

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 306 of 2005

Date of order: 7-4-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Sohan Lal Jain son of Shri Khem Raj Ex-Gramin Dak Sevak Sub Post Master, Sub-Post Office Chawand, Tehsil Sarada R/o Village Chawand, Tehsil Sarada, District Udaipur.

....Applicant.

Mr. Vijay Mehta, counsel for applicant.

VERSUS

1. Union of India through the Secretary Ministry of Communication, (Department of Post) Sanchar Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Udaipur.
3. Director, Postal Services, Southern Region, Rajasthan, Ajmer.

... Respondents.

Mr. M. Godara, proxy for Mr. Vinet Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, (JM)

1. This Original Application has been filed by applicant, Sohan Lal Jain, Ex-Gramin Dak Sevak Sub Post Master, Sub- Post Office Chawand, Tehsil Sarada, r/o Village Chawand, Tehsil Sarada, District Udaipur for grant of following reliefs:-



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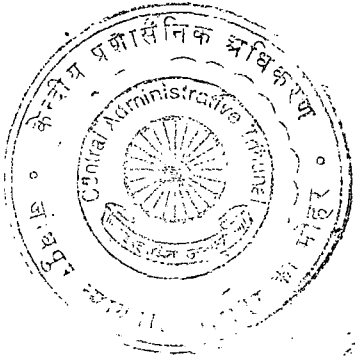
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- i) That the impugned orders at Annexure A-1 and Annexure A-2 be quashed and the applicant be reinstated in service with complete salary and allowances and all other consequential benefits be also granted to him.

The brief facts of the case are as follows:-

2. The applicant was appointed as ED SPM (GDS SPM) about 30 years back. His service record was unblemished as he has served the Postal Department honestly and efficiently. While the applicant was working as GDS SPM, Chawand on 5.2.2004, he was served with a memo under Rule 10 of GDS (Conduct & Employment) Rules, 2001 vide Annexure A-3 dated 5.02.2004. In the memo it was alleged that at the time of inspection on 5.8.2003 by the SPO a sum of Rs. 1,89,000/- was found short, which was later on deposited by the applicant on two dates i.e. on 6.8.2003 and 7.8.2003, thus the applicant has failed to maintain absolute integrity and devotion to his service. The memo further states that the act of the applicant was in violation of Rule 85 of the Postal Volume (VI) of Part III and also in violation of Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules of 2001. The charge memo further states that by keeping the cash in excess without any liabilities and authorization from any competent authority the applicant had violated the provisions of Rule 102 of Postal Rules Volume VI Part III). Further case of the applicant is that the applicant



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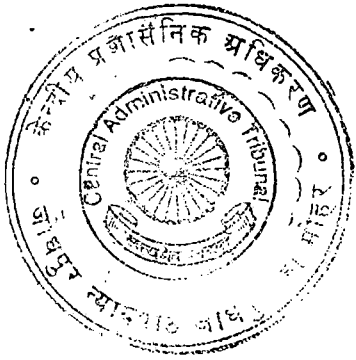
submitted his reply dated ⁻³⁻ 7.2.2004 of Annexure A-3 , denying the charges leveled in the charge sheet against him. Thereafter an inquiry was conducted against the applicant and the inquiry report was submitted by the inquiry officer on 18.6.2004, in which the applicant was exonerated. But, the respondent no.2 who is disciplinary authority while disagreeing with the findings of the inquiry officer, imposed penalty of removal of the applicant from service vide his order dated 15.7.2004. On appeal preferred by the applicant the respondent no.3 quashed the order of removal passed by the respondent no.2 and remitted back the case to respondent no.2 for passing reasoned order. Thereafter the respondent no. 2 vide his order dated 14.3.2005 passed order and imposed the penalty of removal from service upon the applicant. The said order is at Annexure A-1. The applicant preferred an appeal against the said order before the respondent no.3, but the respondent no.3 vide his order dated 26.8.2005 dismissed the appeal and upheld the order passed by the respondent no.2. Being aggrieved by both the orders passed by respondent no.2 & 3 vide Annexure A-1 & A2 the applicant has preferred this O.A., challenging those orders on the ground that the said orders are not passed in accordance with law and both the authorities have not considered the facts and plea taken by the applicant.



3. On filing of the present Original Application, notices were issued to the respondents and in compliance of the

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notice the respondent appeared and filed joint reply of the O.A. As per reply of the respondents, the respondents have justified their action in passing the orders of removal of the applicant from service. According to them, on receipt of complaint in regard to retention of excess cash by the applicant, without any authorization by any competent authority, the sub Post Office where the applicant was working was inspected on 5.8.2003 by S.D.I. (P), Salumber and during the course of inspection the cash and stamps of Rs. 1,89,000/- were found short with the applicant and accordingly the inspection report was submitted to the competent authority. However, the applicant willingly credited Rs. 20,000/- on 6.8.2003 and remaining amount of Rs. 1,69,000/0 on 7.8.2003 vide receipt No. 34 & 35. It is further stated that on the alleged irregularity and misconduct a disciplinary inquiry was initiated against the applicant and he was served with a memo of charges on 5.2.2004. The applicant denied the charges in his representation and so inquiry was proceeded as per Rules and the inquiry officer after completion of inquiry submitted his report to the disciplinary authority holding that on merit the charges leveled against him stands well proved. On that basis, the disciplinary authority passed the order of penalty of removal from service. However, in appeal the appellate authority set aside the order and remitted back the case for fresh orders. The disciplinary authority again passed similar order which



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was confirmed by the appellate authority. It is stated that it is incorrect to say that the inquiring officer had exonerated the applicant of the charges.

