

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the ^{2nd} day of ^{August} 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. No. 744 of 1995.

Arjun Prasad Kureel s/o Late Shri Mathura Prasad, Ex-Branch Post
Auron Taharpur (Bilhaur, Kanpur) aged about 39 years r/o Auron
Taharpur at present residing at Village Hasanpur, Post Rawatpur,
District Kanpur..... Applicant.

Counsel for applicant : Sri A. Shukla.

Versus

1. Union of India through the Secretary, Ministry of Communication
Post & Telegraphs, New Delhi.
2. Asstt. Director General (ED and Trg.), New Delhi, Dak Bhawan,
Sansad Marg, New Delhi.
3. Post Master General, Kanpur Region, Kanpur.
4. Director, Postal Services, Kanpur Region, Kanpur.
5. Supdt. of Post Offices, Mufassil Division, Kanpur.

..... Respondents.

Counsel for respondents : Km. S. Srivastava.

ORDER

BY MR. S. DAYAL, A.M.

This application has been filed for setting aside the
order dated 10.2.90 of disciplinary authority, 21.3.91 of appellat
authority, review order dated 4.12.91 and the order ^{on} ~~and~~ memorial
dated 30.1.1995.

2. The short case of the applicant is that he was proceeded
against departmentally while working as Extra Departmental Branch
Post Master, Auron, Taharpur, Kanpur and had paid money orders
to different payees and took a sum of Rs.230/= from the payees
which he pocketed. The Inquiry Officer held the charges as not
proved. The disciplinary authority forwarded the report of
enquiry officer to the charged E.D. without showing any dis-

agreement and on receipt of a reply from the applicant, passed order of removal which was upheld by the appellate/reviewing authorities and authority decided the memorial of the applicant.

3. We have heard the argument of Sri A. Sthalekar for applicant and Km. S. Srivastava for respondents.

4. The applicant has claimed relief on the ground that the disciplinary authority sought the defence statement of the applicant without showing disagreement with the report of Inquiry Officer which had held the applicant as not guilty.

5. The learned counsel in advancing the argument relied upon the pronouncement of Hon'ble Supreme Court in Punjab National Bank & others Vs. Kunj Bihari Misra (1998) 7 SCC 84 which lays down as follows :-

"Whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

The learned counsel for the applicant has also placed before us the judgment of Hon'ble Apex Court in Yoginath D. Bagde Vs. State of Maharashtra which lays down as follows :-

"28. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the

Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

The learned counsel for the respondents requested us to take into consideration the pronouncement of Hon'ble Apex Court in State of Punjab & others Vs. Dr. Harbhajan Singh Greasy 1996 SCC (L&S) 1248 which lays the following law :-

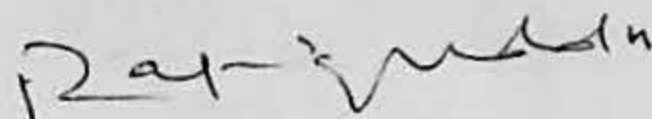
"It is now a well-settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon."

6. We find that charge against the applicant was that he did not pay the full amount sent by money orders to eight persons and deducted Rs.20 to Rs.25/= from the amount to be paid to each of these persons. We also find that the Inquiry Officer concluded that no payee of money order made any complaint regarding less payment to any postal authority. The payees have not accepted that they were paid less and the Gram Pradhan also stated that he had made an enquiry into the rumour that the payees were paid less and found it to be false. The Inquiry Officer concluded that the charge was, therefore, not proved. We find from the order of the disciplinary authority that the enquiry report was sent to the charged official, who is the applicant in this case, in the form it was made by the Inquiry Officer. The pronouncements of the Apex court make it clear that the charged official has to be given full opportunity to defend himself and if such an opportunity is to be given in a case where the disciplinary authority defers from the report of the Inquiry Officer, the reasons for deferring from the report and tentative conclusions have to be communicated to the charged employee in order to satisfy the requirement of opportunity to defend to the charged official.

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7. Since this has not been done in this case, the orders of disciplinary authority dated 12.2.90, the order of appellate authority dated 21.3.91, the order of revisional authority dated 4.12.91 and the order on memorial to the President dated 00.1.95 are set aside. The applicant shall be treated to be put of duty. The disciplinary authority shall communicate the reasons for disagreement and tentative c-onclusion drawn by it to the applicant and after giving him opportunity to submit explanation, pass orders in the disciplinary case against the applicant.

8. With this, the O.A. stands disposed of. There shall be no order as to costs.


J.M.


A.M.

Asthana/
12.6.02