

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 13th day of September 2000

Original Application no. 1071 of 1992.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member  
Hon'ble Mr. M.P. Singh, Administrative Member

Om Prakash Yadav,  
S/o Late Ram Kripal Yadav,  
R/o Village and Post Shamsabad,  
Phoolpur, Azamgarh.

... Applicant

C/A Shri K.P. Srivastava  
Shri Hemant Kumar

Versus

1. Union of India through its Secretary,  
Ministry of Communication, Govt. of India,  
NEW DELHI.
2. Director, Postal Services, Gorakhpur,  
Distt. Gorakhpur.
3. Senior Superintendent of Post Office,  
Azamgarh.

.. Respondents

C/Rs Km. Sadhana Srivastava

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O R D E R

Hon'ble Mr. S.K.I. Naqvi, Member-J

The applicant - Shri Om Prakash Yadav, has come up impugning punishment order as well as appellate order, copies of which has been annexed as annexure A-2 and A-1 respectively.

2. As per applicant's case he was posted as Extra Branch Post Master at Jagdishpur Branch Post Office in Distt. Azamgarh and was working as Branch Post Master for last 8 years. On 15.09.89, he proceeded on medical leave after handing over charge to his substitute Shri Kalap Nath Yadav. It was on 13.10.89, the Sub Divisional Inspector (Post Office) Phoolpur, Azamgarh took charge of Branch Post Office and expelled the substitute. On his return, the applicant was not given the charge and the Sub Divisional Inspector (Post Office) Phoolpur lodged a F.I.R. against the applicant on 20.01.90 under section 409 I.P.C., on the basis of complaint of Smt. Bhaunga Devi for alleged misappropriation of Rs. 15685/- from the T.C. account no. 39005, Rs. 11060.50 from T.D. account no. 39006 and Rs. 25100/- from S.B. Account no. 952659 making a total of Rs. 51851.50 and the applicant was also put off duty w.e.f. 20.12.89. Vide order dated 28.08.90, the applicant was informed that proceedings under section 8 of E.D. conduct and service Rule 1964 were to be initiated against him. The O.A further

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goes to narrate that the inquiry officer submitted his report on 24.12.90 to the disciplinary authority, who passed the impugned order on 31.01.91, through which the applicant was dismissed from service. Against this order the applicant preferred an appeal which was also dismissed on 19.08.91 (Annexure A-1). The applicant has come up before the Tribunal impugning the dismissal order as well as appellate order and has claimed for consequential benefits on the ground that the punishment order and the impugned order have been passed without application of mind by the authorities concerned and the applicant has been punished through ex parte proceedings without giving him reasonable opportunity of being heard. It has also been taken as ground that he was not provided with copies of relevant documents and statements recorded during preliminary inquiry. The appellate order has also been assailed on the ground that the order is non speaking.

3. The respondents have contested the case and filed CA and submitted that the impugned orders have been passed <sup>as per</sup> ~~after~~ due procedure <sup>as</sup> laid down in Rules in this regard. It has also been emphasised that due opportunity was afforded to the applicant during the disciplinary proceedings which he did not avail and therefore, he cannot complain <sup>at</sup> it, this stage.

4. Learned counsel for the respondents also

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made available to us the record regarding disciplinary proceedings against the applicant.

5. Heard learned counsel for the rival contesting parties and perused the record.

6. We find that the disciplinary proceedings were taken up against the applicant as exparte proceedings after holding that the applicant was duly informed of dates of hearing, but he himself abstained from participating in the proceedings. Km Sadhana Srivastava drew our attention towrds proceedings sheet dated 10.10.90 and pointed out that on that date and on <sup>applicant's</sup> ~~his~~ request the inquiry officer deferred the cross examination of the witnesses and also allowed him time to furnish the list of documents and defence witnesses by 01.11.90. With these facts learned counsel for the respondents emphasised that the applicant was afforded due opportunity to participate the proceedings.

7. We find that the first proceedings sheet is dated 15.10.90 and the next proceedings sheet is dated 24.10.90 and the third one is dated 30.11.90. There is no mention in the order sheet dated 24.10.90 that the next date of proceedins is 30.11.90. There is also nothing on record to show that otherwise the

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applicant was informed of this date i.e. 30.11.90. and the proceeding on 30-11-90 against the party charged ~~held~~ was without information to him and the matter was proceeded against the party charged with impugned ~~ex parte~~ proceedings which clearly indicates that all the proceedings on this date i.e. 30.11.90 were at the back of applicant for which he had no information and, therefore, he could not participate on that date to defend himself which amounts denial of opportunity.

8. The above leads us to a conclusion that the applicant was not given opportunity of being heard or put his defence during disciplinary proceedings which is not only against the Principle of Natural Justice but also amounts to non compliance of Rule in this regard. The punishment order (Annexure A-2) and appellate order (Annexure A-1) have been passed on the basis of findings of the disciplinary enquiry which suffers from procedural defects as mentioned above. Therefore, we are not in a position to uphold the punishment order as well as the appellate order.

9. With the above, the impugned punishment order (Annexure A-2) and appellate order (annexure A-1) are set aside. The applicant be provided with consequential benefits without back wages. However, the respondents are not precluded to initiate a fresh disciplinary proceedings, keeping in view the observation made above and the rules and departmental directions in this regard.

10. The OA is decided accordingly. There shall be no order as to costs.

*m/s*  
Member-X

*SAC*