

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.466/2006

Reserved on: 26.7.2012

Pronounced on: 29.8.2012

Hon'ble Dr. K.B.S. Rajan, Member (J).

Hon'ble Mr. S.P. Singh, Member (A)

Radhe Lai Nigam, aged about 46 years, Son of Sri Ram Chandra, Resident of Village & Post-Veepur (Mall), District-Lucknow.

...Applicant.

By Advocate: Sri Saurabh Lavania and Sri Dharmendra Awasthi.

Versus.

1. Union of India through Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Lucknow.
3. Director-Postal Services, Office of C.P.M.G., U.P. Circle, Head Office, Lucknow.
4. Chief Post Master General, U.P. Circle, Lucknow.

.... Respondents.

By Advocate: Sri S.K. Awasthi.

ORDER

By Dr. K.B.S. Rajan, Member (J).

The O.A. has been filed for the following relief:-

"(i). to quash/set aside the impugned order dated 10.04.2003, 15.10.2003 and 22.12.2005 passed by opposite party no.2,3 and 4 as contained in Annexure No.A-1, A-2 and A-3 respectively to this application.

(ii). To direct the opposite parties to reinstate the applicant with all consequential benefits.

(iii). To direct the opposite parties to pay the cost of this application.

(iv). Any other relief, which this Hon'ble Tribunal deems just and

proper in the circumstances of the case."

2. The applicant, while working as Branch Postmaster, Veerpur was chargesheeted under Rule 8 of Extra Departmental Agent Rules for alleged withdrawal of Rs.1100 fraudulently from the savings bank account No. 107 6252

of one Shri Tota Ram, son of Shri Ghanshyam, on 18-12-1996. Thus, he has violated the provisions of Rule 133 and 134 of the BO Rules. Both the depositor of the account as well as the person shown as the Identifier to the depositor had denied to have signed on the said withdrawal form. Applicant having denied the charge, inquiry ensued. The enquiry officer rendered his finding that the charge was proved only to the extent that there was violation of Rule 134 of the BO Rules, whereas, the fact of payment of Rs 1100 to the proper party was not found proved and also that the applicant has not violated the provisions of Rule 133 of the BO Rules. The Disciplinary authority sent a copy of the said Report to the applicant who had preferred his representation, however, the disciplinary authority had recorded the disagreement and then passed the order of penalty of removal from service, vide order dated 10-04-2003. The applicant preferred appeal before the Chief Post Master General, U.P. Circle and the same was also dismissed. Hence this O.A.

3. Respondents have contested the O.A. They have stated that the Inquiry Officer has not completely exonerated the applicant. Whereas he has only stated that the withdrawal of Rs 1100/- on 18-12-1996 appeared to have been made correctly, when making the transaction, the applicant did not adhere to the provisions of Rule 134 of the Branch Office Rules and therefore, he had violated Rule 17 of the EDA (Conduct and Service) Rules, 1964.


4. Counsel for the applicant put forth the following arguments -

(a) The charge sheet mainly revolved round the allegation that the applicant fraudulently withdrawn a sum of Rs 1,100 from the SB account of Shri Tota Ram and the said Tota Ram as well as the identifier denied their signature/thumb impression in the relevant documents in token of having received the amount. The act thus constituted provisions of Rule 133 and 134 of the BO Rules. The I.O. has held that the charge is partly proved in that there was no violation of rule 133 of the BO Rule, and it appears that the amount had been actually paid to Tota Ram, but the other part of the charge i.e. violation of the provisions of Rule 134 of the BO Rules stood proved.

(b) The disciplinary authority did not agree with the above finding. He had held that the entire charge stood proved and on the basis of the same imposed the penalty of removal from service. However, the disagreement note has not been made available to the applicant before imposing the penalty. This is a clear violation of principles of natural justice and the same resulted in a grave legal lacuna which is fatal to the proceedings conducted against the applicant.

(c) Appellate authority and the Revision authority had also upheld the penalty, despite the fact of non following of the procedure contained in the Rules.

