

CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH  
ALLAHABAD.

O.A. No.588/92.

Shri Phool Chand Sonker :::: Applicant

Vs.

Union of India &  
Others. :::: Respondents.

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

Hon.Mr. A.K. Sinha, J.M.

(By Hon. Mr. K. Obayya, A.M.)

The applicant, who is employed in the Postal department, was subjected to disciplinary proceedings. A charge memo dated 12/4/85 was served on him and upon denial of the charges regular enquiry proceeded. The disciplinary authority, by order dated 5-2-88, passed punishment order reducing the applicant by one stage in his pay from Rs.1450/- to Rs.1420/- for one year, without affecting future increments and also recovery of Rs.10,000/- in 36 instalments at the rate of Rs.280/- per month, the last instalment being Rs.200/-. Against the punishment order the applicant preferred appeal and the appellate authority vide order dated 31/1/90 modified the order of reduction to the lower stage for 6 months without cumulative effect. The recovery part of the punishment was maintained. Thereafter the applicant preferred a revision petition, but the order of the appellate authority was confirmed.

2. The charges against the applicant related to the period when he was working as Cashier in H.R.O.

Gorakhpur, during the year 1982. The charge memo was for violation of rules in the postal Manual and also CCS (Conduct) Rules. The charge memo contained 4 charges. Charge No.1 related to failure of the applicant to keep separate records of the U.P. Postal Co-operative Bank and Recreation Club, thus violating the instructions contained in Rule 559 read with Appex. 29 of F.H.B. Vol.I. Charge No.2 was for failure to hand-over the cash personally. Charge No.3 was for his failure to verify the cash put in the cash box and the Charge No.4 related to taking away of cash to the extent of Rs.20,000/--.

3. The Enquiry Officer held in his report that the charges 1, 3 & 4 were not proved while charge No.2 was established. The disciplinary authority, however, disagreed with the finding of the Enquiry Officer in regard to charge No.4, though he has given reasons for the same.

4. The learned Counsel for the applicant urged that the enquiry was not held properly, witnesses were not examined and also copy of the enquiry report was not given to the applicant before passing the punishment order.

5. The learned Counsel for the respondents, however, countered these contentions by stating that the benefit of the decision of the Supreme Court in the case of Mohmad Ramzan Khan (AIR 1991 S.C. 471) is not available to the case of the applicant, as <sup>in</sup> a number of subsequent decisions the Supreme Court has clarified that this judgement will be applicable only prospectively and not retrospectively.

Admittedly the punishment order was dated 5/2/88 and as such non-furnishing of the enquiry report would not vitiate the disciplinary proceedings.

6. The learned Counsel for the applicant urged that the disciplinary authority disagreed with the findings of the Enquiry Officer, but the applicant was not informed of reasons of disagreement to enable him to make representation against the same and as such the proceedings are vitiated and violative of <sup>Principles of</sup> natural justice and the punishment order passed thereafter cannot be said to be a proper order and is a void order.

7. We have heard the Counsels of the parties. We have also carefully gone through the record. In this case, the disciplinary authority disagreed with finding of enquiry officer on charge 4, and punishment order was passed by holding that charge 4 is established. The disciplinary authority, no doubt, has given reasons for disagreement, but the applicant was not informed of the same, nor opportunity given to him to make representation. The learned Counsel for respondents tried to justify impugned orders by pointing out to the appellate order wherein all the pleas raised were discussed. This may be so. But it cannot be said that appellate order cures the infirmity in the disciplinary proceedings. Reference may be made to the decision in the case of Narain Mishra (1969 SLR 657) wherein the Supreme Court held that the disciplinary proceedings are vitiated if no notice or opportunity is given to the charged officer for making representation against disagreement recorded by disciplinary authority with the findings of the Enquiry Officer. In view of the above legal position we are of the view that the impugned orders passed by the disciplinary authority is liable to be quashed and the same is quashed. The orders of appellate authority and also order in revision, arising on the punishment order of disciplinary authority, in the circumstances, cannot stand and they are also quashed.

It is, however, open to the respondents to proceed with the disciplinary proceedings from the stage of furnishing reasons for disagreement with the enquiry report and giving opportunity to the applicant to make representation against the same and thereafter pass orders in accordance with law. The application is allowed as above. No order as to the costs.

*Ashok Kumar Sinha*  
Member (J)

*Quahyze*  
Member (A)

Dated: 26 /3/1993, Allahabad.

(tgk)