

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1144 of 1995

Allahabad this the 26th day of May 1998

Hon'ble Mr. D.S. Baweja, Member (A)
Hon'ble Mr. S.L. Jain, Member (J)

Kameshwar Nath Pandey S/o Shri Madan Mohan Pandey,
R/o Vill. Bandhuchak P.O. Nagwa Distt. Ballia, employed
as Sorting Assistant, R.M.S. 'G' Dn. Ballia.

Applicant

Inperson

Versus

1. Union of India through Secretary, Ministry of Communication, Govt. of India, New Delhi.
2. Director, Postal Services, Gorakhpur Region, Gorakhpur.
3. Senior Supdt. R.M.S. 'G' Dn. Gorakhpur.

Respondents

By Advocate Sri N.B. Singh

O R D E R

By Hon'ble Mr. D.S. Baweja, Member (A)

This application has been filed seeking quashment of the orders dated 22.7.92, dated 08.3.95 of the disciplinary authority, dated 03.11.92 of the appellate authority and dated 31.10.94 of the revisional authority.

2. The applicant while working as Sorting

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A-ssistant in R.M.S. Wing at Ballia, was issued a charge-sheet dated 13.2.92 under Rule 16 of C.C.S. (C.C.A.) Rules, 1965. The applicant demanded certain documents before submitting his defence but these documents were not supplied. The applicant submitted his defence making a request for holding an oral inquiry under Rule 16(1)(b) of C.C.S. (C.C.A.) Rules, 1965 taking a plea that the imputation of misconduct was not based on any documentary evidence. However, the disciplinary authority without taking any decision on the request for oral inquiry passed the order dated 22.7.92 ^{next} imposing the punishment of withholding of one/increment for 2 years without cumulative effect. This order was subsequently modified to one increment as per the order dated 08.3.95. The applicant filed an appeal against the punishment order and the same was rejected as per the order dated 03.11.92. Thereafter the applicant filed revision, [✓] appeal. The same was also rejected as per the order dated 31.10,94. Feeling aggrieved, the present O.A. has been filed on 30.10.95.

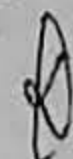
3. The applicant has challenged the impugned orders on the following grounds;

- (a) The applicant was not supplied the documents demanded and, therefore, denied the reasonable opportunity in submission of his defence.
- (b) The demand for oral inquiry was neither granted nor any reason was assigned for rejecting the same by the disciplinary authority.
- (c) The penalty has been imposed on the basis of extreneous material not disclosed to the applicant. The punishment order has been passed placing reliance on the preliminary inquiry report, Copy of which had ^{not} been furnished to the applicant.

(d) The order^s of the appellate authority and the revisional authority are non-speaking.

4. The respondents have contested the O.A. through the counter-affidavit. The respondents have submitted that the relevant documents which were demanded by the applicant, were supplied or shown to him and, therefore, full opportunity was provided. The respondents further contend that in terms of the Rule 16(1)(b) of C.C.S. (C.C.A) Rules, 1965, the disciplinary authority has to decide whether the oral inquiry is required to be conducted in a particular case. In the present case, the request of the applicant for holding oral inquiry was considered by the disciplinary authority and he concluded that it was not necessary to hold a detailed inquiry. The respondents also submit that the appellate and revisional authorities have ~~been~~ passed their orders considering all the aspects. Keeping these averments in view, the respondents plead that the O.A. is devoid of merits and the same deserves to be dismissed.

5. The applicant has filed the rejoinder-affidavit, controverting the averments of the respondents and reiterating his submissions made in the O.A. The applicant submits that he had demanded 20 documents out of which ^{only} 14 were supplied or shown to him. However, the main document which was the preliminary inquiry report, has not been made available to him. The preliminary inquiry report was very vital document to prepare his defence as the reliance has been placed on this while imposing the punishment. The applicant also refutes the contention of the respondents that the disciplinary authority had considered the request for oral inquiry and the same was rejected.

J. L. D. - 

6. We have heard the applicant in person and Sri S. Mandhyan proxy counsel to Sri N.B. Singh, counsel for the respondents. The material brought on record have been carefully considered.

