

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 314/2005

Date of order: 7-4-2010

CORAM:

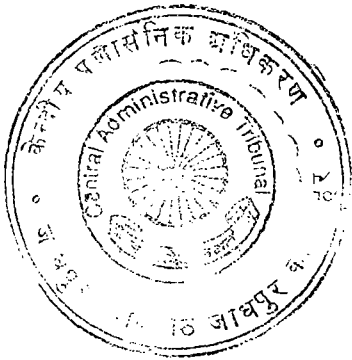
**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Madhav Lal Garg son of Sh. Nand Lal aged 61 years Ex-EDBPM,
Samaria Khurd, District Chittorgarh, R/o Village Samria Kalla,
District Chittorgarh.

...Applicant.

Mr. Vijay Mehta, counsel for applicant.

VERSUS



1. Union of India through the Secretary to Government, Ministry of Communication (Dept. of Posts), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Chittorgarh.
3. Director, Postal Services, Southern Region Ajmer.
4. Post Master General Rajasthan, Southern Region, Ajmer.

... Respondents.

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

ORDER

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

Applicant Madhav Lal Garg, Ex-EDBPM, Samaria Khurd, District Chittorgarh has preferred this Original Application for grant of mainly the following relief:-

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"That the impugned order Annexure A-1 to Annexure A-3 may kindly be quashed and the dismissal of the applicant may kindly be quashed and the applicant be reinstated with full back wages and all consequential benefits".

The brief facts of the case are as follows:-

2. The applicant while working as ED BPM Samaria Khurd was put off from duty vide order dated 13.10.1998 and a preliminary inquiry was initiated against him after more than 8 months and thereafter on 2.11.1999 he was served with a charge sheet alleging therein that on 13.09.1997 he did not pay a sum of Rs. 200/- (Rupees two hundred) of money order to Shri Dhunger Singh and put a forged thumb impression of the said Dunger Singh on the money order form and kept the said amount with him. It was further alleged in the charge sheet that the applicant paid less amount of four money orders to Sh. Pratap, but showed the full amount as paid to said the Sh. Pratap in the accounts. There was further allegation that the applicant did not make the entries in the Accounts from 16.9.1998 to 21.9.1998. The applicant submitted his reply, denying all the charges levelled against him and thereafter the authority passed order for initiation of departmental inquiry against the applicant. One Sh. Suresh Chandra Sharma was appointed as inquiry officer. However, due to his illness the applicant could not participate in the inquiry and sent an application to the inquiring officer alongwith medical certificate. Thereafter, the inquiring officer



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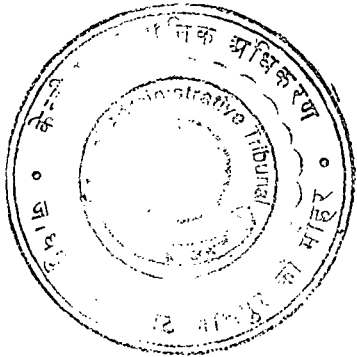
proceeded to conduct ex-parte inquiry. Again on 8.6.2000 i.e. on the next date the applicant could not attend the inquiry as he reached late and on that date two witnesses were examined but no examination in chief of the witnesses was recorded. The applicant requested the inquiry officer to adjourn the proceedings, but his request was turned down which showed that the inquiry officer was biased and so the applicant requested the authority to change the inquiry officer which was accepted by the respondent no.2 and another inquiry officer namely Sh. I.L. Sankhla was appointed as inquiry officer. However, the said Sh. Sankhla also failed to record the examination in chief of the witnesses in spite of the request made by the applicant. The applicant made request to the inquiring officer to supply copy of the additional documents and for summoning additional defence witnesses which was turned down by the inquiring officer. The applicant also made request to the inquiry officer to supply copy of the report of the preliminary inquiry as the same was conducted behind the back of the applicant, but this request was also turned down. It is stated that the act of the inquiry officer caused great prejudice to the applicant and entire inquiry was conducted in violations of Rule 14 (15) of CCA (CCS) Rules. It is stated that inquiry officer without considering the submissions made by the applicant submitted his report on 29.7.2002 and the applicant was served with the copy of inquiry report whereupon he submitted his



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objection on 17.6.2002. The respondent no.2 vide his order dated 31.7.2002 held the applicant guilty of all the charges and imposed upon him the penalty of dismissal from service. The applicant preferred appeal before respondent no.3, but respondent no.3 vide his order dated 17.6.2003 (Annexure A-2) dismissed the appeal and confirmed the order of the disciplinary authority. The applicant submitted revision petition before the respondent no.4, but the same was also dismissed via order dated 29.10.2004 (Annexure A-3). Therefore, the applicant being aggrieved by the above mentioned orders preferred this Original Application.



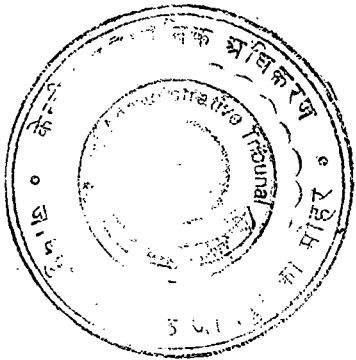
3. Besides, several factual and legal grounds taken by the applicant in the present O.A., one of the ground taken in para 5(t) is with regard to not providing him personal hearing by the appellate authority and as per the ground the order passed by the appellate authority is vitiated in law due to not providing of personal hearing to the applicant by the appellate authority.

