

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1064 of 1992

R.B.Sharma Applicant.

Versus

Union of India & Ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.N.)

This application has been filed under Section 19 of the Administrative Tribunal Act for quashing order dated 11.6.1992 upholding the punishment order dated 20.12.1991 passed by the disciplinary authority and for a direction to the Senior Superintendent Post Offices, Allahabad to refund the amount recovered from the salary of the applicant.

2. The Petitioner, Shri R.B.Sharma was posted as Head Treasurer Allahabad Kachehari Post Office during the relevant period. It is said that on 31.12.1986, the applicant closed and sealed the leather cash bag of Mau Aima Sub Post Office containing remittance of 15,000/- with the help of Shri Babu Lal, Group 'D'. It is further alleged that the cash, said to have been kept and sealed in the leather cash bag, was found missing when the same was received at the destination post office. The applicant, is alleged to have violated the Rules by taking the help of Group 'D' in closing and sealing the leather cash bag. A departmental proceeding, accordingly, was initiated against the applicant by the Senior Superintendent Post Offices Allahabad and

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chargesheet dated 1.6.1989 (Annexure A-2) was served on the applicant. The applicant submitted his written statement of defence on 1.7.1989 and the disciplinary authority passed punishment order withholding increment for one year without cumulative effect and recovery of Rs. 5000/- being portion of the loss sustained by the department. The Appellate Authority, however, by order dated 26.11.1989 allowed the appeal and remitted the proceeding for denovo trial from the stage of issuing of chargesheet with a direction that the proceedings must be finalised within the prescribed time frame observing all the laid down Rules/procedures on the subject. Fresh chargesheet was served on the applicant on 8.10.1991 vide Annexure A-7 and he was called upon to submit his representation by 18.10.1991. The disciplinary Authority passed order dated 20.12.1991 (Annexure A-11) passed fresh punishment order directing recovery of a sum of Rs. 3000/- being portion of the loss sustained by the department in 20 instalments of Rs. 120 each. This punishment order passed by the disciplinary authority was appealed against. The Appellate Authority by order dated 11.6.1992 (Annexure-13), has upheld the punishment order passed by the disciplinary authority.

3. The impugned orders have been assailed interalia on the ground that the direction given by the appellate authority in the appellate order remitting the proceeding to hold denovo proceeding and provisions of Rule 106, 107 and 111 of the P&T Manual Vol. II have not been complied with and also that the appellate authority has based its conclusions

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on statements of witnesses who were examined in absence of the applicant without giving opportunity to crossexamine.

4. It was stated that according to the directions given by the appellate authority in order dated 26.11.1989 (Annexure A-6), the chargesheet to be served upon the applicant in *denovo* proceeding should have contained the details as indicated in Rule 106, 107 and 111 of the P&T Manual Vol.II. The chargesheet submitted earlier is Annexure A-2 and the chargesheet submitted after remand of the proceeding may be seen at Annexure A-7. A comparision of Article of charges of the two chargesheets would disclose that the contents of the two except some changes of words here and there, remain the same. According to the directions issued by the DG-P&T vide its letter No. 114,116/78-Discs II dated February 13, 1981 in proceedings relating to recovery of pecuniary loss caused to the Government by negligence or breach of orders by a Govt. servant, penalty of recovery can be imposed only when it is established that the Govt. - servant was responsible for a particular act or acts of negligence or breach or orders or rules and that such negligence or breach alone has caused the loss. These particulars have to be incorporated in the chargesheet. From the perusal of the chargesheet, it would appear that it is nowhere been specified as to how the loss took place and that but for the lapse of the applicant, the loss could have been avoided. The chargesheet also does not disclose as to which of

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particular lapse of the applicant or nonobservance of Rule /Instruction by him resulted in the alleged loss. The appellate authority in its order, Annexure A-6, had remitted the proceeding to the disciplinary authority for denovo proceeding with a direction to reframe the charges after removing the aforesaid defects. It seems that the disciplinary authority has merely observed the formality of reframing the chargesheet by making some changes in the language here and there. The direction of the appellate authority, thus, has not been complied with in substance and as such the defect of chargesheet which resulted in the remand of the proceeding ^{has} remained, as it was. This has, in our opinion, resulted in the violation of the principle of natural justice because in absence of such details the delinquent officer is not in a position to defend himself properly. That being so, the punishment based on the defective chargesheet, cannot be upheld.

5. It was next argued that the disciplinary authority as also the appellate authority have based their conclusions on statements of persons whose evidence was recorded in fact finding inquiry. As no witness was examined in the disciplinary inquiry, the applicant had had no opportunity of crossexamining the witnesses on whose statements, the disciplinary authority as also the appellate authority have recorded their findings. The disciplinary authority has come to the conclusion that the applicant had violated Rule 601(3) of the P&T Manual Vol.VI Part -3 on the basis of the statement of Group 'D'. The appellate authority

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has gone a step further and has clearly stated in para 4 of his order that the version of Shri Babu Lal Group 'D' is well supported by Shri Brij Mohan Lal Srivastava Sub A/c Asstt. and Jagat Narain Gupta Mail Asstt. who in their written statement dated 1.1.1987 recorded by Shri B.N.Ram the then office supervisor.

The extracts of the statements have been quoted in page 2 of the order. The appellate authority has come to the conclusion that the applicant had taken the help of Group 'D' for closing and sealing leather cash bag on the basis of evidence of witnesses named in his order. The applicant has all along denied this allegation. He has stated that he had closed and sealed the bag without any assistance and that he had taken the help of group 'D' for carrying the sealed bag. In that view of the matter, examination of the witnesses whose statements have been relied upon by the disciplinary authority and the appellate authority in the departmental proceeding was necessary.

The statement of witnesses referred to in the order of the appellate authority, admittedly, were not recorded in course of the departmental inquiry. For placing reliance on the statements of these witnesses, it was necessary to ~~not~~ examine them in the inquiry in presence of the delinquent officer so that he could have, if necessary, crossexamine them to elicit the truth. Nonexamination of the aforesaid witnesses in the departmental proceeding, in our opinion has prejudiced the defence of the applicant. Although the provisions of the Indian Evidence Act are not strictly applicable in departmental proceedings even

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then it is necessary to bring essential evidence on record to bring home charged framed against the delinquent officer.

6. On a careful consideration of the facts and circumstances of the case discussed above, we find and hold that Rules as contained in P&T Manual Vol III have not been complied, which has resulted in ~~in~~ failure of justice and also nonexamination of the witnesses in the departmental proceeding whose evidence has been relied upon by the disciplinary as well as the appellate authority has prejudiced the defence of the applicant. That being so, the impugned orders of punishment cannot be sustained. In the result, this application is allowed and the impugned orders are quashed. The proceeding is remitted to the disciplinary authority for *de novo* proceedings from the stage of issuing chargesheet in the light of the direction as contained in Annexure A-6 and examination of witness whose statements have been relied upon ~~by them~~ for passing order or punishment. The proceedings must be finalise within a period of 3 months from the date of service of this order. There shall be no order as to costs.

T. Verma

Member-J

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Member-A

Allahabad Dated: 27.5.94

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