

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 17TH DAY OF OCTOBER, 2000

Original Application No.1106 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Radha Krishna Gupta,  
a/a 51 years, S/o Shri Mahadeo  
R/o Post & Village Mashauli Bazar,  
Captainganj, Distt.Deoria

.. Applicant

Versus

1. Union of India through its  
Superintendent of Post Offices,  
Deoria Mandal, Deoria
2. Kapil Deo pandey  
the alleged EDBPM  
Vill.&Post Mahauli,  
Captainganj,distt.Deoria

.. respondents

Along with OA No. 1382 of 1992

Kapil Deo Pandey, S/o Sant  
Prasad Pandey, R/o Vill. & post Office  
Mathauli(Captainganj),Deoria.

.. Applicant

(By Adv: Shri Anupam Shukla)

Versus

1. Union of India through the  
Director general Postal Services  
New Delhi.
2. Senior Supdt. of Post Offices,  
Deoria.
3. Sri Radha Krishna Gupta,  
R/o Vill.&Post Mathauli  
District Deoria

.. Respondents

(By Adv: km.Sadhna Srivastava)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi)

The facts giving rise to the aforesaid two OAs are that  
applicant Radha Krishna Gupta was serving as EDBPM at post office

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Mathauli since 1964. He was subjected to disciplinary proceedings for certain misconduct. The order of punishment was passed against him on 23.2.1989 which was confirmed in appeal on 20.12.1990. However, both these orders were set aside by this tribunal in OA 1212/91 on the ground that the report of the Enquiry officer was not served on the applicant. When the disciplinary proceedings resumed afresh, on 10.9.1992 order of punishment was passed by Sr.Supt. of Post Offices Deoria and the applicant was censured and was given punishment that he shall not be allowed to appear in the departmental examination for 2 years and with these punishment<sup>s</sup> he was taken back in service. The Senior Supt. of Post Offices, however by another order dated 11.6.1993 reviewed his earlier order dated 10.9.1992 and passed the order of punishment of dismissal on 11.6.1993 against the applicant. Aggrieved by this order the applicant has filed OA No.1106/93.

Kapil Dev Pandey was appointed in the year 1973 on the post of EDBPM which had fallen vacant on <sup>suspension</sup> ~~removal~~ of applicant Radha Krishna Gupta. When Radha Krishna Gupta was reinstated by 10.9.1992 applicant Kapil Deo pandey filed OA No.1382<sup>4</sup>/92 questioning the said order.

We have heard Shri Anupam Shukla counsel for the applicant in OA 1106/93 and Shri Avnish tripathi for the applicant Kapil Deo Pandey, Km.Sadhna Srivastava learned counsel for the respondents in both the OAs..

Shri Anupam Shukla has submitted that the order dated 11.6.1993 <sup>cannot</sup> be sustained as the Senior Superintendent Post Offices Deoria was not competent to revise his earlier order dated 10.9.1992 under rule 16 of EDA Conduct & Service Rules 1964. It has also been submitted that applicant Radha Krishna Gupta was not afforded any opportunity of hearing by Senior Supt. of Post Offices before passing order dated 11.6.1993 and for this reason also the order is liable to be quashed being <sup>an</sup> inviolation of the principles of natural justice.

Km.Sadhna Srivastava and Shri Avnish Tripathi on the other hand, have placed reliance on para 130 of Post and Telegraphs Manual Vol-3

and have submitted that the Punishing Authority could review the order if <sup>a punishment awarded</sup> ~~the~~ was inoperative. Shri Avnish Tripathi further submitted that applicant Kapil Deo pandey is serving as EDBPM for the last 27 years and he cannot be removed from his post as after completing three years he is entitled to be provided alternative job under the Departmental instructions.

