

105 17

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 311 of 1993

Allhabad this the 13<sup>th</sup> day of December 1995

Hon'ble Dr. R.K. Saxena, Member ( Judicial )  
Hon'ble Mr. D.S. Baweja, Member ( Administrative )

Ram Bahadur Khare, S/o Late Shri Sunder Lal A/a 65  
years, Retd. Sub Postmaster, Bikapur, C/o Shri Om  
Prakash, 99 B, Ashok Nagar, Allahabad - 1.

APPLICANT

By Advocate Shri R.K. Tiwari.

Versus

1. Asstt. Director General (V-III), Postal Directorate,  
New Delhi-1
2. Secretary, Union Public Service Commission,  
Dholpur House, New Delhi - 1
3. Union of India through Secretary, Ministry of  
Communication, New Delhi - 1

RESPONDENTS.

By Advocate Shri N.B. Singh.

ORDER (O  
-----

By Hon'ble Dr. R.K. Saxena, Member ( J )

The applicant has approached the Tribunal  
challenging the order (Annexure A-1) whereby the  
penalty of imposing a cut of 5% in the pension of  
the applicant for a period of 10 years, was passed.

2. The brief facts of the case are that the applicant was serving under the respondents. During the period from 20.3.1980 to 04.10.1980, he was working as Assistant-Post-Master S.B. IIIrd, Faizabad. During this period, <sup>2</sup> of 5 years T.D. Accounts No.s 993, 924 and 974 were not closed in accordance with the Rule 430(i) of the P&T Manual Vol. VI Part-II; and the result was that an amount of Rs.1,07,792.50 was <sup>fraudulently</sup> withdrawn and the loss was caused to the Government. It is said that the forged withdrawal was made because the applicant had failed to check and get the remark of closure being noted in the said account. It is also the allegation against the applicant that while he was functioning as Assistant-Post-Master S.B.I, Faizabad, during the period from April 1984 to January, 1985, warrant of payment to the tune of Rs.2,63,819.65/- was cleared by the applicant in respect of the accounts numbers <sup>and</sup> 928, 824, 869, 974, 708, 944, 994, 710, 993/ 853. It is alleged that the applicant during this period was posted only as Assistant-Post-Master S.B. I Faizabad but, he performed the functions of Assistant Post Master S.B.IIIrd without any approval of the competent authority. It is further alleged that the said withdrawal was made by using fake ledger cards without any authentication of the Assistant Post Master. It is also the allegation that the forged withdrawals of 5 years time deposit accounts were allowed without getting the signatures of the



depositors compared with the signatures on the application for withdrawal at the Counter as well as before the Ledger Assistant. For these reasons, the charge-sheet was served on 14.7.1986. The applicant retired on 31.7.86 on reaching the age of superannuation. The inquiry, however, continued. It appears that the inquiry officer did not find the charges established against him but, the disciplinary authority did not agree with the view of the inquiry officer and came to the conclusion that the charges were established. He recommended the cut of 5% of pension of the applicant and also <sup>for</sup> ~~imposing~~ recovery of Rs.2000/- from the gratuity. Since the applicant had retired, the matter was submitted to the President under Central Civil Services(Pension) Rules, 1972(herein after referred <sup>to</sup> as Rules). As required under Rule 9 of the Rules, the matter was referred to the Union Public Service Commission (herein after referred as U.P.S.C.). The Deputy Secretary to the U.P.S.C. gave the opinion of the Commission that the charges were established. The proposed penalty of reduction of pension by 5% was also approved but the realisation of an amount of Rs.2000/- was not approved. Consequently, the President ordered reduction of pension at the rate of 5% for 10 years. Feeling aggrieved by the said order, this C.A. has been filed with the relief mentioned above on the grounds that there was no evidence in support of the charges. It

was also contended that the disciplinary authority disagreed with the report of the Inquiry-Officer but, the note of dis-agreement was not given to him. It is also averred that the copy of the report of the U.P.S.C. was also withheld and thus, the principles of natural justice are violated and consequently the order of punishment is illegal.

3. The respondents resisted the O.A. on the grounds that the charges were established against the applicant; and, therefore, the order which was passed after <sup>holding the</sup> inquiry and affording opportunity of defence to the applicant, was <sup>quite</sup> ~~illegal~~ & legal. It is further contended that the applicant was involved in the forged withdrawal of money because he had not followed the rules and regulations, and he had illegally acted as Assistant-Post-Master S.B. IIIrd. It is also pleaded on behalf of the respondents that the report of the U.P.S.C. was of advisory nature and was not an order in itself. On these grounds, it has been contended that the application is not maintainable.

