

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Original Application No.421/2004
Lucknow, this the day of ²⁹ April 2005.

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI M.K. MISRA, MEMBER (A)

Vijai Pal Singh aged about 48 years S/o Late Sri Gur Bux Singh Ex.
E.D.B.P.M. Teola District Sitapur R/o Village & P.O. Teola H/O Telgaon
District Sitapur.

...Applicants.

By Advocate: Shri R.S. Gupta.

Versus.

Union of India through the Secretary Department of Posts Ministry of
Communication, Government of India Dak Bhawan, New Delhi.

2. Chief Postmaster General U.P. Lucknow.
3. Superintendent of Post Offices Sitapur Division.

...Respondents.

By Advocate: Shri G.K. Singh.

ORDER

MR. SHANKER RAJU, MEMBER (J)

Applicant through this OA impugns respondents' order dated
12.4.2004 passed in suo moto revision, enhancing the penalty to
dismissal from service.

2. Applicant who was working as a Branch Post Master was proceeded against for a major penalty for misappropriation of money. The Enquiry Officer (EO) held applicant guilty of the charge and accordingly by an order dated 30.12.99 a penalty of debarment for three years examination and TRCA of reduction of pay has been accorded for a period of three years and this service would not be treated as qualifying service. By an order dated 13.1.2000 the punishment was modified by a show cause notice dated 12.6.2001 without any reasons which the Post Master General proposed. The enhanced punishment, which was responded to, when not culminated into any order directions were issued in OA-361/2001 by the Tribunal on 29.10.2002, directing the respondents to pass a reasoned order. Accordingly, an order passed, removing applicant is assailed.

3. Learned counsel stated that neither in the show cause notice issued nor in the order passed the revisional authority has stated any reason which has not only deprived applicant a reasonable opportunity to defend but being an adverse order effecting the rights of applicant it should have been reasoned.

4. Learned counsel has relied upon a decision of this Bench in OA-57/2000 – J.S. Tewari v. Union of India.

5. On the other hand, learned counsel for respondents has vehemently opposed the contentions and stated that a written representation was sought from applicant and was considered. Accordingly the order of punishment was reviewed. Reasons for enhancement of penalty have been mentioned in memorandum dated 12.4.2004.

6. We have carefully considered the rival contentions of the parties and perused the material on record. Recording of reasons in support

of an order by a quasi judicial authority is a sine qua non not only to have transparency in the order but also in consonance with the principles of natural justice. If the proposal lacks reasons it would be difficult for an employee to defend on what grounds the penalty is going to be enhanced. Even if Rules of natural justice are not incorporated in the EDA (Conduct and Service) Rules, 1964, yet the same are to be read as an inbuilt to the rules. Once of the obligatory duty of the Government is to state reasons in support of an order. We support our above observations on the basis of the decision of the Apex Court in State Govt. Homeless Harijan Employees Association v. State of Karnataka, 2001 (1) SCC 610 and also Kumayon Mandal Vikas Nigam Ltd. V. Girja Shanker Pant, 2001 (1) SCC 182. A recent decision of the Apex Court also affirms the above view in J.A. Naiksatam v. Prothonotary Senior Master, 2005 (1) SLJ SC 219. From the perusal of Rule 19 of the Rules ibid recording of reasons is not dispensed with.

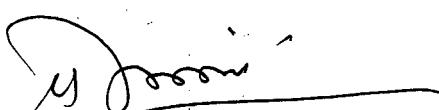
7. From the perusal of the show cause notice issued/revision on 12.6.2001 no reasons at all have been assigned and in the impugned order passed on representation of applicant we do not find any consideration to the contentions put-forth though certain reasons are given but are only controverting the contentions raised.

8. However, the fact remains that ~~one~~the reviewing authority suo moto exercised the power to enhance the punishment unless reasons are reflected in the order it would be irrational and almost impracticable for an employee to effectively defend the proposal. In such an event when civil consequences are to be ensued and the punishment is to be more severe than what has been inflicted earlier recording of reasons is obligatory for want of reasons, In the present

case this obligation has not been discharged. The action is certainly in violation of principles of natural justice and is not fair.

9. From the perusal of the impugned order as well we do not find the same as to be a reasoned order.

10. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are set aside. Respondents are directed to re-instate applicant in service and he would be entitled to all consequential benefits. However, respondents, if so advised, are at liberty to issue a show cause notice to applicant by recording reasons and in that event law shall take its own course. No costs.



(M.K. Misra)
Member(A)



Shanker Raju
Member (J)