(d) Counsel for the respondents submitted that there is no need to make available the disagreement note before hand since the I.O. has rendered his finding that the applicant had violated the provisions of Rule 134 of the BO Rules.



5. Arguments were heard and documents perused. The applicant is being governed by the GDS Rules and the same contains the drill to be performed in conducting the disciplinary proceedings. The I.O. no doubt, has held that there is a procedural irregularity in that the provisions of Rule 134 of the BO Rules have not been followed. But, the charge when fragmented, could be trifurcated - (a) fraudulently withdrawn an amount of Rs 1100 from the SB A/c of Shri Tota Ram; (b) violation of the provisions of Rule 133 of the BO Rules and (c) violation of the provisions of Rule 134. Of these, the first two have been held as not proved by the I.O. It was only violation of Rule 134 that has been found proved by the I.O. However, the Disciplinary Authority has held that the entire charge stood proved. The Appellate and Revision Authority had also endorsed the same, holding that there is no need to communicate the point of disagreement in view of the fact that the disciplinary authority had agreed with the I.O. with regard to the infringement of Rule 134 of the BR Rules.

6. The question whether the point of disagreement should be communicated to the delinquent or not came up for consideration in the following two cases and the Apex Court has held as under:-

(a) **Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84**, wherein, the Apex Court has stated -

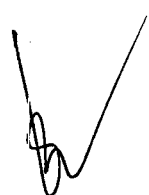
"The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In

departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

(In this case, Two Assistant Managers at the Lucknow Branch of the appellant Bank viz. Kunj Behari Misra and S.P. Goel were charged for misconduct, when shortage of Rs. 1 lakh was detected in the branch on 10-11-1981. The enquiry officer held Mr Misra guilty of only one out of the six charges viz. that he had not signed the register concerned at the relevant time. He exonerated Mr Goel of all the charges. The disciplinary authority reversed the findings of the enquiry officer and held that the charges were proved. By his orders dated 12-12-1983 and 15-12-1983 he directed proportionate recovery of Rs. 1 lakh from both the officers.)

(b) **Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739**, wherein it has been held -

"Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded."



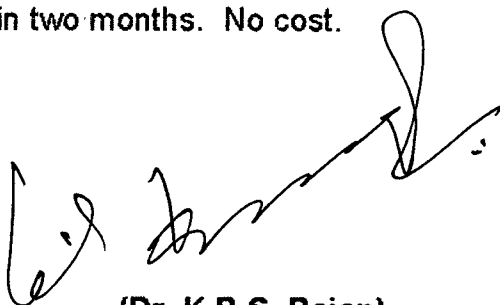
7. In the instant case, of the charges, the one relating to withdrawal of the amount is more grave, especially when it has been qualified with the alleged 'fraudulent withdrawal'. The other two, i.e. violation of the provisions of Rule 133 and 134 become less grave in that they are only procedural irregularity. The I.O.'s findings virtually exonerate the applicant save in one charge, i.e. violation of provisions of Rule 134 of the BO Rules, which is a procedural irregularity. When the Disciplinary Authority holds that the charges stand proved completely, that meant that the other two parts of the charge, i.e. fraudulent withdrawal as well as violation of the provisions of Rule 133 of the BO Rules are also held to be proved. This finding arrived at by the Disciplinary authority, on the strength of the decision of the Apex Court in the case of Kunj Behari Mishra (supra) does warrant that the applicant ought to have been communicated the disagreement note by the Disciplinary Authority before imposing penalty.

8. In view of the above, the **OA succeeds**. The order of the Disciplinary authority and appellate as well as revision authority (Annexure A-1 to A-3) are hereby quashed and set aside. The applicant is entitled to reinstatement. Since a part of the charge has stood proved even by the Inquiry Authority, proportionate penalty could be imposed by the Disciplinary authority. The ^{applicant}~~appellant~~ till reinstatement shall be treated as on 'put off duty' and the emoluments admissible during that period shall be paid.

9. This order shall be complied with, within two months. No cost.



(S.P. Singh)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)