4. On filing of the present O.A. notices were issued to the respondents and in compliance of the notice the respondents appeared and filed their joint reply of the O.A. The respondents have controverted all the pleas taken by the learned counsel for the applicant in O.A. However, in reply to para 5(t) of the O.A. the respondents at internal page 20 of the reply have admitted this fact that the applicant was not given an opportunity of personal hearing by the appellate

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authority. It has been stated by the respondents at para 5(t) of the reply that the provision of personal hearing is only available in the case where there is proposal for enhancement of punishment awarded by the Disciplinary Authority. In this case the appellate authority, i.e. respondent no. 3 has made no intention towards enhancement of punishment as awarded by the respondent no.2 hence, the question of personal hearing does not arise. However, on legal ground the learned Advocate of the applicant challenged this argument of the respondents.

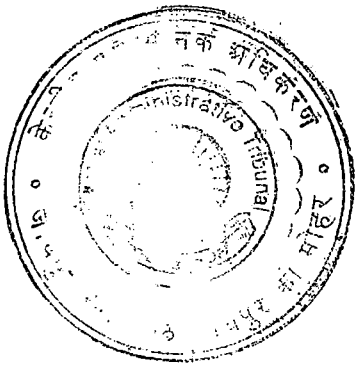
5. During the course of arguments Sh. Vijay Mehta, learned counsel for applicant submitted that this case is fully covered by the two decisions of this Tribunal in which the finding of the Tribunal was that since the appellate authority did not grant opportunity to the applicant of being heard personally as such the order of the appellate authority was declared not in accordance with law and accordingly in both the cases this Tribunal has remitted the matter back to the appellate authority for fresh decision after giving an opportunity to the applicant of being heard personally. In support of his argument the learned counsel for applicant has filed copy of the decision dated 12.2.2001 in O.A. No. 211/1996 titled **Ram Autar Chowdhary Vs. Union of India & Ors.** and another decision rendered by this Tribunal in O.A. No. 141/2001 dated 9.4.2002 titled **Gopal Lal Vs. Union of India & Ors.** Besides, the above two decisions



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the learned counsel has also⁶ produced a copy of decision in the case of **Ram Chander Vs. Union of India & Ors.** Reported in 1986 Administrative Tribunal cases page 47. Relying upon the above said decisions the learned counsel for the applicant submitted that since the appellate authority by not giving an opportunity to the applicant of personal hearing, has committed illegality as such in view of the earlier decisions of this Tribunal the case should be remitted back to the appellate authority to decide the appeal afresh after giving an opportunity of personal hearing to the applicant. This submission of the learned counsel of the applicant was vehemently opposed by the counsel for the respondents, who submitted that the applicant was not in any manner prejudiced by not affording an opportunity of personal hearing by the appellate authority. He submitted that in the case of **Mishri Lal Tanwar Vs. Union of India & Ors.** in O.A. No. 324/98 decided on 19.09.2001 this Tribunal had taken a view that if the action of the appellate authority by not providing personal hearing does not cause any prejudice to the applicant no interference can be made in the order of the appellate authority.

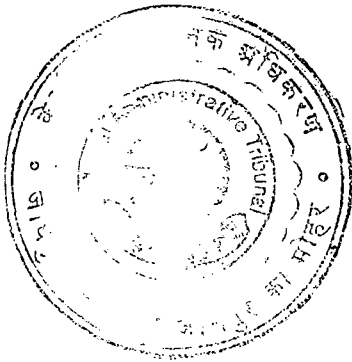



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6. We have perused the above mentioned decisions from which it is clear that in two earlier decisions this Tribunal in the case of Ram Avtar Chowdhary and Gopal Lal (Supra) had held that the personal hearing was necessarily required to be given by the appellate authority and since the

appellate authority has failed to provide personal hearing to the applicant, as such the Tribunal remitted the case back to the appellate authority for fresh decision after giving an opportunity of personal hearing to the applicant. We are of the view that there is no ground to differ with the earlier decisions of this Tribunal with regard to grant of personal hearing to an employee by the appellate authority. As such we are of the opinion that similar order as given in the above two mentioned cases can be passed in the instant case also.

7. In the result, this O.A. is partly allowed only to the extent that the order dated 17.6.2003(Annexure A-2) passed by the appellate authority and the order dated 29.10.2004 (Annexure A-3) passed by the reviewing authority are hereby quashed and set aside and the matter is remitted back to the appellate authority to decide the appeal afresh after giving an opportunity of personal hearing to the applicant. It is observed that the appellate authority and thereafter the reviewing authority shall not be prejudiced in any manner by this order as the same is not being passed on merit of the case. The appellate authority is directed to decide the appeal within a period of 3 months from the date of receipt of copy of this order. 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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केन्द्रीय प्रशासनिक अधिकरण
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