

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

Original Application No.: 1475/1996

Date of order: 07.03.2005

Prosad Kumar Ghosh : Applicant.

Mr. N. Bhattacharjee : Advocate for applicant.

VERSUS

Union of India & Ors. : Respondents.

Ms. U. Sanyal : Advocate for respondents.

CORAM:

THE HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.

THE HON'BLE MR. M.K. MISRA, ADMINISTRATIVE MEMBER.

1. Whether reporters of local papers may be allowed to see the judgement? *No*
2. To be referred to the reporter or not? *Yes*
3. Whether it needs to be circulated to other Benches of Tribunal? *Yes*


[M.K. MISRA]
ADMINISTRATIVE MEMBER


[J. K. KAUSHIK]
JUDICIAL MEMBER

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**HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. M. K. MISRA, ADMINISTRATIVE MEMBER.**

Prosad Kumar Ghosh son of Late Brotindra Nath Ghosh, working as EDBPM, Gouranganagar EDBO (now removed from service), resident of Vill. & P.O. Gouranganagar, P.S. Rajarhat, Distt. 24-Parganas (North).

...Applicant.

[Rep. by Mr. N. Bhattacharjee, advocate for applicant]

V E R S U S

1. Union of India service through the Secretary, Ministry of Communication, Department of Posts, Dak Bhavan, New Delhi – 110 001.
2. Chief Postmaster General, West Bengal Circle, Yoga Bhavan, Calcutta – 700 012.
3. Senior Superintendent of Post Offices, East Calcutta Division and (Ad-hoc Disciplinary Authority) office of Sr. Superintendent of Post Offices, East Calcutta Division, Calcutta – 700 014.

...Respondents.

[Rep. by Ms. U. Sanyal, advocate for respondents]

O R D E R

Per Mr. M.K. Misra, Administrative Member

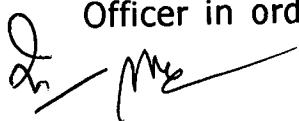
Shri Prosad Kumar Ghosh has, inter alia, prayed for the following relief: -

"a) The appointment of Ad-hoc Disciplinary Authority without following the Departmental Rules and Procedure on the subject be treated as null and void.

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- b) The order dated 30.10.96 (Annexure A7) passed by the Ad-hoc Disciplinary Authority be declared as void ab-initio.
- c) The respondents be directed to appoint the applicant to the post of EDBPM Gouranganagar EDBO within a period to be stipulated by the Hon'ble Tribunal.
- d) The respondents be directed to treat the applicant to be on duty from the date of put-off duty to the date of his re-appointment and pay allowances as admissible under the rules.
- e) Such other and further order or orders as to Your Lordships may seem fit and proper."

2. The factual background of this case as may be succinctly put in, is that the applicant came to be initially appointed to the post of EDBPM Gouranganagar on regular basis with effect from 20.07.1990 by the Senior Superintendent of Post Offices, North Presidency Division, Barrackpore. He was placed under put off duty with effect from 24th January, 1994, which was followed by issue of a Charge-sheet vide memo dated 15.12.1994 issued by Senior Superintendent of Post Offices, East Calcutta Division and Adhoc Disciplinary Authority but signed by some officer For Sr. Supdt. East Calcutta Dn. The set of charges are three in number whereby the violation of Rule 17 of P&T EDA (Service and Conduct) Rules, 1964 amongst other rules has been said to be indicated. The applicant denied the allegations and a confronting enquiry was held in the matter. The Defence Assistant wanted to know whether the Competent Authority approved the appointment of Adhoc Disciplinary Authority but no approval was communicated to the applicant. He also apprised them that no such rule was forthcoming and no such direction could be available from CCS (CCA) Rules as observed by the Inquiry Officer in order dated 24.07.1995, the objection was overruled



and the subsequent proceedings were continued. The applicant apprised in his written brief that the disciplinary proceedings have been irregularly initiated by the Adhoc Disciplinary Authority not being authorised by the competent authority but below the Appellate Authority of the applicant as required under the Rules in force. The Inquiry Officer submitted his report to the Adhoc Disciplinary Authority without any mentioned regarding the provisions relating to Adhoc Disciplinary Authority. The applicant was found guilty by the Adhoc Disciplinary Authority and was imposed the penalty of removal from service on 30.10.1996. The certain further details have been adduced and the impugned order has been assailed on multiple grounds wherein the relevant provisions have been extracted in ground No. II in the matter.

