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[RESERVED 04.10.2012]

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 12th DAY OF October 2012)

Present

HON'BLE DR. K.B.S. RAJAN, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

ORIGINAL APPLICATION NO. 498 OF 2007
(U/S 19, Administrative Tribunal Act, 1985)

Pramod Kumar Bhardwaj son of Ram Avtar Bhardwaj, R/o House
No.3 Mohalla Chhota Khudaganj, Distt. Pilibhit.

.....Applicant

V E R S U S

1. Union of India through Ministry of Communication, Secretariat, New Delhi.
2. The Chief Post Master General, U.P. Circle, at Lucknow.
3. The Post Master General, Bareilly Region Bareilly.
4. The Director Postal Services, Bareilly Region, Bareilly.
5. Senior Superintendent of Post Offices, Bareilly Region, Bareilly.

.....Respondents

Advocates for the applicants:- **Shri A. K. Sachan.**

Advocate for the Respondents:- **Shri S. Srivastava.**

O R D E R

DELIVERED BY:-

(HON'BLE DR. K.B.S. RAJAN MEMBER-J)

The admitted facts of the case are that the applicant while serving in the Pilibhit Head Office as Postal Assistant was ordered to work as Treasurer, Pilibhit Head Office w.e.f. 23-11-2000. On 15-04-2002, the regular Post Master of the Pilibhit Head Office

was on casual leave and hence, another was officiating. The applicant requested the officiating Postmaster for withdrawal of Rs.2 lacs from SBI Pilibhit for clearance of liabilities of different Post Offices of the District as also counter liabilities of Pilibhit Head Office. Four vouchers of Rs.50,000/- were thus issued and the applicant withdrew the amount from the SBI Pilibhit on 15-04-2002. However, according to the applicant, the said amount was looted by three miscreants and he had registered an FIR with the Police Station, Kotwali. Initially, investigation by the police was conducted and the Police had, having found that the alleged loot incidence was bogus, diverted the case against the applicant who was also kept in custody for a week between 15-04-2002 to 21-04-2002. This had resulted in the suspension of the applicant w.e.f. 15-04-2002 vide order dated 18-04-2002.

2. The applicant was issued with a charge sheet under Rule 14 of the CCS (CC&A) Rules, 1965 which resulted in a penalty of Removal from service vide SSP, Bareilly memo dated 31-12-2003 (Annexure A-16). The applicant preferred an appeal dated 19-02-2004 (Annexure A-17) which was decided by the Appellate authority reducing the penalty of removal to one of recovery of the lost amount of Rs.2lacs from the applicant's pay and the period of suspension was treated as leave due. Annexure A-18 refers. According to the applicant, the aforesaid order of the Appellate authority was not communicated to him. Further, the Chief Postmaster General had reviewed the case under Rule 29 of

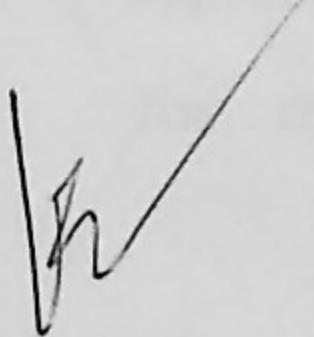
the CCS (CC&A) Rules without following the set procedure and remitted the matter to the appellate authority by order dated 13-10-2006 (Annexure A-21) which fact was also not communicated to the applicant. The Appellate authority by order dated 05-01-2007 (Annexure A-22) revised the earlier penalty order and dismissed the appeal and here again, there was no prior notice much less any opportunity given to the applicant. The applicant has filed this OA on various grounds, including the following:-

- (a). The order of the CPMG remanding the matter to the Director of Postal Services without giving any opportunity to the applicant is illegal and unjust.
- (b). The impugned orders passed by the Disciplinary authority and the appellate authority are thoroughly illegal and unjust.
- (c). Rule 29 of the CCS (CC&A) Rules, 1965 has not been followed.

3. The applicant has prayed for the following reliefs:-

"A). to quash the order dated 5.1.2007 passed by the respondent no.4(Annexure 21) of compilation no.1 and order dated 13.10.2006 passed by Respondent No.2. The Chief Post Master General, U.P. Circle, Lucknow (Annexure 20) and also quash the order dt.31.12.2003 (Annexure no.15) passed by Respondent no.5 by which petitioner has removed from his service and major penalty has been awarded against the applicant.

(B). to set aside the charges against the petitioner/applicant by which it has been hold that applicant has violated Rule 9 of Part III Volume No.-VI of the Postal Manual and also violated Rule 3(i)(ii)(iii)



of CCS (C.C.A.) Rule 1965 and direct the respondents to assume the joining of the applicant in service."

