

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH  
LUCKNOW**

**Original Application No 156 of 2006**

**Order Reserved on 18.2.2014**

**Order Pronounced on 13/03/2014**

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)**  
**HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Sunil Kumar Gupta aged about 31 years S/o Sri M. L. Gupta P.A. Sitapur  
Head Office R/o Sector A Adarsh Nasgar, Sitapur.

**Applicant**

**By Advocate Sri R. S. Gupta.**

**Versus**

1. Union of India through the Secretary Department of Post Dak Bhavan, New Delhi.
2. Director Postal Services O/O Chief Postmaster General U.P. Lucknow.
3. Superintendent of Post Offices, Sitapur.

**Respondents**

**By Advocate Sri Praveen Kumar for Shri G. K. Singh.**

**ORDER**

**By Hon'ble Mr. Navneet Kumar, Member (J)**

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(a) That the Hon'ble Tribunal may kindly be pleased to quash recovery order dated 29.6.2005 as contained in Annexure No. 1 and refund the amount already recovered from pay along with interest @ 18% over recovered amount.

(b) any other relief found just and proper be also awarded with costs of O.A.

2. The brief facts of the case are that the applicant while working in the respondents organization was served with the charge sheet dated 9.5.2005 indicating there in that due to procedural lapses the government exchequer has suffered a loss of Rs. 406520/- and the applicant was held liable for the same. As such, the charge sheet was

served upon him. The applicant submitted the reply to the authorities on 19.5.2005 asking for certain documents and after certain period, he has also given a reply to the disciplinary authority vide his representation dated 23.6.2005 wherein, it is categorically pointed out by the applicant that in his earlier representation, he has asked for some documents for the preparation of his defence and the same were not made available for inspection. Therefore, the proceedings initiated against him is violative of Principles of Natural Justice and is liable to be struck down. The applicant has also taken note of Rules 4 and 51 of Postal Manual Volume VI (Part III) and has indicated that he was devoted to his duty and he has not committed any misconduct. As such the punishment awarded against him is liable to be quashed. After receipt of the representation by the disciplinary authority, the disciplinary authority has taken a decision on 29.6.2005 whereby a penalty of Rs. 49000/- was imposed upon the applicant which is required to be recovered @ of 1,000/- per month in 49 installments. The applicant preferred the appeal to the appellate authority dated 11.8.2005 and has categorically pointed out that the said appeal is still pending for final adjudication. The applicant through his appeal has also indicated that he demanded 6 documents relevant for the purpose of preparation of proper representation against the action proposed to be taken against him vide his application dated 19.5.2005 and the applicant was only allowed to inspect three documents out of 6 documents demanded by him. As such, the entire recovery is liable to be quashed. It is also indicated by the applicant that he has deposited entire amount despite the interim order dated 4.4.2006.

3. The learned counsel for the respondents have filed their reply as well as the supplementary counter reply and through which it is indicated by the respondents that after service of the charge sheet, the applicant asked for certain documents and those documents which were relevant in the case were allowed to be inspected by the respondents and after considering the reply filed by the applicant, the disciplinary authority

came to the conclusion and imposed a penalty of recovery of Rs. 49000/- upon the applicant which is required to be recovered Rs. 1000/- per month in 49 installments. It is also indicated by the respondents that the appeal preferred by the applicant was considered and rejected by the authorities on 23.8.2006 but the applicant has not challenged the said appellate order in his O.A. However, a copy of the said appellate order is not available on record. Through their supplementary affidavit, the respondents have not indicated any new facts. Only the facts mentioned in the counter reply are reiterated.

4. The learned counsel for the applicant has filed their rejoinder affidavit and through rejoinder, once against the applicant has reiterated the averments made in the O.A. and pointed out that the procedure laid down under Rule 18 of the CCS (CCA) Rules, 1965 is not followed and without providing the relevant documents to the applicant, the respondents have imposed penalty upon the applicant which is against the principles of natural justice.

