CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,

CIRCUIT BENCH

LUCKNOW

O.A. No. 274/1989(L)

Swami Dayal Mishra ...Applicant.

versus

Union of India & others ...Respondents.

Hon. Mr. Justice K.Nath, V.C.
Hon. Mr. K.J. Raman, A.M.

(Hon. Mr. Justice K. Nath, V.C.)

This is a petition under section 19 of the Administrative Tribunals Act, 1985 for quashing an order dated 29.8.88 (Annexure -1) whereby the petitioner was dismissed from service as Extra Departmental Branch Post Master (E.D.B.P.M.), post office Waidaha, district Sultanpur and also an order dated 22.7.89 (Annexure A-2) whereby his appeal against dismissal was dismissed.

2. The petitioner was working as E.D.B.P.M. and used to deal with Money Orders. On 21.4.86, a Money Order of Rs 500.00 for delivery to Ganga Ram Prajapati was received by him. It is said that on that very date the amount was misappropriated by the petitioner who also placed a forged voucher in the record purported to show that money had been paid to Ganga Ram Prajapati. Similarly on 22.5.86, he received a Money Order of Rs 500.00 tobe delivered to Daya Ram Muneshwar Prasad. He is said to have mis-appropriated the amount on 27.5.86 and is alleged to have placed forged voucher of payment of money to Daya Ram Muneshwar Prasad.

3. Both the addressees of the Money orders are said to have made complaints of non payment of amounts to them. After

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a preliminary enquiry, the departmental disciplinary proceedings were started against the petitioner. He was served with a charge sheet dated 11.11.87 containing the allegations as indicated above. The petitioner replied to the charge sheet. On 6.8.88 the Enquiry Officer submitted his report in which he stated to have found the petitioner guilty of the charge. On 29.8.88 the disciplinary authority, namely, Superintendent of Post Offices, respondent No. 2 passed the impugned dismissal order. An appeal preferred against the dismissal order was dismissed by the appellate authority, namely the Director of Postal Services, respondent No. 3 by Annexure -2 dated 22.7.89.

4. Counter and rejoinders were exchanged; We have heard Shri S.B.Mishra, learned counsel for the petitioner and Shri K.C. Sinha, the learned counsel for the respondents.

5. The first point raised is that on 11.1.88 the petitioner had applied for copies and inspection of 9 documents including the complaints, but while the two complaints and the Mail Peon Register were shown to him, the rest of the documents were neither shown, nor furnished to the petitioner. In respe of the Mail Peon Register, the further grievance is that pages 26 to 43 thereof which contained relevant extracts, had been replaced by bogus pages.

6. The statement in counter is that on the petitioner's own showing in para 6(v) of the petition, copy of the two complaints had been furnished to him; there was no replacemen of the pages of the Mail Peon Register and that the rest of the documents were irrelevant and therefore were not made available to the petitioner.

7. It is significant that the petitioner had not filed

copy of the application by which he called for documents. He has also not stated the relevancy of each of the documents to enable this Tribunal to find whether they were relevant or not. It is admitted in the petition that the document had not been furnished on the grounds recorded by the Enquiry Officer that they were irrelevant. We are unable to agree with the learned counsel for the petitioner that he is entitled to obtain copies or inspect any document of his choice irrespective of its relevancy. The basic principle is that a delinquent employee is entitled as a right to receive copies of only such material as is purported to be used in the course of enquiry ; beyond that extent the delinquent employee must show to the satisfication of the Enquiry Officer, that further document is relevant for purposes of enquiry and for enabling him to make a defence. The case of Surat Singh vs. S.R. Bakshi and others (1971 Delhi, 133) is not an authority for the proposition that a delinquent employee is entitled to inspect a document which is not shown to be relevant.

8. In respect of the Mail Peon Register, there is no cogent evidence of replacement of pages. The Enquiry Report which was admittedly handed over to the petitioner, has not been filed by the petitioner; the enquiry record was not in the hands of the Standing Counsel when we heard the case; a copy of the report which was with the learned counsel for the petitioner, was read over to us and we noticed that the Enquiry Officer had recorded cogent reasons for his view that pages of Mail Peon Register had not been replaced.

9. The second ground is that the report of preliminary enquiry made by B.R. Shastri was not furnished to the petitioner and therefore, the petitioner was handicapped

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in the disciplinary proceedings when B.R.Shastri was examined The learned counsel for the respondents said that B.R.Shastri was not examined at all in the course of enquiry and that the preliminary enquiry report of B.K. Shastri was not a document for the use of the petitioner and indeed had not been used as piece of evidence in the course of disciplinary enquiry. There is nothing to show that B.R. Shastri was examined in the course of disciplinary enquiry. Moreover, the report of B.R. Shastri as an Enquiry Officer is not the same thing as B.R.Shastri's own statement which could be used, if at all, for the purposes of his cross-examination.