4. Respondents have contested the O.A. According to them, the story of alleged loot was concocted one and the alleged loot was stated to have taken place at a remote Road, which the applicant could not account for, as there was a main road available from the Bank and the applicant has also failed to get necessary escort at the time of withdrawal of the cash and carrying the same to the Post Office. According to them, the order dated 13-10-2006 of the CPMG was handed over to the applicant on 26-10-2006. There is no provision in the Rules for giving opportunity of hearing to the applicant while deciding the appeal. All the grounds of the O.A. have been denied by the applicant.

5. The applicant has filed his rejoinder reiterating the contents of his O.A.

6. Counsel for the applicant argued that it is not the first occasion that the applicant had withdrawn huge amount of cash from the bank. He had performed the job on many occasions earlier and at no point of time there was any mishap. It was for the first time that when he was returning from the Bank the amount withdrawn by him was looted and it was the very applicant who informed the authorities as also registered FIR.

The counsel further contended that the respondents have

committed various manifest errors in holding the inquiry, including the fact that they had not relied upon the defence witnesses. Again, the first order of the Appellate authority was not served upon the applicant and while passing the second order, the appellate authority had not given any notice to the applicant. The CPMG too had remitted the matter without giving an opportunity to the applicant. Thus, there is infraction of the principles of natural justice.

7. Counsel for the respondents argued that the action taken by the respondents is strictly in accordance with the provisions of CCS (CC&A) Rules. The place of occurrence of alleged loot is such to which the applicant cannot account for, for, when there is a main busy road from the Bank to Post Office, there was no occasion for him to come via a remote road. As regards passing of orders by the Revisional or Appellate Authority without notice to the applicant, the counsel for the respondents has stated that there is no specific provision for such opportunity to be given.

8. Arguments were heard and documents perused. The Inquiry Officer has rendered the finding that the applicant was found guilty of the misconduct contained in the charge sheet. There is no complaint that the copy of the inquiry report was not made available to the applicant. The Disciplinary authority by his comprehensive order imposed the penalty of removal from service vide Annexure A-16. The applicant zealously availed of the remedy of appeal under the Rules and the Appellate authority

thought it fit to modify the penalty from one of removal from service to one of recovery of the amount of Rs 2 lacs from the applicant. According to the applicant the said order was not communicated to him. It is for the authorities to verify the same. The Revisional Authority, invoking the provisions of Rule 29 of the CCS (CC&A) Rules, 1965 chose to remit the matter to the Appellate Authority as according to him, the appellate order was not specific and reasoned and is also not considered as commensurate and thus, directed the appellate authority with the direction to issue the appellate order afresh. The applicant questions this order as he was not put to notice. Rules do not contemplate any notice at this stage. It is only if the Revisional Authority, either of his own or on application, decides to enhance the penalty imposed that he has to give notice. Here, the Revisional Authority has only remitted the matter back to the Appellate Authority. The appellate authority has, however, without notice to the applicant upheld the penalty order of removal, vide Annexure A-22. The applicant questions this too as not being in conformity with the relevant Rules. There is substance in the contention of the applicant. When the Appellate Order has reduced the penalty of removal to one of recovery of the amount of Rs.2lacs, the appellant was entitled to resume his duties and this gives him the right of being back in service. When the Revisional Authority set aside the order of the Appellate Authority, the right of the applicant to reinstatement has already been crystallized. In that event, upholding the order of the

Disciplinary Authority i.e. resurrecting the order of removal is one which amounts to imposing enhancement of the penalty suffered by the applicant. This warrants a due notice to the applicant and his representation ought to have been called for from him. This not having been done, the same is a serious legal lacuna, which makes the order of the appellate authority as illegal and unjust.

9. In view of the above, the order dated 05-01-2007 vide Annexure A-22 is liable to be set aside. This would mean that the applicant shall be permitted to resume duties and he shall be given a due notice and if he desires, he should be given an opportunity of being heard by the Appellate Authority before he complies with the order of the Revisional Authority. We order accordingly. The appellate authority shall initiate necessary action in this regard and come to a decision within a period of three months from the date of communication of this order. As regards the inter-regnum period, the period between the date of removal from service till the date of earlier appellate order dated 16-06-2006 would be treated as period of suspension. The applicant's contention is that he was not served with the order of the aforesaid appellate authority. The period from the aforesaid date till the date the applicant resumes duty would be considered by the authorities for due regularization on the basis of the fact whether the applicant was or was not actually served with the order dated 16-06-2006 and decision taken accordingly, either as

period of suspension or by any other manner as the authorities deem fit.

10. Under the above circumstances, there shall be no orders as to cost.

J.Chandra

[Jayati Chandra]
Member-A

Dr. K.B.S. Rajan

[Dr. K.B.S. Rajan]
Member-J

/Dev/