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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH; JODHPUR.

17TH Day of December, two thousand three.

O.A. No. 288/02

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Lal Chand Sharma,
S/o Govind Ram Sharma
Vill. Dholipal,
Tehsil & Distt. Sri Ganganagar

: Applicant.

Mr. Vijay chahar : Counsel for the applicant.

Versus

1. The Union of India through the
Secretary, Ministry of Communications,
Department of Postal Services,
Sansad Marg,
New Delhi.
 2. Chief Post Master,
Head Post Office,
Hanumangarh Junction.
 3. The Superintendent of Post Office,
Mandal,
Sri Ganganagar 335 001
- : Respondents.

Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

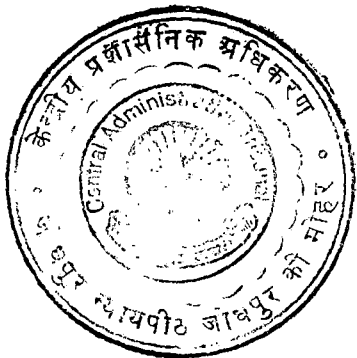
Shri Lal Chand Sharma, has filed this O.A for assailing the order dated 13.09.2002(Annex. A-1), by which he has been imposed a penalty of recovery of Rs. 1,33,860/- and order dated 07.01.2003 (Annex. A-1.A) passed by the Appellate Authority upholding the penalty order passed by the Disciplinary Authority.



2. With the consent of the learned counsel for the parties, the case was taken up for final disposal at the admission stage. We have heard the learned counsel for the parties and very carefully considered the records of this case.

3. The controversy involved in the instant case is at a very narrow compass. The applicant is a Group "D" employee working on the post of Watchman in the respondents department. During the night of 23/24-01-2001, an incident took place in the Head Post Office, Hanumangarh Junction, where the applicant was on duty and there was a theft and the thieves have taken away a sum of Rs. 1,33,859.60/- from the locker of the Post Office. The applicant was charge sheeted. A detailed inquiry was held in the matter. The Inquiry Officer submitted his report that the charges alleged against the applicant did not stand proved. In the covering letter by which the inquiry report was given (Annex. A.4- dated 07.02.2002) it is annotated that in the inquiry report in lines 15 to 20 of page 11, the Inquiry Officer has taken as proved that the information regarding the theft was sent late to the Chief Post Master and the Presenting Officer also has held the charges proved.

4. The further case of the applicant is that the Disciplinary Authority has dis-agreed with the findings of the Inquiry Officer on the charges and without giving any notice or hearing to the applicant, the penalty of recovery has been imposed. An exhaustive appeal was preferred but the same has been turned

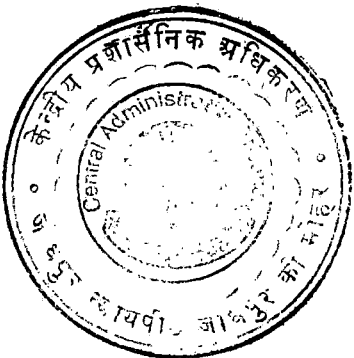


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down without considering the same as per Rule 27 (2) of the CCS(CCA) Rules, 1965.

5. The Original Application has been filed on a number of grounds mentioned in para 5 and its sub-paras; primarily the ground of violation of Rule 15 (2) and Rule 27 (2) of the CCS(CCA) Rules, 1965, has been taken. In addition to that the non-adherence of D.G. P & T's letter dated 17.08.1971, under Rule 11 of the CCS (CCA) Rules, 1965 has also been complained of.

6. The respondents have filed a detailed reply and have controverted the facts and grounds raised in the OA. It has been averred that reasons for disagreement have been mentioned on the forwarding letter by which the inquiry report was sent to the applicant and the Appellate Authority has applied its mind and rejected the same. Thus there is no illegality or infirmity in the action of the respondents. He has also submitted that the scope of judicial review is very limited in cases of disciplinary proceedings and there is no ground for interference in the instant case by this Tribunal.



7. A short rejoinder has been filed almost reiterating the facts raised in the appeal and the statement given by the applicant during the inquiry is also annexed.

