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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of Order : 05.09.2001.

ORIGINAL APPLICATION NO. 377/1997

Lakha Ram S/o Shri Uda Ramji aged about 41 years, R/o Joto Ka Bera, Via Sedwa Distt. Barmer, last employed on the post of EDBPM Jato Ka Bera Via Sedwa Distt. Barmer.

.....Applicant.

VERSUS

1. The Union of India through Secretary to Govt. of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Barmer Division, Barmer.
3. Director of Postal Services, Rajasthan Western Region, Jodhpur.

.....Respondents

.....

CORAM :

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN
HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

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Mr. J.K.Kaushik, Counsel for the applicant.
Mr. Vinit Mathur Counsel for the respondents.

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ORDER

(PER HON'BLE MR.A.P.NAGRATH)

The applicant, while working on the post of Extra Departmental Branch Post Paster (EDBPM), at Jato-Ka-Bera,



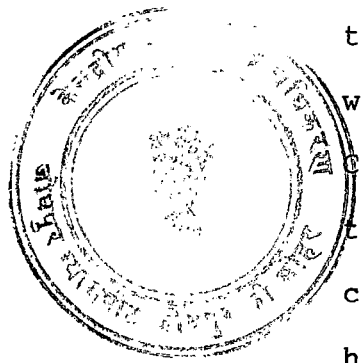
District Barmer, was issued a Chargesheet dated 10th March, 1995 (Annex.A/1) wherein eight charges were levelled against him. On completion of the departmental proceedings, the disciplinary authority by its order dated 10th June, 1996 (Annex.A/2), imposed a penalty of removal from service upon the applicant. On appeal, the penalty was up-held by the appellate authority vide its order dated 18th November, 1996 (Annex.A/3). The applicant is aggrieved with these orders and has filed this Application for declaring the orders as illegal and to quash the same allowing him all consequential benefits.

2. The facts of the case, as per the applicant, are that on receipt of the Chargesheet (Annex.A/1), he denied the charges and prayed for an oral inquiry which was held. The applicant vide his letter dated 17th June, 1995, Annex.A/12, demanded 36 additional documents and in response to this, the inquiry officer accepted to supply only documents No. 1, 7, 9, 10, 12, 25, 26, 32 and 33 vide his letter dated 17th June, 1995 at Annex.A/13. Further, in respect of the listed documents original copies of only four documents namely 1, 2, 3 and 4 were made available and in respect of other 8 relied upon documents, only copies were given to him and he was asked to inspect the original documents himself in the Court of Special Judge, Central Bureau of Investigation (CBI), Jodhpur, vide letter dated 16th August, 1995. The applicant submits that he objected to this procedure and requested that the original documents be made available to him in the inquiry. His plea is that while the original documents were not made available to him, even the photo copies of the certain documents were not certified as true



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copies. The applicant was supplied with a copy of inquiry report vide letter Annex.A/16 dated 18th December,1995. The Charges No. 1,5,6,7 and 8 were held to be proved and other charges were not proved. After receipt of applicant's representation, a penalty of removal from service was imposed upon him vide order dated 10th June, 1996 (Annex.A/2) and the appeal filed by the applicant against the said order was rejected by the respondent No.3 vide order dated 18th November, 1996 (Annex.A/3). The main ground on which the applicant has challenged the action of the respondents is that the chargesheet was issued to him without verification of the facts by the disciplinary authority, as required under Rule 69 of the P.&T. Manual Vol.III. The applicant's contention is that the facts were required to be verified from the original records and since the original records at the relevent time were not available with the disciplinary authority, as it was seized by the C.B.I., on 3rd July,1994, their inference was obvious that the original records were not consulted while drafting the chargesheet. The applicant has also raised a plea of not having been afforded a reasonable opportunity to defend his case as the relevent documents in support of his defence were not made available to him. Even the listed documents alongwith the chargesheet were not made available to him for inspection in original. For these reasons, the applicant contends that the disciplinary proceedings stand vitiated and the impugned orders were illegal, arbitrary and deserve to be quashed. The applicant has also assailed the orders of the disciplinary and appellate authorities on the ground that these orders were passed mechanically without adhering to the relevant rules. The other plea of the applicant is



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that the alleged mis-conduct is not of such a nature as to warrant the penalty of his removal from service and the same ^{as} stated to be grossly dis-proportionate.