7. From the rival averments, it is noted that some of the documents demanded by the applicant before submitting his defence, had been neither supplied to him nor shown to him. Apart from the other documents, the most vital document which was demanded by the applicant and not supplied by the respondents, was the preliminary inquiry report. The preliminary inquiry report conducted by the department is mainly meant for the purpose of collection of the facts in regard to the conduct of the government servant, so that the concerned authority could decide whether to take any disciplinary action. Preliminary inquiry report is, therefore, meant for the satisfaction of the disciplinary authority. In view of this, preliminary inquiry report cannot be demanded as a matter of right by the delinquent employee. However, the preliminary inquiry report is required to be furnished in case the same has been relied upon in framing of the charges. However, if no reference is made in the charge-sheet to the preliminary inquiry report, furnishing of the same to the delinquent employee is not fatal. But, the situation in the present case is entirely different. On going through the order of the disciplinary authority, it is noted that he has stated "I have gone through the charges framed against the official its concerning documents, enquiry report of the A.S.R.M. Gorakhpur R.M.S. and defence of the official dated 01.6.92". This clearly shows that the disciplinary authority has relied upon certain documents as well as the preliminary ^{inquiry} report. From the charge-sheet it is noted that no documents have been listed as relied upon. The preliminary inquiry report has been also not relied upon. However, the preliminary inquiry report has been relied upon bypg5/-

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the disciplinary authority to--- conclude that the charges against the applicant are approved. The disciplinary authority has ^{also} stated that misbehaviour committed by the applicant is proved from the inquiry report of the A.S.R.M., Gorakhpur Division, Gorakhpur R.M.S. and the statement of the findings recorded thereof. It is, thus, very clear that reliance has been placed on the preliminary inquiry report findings on which had been recorded at the back of the applicant. Though the applicant has sought the preliminary inquiry report but still the same has not been furnished. Keeping these facts in view, we are inclined to agree with the submission of the applicant, that the disciplinary authority has passed the impugned orders by placing reliance on extreneous material not disclosed to the applicant. On account of this, the punishment order get vitiated. The app^v

8. The applicant has also taken a plea that he had sought holding of oral inquiry as the imputation of the misconduct in the charge-sheet was not based on any documentary evidence. The respondents in para-7 of the counter-reply have stated that disciplinary authority had considered the request of the applicant for oral inquiry and concluded that the same was not necessary. However, the respondents have not ~~ind~~ indicated whether this decision was conveyed to the applicant. The respondents were directed to produce the documentary evidence to show whether any-reply was given to the applicant with regard to the decision of the disciplinary authority for not holding the oral inquiry. However, the respondents ^{have} ^{during the hearing} ~~submitted~~ that they are not in a position to present the documentary evidence to support their contentions. On going through the order of the appellate authority, it is noted ^{that appellate authority has stated} that rejection of the request of the applicant for holding an oral inquiry by the disciplinary authority

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does not constitute the denial of the natural justice. This contention of the appellate authority appears to be not factual as the respondents are not able to produce any documentary evidence to show that the conclusion arrived at by the disciplinary authority was conveyed to the applicant in writing. In the absence of such^a documentary evidence, we have no hesitation to infer that no communication was sent to the applicant. This infirmity is fatal to the disciplinary proceedings.

9. The applicant has taken a plea that the orders of the appellate authority and revisional authority are non-speaking. We have carefully gone through these orders and are ^{inclined to} not agree ~~to~~ the view points of the applicant. ^{though,} These impugned orders are quite elaborate and covered several points giving the reasons for the same.

10. Keeping in view the above deliberations, we concluded that the impugned orders of the disciplinary authority dated 22.7.92 and as modified on 08.3.95, are not sustainable and same deserve to be quashed and are accordingly quashed. The order of the appellate authority and the revisional authority which are based on the order of the disciplinary authority are also accordingly quashed. However, this order shall not preclude the respondents from taking action as per the rules after furnishing the necessary relied upon documents and considering the request of the applicant for oral inquiry, if so desired. No order as to costs.

S. L. Jaiswal
Member (J)

A. K. Jaiswal
Member (A)

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