

OPEN COURT.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.**
ORIGINAL APPLICATION NO. 186 of 2000.

ALLAHABAD THIS THE 04th DAY OF January 2006.

**Hon'ble Mr. A.K. Bhatnagar, Member-J
Hon'ble Mr. D.R. Tiwari, Member-A**

Shri Adya Singh
Aged about 50 years,
Son of Sakal Raj Singh
R/o Village Samdar Khurd Pipraich,
District Gorakhpur

.....Applicant.

(By Advocate: Sri A. Shukla)
Versus.

1. Union of India through
Its Secretary Communication Dak Bhawan, New
Delhi.
2. Superintendent of Post Offices, Gorakhpur
Division, Gorakhpur.
3. Director of Postal Services, Gorakhpur
Region, Gorakhpur.

.....Respondents.

(By Advocate: Sri S. Chaturvedi)

O R D E R

By Hon'ble Mr. D.R. Tiwari, Member-A

By this O.A. filed under section 19 of the A.T.
Act 1985, the applicant has prayed for the following
relief(s) :-

- "(a) That the Hon'ble Tribunal may be pleased to quash the impugned dismissal order dated 9.1.1992 passed by the respondent NO.2, dismissing the petitioner from the post of E.D.B.P.M, Samdar Khurd Pipraich, Gorakhpur.
- (b) That the Hon'ble Tribunal may be pleased to quash the appellate order dated 21.10.1999 passed by the respondent NO.3.
- (c) That the Hon'ble Tribunal may be pleased to direct the opposite parties to re-instate the petitioner to the post of E.D.B.P.M Samdar Khurd Pipraich, Gorakhpur and pay all the arrears as due to him".

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2. The applicant had been working as E.D.B.P.M Samdar-Khurd (Piparaich) Gorakhpur from March 1987. While he was working as E.D.B.P.M, he was chargesheeted under Rule 8 of the E.D.A. (Conduct and Service) Rules 1964 vide memo dated 21.5.1991 (Annexure CA-1). The main charge against the applicant was that he made entry of deposit of Rs.654/- in the Savings Bank Account No.206787 on 2.2.1990 but did not account it for in Govt. Account thereby Contravened Rule 131 and 174 of E.D Rules. He further did not maintain absolute integrity and devotion to duty and contravened Rule 17 of E.D.A (Conduct and Service) Rule 1964. He was also charged that he actually deposited the same on 14.5.90 thus misappropriated the same amount for some time. Accordingly, the enquiry officer was appointed vide order dated 10.6.91 (Annexure CA-2). The enquiry officer after completing his enquiry submitted the enquiry report vide his order dated 30.11.1991. The findings of the Enquiry Officer are as under:-

"निष्कर्ष :- पूरी जांच कार्यवाही की प्रक्रिया में यह स्पष्ट होता है कि प्रत्यर अधीक्षक डाकघर गोरखपुर मण्डल के ज्ञा च-6/थनादेश/90-91 दिनांक 10.6.91 के अन्तर्गत एस पी एस के विषद् विलियित आरोपों में कर्तव्यनिष्ठा का पालन व के कारण 70 वि 70 आचरण एवं सेवा नियमावली 1964 के नियम 17 के उल्लंघन का आरोप पूर्ण रूप से तथा शास्त्रा डाकघर नियमावली के नियम 174 व 131 के उल्लंघन का आरोप आंशिक रूप से एस पी एस के विषद् सिद्ध होते हैं,"

3. On receipt of the enquiry report and taking into account, other materials on record, the Disciplinary Authority, disagreeing with the report of the Enquiry Officer, imposed upon the applicant punishment of removal from service vide his order dated 9.1.1992 (Annexure NO.1). The applicant preferred an appeal to



the Appellate Authority who rejected his appeal and affirmed the punishment order by his order dated 6.4.1992. Against this, applicant preferred a review application to the Reviewing Authority i.e. P.M.G. Allahabad. The P.M.G., Allahabad after going through the memo of charges, punishment order, appellate order, representations and other relevant documents, records including the Disciplinary proceedings file, found that the appellate authority has not passed a speaking and reasoned order. He further found that points raised in the appeal have not been properly discussed by the Appellate Authority as required by the provision contained in D.G.P.&T. instructions dated 1.10.1980. Accordingly, he set aside the appellate order and ordered for de-novo proceedings from the stage of the appeal and remitted back the case to the appellate authority (Annexure No.3). The applicant again filed the appeal memo and the appellate authority by his order dated 21.10.1999 rejected his appeal and affirmed the punishment order dated 9.1.1992.