3. The respondents in their reply have stated that the original documents were in the custody of the CBI and copies of these documents were made available to the applicant. The applicant also has nowhere stated that these documents were not the correct and true copies of the originals. It is mentioned in the reply that the copies of the documents which were relied upon by the inquiry officer and used in the inquiry, were supplied to the applicant. It is admitted that on a request made by the respondent No.2, the Superintendent of Police, CBI, sent the photo stat copies of the seized documents vide order dated 18.1.1995 (Annex.R/2) and it is nowhere alleged by the applicant that any tempering has been made or he has been prejudiced by making available true copies of the original documents. The respondents contend that the applicant had participated in the inquiry and a copy of the inquiry report was sent to him. On receipt of the ~~inquiry~~ inquiry report, the applicant moved his defence representation which was also duly considered by the disciplinary authority and only thereafter, a penalty of removal from service upon the applicant was imposed. The respondent No.3, after considering the appeal and the related documents rejected the same vide its order Annex.A/3 dated 18.11.1996. The respondents' stand is that the procedure required to be adopted in such disciplinary cases has been fully observed and there is no infirmity in their action. It has been stated that the authenticity of



the documents was not the subject matter of controversy as the documents relied upon, were listed by the department and were made available to the applicant and thus, no prejudice has been caused to him.

4. We have heard the learned counsel for the parties and have perused the whole record.

5. The entire controversy in the instant case revolves around ~~xxxxxx~~ the fact whether not making available the original documents to the applicant has vitiated the inquiry proceedings. To support this contention, the learned counsel for the applicant referred to the relevant rules printed in P&T Manual Vol.III and has argued that Rule 69 of the said Rules made it obligatory for the disciplinary authority to verify the facts from the original records before framing a chargesheet, hence, the impugned chargesheet is illegal being violative of the Rule 69 of the P&T Manual, Vol.III, ~~however~~, in view of the ^{that} admitted position/when the chargesheet dated 10.3.1995 was issued, the original records/documents were in the custody of the CBI and there was no occasion for the disciplinary authority to have verified the facts from those original records. The learned counsel for the applicant also referred to ~~the~~ Rule 6 of the Rule 14 of the CCS (CCA), Rules, 1965 and stated that it was mandatory that the original documents should be available with the Presenting Officer or with the Inquiry Officer. In the instant case, through-out the proceedings there was no occasion for the applicant to see the original documents and, therefore, the learned counsel contended that the entire proceedings are ^{and} illegal, unsustainable/hence, deserve to be quashed.



6. The learned counsel for the applicant placed reliance on (1998 (2) SLJ 67 - Ministry of Finance and Another Vs. S.B.Ramesh and 1995 (1) SLJ 157 - Committee of Management Vs. Shambu Saran Pandey and Ors. in support of his case.

7. On the other hand, the learned counsel for the respondents has contended that applicant can make a grievance only if non-supply of original documents caused him any prejudice to his case. The learned counsel admitted that at various stages in the inquiry and also in appeal against the imposition of penalty applicant did take a plea of non supply of original documents but this would not affect the case as the chargesheet and the proceedings themselves were based on the copies of the original documents and these copies have also been made available to the applicant. Even the applicant was asked to inspect the original documents himself in the court of Special Judge, CBI, but he did not take any steps to do the same. Thus, the learned counsel for the respondents argued that the applicant cannot make use of his own wrong in his own favour. The plea of the learned counsel was that non availability of the original documents has not caused any prejudice to the case of the applicant and so long ~~the~~ as the prejudice is not established, he could have no grievance. In support of his contention, he placed reliance on AIR 1996 SC 1669 - State Bank of Patiala and Others Vs. S.K.Sharma and AIR 1996 SC 484 - B.C.Chaturvedi Vs. Union of India and Others.

8. As we have stated above, one has to establish whether non supply of original documents has caused any



injury to his legal rights and this also is violative of statutory provisions. We have perused the rule position and the case laws, relied upon by the learned counsel for the applicant. The judgements of Hon'ble the Supreme Court cited by the learned counsel for the applicant are not applicable as they are distinguishable on facts. In the case of Committee of Management Versus Shambu Saran Pandey and Ors., no documents had been supplied to the appellant nor even an opportunity of inspection had been given to the charged official. He was informed that he is at liberty to inspect the documents at the time of final arguments. In these circumstances, Hon'ble the Supreme Court held that the procedure followed by the inquiry officer to allow inspection at the time of final hearing by the High Court was erroneous and therefore there was violation of principles of natural justice. In the case in hand, it is not the case of the applicant that no documents were supplied to him at all along with the chargesheet or during the inquiry; his case is that the original documents were not made available to him for inspection. In the other case, Ministry of Finance and Anr. Vs. S.B. Ramesh, the inquiry officer had not exhibited certain documents which were used by him actually in his report. The inquiry was held to be initiated on this account. It is not the case of the applicant that the inquiry officer, in the instant case, based his conclusions on the documents not listed.