4. The applicant has filed rejoinder reiterating the facts which were mentioned in the O.A. itself.

5. We have heard the learned counsel for the parties and have perused the record.



6. Learned counsel for the applicant contends that the charges are not established but, this contention is contradicted from the pleadings made in the O.A. in para 4(iii), where it was mentioned that it was established beyond doubt that a loss of Rs.1,07,782/05 was caused to the Government due to fraudulent withdrawal of money or fake ledger cards in the Savings Bank Branch of Faizabad Head Post Office. It is not the case of the applicant that the charges are deemed established without any evidence. The documents are there and the witnesses were examined. In case, the learned counsel for the applicant wants to argue that proper appreciation of the facts is not done by the disciplinary authority, we are afraid that then this aspect is not covered in the judicial review. We cannot marshal the evidence and make re-appraisal of the evidence. In this way, this argument does not hold good.

7. It is also pleaded on behalf of the applicant that the Inquiry Officer did not hold the charges established against the applicant but, the disciplinary authority on the other hand held that the charges were established. It is, therefore, contended that the order of dis-agreement has not been communicated to him and, <sup>thus</sup> therefore, the proceedings were vitiated. It is well established principle of law that the disciplinary authority may agree or may not agree with the findings of the Inquiry Officer. Where there is dis-agreement, it is expected that the disciplinary

authority should record reasons of dis-agreement and when we examined<sup>1</sup> this issue through Annexure A-1, we find that some grounds were mentioned therein. Besides, the report of the Inquiry Officer was elaborately considered by the U.P.S.C. and thus, the grounds of dis-agreement may be known from the said report. It is also pointed out on behalf of the applicant that even the copy of the report of the U.P.S.C. was not made available to him. The contention of the respondents on this point is that the report of the U.P.S.C. was of advisory nature and it was, therefore, not necessary to furnish the same. <sup>2</sup> ~~In~~ The facts of the case, however, revealed<sup>2</sup> that the ultimate decision of making a cut of 5% in the pension amount was taken on the basis of the report of the U.P.S.C.. The proposed recovery of Rs.2000/- was dropped because the Commission did not agree to that part of punishment. In view of this fact, the report of the U.P.S.C. becomes of great importance. The guiding factor for imposing the penalty had been this report. We, therefore, hold that the copy of the report of U.P.S.C. ought to have been served on the applicant before the order of punishment was passed. Their Lordships of Supreme Court in the case 'Narayan Misra Vs. State of Orissa (S.C.) 1969 S.L.R 657' also took the same view, where it was held that if, no notice or opportunity was given to the delinquent official about the attitude of punishing authority, the order of punishment was violative of natural



justice and fair play. This view is fully strengthened on the basis of the reasoning given in the case Union of India Vs. Mohd. Ramzan Khan A.K.R. 1991 S.C. 471 and <sup>clarifying the</sup> Full Bench decision in 'Managing Director, E.C.I.L. Hyderabad Vs. B. Karunakar 1993(5) S.L.R. 532 by their Lordships of Supreme Court. The purpose of giving copy of the report of the Inquiry Officer is so that the delinquent employee may know about the charges which were found established and on the basis of which he was going to receive punishment. Non-supply of copy of the report of the Inquiry Officer was, therefore, held violative of principle of natural justice. In case, the said principle is not made applicable so far as the report of the U.P.S.C. is concerned about the punishment of withholding or cutting the pension in any proportion, the same prejudice, as is likely to be caused by non-supply of the copy of the report of the Inquiry Officer, is going to be caused. We have already discussed that the order of punishment about 5% cut in the pension for 10 years squarely rested on this view of U.P.S.C. For this reason, the non-supply of the copy of the report of U.P.S.C. has caused great prejudice to the applicant. For this reason, the impugned order remains no more sustainable in law. We, therefore, <sup>&</sup> quashed the impugned order and set aside the same with the direction that the punishing authority should furnish the copy

:: 8 ::

of the report of the U.P.S.C. to the applicant and then to take final decision after considering the explanation which may be submitted by the applicant. The application is disposed of accordingly. No order as to costs.

*D. S. Baweja*  
( D.S. Baweja )  
Member (A)

*R. K. Saxena*  
(Dr. R.K. Saxena)  
Member 'J'

/M.M./