

**Central Administrative Tribunal, Lucknow Bench,
Lucknow**

Original Application No. 296/2008

Reserved on 16.10.2014

Pronounced on 12/11/14

**Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Suresh Kumar Pandey aged about 45 years son of Sri Pramod Kumar Pandey, resident of Sagra City Road, P.o. Afim Ki Kothi, Police Station- Kotwali Nagar, District- Pratapgarh

By Advocate: Sri G.Mishra

Applicant

Versus

1. Union of India, through Chief Post Master General, U.P. Circle, Lucknow.
2. Director of Postal Services, Allahabad Region, Allahabad – 211001.
3. Senior Superintendent of Post offices, Pratapgarh Division, Pratapgarh.

By Advocate: Sri S.K. Singh

Respondents

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i) issue order or direction setting aside the impugned orders dated 10.3.2008 and 31.10.2007 passed by the opposite parties Nos. 1 and 2 respectively
- ii). Issue order or direction to the opposite parties to make payment of his full salary without any deduction in pursuance of the impugned order.
- iii) pass any other relief deemed fit and proper in the circumstances of the case may kindly also be passed in the interest of justice.
- iv) Award the cost of the application to the applicant.

2. The brief facts of the case are that the applicant was working in the respondents organization was charge sheeted after holding

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the preliminary inquiry. The said charge sheet was served upon the applicant under Rule 14 of CCS (CCA) Rules, 1965. The Inquiry officer conducted the inquiry and submitted the report to the opposite parties who considered the inquiry report and found that only 7 witnesses were examined out of 13 witnesses and remitted the matter back to the inquiry officer to examine the remaining witnesses and submitted report. The inquiry officer further proceeded with the inquiry and examined 4 witnesses out of remaining 6 and two witnesses namely Smt. Jagpati and Sri Vijay Shyam Tiwari did not turn up to participate in the inquiry despite they have received notices for their appearance before the inquiry officer. It is also to be indicated that the four charges were made against the applicant. In charge No. one it is alleged that he paid Rs. 60,000/- to Smt. Jagpati Devi in place of Rs. 63,900/- but he had shown in the record the entire amount of Rs. 63000/- as such Rs. 3900/- are used by the applicant. In the 2nd charge, it is alleged that he paid Rs. 40,000/- to Smt. Shiv Kumari instead of Rs. 40,230/- which was maturity amount of Kisan Vikas Patra, as such Rs. 230/- is used personally by the applicant. In the 3rd charge, it is alleged that the applicant paid Rs. 1,00,000/- to Sri Ramesh bahadue Singh instead of Rs. 1,02,625/- and in the 4th charge, it is alleged that instead of paying Rs. 61740/- he paid only Rs. 60,000/-. The applicant submitted his reply to the memorandum of charges, giving detailed explanation refuting the charges made against him and also asked for certain documents. It is also to be indicated that the documents so mentioned along with the charge sheet were not provided to the applicant. The Inquiry Officer conducted the inquiry and in the inquiry report, it is categorically mentioned that the documents No. 17 and 19 were not placed before the inquiry officer. Apart from this, it is also alleged that no expert opinion was sought in regard to hand writing expert. It is also indicated by the applicant

that since no fair enquiry was conducted, as such it requires interference by the Tribunal.

3. On behalf of the respondents, counter reply is filed and through counter reply, it is indicated by the respondents that the applicant who was working as Postal Assistant, Station Road, Pratapgarh was ordered to work on deputation for the period of two months. He was ordered to work on NSC/KVP discharged counter by Sr. Post Master, Pratapgarh H.O. While working on the said counter, certain allegations were leveled against the applicant for not paying the correct amount of KVPs and as such, the applicant was found responsible for misappropriation of funds. Accordingly, a charge sheet was served upon the applicant under Rule 14 of CCS (CCA) Rules, 1965 and the Inquiry Officer was appointed. The inquiry officer submitted his report. Since he failed to examine all witness during the course of inquiry, the than SSPOs, Pratapgarh did not agree with the findings of the inquiry officer and returned the case back to Inquiry Officer to re-inquire again from the stage of examination of witnesses. The Inquiry officer re-examined the case and submitted his report again on 1.5.2007. The copy of the report was also given to the applicant to submit his defence statement. Request was made to appoint an adhoc disciplinary authority as such one Sri R.S. Mishra, the than SSPOs, Allahabad was appointed as adhoc Disciplinary Authority. The entire case was placed before him as such finally the disciplinary authority found the applicant guilty of charges and awarded punishment of reduction of one stage from the pay of Rs. 5570/- to Rs.5625/- in the scale of Rs. 4500-125-7000 for the period of two years with cumulative effect and it is also ordered that during the reduction period, he would not earn any increment. The applicant submitted the appeal against the aforesaid punishment to the PMG, Allahabad and the Appellate Authority found no justification to interfere in the matter rejected

the appeal of the applicant. Respondents have categorically argued that there is no procedural lapses in conducting the inquiry as such it does not require any interference by this Tribunal. Not only this, the respondents have also filed Supple. Counter Reply and through Supple. Counter Reply, no new facts were mentioned and only reiterated the averments made in the counter reply.

4. On behalf of the applicant, rejoinder reply is filed and through Rejoinder Reply, mostly the averments made in the Original application are reiterated the denied the contents made in the counter reply. It is once again alleged by the applicant that on account of non-supply of relevant documents and also not examining the entire witnesses, the entire inquiry is baseless and requires interference by this Tribunal.

