

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A.No./T.A.No. 391 of 1990

Date of decision 10/9/98

B. hikari Lal

Applicant(s)

C/A

Sri RK Tewari

COUNSEL for the
Applicant(s)

Versus

UI & Ors.

Respondent(s)

Sri NB Singh


Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. S. Dayal, A.M. V.C./Member()

Hon'ble Mr. S.K. Agrawal, J.M. Member ()

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not ? Yes
3. Whether their Lordship wish to see the fair Yes copy of the judgment ?
4. Whether to be circulated to all Benches ? No


(SIGNATURE)

MANISH/

RESERVED

(A2/1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

* * *

Allahabad : Dated this 10th day of September, 1998

Original Application No.391 of 1990

District : Budaun

CORAM: -

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K. Agrawal, J.M.

Bhikari Lal
S/o Sri Lachhoo Lal
R/o Vill & Post-Arifpur Newada
Distt-Budaun.

(Sri R.K. Tewari, Advocate)

. Applicant

Versus

1. Sub Divisional (Inspector posts)
East Sub Division, Budaun
2. Superintendent Posts, Budaun.
3. Union of India through the
Secretary of Communications,
New Delhi.

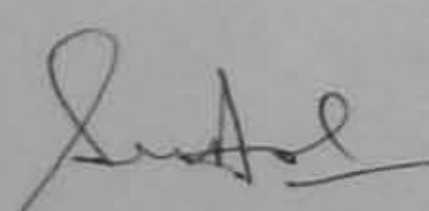
(Sri NB Singh, Advocate)

. Respondents

O R D E R

By Hon'ble Mr. S.K. Agrawal, J.M.

In this OA the prayer of the applicant is to quash the punishment order dated 23-7-84 passed by the SDI (Posts) East Sub Division, Budaun and the appellate order dated 1-5-1989 passed by the Superintendent (Posts), Budaun.



2. In brief, the facts of the case as stated by the applicant are that the applicant had entered the Department of posts on 1-10-1968 as an Extra Departmental Mail peon at Arifpur, Newada Branch postoffice in Budaun Postal Division. He was served

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with a Memo of Charges by the Sub Divisional Inspector (Post Offices), East Sub Division, Budaun vide Memo No. A/Arifpur, Newada dated 23-7-1984. The applicant denied the charges and as such an Inquiry Officer was appointed to hold an enquiry. The charges were not established in the enquiry. Nevertheless, respondent no. 1 awarded the applicant the punishment of removal from service vided Memo No. A/arifpur, Newada dated 23-7-1984.

3. It is further submitted that despite the repeated requests the respondent no. 1 did not supply the copy of the enquiry report to the applicant alongwith the punishment order which was mandatory on the part of the respondents before passing the order of punishment. Non-supply of the enquiry report makes the punishment order unsustainable as observed by the Calcutta Bench of the Tribunal in DA No. 432 of 1986 and by the Hon'ble Supreme Court in Union of India Vs. E. Bhashyam reported in AIR 1989(1) Page 50. It is also stated that the respondent No. 1 did not agree with the findings of the Inquiry Officer. He held the charges proved but the applicant was not given any opportunity to submit his defence. This punishment order was passed ex parte and was not maintainable in law. It is further submitted that the applicant belongs to Scheduled Caste. He applied for leave from 10-7-1979 to 10-8-1979 to respondent no. 1 for his eyes operation. The leave was sanctioned. After the expiry of the leave, the applicant went to the Post Office and requested Sri Noor-Ahmad to let him resume his duties. He refused

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to hand over the charge to the applicant and asked him to contact Sri Y.R. Pathak, I.P.O. Then the applicant contacted Sri Y.R. Pathak, but he also refused to permit the applicant to join duty and in this way the applicant remained absent from duty beyond 180 days, not intentionally but he was not allowed to join duty. It is further submitted that the applicant preferred an appeal to the Superintendent Post Offices, Budaun, respondent no.2 but it remained undecided. Inspite of repeated reminders respondent no.2, instead of forwarding Memorial to the President decided the applicant's appeal on back date. The appellate order is quite silent and none speaking of inquiry report and not granting adequate opportunity to the applicant. As such, the appellate order is also not maintainable and in this way by this Original Application the applicant makes a prayer to quash the impugned order of punishment dated 23-7-1984 passed by the Sub Divisional Inspector (Posts) and the appellate order dated 1-5-1989 passed by the Superintendent Post Offices, Budaun.

