

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 09th day of January, 2001.

Q U O R U M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Original Application No. 1587 of 1993.

*Nishwakarma* *Viphiwakarma*  
Kedar Nath Srivastava S/o Shri Shyam Lal Srivastava  
Ex Branch Post Master, Belwa Khurd, Distt. Maharashtra

*Counsel vide  
order dt 20/3/2002* .....Applicant  
Counsel for the applicant :- Sri Avnish Tripathi  
Sri M.K. Upadhyay  
Sri J.M. Sinha

V E R S U S

1. Sr. Supdt. of Post Offices, Gorakhpur
2. Director, Postal Services, Office of the P.M.G, Gorakhpur.
3. Post Master General, Gorakhpur.
4. Union of India through the Secretary, M/o Communication, New Delhi.

.....Respondents

Counsel for the respondents :- Sri C.S. Singh

O R D E R (oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A under section 19 of the Administrative Tribunals Act, 1985, applicant has challenged the order of punishment dt. 24.10.1989 (annexure A- 1) by which

he has been removed from service of E.D.B.P.M on conclusion of enquiry. The applicant filed appeal which has been dismissed on 28.03.1990 (annexure A- 2) which has also been challenged.

2. Facts giving rise to this application are that applicant was serving as E.D.B.P.M, Belwa Khurd, Distt. Gorakhpur. He was served with the memo of charge dated 31.10.1988. The allegations against the applicant were that he was unauthorisedly absent from duty from 28.06.1988 to 01.07.1988. The second charge was that during period of 18.03.1988 to 27.06.1988, he did not hand over the money to E.D.D.A for distributing to the claimants and the money orders were of high value. Third charge against the applicant was that from March, 1988 to April, 1988 he retained the cash up to Rs. 300/-.

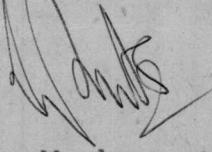
*Corrected  
vide order dt  
20/3/2002*

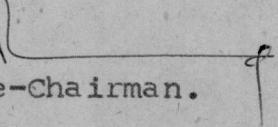
3. As usual enquiry proceeding was concluded, the enquiry officer submitted his report on 31.07.1989. He found that charge No.1 and 2 ~~are~~ <sup>found</sup> proved. However, charge No. 3 ~~was~~ <sup>not</sup> found proved. The disciplinary authority, however, disagreed with the report of the enquiry officer and passed the order of removal against the applicant on basis of all the three charges. A copy of the order has been annexed as annexure A- 1. Learned counsel for the applicant has submitted that under rules it was mandatory for the disciplinary authority to serve the memo of disagreement on the applicant containing the reasons for disagreement and give an opportunity of hearing to the applicant before passing the order of punishment which in this case, has not been done. In counter affidavit, this position has not been disputed. Thus the order of the disciplinary authority suffers from the manifest illegality.

The appellate authority, however, has <sup>also</sup> failed to consider this important aspect of the matter and dismissed the appeal of the applicant. It is difficult for this Tribunal to assess as to what impact charge No.3 could have before the disciplinary authority which assessing the quantum of punishment. In these circumstances, in our opinion, the matter should be sent back to the disciplinary authority for passing a fresh order after serving memo of disagreement on the applicant with regard to charge No. 3.

4. For the reasons stated above, this O.A is allowed in part. The order dated 24.10.1989 (annexure A-1) and order dated 28.03.1990 (annexure A- 2) passed by the appellate authority are quashed. The disciplinary authority shall pass a fresh order within a period of three months from the date of communication of this order. The period from the date, the order of removal was passed till the date of this order, the applicant shall be treated as put off from duty and shall be entitled for the allowances as provided under rules.

5. There will be no order as to costs.

  
Member- A.

  
Vice-Chairman.

/Anand/