

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD this the 07th day of July, 2005.

Original Application No. 622 of 2002.

Hon'ble Mr. Justice S.R. Singh, VC.
Hon'ble Mr. S.C. Chaube, AM.

S.K Pathak, a/a 60 ½ years,
S/o Late Man Mohan Pathak
R/o 117/Q/639-D, Sharda Nagar,
Kanpur-25.

.....Applicant

Counsel for the Applicant: Sri Rakesh Verma

V E R S U S

1. Union of India through the
Secretary, M/o Urban Improvement,
New Delhi.
2. The Chief Engineer (Electrical),
North Zone, CPWD, East Block,
R.K. Puram, New Delhi.
3. The Superintending Engineer (Electrical),
Lucknow Central Electrical Circle,
CPWD, CGO Complex, 'H' Block, Aliganj,
Lucknow.
4. The Executive Engineer (Electrical),
Kanpur Central Electrical Division,
CPWD, Kanpur.

..... Respondents

Counsel for the respondents: Sri S. Singh

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

The applicant was served with charge memo dated 09.07.1991. The applicant submitted his reply to the charge memo on 23.09.1991. As a matter of fact, it is alleged, no enquiry was held and the enquiry report dated

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26.09.2001 was submitted in breach of principles of natural justice. The copy of Inquiry report was not actually served though it was pasted on the door of the applicant's house in his absence. The disciplinary authority by its order dated 28.09.2001 dismissed the applicant from service w.e.f. 29.09.2001 (AN). The order impugned herein reads as under :-

"Whereas Sri S.K. Pandey, Electrician attached to Kanpur Central Electrical Division, EPWD, Kanpur has been convicted on account of disobedience of his immediate controlling officer for obvious ulterior motive. He has switch on the H.T. Feeder Line intentionally on 13.09.1988 during his duty time. There was a casualty of Sri K.K. Srivastava, Lineman. He was injured and hospitalized due to this accident. This act of carelessness and cruelty which held the life of an employee in danger cannot be compromised in any civilized society. Being a senior and experienced Electrician his grossly immoral act for not discharging his official duties properly and negligence, dereliction of duty shown on his part, he has failed to maintain the devotion to his duties under rule 3(I)(i)(ii) and (iii) of the CCS (Conduct) Rules, 1964;

And whereas it is considered that the conduct of the said Sri S.K. Pathak, Electrician, which has led to his conviction is such as to render his further retention in the public service undesirable and the gravity of the charge is such as to warrant the imposition of a major penalty;

An whereas Sri S.K. Pathak was given an opportunity of personal hearing and offer his written explanation;

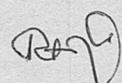
And whereas a show cause notice was issued under rule 15(4) of the CCS(CCA) Rules, 1965 to Sri S.K. Pathak for submission of his representation which he may wish to make against the penalty proposed to be considered by the undersigned but the same has been refused to be received by the family members of Sri S.K. Pathak, Electrician at his local known address in absence of the said Sri S.K.

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Pathak on 26.09.2001. As reported by the Executive Engineer, Kanpur Central Electrical Division, the show cause notice has been pasted on the door of the house of the said Sri S.K. Pathak on 26.09.2001.

Now, therefore, in exercise of the powers conferred by the Rule 11(ix) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby dismissed the said Sri S.K. Pathak, Electrician from service with effect from 28.09.2001 (AN)."

2. Having heard counsel for the parties, we are of the view that the order impugned herein cannot be sustained. Firstly, due to the reason that the punishment has been inflicted on erroneous assumption that the applicant has been "convicted on account of disobedience of immediate controlling officer for obvious ulterior motive" and "further retention in public service could be undesirable"; and secondly, due to the reason that the order impugned herein has been passed in complete violation of principles of natural justice. The applicant was never convicted for any offence and, therefore, the question of his continuance in public service being "undesirable" does not arise. The enquiry report, as pointed out herein above, is dated 26.09.2001 and the impugned order of punishment came to be passed on 28.09.2001 just within two days of submission of enquiry report without affording reasonable opportunity to the applicant of showing cause. Further the order impugned herein does not exhibit any application of mind to the reply that had been submitted by the applicant in response to the charge-memo nor is there any discussion and finding on the report of the Inquiry Officer.



3. Accordingly the O.A succeeds and is allowed. The impugned order dated 28.09.2001 is set aside. The applicant is entitled to consequential benefits which shall be extended to him within a period of three months from the date of communication of this order. No costs.

Anand
MEMBER- A.

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VICE-CHAIRMAN.

/ANAND/