

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.360/2012

Jodhpur this the 18th day of November, 2013

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Ashok Kumar Seth S/o Shri Maluck Chand Seth, aged about 52 years, R/o Ghatol District Banswara, at present employed on the post of Postal Assistant, Dungarpur HO, Dungarpur.

.....Applicant

Mr. J.K.Mishra, counsel for applicant.

Versus

- (1) The Union of India through the Secretary to the Government, Ministry of Communication and Info Technology, Department of Posts, Sanchar Bhawan, New Delhi.
- (2) Director Postal Services, O/o Post Master General, Rajasthan Southern Region, Ajmer.
- (3) Superintendent of post Offices, Dungarpur Division, Dungarpur.

.....Respondents

Smt. K. Parveen, counsel for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i) That impugned order dated 25.07.2011 (Annexure-A/1), passed by 2nd respondent, charge sheet dated 27.06.2012 (Annexure-A/2) for imposition of major penalty and all subsequent proceedings thereof including order dated 24.08.2012 (Annexure-A/3 and A/4) appointing Inquiry officer and presenting officer etc, may be declared illegal and the same may be quashed. The applicant may be allowed all consequential benefits as if none of the impugned orders were ever in existence.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.”

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2. The brief facts of the case as averred by the applicant are that the applicant was initially appointed on 09.02.1983 on the post of Postal Assistant and subsequently he was posted at Dungarpur HO from 17.06.2011 where he is working at present. The respondent department vide memo dated 03.03.2011 issued a charge sheet to the applicant under Rule 16 of CCS (CCA) Rules, 1965 alleging therein that he made the payment of more than Rs.20,000/- in cash instead of through cheque as per rules and made the payment on the requisition submitted by the agent without verifying the signature with SB No.3. Being aggrieved of that, the applicant submitted a representation on 07.03.2011. But the respondent department vide order dated 25.03.2011 imposed the penalty of withholding of one increment for six months without cumulative effect upon the applicant. Thereafter, the respondent No.2 (Reviewing Authority) vide its order dated 25.07.2011 (Annexure-A/1) remitted the case to Disciplinary Authority with a direction to set aside the present minor penalty proceedings and to conduct the enquiry under rule 14 of the rules and submit the report on conclusion. The respondent No.3 vide memo dated 27.06.2012 (Annexure-A/2) issued a fresh charge sheet to the applicant under rule 14 of the CCS (CCA) Rules, 1965 and the charge is substantially the same as imputation alleged against applicant in earlier proceedings. The applicant submitted a representation to the same vide letter dated 07.07.2012 and stated that the fresh charge sheet was without jurisdiction, the penalty imposed on him was already over. The respondent No.3 has replied the same vide letter dated 24.08.2012 that his case was not

yet finalized and the punishment was ineffective from July 2011.

Being aggrieved of the action of the respondent department, the applicant has filed the present OA.

3. By way of reply, the respondent department averred that the applicant has assailed the order dated 25.07.2011 & 27.06.2012 and the subsequent proceedings thereto without pointing any lacuna or arbitrariness in the decision making process adopted by the respondents and further it is only a judicial review of the process adopted by the respondents and not judicial review of the decision. Moreover, the applicant himself vide his representation dated 07.03.2011 (Annexure-R/3) has admitted all the allegations leveled against him in toto. It has been further averred that the applicant has been given all reasonable opportunity to defend his case during the oral enquiry under Rule 14. It has been further averred in the reply that Rule 29 (1) (vi) (c) of CCS (CCA) Rules, 1965 provides that the reviewing authority can remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may be considered proper in the circumstances of the case.

4. In rejoinder, the applicant reiterated the same facts as averred in the OA.

5. The respondent department filed an additional affidavit and annexed the representation of the applicant dated 07.07.2012 as Annexure-R/6, which is still pending for consideration.

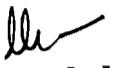
6. Heard both the parties. Counsel for the applicant contended that vide order Annexure-A/1, the Appellate Authority while exercising the power under Rule 29 of the CCS (CCA) Rules, 1965, reviewed the order of the Disciplinary Authority and directed the Disciplinary Authority to set aside the order of the punishment of minor penalty and to conduct the enquiry under Rule 14 of the CCS (CCA) Rules, 1965 i.e. for major penalty, and to submit the report on conclusion of the enquiry to the competent authority because earlier the enquiry was conducted under Rule 16 of CCS (CCA) Rules, 1965 i.e. for minor penalty. Counsel for the applicant further contended that no opportunity of hearing was provided to the applicant before passing the impugned order Annexure-A/1 and in pursuance to the order Annexure-A/1 a charge sheet was issued to the applicant vide Annexure-A/2. He further contended that it is a fundamental rule of natural justice that nobody should be adversely affected by any order without giving any opportunity of hearing. He further contended that as per the provisions of Rule 29 (1), the right of hearing is must before passing any order adverse to the interest of applicant. He further contended that the Reviewing Authority cannot direct the Disciplinary Authority to conduct a de novo enquiry because under the provisions of Rule 29 (1) (vi) (c) of the CCS (CCA) Rules, 1965 only further enquiry can be ordered whereas in the present case, the Reviewing Authority directed the Disciplinary Authority to conduct a de novo enquiry which is against the provisions of law.

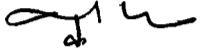
7. Per contra, counsel for the respondents contended that in the review matter no such right exist in favour of the applicant and after perusal of the entire record, the Reviewing Authority can pass any appropriate order which it deems fit.

8. We have considered the rival contentions of both the parties and also perused the relevant record. It is an admitted fact that a representation dated 07.07.2012 (Annexue-R/6) is pending before the respondent department wherein the applicant prayed to drop the charge sheet dated 27.06.2012 because of the order of the Reviewing Authority being illegal in the eyes of law. It is also an admitted position that before passing the order at Annexure-A/1, the applicant was not provided any opportunity of hearing and further it is evident from the order at Annexure-A/1 that the Disciplinary Authority was directed to conduct the enquiry under the provisions of Rule 14 of the CCS (CCA) Rules, 1965 and to submit the report on conclusion of the enquiry to the competent authority. It is settled a principle of law that the delinquent must be heard against his interest and effective opportunity of hearing must be provided. But in the present case, no opportunity of hearing was provided to the applicant which is perse against the provisions of law. Therefore, we set aside the order at Annexure-A/1, and further the charge sheet issued to the applicant in pursuance to the Annexure-A/1 i.e. Annexure-A/2 and direct the reviewing authority i.e. Director Postal Services, Rajasthan Southern Region, Ajmer to provide an opportunity of hearing to the applicant before passing any order of reviewing, and the competent authority would be free

to pass any order as per law, within a month after hearing the applicant.

9. Accordingly, the OA is allowed as stated above with no order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member