.9.87 of the disciplinary and appellate authority respectively. The applicant will be restored in service and the period from the removal from service till the reinstatement will be dealt with as per the extant rules. The respondents will be however free to hold fresh inquiry following the rules, if so desired. No order as to costs.

  
 Member - A

  
 Member - J

Arvind.