8. Both the learned counsel have reiterated their pleadings. The learned counsel for the applicant has placed heavy reliance on Rule 15 (2) of the CCS (CCA) Rules, 1965 and has submitted

that the applicant has not been given any hearing on the point of disagreement by the Disciplinary Authority. He has also submitted that a perusal of the letter would show that the letter through which the inquiry report was sent to him is contrary to the facts. Besides, it does not disclose the point of disagreement by the Disciplinary Authority on the findings of the inquiry officer. He has also contended that the findings of the Inquiry Officer are very clear and also the Disciplinary Authority has disagreed with the findings of the inquiry officer on the charge while passing the final order and the mind of the disciplinary authority has not been disclosed prior to the passing of the impugned order. His further contention is that the Appellate Authority has not appreciated the correct position of the law and the requirement of the principles of natural justice as per the mandate of the rules.

9. Per contra, the learned counsel for the respondents has submitted that as far as the law and rule position is concerned there can hardly be any dispute and in the instant case the Disciplinary Authority had communicated the reasons for disagreement, may be that the communication has not been happily worded and therefore the requirement of Rule 15 (2) of the CCS(CCA) Rules has been fulfilled and on that count no judicial review is warranted. As regards the Appellate Authority's order the same has been passed after due application of mind. The Original application, therefore, does not have any force and the same should be dismissed with costs.



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10. We have considered the rival contentions raised on behalf of both the parties. To appreciate the controversy involved in the instant case, it would be expedient to extract Rule 15(1) and 15(2) of the CCS(CCA) Rules, 1965, which reads as under:

15. Action on the inquiry report.

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

11. The law on this point is also well settled by the Supreme Court in one of the very recent decisions in the case of **State**

Bank of India and others vs K.P. Narayanan Kutty [2003

(1) Supreme 778], wherein their Lordships have relied upon an

earlier judgement in the case of **Punjab National Bank and**

others vs. Kunj Behari Misra [1998 (7) SCC 84] para 19 of

the said judgement reads thus:

" The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent

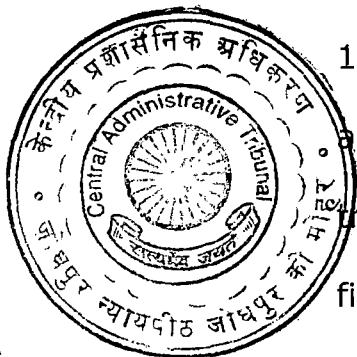


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officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision, and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

Thus as far as the law is concerned, the matter stands settled and does not remain res-integra. The law position is that in case of disagreement with the finding of the inquiry officer, the disciplinary authority should inform the delinquent employee the reasons for disagreement and give him an opportunity to represent against the same.

12. Now, advertent to the facts of this case, applying the aforesaid proposition of law, a perusal of Annex. A.4 indicates that the inquiry officer in his inquiry report has held in lines 15 to 20 at page 11 that there was delay in informing the Chief Post Master. Further it is said that the Presenting Officer has held the charges as proved. We have perused lines 15 to 20 of page 11 of the inquiry officer's report, we find that it is indicated that the prosecution could not produce any evidence regarding the sending of information late, but the lines which are being referred to do not indicate so.



13. Next, the presenting officer is not the authority to give any finding or pointing out disagreement. It is very strange that the Disciplinary Authority has said nothing about the main finding of the inquiry officer in the forwarding letter and it was only when he passed the final order he indicated that he disagrees with the finding of the inquiry officer. It seems that the Disciplinary Authority had moved on the basis of certain

precarious assertions and if the said lines 15 to 20 at page 11 of the inquiry officer's report are the only reason for disagreement, the same is contrary to the very record of the respondents in as much as the inquiry officer has specifically said that the prosecution has failed to prove as to at what time the theft has taken place and also what is the yard stick of measuring delay in informing the same to the Chief Post Master.

14. In this view of the matter, we are of the considered opinion that the applicant has been denied reasonable opportunity to defend his case and he has not been communicated at any point of time the points of disagreements with the findings of the inquiry officer by the Disciplinary Authority and therefore the procedure established by law has not been followed.

15. In the result, we find there is sufficient merit and substance in this case and the same stands partly allowed. The impugned orders dated 13.09.2002 and 07.01.2003 are hereby quashed with all consequential benefits. However, it shall not preclude the competent authority to proceed on the basis of the inquiry officer's report and pass a fresh order in accordance with law. No costs.



(G.R. Patwardhan)

Administrative Member

jsv


(J.K. Kaushik)

Judicial Member.

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Part II and III destroyed (along with MA)
in my presence on 17/10/13
under the supervision of
section officer () as per
order dated 09/10/13

D.K. Shrivastava
Section officer (Record) 17.10.2013