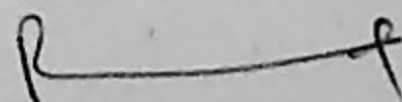
We have carefully considered the submissions of the learned counsel for the parties. The learned counsel for the respondents have relied on Para 130 of the Post and Telegraph Manual Vol-3, ~~At the~~ <sup>beginning</sup> whereas the learned counsel for the applicant has relied on Rule 16 of EDA Conduct & Service Rules for submitting that the review could not be done by the Punishing Authority. We have examined both the provisions contained in the Manual, as well as EDA Conduct & Service Rules. We are of the opinion that the Post & Telegraph Manual Vol-3 are general in nature and applicable to the employees of the Post and Telegraph Department. However, EDA Conduct & Service Rules specially deal with the service conditions and misconduct of the Extra Departmental Agents employed for various purposes. There is no doubt about the well settled <sup>legal</sup> principle, that when a Special Rule exists dealing with the Service the General Rules are excluded by implication. The same is the situation in the present case. Rule 16 of the EDA Conduct & Service Rules reads as under:-

16"Review of Orders:

Notwithstanding anything contained in these rules,

- (i) The Central Government ,or
- (ii) The Head of the Circle, or
- (iii) an authority immediately superior to the authority passing the orders,

may at any time, either on its own motion or otherwise, call for records of any enquiry or disciplinary case and review any order made under these rules reopen the case and after making such enquiry as it considers necessary, may



(a) confirm, modify or set aside the order,

Or

(b) Pass such orders as it deems fit:


From perusal of the Rules, it is clear that the review could be made only by the Central Government or by the Head of the Circle or Post Master General or an Authority immediately superior to the authority passing the order. In the present case, the order has been passed by the Punishing Authority himself, the order is thus wholly without authority.

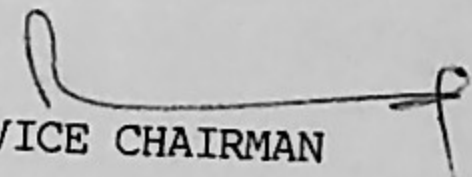
We have considered the submission of the learned counsel for the respondents that the punishment order was in operative and hence Punishing Authority could review the order. However, it is difficult to accept the submission of the learned counsel for the respondents that punishment was in-operative. The order dated 10.9.1992 provided that applicant Radha Krishna Gupta shall not be allowed to appear for two years in departmental examination and he is also administered severe warning. The case of the respondents is that as Radha Krishna Gupta had already attained the age of 50 years he was otherwise not entitled to appear in the departmental examination hence the order of punishment was inoperative. However, in the present case even if the applicant was not required to appear in departmental examination, the remaining part of the punishment remained there and it is difficult to accept that punishment was inoperative. The warning administered was in the nature of a censure. There is yet another aspect on which the impugned order dated 11.6.1993 cannot be sustained that applicant has not been heard before the impugned order was passed. This is undisputed position that respondent Senior Supdt of Post Offices Deoria did not provide any opportunity of hearing to the applicant before passing the order of dismissal from service. ~~Even if~~ Such an adverse order could not be passed without complying with the principles of natural justice. The order is liable to be set aside on this ground also.

Now the question remains with regard to the applicant Kapil Deo Pandey who has served on the post for 27 years. Though we have sympathy for him but as the legal position stands he cannot resist the claim of the applicant who is entitled to be reinstated after the order dated 11.6.1993 is set aside. However, considering the long period of service rendered by him, the department shall adjust him on some other vacant post and he may not be rendered any employment at this age.

The aforesaid direction is in consonance with the policy of the department contained in D.G.P&T letter No.43-4/77-PEM dated 18.5.1979.

For the reasons stated above, the OA No. 1106/93 is allowed. The order dated 11.6.1993 is quashed. The applicant Radha Krishna Gupta shall be reinstated on the post. However, he will not be entitled for backwages. The OA No.1382/92 is disposed of finally with the direction that applicant Kapil Deo Pandey shall be adjusted by the department on some other vacant post and he shall be continued in service. There will be no order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN

Dated: 17.10.2000

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