4. During the course of arguments Sh. Vijay Mehta learned counsel for the applicant drew our attention towards para 5 (g) of the Original Application in which the applicant has stated that the order (in appeal) has been passed without giving him an opportunity of personal hearing. He submitted that this fact has not been controverted by the respondents in their reply. Rather at para 5(g) of the reply it has been stated that the appellate authority did not feel necessity of granting personal hearing thereby admitting this fact that before disposing of the appeal the appellate authority did not allow personal hearing to the applicant. In reply to the contention of learned counsel for the applicant, learned counsel appearing on behalf of the respondents submitted that Rule 27 of the CCS (CCA) Rules, 1965 does not specifically provides for the grant of personal hearing by the appellate authority to the government servant and the same is not mandatory in each case. Controverting the argument of the learned counsel of the respondents the learned counsel for the applicant submitted that the controversy involved in the present Original Application has been set at rests by several decisions of this Tribunal as well as by the Hon'ble Apex Court. He submitted that this case is fully covered by the two previous decisions of this Tribunal as well as the



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decision of the Hon'ble Apex Court given in the case of **Ram Chander Vs. Union of India & Others** reported in 1986 Administrative Tribunal Cases page 47. In support of his argument the Learned Advocate of the applicant has filed copies of the decisions passed in O.A. No. 211/1996 dated 12.2.2001 in the case of **Ram Autar Chowdhary Vs. Union of India & Ors.** and O.A. No. 141/2001 dated 09.04.2002 in the case of **Gopal Lal Vs. Union of India & Ors.**

5. From the perusal of the decision rendered in O.A. No. 211/1996 dated 12.2.2001, it appears that the said decision is based on the decision of the Hon'ble Apex Court given in the case of Ram Chander (Supra). It further transpires that the decision dated 9.4.2002 passed in O.A. No. 141/2001 is based on the decision of this Tribunal given in O.A. No. 211/1996 (Supra). For better appreciation of the point raised by the learned Advocate of the applicant, we would like to incorporate para 5 of O.A. No. 211/1996 as well as para 8 of the decision of this Tribunal in O.A. No. 141/2001 herein in below:-



"Learned counsel for the applicant has cited the case of Ram Chandra Vs. Union of India & Ors. AIR 1986 SC 1173 in support of this contention that the Appellate Authority should have given personal hearing to the applicant and the absence of the same would amount to violation of principles of natural justice. We consider it appropriate to extract below the relevant portion of the above mentioned judgment:

It is not necessary for our purposes to go into the vexed question whether a post decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural

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justice since the majority in Tulsiram Patel's case 9AIR 1985 SC 1416) unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e., an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of air-play and justice also require that such a personal hearing should be given. "

" In the instant case, a major penalty had been imposed upon the applicant, and the applicant had made a request via letter dated 22.1.95 (Annexure A/16) for grant of personal hearing to the applicant alongwith his defence assistant. It is very clearly provided in the Government of India instructions cited above that the applicant can take Defence Assistant during personal hearing. Thus, the Government of India instructions cited by the learned Counsel for the respondents does not come to their rescue. The order dated 19.1.96 passed in O.A. no. 214/94 Ram Pratap Meena Vs. Unions of India & Ors. has also been relied upon by the learned counsel for the respondents. It has, inter alia been observed in this order that 'it is not always necessary that an opportunity and the revising authority before passing their orders. Ultimately, what we have to see is whether there was evidence to justify the conclusions drawn by them. It is also pertinent to note that neither in his appeal (Ann. A/10) nor his revision application (Ann. A/11) did the applicant ask for a personal hearing from these authorities. Therefore, the ground that his appeal and the revision application were rejected without granting a personal



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hearing to him is also rejected. In our opinion, the observation made by the Tribunal in order dated 19.1.96 passed in O.A. No. 214/94, does not lay down a law. Moreover, it appears that the Government of India instructions and the Supreme Court Judgment (supra) were not brought to the notice of the Tribunal at the time the said O.A. was decided. In the circumstances, we do not consider it necessary to follow the order dated 19.1.96 passed in OA NO. 214/94."

6. Para 8 of the decision in the case of **Gopal Lal Vs. Union of India & Ors.** rendered in O.A. No. 141/2001 by this Tribunal runs as follows:-

"After having heard the learned counsel for the parties we feel that it was a case fit enough in which personal hearing was necessarily required to be given by the appellate authority. Denial of such an opportunity of personal hearing has resulted in positive prejudice to the case of the applicant. Therefore, without diluting over the matter and touching the merits of the case, we feel that it would be in the interest of justice if the appellate authority is directed to give a fresh look to the appeal of the applicant after giving an opportunity of personal hearing to him."

7. From the facts stated as above it is clear that this case is fully covered by the above mentioned earlier two decisions of this Tribunal as well as the Judgment of the Hon'ble Apex Court given in the case of Ram Chander (Supra) as in this case also admittedly the applicant was not given an opportunity of personal hearing by the appellate authority. Thus, we are of the opinion that similar order should be passed in this case also as given by this Tribunal in previous two cases referred above.

8. In the result, it is hereby ordered that this Original Application is partly allowed only to the extent that the order dated 26.8.2005 (Annexure A-2) passed by the appellate



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authority is hereby quashed and set aside and the case is remitted back to the appellate authority to decide the appeal afresh after giving an opportunity of personal hearing to the applicant. The appellate authority is further directed to dispose of the appeal within a period of 3 months from the date of receipt of copy of this order. It is observed that this order will not affect the merit of the case. In the circumstances, of the case there will be no order as to costs.




(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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दिनांक 17/12/15 के आदेशानुसार
पेरी उपस्थिति में दिनांक 10-2-16
को भाग-II में भाग-II में लिखें।

अनुष्ठापन अधिकारी
केन्द्रीय प्रशासनिक कक्षा-1/2/3/4
जोधपुर न्यायपीठ, जोधपुर