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

6. The applicant was charge sheeted under rule 14 of CCS (CCA) Rules, 1965 through which four charges were leveled against him. In charge No. 1 it is alleged that he paid Rs. 60,000/- to Smt. Jagpati Devi in place of Rs. 63,900/- as such he misappropriated Rs. 3900/-. In the 2nd charge, it is alleged that he paid Rs. 40,000/- to Smt. Shiv Kumari instead of Rs. 40,230/- In the 3rd charge, it is alleged that the applicant paid Rs. 1,00,000/- instead of Rs. 1,02,625/- and in the 4th charge, it is alleged that instead of paying Rs. 61740/- he paid only Rs. 60,000/- as such applicant misappropriated the amount which is not paid to the beneficiary. The applicant was provided with the copy of the charge sheet and the applicant submitted the report to the same. Through reply, applicant denied the charges leveled against him and has also requested for providing documents as mentioned in the charge sheet. After submission of the said reply, inquiry officer was appointed and after due inquiry, he submitted his report which was

not accepted by the disciplinary authority as such inquiry officer was again asked to submit the report after re-examining all the relevant witnesses. The inquiry officer again submitted the report and copy of the same was duly communicated to the applicant . The applicant submitted his reply and has once again indicated that he was not provided the due material and entire witnesses were not examined by the Inquiry officer. Inquiry officer in his report himself has categorically indicated that documents No. 17 and 19 were not examined. The bare perusal of the aforesaid two documents No. 17 and 19 shows that those are the summary dated 26.3.2014, 13.4.2004 and 19.2.2004. The relevance of those documents are also not mentioned in the inquiry officer's report and the disciplinary authority imposed the punishment of reduction of one stage from the pay of Rs. 5570/- to Rs.5625/- in the scale of Rs. 4500-125-7000 for the period of two years with cumulative effect and it is also ordered that during the reduction period, he would not earn any increment. The applicant preferred the appeal against the said order which was also considered and rejected by the Appellate Authority. Through appeal, the applicant once again indicated that both Smt. Jagpati and Vijay Shyam Tiwari were called by the inquiry officer but they failed to appear before the inquiry officer. Apart from this, it is also indicated by the applicant that the inquiry officer himself has categorically indicated that documents No. 17 and 19 were not placed before the Inquiry officer, as such no fair inquiry was conducted. While deciding the appeal, the Appellate Authority was ought to have been considered the grounds taken in the appeal but the appellate order does not show that the Appellate authority has considered the grounds taken in the appeal and passed the orders.

7. In the case of **State of U.P. Vs. Saroj Kumar Sinha** reported in (2010) 2 Supreme Court Cases, 772, the Hon'ble Apex Court has been pleased to observe as under:-

“An Inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

8. Further, as observed by the Hon'ble Apex Court in the case of **Kashinath Dikshita Vs. Union of India** reported in (1986) 3 SCC, 229, that **“the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges leveled against a govt. servant the appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.”**

The proposition of law that a Govt. employee is facing a departmental enquiry is entitled to get all the material to enable

him to have a reasonable opportunity to meet the charges against him.

9. When a departmental enquiry is conducted against the employee, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased, impartial and fair. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that an employee is treated fairly in proceedings, which may culminate in imposition of punishment including dismissal/removal from service.

10. Considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner the Apex Court in ***Kashinath Dikshita versus Union of India and others (supra)*** held in clear words that no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible. Observance of natural justice and due opportunity has been held to be an essential ingredient in disciplinary proceedings.

11. In the case of ***State of U.P. v. C.S. Sharma, AIR 1968 SC 158*** the Hon'ble Supreme Court held that omission to give opportunity to an employee to produce his witnesses and lead evidence in his defence vitiates the proceedings. It was further held that a dismissal order has serious consequence and should be passed only after complying with the rules of natural justice.

12. It is settled principle that if any material is sought to be used in an enquiry, the copies of material must be supplied to the party

against whom such an enquiry is held. The Disciplinary Authority as well as Appellate Authority did not consider this aspect of the matter and expressed their concurrence to the finding of the Inquiry Officer, without applying their independent and free mind. The Appellate Authority while considering the appeal of the petitioner failed to appreciate the fact that the Enquiry Officer at the back of the petitioner had proved charges without affording reasonable opportunity to controvert the same. Therefore, the order of Appellate Authority is bad in law and cannot be sustained. As regards the opportunity before passing of the final order, the Hon'ble Apex Court has discussed in detail in the case of **B.N. Kansal Vs. State of U.P. reported in 1988 Suppe. SCC 761.**

13. In terms of observations of the Hon'ble Apex Court as well as pleadings on record, it is clear that the entire enquiry was not conducted in a fair manner, as such we are inclined to interfere in the present O.A. Accordingly, the orders dated 10.3.2008 and 31.10.2007 are quashed. The matter is remitted back at the stage of inquiry office to conduct an inquiry and thereafter submit inquiry report to the Disciplinary Authority after providing due opportunity to the applicant and thereafter, the Disciplinary Authority shall pass the order in accordance with law. The said exercise be done maximum within a period of six months from the date of certified copy of order is produced to them. O.A. is allowed. No order as to costs.

J. Chandra
(JAYATI CHANDRA)
MEMBER (A)

HLS/-

V. R. Agarwal
(NAVNEET KUMAR)
MEMBER (J)