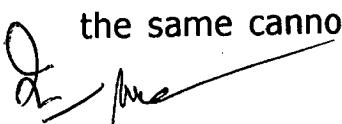
3. The respondents have contested the case and have filed the reply to the Original Application. It has been averred that the applicant has not got any cause of action and the same is liable to be dismissed. There was embezzlement of an amount of Rs. 1,77,954.450. A sum of Rs. 1,88,350/- was recovered from the delinquent E.D.B.P.M. and credited to Govt. account head U.C.R. at Deshbandhunagar S.O. under Belgharia Head Office. The disciplinary proceedings were held under Rule 8 of E.D. Agents (Conduct and Service) Rules, 1964. The Adhoc Disciplinary Authority have to be nominated since the Senior Superintendent of Post Offices was on medical leave. The

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penalty of removal from service was imposed on the applicant. The Adhoc Disciplinary Authority's order was endorsed by the Assistant Postmaster General on behalf of Chief Postmaster General. Due to mistake in the Rubber Stamp "For Sr. Supdt. of Post Offices was to be due to oversight. The Adhoc Disciplinary Authority was appointed by the Appointing Authority himself so the Adhoc Disciplinary Authority is authorised to initiate the disciplinary proceedings. The grounds have been generally denied. A rejoinder has been filed on behalf of the applicant.

4. We have heard learned counsel for the parties and have carefully perused the pleadings and records of this case. Both the learned counsel for the parties have reiterated the facts and grounds mentioned in their respective pleadings.

5. The learned counsel for the applicant has strenuously harped on the ground of competence of the Disciplinary Authority. He has submitted that there is no provision to appoint the Adhoc Disciplinary Authority under E.D. Agents (Service and Conduct) Rule. The rules provides for the next higher authority to act as Disciplinary Authority in such circumstances. Our attention was invited to the relevant rules as reproduced in sub para II of para 5. He has contended that the very order of the Disciplinary Authority is void ab initio and the same cannot be sustained being passed by an incompetent

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authority. He has also contended that since the Rules did not prescribe for appointment for any Adhoc Disciplinary Authority and provides for a specific procedure to be followed in such cases, the appointment of Adhoc Disciplinary Authority by Chief Post Master General or by any other authority is of no consequences. The punishment order is a non-est in the eye of law and the same does not meet the scrutiny of the law.

6. Per contra, the learned counsel for the respondents has submitted that the applicant has been found guilty and he has been penalised as per the Rules. The Disciplinary Authority itself was appointed by the Competent Authority and therefore no fault can be fastened with the action of the respondents. In this view of the matter the Original Application deserves to be dismissed.

7. We have considered the rival submissions put forth on behalf of both the parties. We find that the plea of the competence of the so-called ad hoc disciplinary authority has been taken by the applicant from the date of very initiation of disciplinary action against him but none of the authority has paid any heed to the same. The respondents did not become wiser even from the specific mention of the contents of relevant memo and find it expedient to right the wrong. There is hardly any adjudication required in this case in view of the specific instruction on the subject issued by D.G., P&T, letter No.

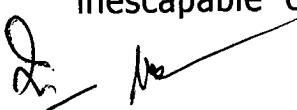
48/42/78-Pen/Disc.II dated 22nd June, 1979 when the normal disciplinary authority is not in a position to initiate action, laying down as under:

"it will be observed from Rule-8 of E.D. Agents (Conduct & Service) Rules, that the term "disciplinary authority" has not been used in the matter of imposition of penalties. It is laid down that the appointing authority will be competent to impose the penalties. The Ministry of Law has advised that even though there is no provision for appointment of ad-hoc disciplinary authority, the difficulty can be overcome if an authority senior to the appointing authority, exercises the power of the disciplinary authority (i.e., of the appointing authority), provided that the authority senior to the normal authority is not the appellate authority himself. No specific delegation has been made in respect of appellate authority, but it is laid down in Rule-10 ibid that the authority to which the authority imposing the penalty is immediately subordinate, shall act as the appellate authority. Accordingly, it would not be necessary to issue any general or special orders for appointment of ad-hoc disciplinary authority, when the normal appointing authority is not in a position to process the discipline case.

In view of the ruling of the Ministry of Law, the authority immediately senior to the prescribed appointing authority would process the disciplinary case and pass the necessary orders."

8. In the instant case, the competent authority i.e. next higher authority has neither initiated the disciplinary proceedings nor passed the order of penalty. The whole of the disciplinary proceedings including that of penalty order shall have to be held as without jurisdiction, void ab initio having no existence in the eye of law and therefore offends Article 14 and 311 of the Constitution. This Original Applications deserves to be accepted on this ground itself. Thus we do not find any necessity to debate on other grounds raised in this case.

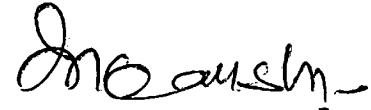
9. The upshot of the aforesaid discussion leads us to an inescapable conclusion that there is ample substance in this

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Original Application and the same stands allowed accordingly. The complete disciplinary proceedings including the impugned penalty order dated 30.10.96 (A/7) is hereby quashed and the applicant shall be entitled to all consequential benefits including reinstatement as if no such orders were in existence. This order shall be complied with within a period of three months from today. No costs. However, the competent authority is given liberty to take appropriate action in the same matter but finalise the same within a period of not later than four months from today.



[M. K. MISRA]
ADMINISTRATIVE MEMBER



[J. K. KAUSHIK]
JUDICIAL MEMBER

Kumawat