9. In the case of State Bank of Patiala and Others Vs. SK Sharma, cited by the learned counsel for the respondents, Hon'ble the Supreme Court laid down certain basic principles of natural justice keeping in view the order of punishment imposed upon the employee. We consider it appropriate to reproduce the relevant portions which

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would provide necessary guidelines to arrive at a just conclusion in the instant case.

"(1).An order passed imposing a punishment on an employee consequent upon a disciplinary/departmen-
tal enquiry in violation of the rules/regulations/
statutory provisions governing such enquiries
should not be set aside automatically. The Court
or the Tribunal should enquire whether (a) the
provision violated is of a substantive nature or
(b) whether it is procedural in character.

(2).A substantive provision has normally to be
complied with and the theory of substantial
compliance or the test of prejudice would not be
applicable in such a case.

(3).In the case of violation of a procedural
provision, the position is this : procedural
provisions are generally meant for affording a
reasonable and adequate opportunity to the
delinquent officer / employee. They are, generally
speaking, conceived in his interest. Violation of
any and every procedural provision cannot be said
to automatically vitiate the enquiry held or order
passed.....".

(4)(a).In the case of a procedural provision which
is not of a mandatory character, the complaint of
violation has to be examined from the standpoint of
substantial compliance. Be that as it may, the
order passed in violation of such provision can be
set aside only where such violation has occasioned
prejudice to the delinquent employee.

(b).In the case of violation of a procedural
provision, which is of a mandatory character, it
has to be ascertained whether the provision is
conceived in the interest of the person proceeded
against or in public interest. If it is found to
be the former, then it must be seen whether the



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delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called."

In the instant case, we do not find any mandatory provision in the rules that the chargesheet should be issued only after verification of the facts from the original record. Similarly, there is no provision that it is only the original documents which have to be made available to the charged official. What is required to be made available is the relied upon documents. The relied upon documents in this case were the photo copies of the original. The chargesheet was based on these photocopies only and the copies of these only, were actually given to the applicant. The Rule 69 of the P&T Manual, on which the learned counsel for the applicant has placed reliance is extracted below :-

"Verification of facts.

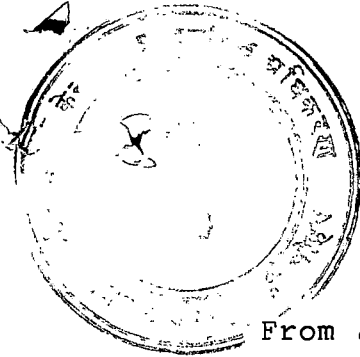
69. It is necessary and desirable that disciplinary authorities before initiating action against employee verify facts from the original records." (emphasis supplied).

The very wording shows that it is not mandatory provision. The mandatory provisions are not expressed as being something desirable. This, at best, can be read as a guideline. What is required for the satisfaction of the disciplinary authority is that the documents from which he is verifying the facts are in original or copies of the original and are genuine in nature and correct. The learned counsel referred to Rule 6 of Rule 14 of the CCS (CCA) Rules, 1965 and argued that the original documents

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should be in the custody of the Presenting Officer or with the Inquiry Officer for making an inquiry against the charged official and the learned counsel takes support from sub para 5(iii) of Chapter I of the Posts and Telegraphs Manual Vol. III, which reads as under :-

"5(iii) To enable the Enquiry Officer to hold the enquiry, the disciplinary authority is required to send copies of the documents as indicated in sub rule 6 of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 to him. The original documents should be available with the Presenting Officer. In case there is no Presenting Officer, the enquiry officer should have the original documents."



From a perusal of the above sub para (iii) of para 5, it is clear that this is only a guideline in respect of the procedure to be followed in the disciplinary proceedings and again can ^{not} be said to be a mandatory provision of rules. As held in the case of State Bank of Patiala and Others Vs. S.K.Sharma ^{supra}, ~~mentioned above~~ a substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case and in the case of violation of a procedural provision, this cannot be said to ~~be~~ automatically vitiate the inquiry. Any order passed in violation of the procedural provision can be set aside only where such violation has occasioned prejudice to the delinquent employee. In the case before us, we find that the applicant has nowhere taken the stand that because of non availability of the original documents the contents of the chargesheet against him are vague. He has in fact, given his detailed defence against each of the charges and from reading of the defence, as incorporated in the inquiry

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proceedings, we feel persuaded to conclude that non availability of the original documents has not caused any prejudice to the case of the applicant. The entire case has been proceeded with based on the copies of the original documents, and these copies only were with the disciplinary authority and also the inquiry officer. Copies of the same were also made available to the applicant. We do not find any substance in the ground taken by the applicant that non supply of the original documents has vitiated the inquiry proceedings. We are satisfied that full opportunity has been given to the applicant as enjoined under the statutory provisions of Rules and there is no infirmity in so far as the inquiry against the applicant is concerned. We have perused orders passed by the disciplinary authority and the appellate authority and we find ^{that} the orders are reasoned and speaking and thus we reject the contention of the applicant that these have been passed mechanically or without adverting to the rules.