10. The third point raised is that the petitioner was not given reasonable opportunity of obtaining the services of defence assistant. It is admitted that one R.S.Chaubey was initially appointed as petitioner's defence assistant. The petitioner's grievance is that on 25.4.88 R.S.Chaubey did not appear and when the petitioner himself could not attend, the Enquiry Officer should have given an opportunity to the petitioner to appoint another defence assistant and should not have proceeded with the enquiry exparte on 25.4.88. In the first place, there is no specific statement in the petition that he had been denied the opportunity to appoint Defence Assistant. The statement in para 6(VII) of the petition is that on 11.4.88, the Enquiry Officer proceeded to record the statement of witness-es in the absence of the Defence Assistant and again on 25.4.88 when the petitioner was absent a written request for adjournment was rejected so as to enable him to appoint another defence assistant. In para 6(viii) it is stated that the Enquiry Officer ordered the petitionder to defend his case personally without any legal or other assistance. The allegations

were denied in para 13 and 14 of the counter. This part of the case was dealt with by the disciplinary authority in his order Annexure 1. It was stated that after R.S. Chaubey, the defence assistant, did not appear, the petitioner appointed Ram Lakhan Singh for his defence. It is plain enough that the petitioner had availed the services of two defence assistants and if they did not turn up, he had only to thank himself. No fault can be found with the directions of the Enquiry Officer that the petitioner should defend his case personally in the event of failure of defence assist to make appearance. There is nothing to show that the petitioner made any further application for appointing a third defence assistant. The appellate authority has recorded that proceedings had to be completed within the time schedule and therefore, there was nothing wrong when the enquiry officer proceeded exparte. According to the learned counsel for the petitioner, the time fixed in the circular issued by the government is 120 days. That only shows that the enquiry was expected to be concluded speedily the fact that it could be completed after several months neither vitiated the enquiry, nor disentitled the enquiry officer to proceed in the absence of the delinquent employee.

10. The next ground urged is that the motion for adjournment on 11.4.88 and 25.4.88 should have been allowed. A reading of the enquiry report at the Bar shows that it contained acceptable grounds for proceeding exparte on both these dates.

11. The fourth point raised is that the order (Annexure-1) passed by the disciplinary authority as also the order (Annexure-2) of the appellate authority are non-speaking

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orders.The contention is not quite correct.

12. In the order Annexure 1, a substance of the proceedings taken by the enquiry officer is set out. It is stated that the enquiry officer held 17 sittings in which he followed prescribed the procedure. He then went on to record that he had thoroughly and carefully studied the charge-sheet, the oral and documentary evidence laid during the enquiry, defence statement of the petitioner and the summary of evidence furnished by the Presenting Officer as well as the defence assistant. He mentioned that on such consideeation he fully concurred with the well considered findings of the Enquiry Officer. He observed that having regard to the seriousness of the proved charges, the petitioner was liable for severe punishment and therefore, he ordered dismissal of the petitioner. The contention of the learned counsel for the petitioner that the disciplinary authority had not discussed findings as such is technically correct; but the learned counsel for the respondents has urged that where the disciplinary authority fully agreed with the Enquiry Officer's report, it was not necessary for the disciplinary authority to give detailed reasons, which, essentially would only be a repetition of the reasons recorded by the Enquiry Officer. It must be ~~xxxx~~ mentioned immediately that the petitioner had not urged that the Enquiry Officer did not record reasons. Apparently, the Enquiry Officer recorded detailed reasons and since the disciplinary authority entirely agreed with them after a perusal of the entire material independently, it does not appear necessary for the disciplinary authority to have recorded its own reasons. In the case of State of Madras vs. A.R. Srinivasan (1966 Supreme Court 1827) it has been held that where the punishing authority agrees with the findings

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of the enquiry authority, it is not necessary to record reasons; if he differs, reasons must be recorded.

13. The appellate order (Annexure -2) also cannot be said to be a non-speaking order. Indeed the appellate authority has specifically set out the various points raised by the petitioner in his memo of appeal including the objection that the disciplinary authority did not discuss the evidence. Since he agreed with the findings of the disciplinary authority he was also not expected to record an appreciation of evidence by himself independently. He has dealt with the points raised in appeal and the appellate order does not suffer from any infirmity.

14. These are all the points raised in this case. The result is that the petition should fail.

15. The petition is dismissed. Parties shall bear their own costs.

A.M.

6.7.90
V.C.

Dated May, 1990.

This judgement could not be pronounced at the Lucknow Circuit Bench by accidental omission when I was on tour there ~~~~ last. To avoid further delay the judgement is being pronounced at Allahabad today. This office will issue copies of judgements to the concerned parties within three days and thereafter send the record (containing the judgement and office copy of letter of despatch of judgement) to the Lucknow Circuit Bench for information and necessary action.

6.7.90
Vice Chairman

Dated the 6th July, 1990.