5. Heard the learned counsel for the respondents and perused the record.

6. The applicant while working in the respondents organization was served with a charge sheet wherein, it is indicated that due to his procedural lapses and discharging his official duties, the government suffer a loss of Rs. 406520/- and not followed the rules as provided under Rule 4 and 51 of the Postal Manual Vol. VI Part III. The applicant submitted the representation dated 19.5.2005 asking for certain documents and when the entire documents are not shown to him, he submitted another representation indicating therein that out of 6 documents only 3 documents were shown to him. As such, the respondents violated the principles of natural justice which is required to be followed before passing the impugned orders.

7. For ready reference, the Rule 16 and 18 of the CCS (CCA) Rules, 1965 is reproduced below:-

 16. **Procedure for imposing minor penalties.**

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after-

(a) informing the Government servant in writing of proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehavior; and

(e) consulting the Commission where such consultation is necessary."

#### 18. Common Proceedings.

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

8. It is explicitly clear that the applicant has categorically pointed out in his representation dated 19.5.2005 as well as 23.6.2005 asking for particular documents and in the disciplinary authority's order, it is also mentioned that only the relevant documents which were relevant were shown to him. In the appeal also, the applicant has pointed out this fact that he was not shown three documents demanded through application dated 19.5.2005, but in the absence of any order of the appellate authority on record, it cannot be ascertain whether the appellate authority has considered this aspect or not.

9. As observed by the Hon'ble Apex Court in the case of **O..K. Bhardwaj Vs. Union f India and others reported in 2002 SCC (L&S) 188**, it is observed by the Hon'ble Apex Court that "even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with." It is explicitly clear that even minor punishment, the reasonable opportunity of hearing is required to be given.

10. In the case of **Davinder Singh and Others Vs. State of Punjab and Others reported in (2010) 13 SCC-88** it is observed by the Hon'ble Apex Court that the opportunity of hearing is to be given to delinquent and in the absence of no opportunity, the order of the punishment is liable to be interfered with. Not only this, the opportunity of hearing is discussed by the Hon'ble Apex Court in the case of **Maneka Gandhi v. Union of India** reported in **1978(1) SCC-248**, another seven Judges Bench held that

"The substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The test has to be pragmatic otherwise they would cease to be

**reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual."**

11. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. It is a fundamental rule of law that no decision be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In case of **State of Orissa v. (Miss) Binapani Dei** reported in **1967(2)SCR-625**. Hon'ble Apex Court held that :-

**".....even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken."**

In another case of **State of West Bengal v. Anwar Ali Sarkar** reported in **AIR 1952 SC 75**, a seven Judge Bench of Hon'ble Apex Court held that

**"The rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law."**

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal's existence.

13. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice.

The aim of both administrative inquiry as well as the quasi-judicial inquiry

is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

14. In the case of **Associated Cement Companies Ltd. v. P.N. Sharma**, AIR 1965 SC 1595 where Hon'ble Supreme Court approvingly referred to the decision in **Ridge v. Baldwin** 1964 AC 40 and, later in **State of Orissa v. Dr. Binapani Dei** (Supra) observed that : **"If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power."**

Hon'ble Apex Court also pointed out in **A.K. Kraipak v. Union of India**, 1969(2) SCC 262 another historic decision of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and observed as under:-

**"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised."**

**The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted."**

15. The bare perusal of the applicant representation as well as the order of the disciplinary authority and the appeal filed by the applicant, it is clear that the applicant asked for certain documents and out of those documents only few were shown to the applicant whereas, rest of them were not shown to the applicant. As such, it is explicitly clear that the proper opportunity of hearing is not granted to the applicant therefore we are inclined to interfere in the present O.A.

16. Accordingly, the order dated 29.6.2005 passed by the disciplinary authority is quashed. The O.A. is allowed. The amount recovered from

the applicant is liable to be refunded within a period of 4 months. No order as to costs.

*J Chandra*

**(Ms. Jayati Chandra)**  
**Member(A)**

*U.P. Agarwal*  
**(Navneet Kumar)**  
**Member(J)**

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