10. The other ground raised by the applicant in his O.A. is that the punishment imposed is dis-proportionate to the alleged misconduct. We think it necessary, at this stage, to extract below the charges which have been proved against the applicant.

अनुच्छेद: प्रथम-श्री लाखाराम ने अ. वि. शाखा डाकपाल जाटों का बेरा के पद पर कार्य करते हुए दिनांक 1.1.94 को अतिशेष में नकदी रु0102.65 कम रखकर शाखा डाकघर नियमावली के नियम 11 का उल्लंघन किया।

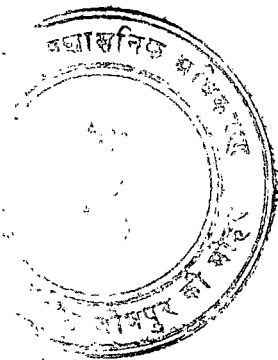
अनुच्छेद: पंचम-उक्त श्री लाखाराम ने दिनांक 2.2.94 को श्री बी.आर. भिरागिया, निरीक्षक डाकघर चौहान को अपशब्द कहकर तथा बयान देने से इकार कर जांच में बाधा डालकर डाक विभाग अ. वि. सेंट सेवा व आचरण नियमावली 1964 के नियम 17 का उल्लंघन किया।

अनुच्छेद: षष्ठम- उक्त श्री लाखाराम ने अधिकृत सीमा रु0 300/- से अधिक नकदी दिनांक 15.10.92 से 1.1.94 की अवधि के दौरान रोककर शाखा डाकघर नियमावली के नियम 136 का उल्लंघन किया है।

अनुच्छेद: सप्तम-उक्त श्री लाखाराम ने अदत डोक प्रभार वाली डाक कुल मूल्य रु0 80.40 का निपुटान/जमा नहीं कर शाखा डाकघर नियमावली के नियम 67 का उल्लंघन किया है।

अनुच्छेद: अष्टम-उक्त श्री लाखाराम ने उक्त कृत्य को छोड़कर डाक विभाग अ. वि. सेंट सेवा व आचरण नियमावली 1964 के नियम 17 के तहत कर्तव्य निष्ठा व सत्यनिष्ठा नहीं बनाए रखी।





11. We find from the contents of charges proved, as stated above, that charge No. 6 wherein it is stated that Lakha Ram, had retained more than Rs. 300/- in cash during the period from 15.10.1992 to 1.1.1994 whereby violating Rule 136 of the Postal Manual; and charge No. 7 that he did not handle the bearing Dak worth Rs. 80.40 properly, are indicative of negligence on the part of the applicant. Charge No.1 by which he has been alleged to have retained 102.65 rupees less in the cash balance is a charge with somewhat serious content. Charge No. 5, by which he has been alleged to have mis-behaved with Shri B.R.Bhirania, Postal Inspector/Chouhatan by using foul words and to have refused to give any statement, is an indefensible conduct which tantamounts to gross violation of Service Conduct Rules. The Competent Authority in the department, keeping in view the nature of charges which have been proved, has imposed the penalty of removal from service.

12. The scope of judicial interference in disciplinary cases is very limited. The Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Permanand - Reported in 1998 SC (L&S) 316, held that the Court cannot go into the quantum of punishment unless it is of the view that the punishment imposed is such that no reasonable person could ever have imposed such a punishment looking into the facts of the case.

13. In the case before us, the nature of offence i.e. mis-behaviour with the Inspector using objectional language is rather a grave charge. The acceptable norms of behaviour form the very basic and essential ingredient of discipline in an organisation. If an employee, by his act, has infringed these norms, he cannot expect any lenient view. Therefore, we do not find any reason to interfere with the punishment imposed by the competent authority. In view of the totality of the circumstances, as discussed in the aforesaid paras this application is liable to be dismissed.

14. We, therefore, dismiss this application with no order as to costs.

(A.P.Nagrath)
Adm.Member

(Justice B.S.Raikote)
Vice Chairman

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Received
Dr. Gould
12/9/2001

Dr. Gould
K.S. Gould
11/9/01
for W.K. Mather

Part II and IM destroyed
in my presence on 18-5-07
under the supervision of
section officer (J) as per
order dated 19/3/07

W.K. Mather
Section officer (Records)