

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

....

Registration O.A. 226 of 1990

Vishwa Nath Singh ... .. Applicant.

Versus

The Union of India  
and others ... .. Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. K. Obayya, Member (A)

( By Hon. Mr. K. Obayya, Member (A) )

The applicant was appointed as 'Extra Departmental Branch Post Master' (EDBPM in short), of Ambara Branch Post Office, District Kheri in the year 1972. During the year 1988, it was noticed that there were certain irregularities in maintenance of account books and also saving accounts, ~~and also saving accounts~~ for which a show cause notice was given to him on 11.10.1988. The applicant submitted his reply on 17.10.1988, thereafter a charge-sheet was served on the applicant on 25.10.1988 and disciplinary proceedings were thus set in motion. The applicant denied the charges. The enquiry officer concluded his enquiry and submitted his report on 2.1.1989 thereafter the disciplinary authority levied the punishment of removal from service against the applicant by order dated 28.2.1989. The appeal preferred by the applicant against this punishment order was rejected vide order dated 30.7.1989.

2. The order of the punishing authority as also that of the appellate authority are assailed on the ground that no opportunity was given to the applicant and that

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though the account holders were not examined. The disciplinary authority held that the charges 1,2 & 4 are established and though the enquiry officer held that the case of embezzlement is not made out. The disciplinary authority discarded the findings of the enquiry officer and held that that charge is also proved. The order of the appellate authority suffers from the lacuna of not being the reasoned order.

3. The respondents have opposed the case. According to them, due opportunity was given to the applicant. The applicant inspected the listed documents on 11.1.1989 and that he also stated that he would not produce any document or ~~or~~ witness on his behalf and that he has also not nominated his defence assistance and his statement was also recorded on 9.2.1989 and he has submitted his brief on 21.2.1989. According to them, the charges levelled against the applicant were found fully established. The appellate order was also well reasoned order and does not suffer from any illegality.

4. We have heard the counsel of the parties and also perused the record. The charges levelled against the applicants were on 4 counts. All the charges related to embezzlement of amounts relating to Saving Bank ~~Accounts~~ and other Accounts. So far as the enquiry is concerned, we do not find that there is any irregularity. It would appear that an opportunity was provided to the applicant to defend his case. As a matter of fact, even before the charge-sheet was served upon him,

There was a show cause notice pointing out the acts of @ omission and commission on the part of the applicant in the Saving Banks Accounts matters. The counsel for the applicant raised the plea that the disciplinary authority held the charges 3 and 4 proved, though, the enquiry officer held that these charges are not established. In para. 8 of the counter affidavit also, the respondents have admitted that the disciplinary authority did not agree with the findings of the enquiry officer in respect of charges 1, 3 & 4. In spite of this, the disciplinary authority held that these charges are established. It would appear that the disciplinary authority has not recorded any reason for his disagreement. In any way, the applicant was not informed of the reasons of disagreement of the disciplinary authority. If the enquiry officer has held that the certain charges are not established, the disciplinary authority, in case he disagrees with the findings of the enquiry officer, he should have assigned reasons for his disagreement and he should have also issued a show cause notice to the applicant to enable him to file effective representation against the same but the same was not done and an opportunity of hearing was not given to the applicant. This violates the principles of natural justice. In this connection reference <sup>may be</sup> has been made to the case of Narainji Mishra Vs. State of Orissa, 1969 SLR page 657, wherein it has been held that when the disciplinary authority did not agree with the findings of the enquiry officer, giving of notice to the charged officer is must and

without giving him notice and an opportunity of hearing no order can be passed.

5. In these circumstances, we are of the view that the order of the disciplinary authority is liable to be quashed. Accordingly, this application is allowed and the punishment order dated 28.2.1989 as well as the appellate order dated 30.7.1989 are quashed. However, this will not preclude to the disciplinary officer from going ahead with the disciplinary proceedings after giving show cause notice and an opportunity of hearing to the applicant. The application is disposed of with the above terms. No order as to costs.

  
Member (A)

  
Vice-Chairman

Dated: 18 September, 1992.

(n.u.)