Sudhakar

4. A counter was filed. In the counter it was admitted that the applicant was granted leave from 10-7-1979 to 10-8-1979 and after the expiry of sanctioned leave, the applicant did not resume his duties and remained absent without any information for more than 180 days. It is stated in the counter affidavit that where an employee fails to resume duty on expiry of maximum period of leave admissible and granted to him, he shall be dealt with according to Rule 8 and he will be removed from service after following the procedure. It is also stated that

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in the counter that the disciplinary proceedings were started against the applicant under Rule 8. The applicant denied the charges which were issued to him on 8-4-1982. Full opportunity was provided to the applicant during the course of inquiry and the Inquiry Officer submitted its report after providing full opportunity to produce defence to the applicant but the Inquiry Officer completely ignored the case of the Department and, therefore, the disciplinary authority did not agree with the inquiry report and passed the punishment order on 23-7-1984 where he has disagreed with the finding and held that the charges leveled against the applicant have been ~~proved~~ *proved* as he remained absent beyond 180 days. The applicant preferred an appeal against the said order to the appellate authority on 27-8-1984 which was disposed of by a reasoned order dated 1-5-1989. It is further submitted that there was no need to provide with a copy of the disagreement order before passing the order of punishment against the applicant and every case should be decided in view of the facts and circumstances. In the instant case, the applicant remained absent beyond 180 days. Therefore, the impugned order was passed and the applicant is not entitled to any relief sought for.

[Signature]

5. The rejoinder affidavit was filed by the applicant. In the rejoinder affidavit, it is stated that non-supply of a copy of the inquiry report is against the principles of natural justice and non-supply of the copy of the order of the disciplinary authority disagreeing with the inquiry report has grossly violated the provisions of Rule 15(2) of

CCS (CCA) Rules. The said Rules laid down the statutory obligation upon the disciplinary authority that if it agrees with the findings of the Inquiry authority or any Article of Charge, shall record reason for such disagreement. The reasons have not been recorded and the copy of the said order was not communicated to the applicant before passing the impugned order of punishment. Therefore, the impugned order of punishment is liable to be quashed.

6. Heard learned lawyer for the applicant as well as learned lawyer for the respondents and perused the whole record carefully.

7. According to Sir Edward-Coke in Cooper Vs. Wordsworth, even God did not pass a sentence upon Adam before he was called upon to make his defence.

8. In Narain Mishra Vs. State of Orissa, 1969 SLR Vol III SC 657, it was observed that if the punishing authority differs from the findings of the Inquiry officer and held the official guilty of the charge from which he was exonerated by the Inquiry officer and no notice or opportunity was given to delinquent official about the attitude of punishing authority, the order will be against the principles of fairplay and natural justice and is liable to be set aside.

9. In K.K. Shashidhar Vs. Sub Divisional Inspector of Post Offices, 1991 (1) ATRCAT 304 Arnakulam Bench, held that there would be violation of Rules of natural justice and fairplay if the disciplinary authorities reasons for disagreement with the Inquiry officer's report, are not furnished to the delinquent. The same view also gives support in P.K. Sanmukh Lal Vs. UOI 1993(23) ATC 726.

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10. In SC Debnath Vs. UOI I & Ors., decided on 13-3-1997 (OA No.2619/90), 1998 CAT Page 209, it was held that when the disciplinary authority disagrees with the Inquiry Officer, the employee should be heard before imposing penalty.

11. In Chaudhary Roosevelt Vs. G.M. South Central Railway, Secunderabad and Ors., CAT (FB) Hyderabad 12, 1998, it was held that members of SC/ST enjoy no special privilege in the matter of transfer. The Circular/Letter No.78(SCT)/15/25 dt.16-7-78 is not enforceable by law.

12. In the instant case, it is an admitted position that the disciplinary authority disagreed with the report of the Inquiry Officer and without furnishing any copy of the order by the disciplinary authority disagreed to the delinquent, passed the impugned order of punishment of removal against the applicant. This order definitely is against the principles of natural justice and fairplay and, therefore, is liable to be set aside on this ground alone.

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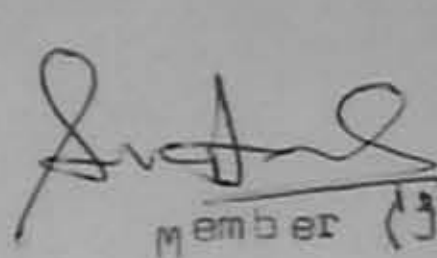
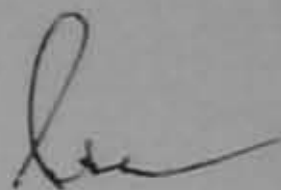
13. Since the disciplinary authority has passed the order of punishment against the applicant without following the principles of natural justice, therefore, any order in appeal against such an order is also liable to be quashed and this case be remitted again to the competent authority to pass the order in accordance with law.

14. Therefore, this original application is allowed and the impugned order passed by the disciplinary authority dated 23-7-1984 and the order passed by the appellate authority dated 1-5-1989 are hereby quashed and the case is remitted back to the concerned authority who first of all will serve upon a copy of the order of disagreement alongwith the inquiry report to the applicant and thereafter the applicant shall file a representation



against it within a period of one month and after considering the representation filed by the applicant the disciplinary authority shall pass an order in accordance with law.

15. No order as to costs.


Member (1967/98) 
Member (A)

Dube/