Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ADDL.BENCH,

ALLAHABAD.

...

This The 21 ,January ,1997.

CORAM. Hon'ble Mr.S.D.Das Gupta, AM.

Honible Mr T.L.Verma, JM.

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O. A. NO: 1226 OF 1993.

Sri Nek Ram son of Sri Thakuri,
resident of village and post :
Mai Khurd Kalan, District:
Shahjahanpur.

Applicant.

C/A: Sri M.K.Upadhaya.

VERSUS:

1. Union of India through the Secretary,
Min. of posts & Telegraph,

2. Director, Postal services, Bareilly
Region, Bareilly.

3. Superintendant, Post offices, Shahjahanpur,
Division, Shahjahanpur.

.. Respondents.

C/R. Sri S.C.Tripathi.

... p.2.

ORDER:

(By Hon'ble Mr S.Das Gupta, AM.)

This application has been filed under section 19 of the Administrative Trimunals Act, 1985 seeking quashing of the impugned order dated 13.12.1992 by which, the penalty of removal from service was imposed upon the applicant and the order dated 24.5.1993 by which, the applicant's appeal against penalty imposed was dismissed. He prayed for a direction to the respondents to reinstate him in service with all the consequential benefits.

2. The applicant was appointed on the post of Extra Departmental Branch Post Master in July, 1979. The respondent No: 3, vide his order dated 1.5.1992 initiated departmental proceedings against the applicant.under Rule 8 of the Extra Departmental Agents(~~E.D.A~~. Conduct and Service) Rules, 1964. There were several articles of charges levelled against the applicant which related to the fradulent mis-appropriation of Money orders. There was also an allegation that he had snatched enquiry papers from the Assistant Superintendant of Post officers and torn them. An enquiry was held into the charges. The enquiry officer in his report dated 4.12.1992 cameto the conclusion that none of the charges levelled against the applicant was established. The Respondent No.3, however, disagreed with the findings of the Enquiry Officer and imposed penalty of dismisal from service on the applicant by the impugned order dated 13.12.1992. The applicant preferred an appeal before

the respondent No.2, and the same was dismissed by the impugned order dated 24.5.1993.

3. The applicant has challenged the impugned orders on the ground that the respondent No.3, did not consider the evidence on record, while disaggreeing with the findings of the Enquiry Officer. Other grounds taken is that the respondent No3, did not give the applicant an opportunity before setting aside all the findings of the Enquiry Officer, and holding him guilty, thereby, violating principles of natural justice.

4. The respondents have filed counter affidavit in which, the circumstances leading to the initiation of disciplinary proceedings against the applicant have been stated in detail. It has been further stated that ~~on the~~ consideration of enquiry report, was found that the same was not based on facts and the records submitted during the enquiry and therefore, the disciplinary authority dis-agreed with the findings, recording detailed reasons for such disagreement. Further ~~the~~ case of the responden-s is that ~~though~~ there is no provision ~~under~~ in the rules to give further opportunity to the applicant ~~for which~~ when, disciplinary authority has disagreed with the enqurity report.

5. The applicant has not filed any rejoinder affidavit

We have heard the learned counsels for both the parties and perused the record carefully.

6. During the course of arguments, the learned counsel for the applicant emphasised one of the pleas raised in O.A.. He urged that by not giving opportunity to the applicant after the disciplinary authority disagreed with the findings of the enquiry officer and straightway imposing penalty, there has been flagrant violation of natural justice. Inthis regard he sought reliance on the decision of the Hon'ble Supreme Court in the case of ' Narayan Mishra. V/S State of Orissa." 1969 SLR(SC) 657, in support of his contention that where the Disciplinary Authority disagreed with the findings of the enquiry report, the reasons for such disagreement should have been communicated to the applicant and he should have been given opportunity to make a representation before imposing penalty on him.