4. Aggrieved by the above orders, the applicant has filed the instant O.A and has challenged the impugned orders on multiple grounds mentioned in various sub-paras of para 5 of the O.A. which are enumerated below:-

- "(i) Because impugned orders dated 9.1.1992 and 21.10.1999 are illegal, arbitrary, discriminatory and violative of article 14 and 16 of the Constitution of India hence liable to be quashed.
- (ii) Because the impugned orders are violative of principle of natural justice hence liable to be quashed.

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(iii) Because the impugned orders are non speaking orders hence liable to be quashed".

In view the reasons mentioned above, it has been pleaded that the O.A. deserves to be allowed on merit.

5. The respondents, on the other hand, have resisted the O.A. and have filed a detailed counter affidavit refuting the claims made by the applicant. It has been argued that on the enquiry being made against the applicant, the charges leveled against him of misappropriation of Rs.654/- deposited by one of the customer, was found to be proved. It was a clear case of misappropriation and the applicant has not discharged his duties honestly with the condition of service under Rule 17 of the E.D.A. (Conduct and Service) Rule 1964. It has been argued that the proper enquiry was conducted giving full opportunity to the applicant and thus the punishment order and the appellate order have been passed in accordance with the Rules prescribed in this regard are valid and legal. Accordingly, it has been submitted that the O.A. is devoid of merit and be dismissed.

6. During the course of the argument, counsel for the parties has reiterated the facts and the legal pleas from their respective pleadings. The counsel for the applicant, however, has relied on the decision of Coordinate Bench in the case of Arjun Prasad Kureel Vs. Union of India in O.A. NO.744 of 1995 decided on 2nd August 2002. The main thrust of the argument of the applicant's counsel is that while passing the

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punishment order, the Disciplinary Authority has disagreed with the findings of the enquiry officer and the Disciplinary Authority while disagreeing has not given a copy of the same to the applicant so as to enable him to present his case. We have gone through the case of Arjun Prasad Kureel (supra) wherein the Court has relied on the decisions of the Apex Court in the case of Punjab National Bank and others Vs. Kunj Behari Mishra (1998) 7 SCC 84 and also in the case of Yoginath D. Bagde Vs. State of Maharashtra wherein the Apex Court in the case of Kunj Behari Mishra (supra) has held as under:-

"Whenever the disciplinary authority disagree 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 given 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".

As such, the counsel for the applicant has submitted that the case is covered by the decisions of the Coordinate Bench in the case of Arjun Prasad Kureel (supra) and deserves to be allowed.

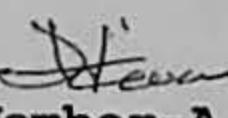
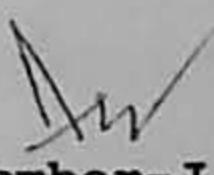
7. We have heard and given anxious consideration to the rival submissions made by the counsel for the parties and perused the records.

8. From what has been discussed above, the only question which falls for consideration is the validity of the impugned orders. We have no manner of doubt

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that in the instant case, the Disciplinary Authority has not given an opportunity to the applicant for making any representation while he has disagreed with the findings of the enquiry officer and the case of Arjun Prasad Kureel (supra) decided by the Coordinate Bench of this Tribunal is binding on us and we respectfully agree with the ratio.

9. In view of the facts and circumstances mentioned above and discussion made, the O.A. succeeds on merit. The impugned order of the Disciplinary Authority dated 9.1.1992 and the appellate order dated 21.10.1999 are quashed and set aside. The applicant shall be treated to be put off duty and the disciplinary authority shall communicate the reasons for disagreement and tentative conclusion drawn by him to the applicant and after giving him opportunity to submit explanation, pass orders in the Disciplinary case against the applicant. The entire exercise should be completed within a period of six months. No order as to costs.


Member-A
Member-J

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