

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.61/2005

This the 25th day of February 2012

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

Uma Narain Dubey, aged about 52 years, S/o late Sri Tribhuwan Nath Dubey, R/o Village Ghasipur, Post Lohramau, District Sultanpur.

...Applicant.

By Advocate: Sri R.K. Upadhyay.

Versus.

1. Union of India through the Secretary, Ministry of Telecommunication (Postal), Central Secretariat, New Delhi.
2. The Director, Postal Services Headquarters, Lucknow.
3. Superintendent of Post Offices, Sultanpur.

.... Respondents.

By Advocate: Sri Vishal Choudhary.

(Reserved on 16.02.2012)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following relief's:-

"(i). To issue a writ, order or direction to the opposite parties to quash the impugned order of removal of the petitioner dated 20th March, 2003 along with the

Ak

appellate order dated 22nd September, 2004, contained in Annexure Nos. 1 and 2 respectively to this Original Application and to direct the opposite parties to reinstate the petitioner in service with all consequential benefits of back wages along with interest prevailing at the market rate;

(ii). To issue any other order of direction, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case;

(iii). Allow the claim petition with cost."

2. Case of the applicant is that he was initially appointed on the post of Postal Assistant in January, 1972. On 11.09.1997, he was placed under suspension by opposite party no.3 and after two years a charge-sheet was served upon him. As the enquiry could not be concluded within the reasonable period, his suspension was revoked vide order dated 25.05.2000. Initially, Sri R.C.S. Yadav was appointed as an Enquiry Officer. After some time Sri N.K. Gupta was appointed in his place, who was biased against the applicant. Therefore, he made a request for the restoration of earlier Enquiry Officer but, it was not accepted. The charges leveled against him related to the alleged misappropriation of different amounts totaling to Rs.3,414/- . Later on an amount of Rs.904/- was found available in the Account Register. But, he was punished for the entire amount. The maintenance of Log Book was the responsibility of the Sub Post Master/Assistant Post Master while the applicant was only a Postal Assistant. Therefore, the charges against him that he received various amounts from the depositors and did not make requisite entries and did not deposit the money in the Treasury were baseless. During the course of the enquiry hand to hand Receipt Book was not made available through, it was the

most important document. The said hand receipt book is the only document, in which exact amount of cash deposited by the applicant on particular date with the Treasury can be seen. Therefore, this act was wholly violative of principles of nature Justice and fair play. Ultimately, the applicant was punished with removal order dated 20.03.2003. Applicant filed an appeal on 22.04.2004 before opposite party no.2 but, it was also rejected in a mechanical manner without any application of mind.

3. The claim has been contested by filing a Counter Affidavit saying that Sri R.C.S. Yadav was a retired Assistant Director, who was initially appointed as an enquiry officer. But, he did not complete the enquiry even after several reminders. Therefore, Sri N.K. Gupta was appointed as an enquiry officer to complete the enquiry and submit the report. Maintenance of Log Book is the responsibility of Counter Clerk as per Rule 10 of Post Office SB Rule Part-I. The applicant did not show any reason of prejudice against the Enquiry Officer Sri Gupta. The charges of misappropriation were proved to the extent as mentioned in the enquiry report. Thereafter, punishment order was passed appropriately.

4. A Rejoinder Affidavit has also been filed in this case reiterating the pleadings contained in the O.A.

5. Written arguments have been filed in this case from both the sides.

6. We have also heard the oral arguments from both the sides.

7. It is submitted on behalf of the applicant that as many as five charges were framed against the applicant in respect of alleged misappropriation of different

AB

amounts totaling Rs.3414/- But, during the course of enquiry, it was found by the enquiry officer that the amount of $400+4=404.00$ pertaining to charge no.4 and an amount of Rs.500/- pertaining of charge no.5 have been properly accounted for. But, while passing the punishment order the Disciplinary Authority/Punishing Authority disagreed with this part of finding and held the applicant responsible for the alleged misappropriation of entire amount of Rs.3414/-. In a case of dissent the disciplinary authority was duty bound to serve a show cause notice to the applicant prior to the passing of the punishment order. But, he did not do so. This lapse and inaction on the part of the opposite party no.3, the disciplinary authority was illegal, arbitrary and without any authority of law. This point has been pleaded specifically in para-4.05 and 4.22 of the O.A. which have been replied with in para-6 and para-23 of the Counter Affidavit. But, nothing substantial and specific has been said except a general denial. In other words these pleadings have not specifically denied. Thus on account of dissent no show cause/ opportunity was given to the applicant before recording the finding of dissent. The aforesaid pleading of the O.A. stands substantiated and proved. As far as legal matrix is concerned the law is very much clear and settled on the point that the principle of natural Justice and fair play requires that if the disciplinary authority intends to differ with the finding of the enquiry officer, then he is required to give an opportunity of representation to the charged employee before differing with those findings. This principle was also laid down in oft-quoted case law of **Punjab National Bank And Others Vs. Kunj Behari Misra reported in**

18

(1998) 7 SCC-84 (Bench of Hon'ble three Judges) and also in the earlier case of **Managing Director, ECIL Vs. B. Karunakar (1993) 4 SCC-727**. The principle was reiterated by Hon'ble Apex Court in the case of **Ranjit Singh Vs. Union of India & Others (2006) 4 SCC-153**. Obviously, therefore in the case in hand the applicant has been deprived from the aforesaid principle of natural Justice and fair play and therefore, the order of punishment passed by the disciplinary authority suffers from irregularity, illegality and impropriety.

8. The impugned order has been assailed on certain other grounds also. But, from the record, it appears that one of those points such as regarding summoning/non-supply of some document was never raised at the relevant stage. Similarly, no specific ground could be shown against the alleged bias of the enquiry officer, who has rather decided at least last two charges in favour of the applicant. Moreover, we are of the view that since this O.A. is liable to be partly allowed on account of non-compliance of principle of natural Justice and fair play as discussed hereinbefore, it is not necessary to enter into such other grounds urged by the applicant.

9. It is seen from record that besides the impugned order of removal dated 20.03.2003 passed by the disciplinary authority, in the order of the Appellate Authority dated dated 22.09.2004 also, this point (not giving opportunity to represent on the points of dissent) could not be appreciated and therefore both the above orders are liable to be quashed.

10. In view of the above, O.A. is partly allowed with cost and the impugned orders of removal dated 20.03.2003 alongwith Appellate Order dated 22.09.2004 contained in

Annexure-1 and 2 of the O.A. are hereby quashed. It will be open to the respondents to take a decision in the matter afresh after giving an opportunity to the applicant to make representation if any, on the points of dissent within a period of six months from today in accordance with the rules.

S.P.Singh
23.2.12
(S.P. Singh)

Member (A)

Alok Kumar Singh
23.2.12
(Justice Alok Kumar Singh)
Member (J)

Amit/-