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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 31.01.2001.

O.A. No. 324/1996

Manak Lal Vyas S/O Shri Badri Narain, aged about 51 years, R/O Tinasani Tehsil Jetaran last employed on the post of Sub-Post Master at Babra Tehsil Raipur District Pali.(Raj).

... Applicant

vs

1. Union of India, through the Secretary to Government of India Ministry of Communication (Dept. of Post) Dak Bhawan, Sansad Marg, New Delhi.
2. Member of Postal Services Board, Ministry of Communication (Dept. of Post) Dak Bhawan, Sansad Marg, New Delhi.
3. The Director Postal Services, Rajasthan, Western Region, Jodhpur.
4. The Sr. Superintendent of Post Offices, Pali Division, Pali Marwar.

... Respondents

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. Vineet Mathur, Counsel for the Respondents.

CCRAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

Applicant, Manak Lal Vyas, in this application under Section 19 of the Administrative Tribunals Act, 1985, has prayed for quashing and setting aside the impugned orders dated 29.12.87, 23.2.89, 25.7.89, 30.10.90, 21.3.91 and 22.8.95 placed at Annexure A/1, A/2, A/3, A/4, A/5 and A/6 respectively with all consequential benefits.

Gopal Singh

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2. Applicant's case is that he was last employed on the post of Sub-Post Master at Babra. He was placed under suspension during the year 1987, and a chargesheet for a major penalty was served upon him on 29.12.'87 (Annexure A/1). On conclusion of the inquiry, the disciplinary authority had imposed upon the applicant the penalty of dismissal from service vide order dated 23.2.'89 (Annexure A/2). On appeal by the applicant, the Appellate Authority vide its order dated 25.7.89 (Annexure A/3) remitted the case back to the disciplinary authority for de novo proceedings from the stage of receipt of defence. A de novo inquiry was initiated against the applicant and on conclusion of the inquiry, the disciplinary authority imposed upon the applicant punishment of dismissal from service vide order dated 30.10.'90 (Annexure A/4). The Appellate Authority rejected the appeal on 21.3.'91 (Annexure A/5) and the Revision Petition submitted by the applicant was also rejected vide order dated 22.8.'95 (Annexure A/6). Feeling aggrieved, the applicant has filed this application.

3. Notices were issued to the respondents and they have contested the application.

4. We have heard the learned Counsel for the Parties, and perused the records of the case carefully.

5. Contention of the applicant is that the first Inquiry Officer held that charge No.2 and 3 were ^{not} proved and charge No.1 is not fully proved, the disciplinary authority, however, disagreed with the views of the Inquiry authority and held all the charges as proved and accordingly imposed the penalty of dismissal from service upon the applicant, without giving him any reasonable opportunity to represent

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against the point of disagreement. It has, therefore, been contended by the applicant that the order imposing penalty of dismissal from service is ab initio, illegal and wrong and, therefore, all subsequent orders would be illegal. It is seen from records that the Appellate Authority had vide its letter dated 25.7.89 remitted the case back to the disciplinary authority for de novo proceedings from the stage of receipt of defence. The Appellate Authority has ordered further inquiry into the matter from the stage of receipt of defence. The disciplinary authority has, however, initiated the inquiry de novo from very beginning as per his understanding of de novo proceedings from the stage of receipt of defence, as seen from letter dated 1.8.89 filed at page 1 & of the Inquiry file. It is also seen from this letter dated 1.8.89 that new Inquiry Officer and the present ^{ing} Officer were appointed for the purpose of Departmental enquiry. It is admitted that the earlier Inquiry Officer had completed the inquiry and had also submitted his Inquiry report, and the disciplinary authority had imposed the punishment of dismissal from service upon the applicant. The Appellate Authority had remitted the case back to the disciplinary authority for de novo ^{inquiry} from the stage of receipt of defence. As per the orders of the Appellate Authority, the inquiry should have been conducted further from the stage of receipt of defence. It has already been mentioned that the disciplinary authority had disagreed with the findings of Inquiry Officer and imposed the punishment on the applicant without giving him any opportunity to defend his case. In these circumstances, the Appellate Authority had ordered de novo inquiry from the stage of receipt of defence, implying

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thereby that the applicant ~~should be~~ given an opportunity to defend his case against the views of the disciplinary authority in disagreement with the findings of the Inquiry Officer. Thus, the disciplinary authority should have given a copy of the Inquiry report alongwith his disagreement Note to the applicant so as to enable him to put up his defence against the views of the disciplinary authority. But the disciplinary authority, as per his understanding as discussed above, instituted fresh proceedings against the applicant. The new Inquiry Officer held all the charges as proved and accordingly the disciplinary authority imposed the punishment/dissmissal from service upon the applicant. Appeal and Review Petition were also rejected. The contention of the applicant is that the fresh inquiry conducted was *ex parte*, and the applicant was not given opportunity to defend his case. We, however, observe that there was no necessity of conducting a fresh inquiry into the case. Only a further inquiry from the stage of receipt of defence was called for. Learned Counsel for the applicant has cited many judgments in this connection. These judgments are being discussed in subsequent para.

6. In (1990) 14 Administrative Tribunals Cases 590 L. David Vs UOI Madras Bench of the Central Administrative Tribunal have held that *de novo* inquiry by a new Inquiry Officer subsequent to submission of Inquiry report was ill. In AIR 1989 (1) CAT., 299 Ram Millan Paroha Vs UOI Jabalpur Bench of Central Administrative Tribunal have held that rule 29 of CCS (CCA) Rules, 1965 does not authorise the competent authority to hold successive inquiries. In that case charge sheet under rule 16 for minor penalty was served upon the delinquent official, and ^{he} was exonerated. Under the review initiation of proceedings *de novo* under rule 14 of major pe

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was ordered. The said order was held not been sustainable. Similarly, in (1994) 27 Administrative Tribunals Cases 771 Somnath Sharma Vs UOI & Ors. Chandigarh Bench of the CAT., held that rules permit only further inquiry and not de novo inquiry. In 1997 (5) SLR 508 R. Rama Rao vs. Andhra Pradesh State Agro Industries Development Corporation Ltd., & Anr. Hon'ble the High Court of Andhra Pradesh has held that once a departmental inquiry has ^{been} conducted, unless the rules applicable to the case so provided, second inquiry or a de novo inquiry into the same charges cannot be initiated. Similarly, Hon'ble the Punjab & Haryana High Court in 2000 (5) SLR 561 Mahendra Paul vs the Secretary, Health Department Punjab Govt. Chandigarh and Ors have held that de novo inquiry into the same charges cannot be held.

7. In view of the settled legal position as discussed above, we are of the view that de novo inquiry should not have been held in the instant case. The proceedings should have been continued from the stage of receipt of defence. Thus, we find much merit in the application and the same deserves to ^{be} allowed. Accordingly, we pass the order as under :

"The Original Application is allowed. The impugned orders dated 29.12.'87, 23.2.'89, 25.7.'89, 30.10.'90, 21.3.91 and 22.8.95 placed at Annexure A/1, A/2, A/3, A/4, A/5 and A/6 respectively are quashed and set aside. The respondents would be at liberty to proceed with the disciplinary case against the applicant from the stage of receipt of defence. No costs."

Gopal Singh
(GOPAL SINGH)

Adm. Member

B.S. RAIKOTE
(B.S. RAIKOTE)
Vice Chairman

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