7. The disciplinary proceedings against the applicant were initiated under Rule 8 of the EDA (Service and Conduct) Rules, 1964. In this rule, the detailed procedure for holding enquiry and also the manner in which the penalty can be imposed have not been spelt out. However, the instructions of D.G.P&T dated 16.1.1990 which may be found below this rule in Swami's Compilation stipulates that it would be desireable to follow the provisions of Rule 14 of CCS(CCA)Rules, 1965 in spirit, if not literally, so that there may be no occasion to challenge the same on the ground that opportunities under Article 311(2) of the Constitution were not provided. We, therefore, adverted to the aforesaid rule to see the provisions pertaining to the situation inwhich the disciplinary authority disagrees with -

thefindings of the Enquiry Officer. This rule, we found, ~~however~~, does not indicate any thing in this regard. However, rule 15 of the CCS(CCA)Rule, 1965 specifically provides that if the Disciplinary Authority disagrees with the findings of the Enquiry Authority on any article -s of charge, he shall record reasons for such disagreement and record its own findings on such charges if the evidence on record is sufficient for the purpose. There is, however, nothing in this rule to indicate that the charged officer should be given an opportunity to represent after the disciplinary authority records its disagreement with the findings of the enquiry officer before imposing the penalty.

8. In the case of " State Bank of India, Bhopal. V/ S; S.S.Koshal." (1994) 27ATC 834, the Hon'ble Supreme Court has laid down that where the disciplinary authority disagrees with the findings of the Enquiry Officer, there is no need to give a fresh opportunity to the charged officer by way of Show Cause Notice, unless there is a provision for the same in the relevant statutory rules.

9. We have seen that the rule 8 of E.D.A.(Conduct and Service) Rules, 1964 does not give any details as to how the enquiry has to be conducted, and in what manner the disciplinary authority shall impose penalty, Therefore, these statutory rules do not have any provision for giving opportunity to the charged employee in case the Disciplinary Authority disagrees with the findings of the Enquiry Authority. Assuming that as the

rules are silent on this matter, and the provisions contained in the CCS(CCA),Rules should normally be adhered to, we find that even inthose rules there is no statutory provision that the show cause notice be issued to the charged employee in case, the Diciplinary Authority disagrees with the findings of the Enquiry officer. Thus, in view of the ratio of the decision inthe S.S.Koshal's case, the order of the Disciplinary authority in thecase before us, cannot be held as illegal on the ground that the penalty was imposed without giving the applicant a Show cause notice, when the Disciplinary Authority disagreed with the Enquiry officer.

10. There is however, a specific provision under Rule 15 of the CCS(CCA) Rules, 1965 that when the Disciplinary Authority disagrees with the findings of the Enquiry Officer, such authority must record reasons for such disagreement. Although, similar provisions do not exist in Rule 8 of the E.D.A. (Conduct and Service) Rules, 1964. We may hold that that even in the case of Extra-Departmental Employee; it would be necessary for the disciplinary authority to record reasons of its disagreement with the findings of the Enquiry Officer. This would follow from the principles of natural justice even though, there are no statutory provisions in this regard under the EDA(Conduct & Service)Rules, 1964. We find that the Disciplinary Authority in this case has recorded detailed reasons for its disagreement in the impugned order by which, the penalty was imposed on the applicant. Thus, these reasons were known to the applicant when he filed an appeal

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before the Appellate Authority and to that extent, raising all the propo pleas before the Appellate Authority was fa cilitated. The applicant did file an appeal stating in detail why heshould not be held guilty to the charges. This appeal was considered by the Appellate Authority who recorded detailed reasons for dismissing the appeal, We thus, find that the applicant was given an adequate opportunity even after the Disciplinary Authority disagreed with the Enquiry Officer and that there has been no violationof the principles of natural justice in this regard.

11. No other point was urged by the learned Counsel for the applicant before us. In any case, the other pleas raised in the O.A. mainly relate to the evidence on record and it is settled law that there would be no occasion for the Court/Tribunal to reconsider the evidence on record in order to see whether it was possible to come to the finding different from that arrived at by the Enquiry Authority, or the Disciplinary Authority unless, such findings are shown to be wholly perverse, or based on no evidence. The findings of the Disciplinary Authority as recorded in the impugned order of penalty are neither perverse, nor are based on no evidence.

12. In view of the foregoing, we are not satisfied that any case has been made outby the applicant for our interference. This application is, therefore, dismissed leaving the parties to bear their own costs.

MEMBER(J). MEMBER(A).

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