

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO. 50 of 1991.

this the 16th day of February'2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER(J)

HON'BLE MR M.P. SINGH, MEMBER(A)

Zahid Ali Warsi, aged about 42 years, S/o Sri Noor Mohd Khan, R/o Village & Post Menha Harhungpur, Via Pather Dewa Police Station Baghouch Ghat, District Deoria, U.P., presently residing at C-3357, Mini LIG, Rajajipuram, Lucknow.

Applicant.

By Advocate: Sri Ratnesh Lal.

Versus.

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

2. The Chief Postmaster General, U.P. Circle, Lucknow.
3. The Director, Postal Services, Gorakhpur Region, Gorakhpur.
4. Senior Supdt. of Post offices, Deoria Division, Deoria.

Respondents.

By Advocate: Sri Q.H. Rizvi.

ORDER. ( O R A L )

M.P. SINGH, MEMBER(A)

The applicant has filed this O.A. under section 19 of the Administrative Tribunals Act challenging the orders dated 30.12.88/3.1.89 (Annexure-23) passed by the Senior Superintendent of Post offices, Deoria Division, Deoria dismissing the applicant from service; order dated 12.2.90 passed by the Director, Postal Services rejecting the appeal of the applicant and order dated 19.11.90 passed by the Chief Post Master General, U.P. Circle rejecting the review petition.

2. The brief facts of the case are that the applicant



was employed as Extra Departmental Branch Post Master , Post Office Mehaharhanpur, District Deoria w.e.f. 20.3.1973. One Kaushal Kishore was also posted as E.D.M.P.-cum-Delivery Agent in the same Branch Post Office. According to the applicant, one Dockyard, Bombay insured letter no. 188 dated 13.4.1987 of Rs. 6000/- addressed to one Sri Gulli Sharma r/o Village Shyampatti, P.O. Meha Harhangpur (Patherdewa) District Deoria was received at P.O. Mehaharhangpur on 18.4.1987. The applicant after entering the receipt of the said insured letter in the postman notice delivery book directed Sri Kaushal Kishore to inform Sri Gulli Sharma, who informed him on the same day i.e. 18.4.1987 by taking thumb impression. On 19.4.1987 was Sunday and from 20.4.1987 to 22.4.1987 Sri Gulli Sharma did not turn-up to take the delivery. Sri Gulli Sharma reported in the post office on 23.4.1987 to take the delivery of the insured letter. After completing the relevant records the insured letter was given to Sri Gulli Sharma, who went away with full satisfaction without saying anything.

3. On 5.5.1987 Sri Ram Sabad Misra, Sub-divisional Inspector of Post Offices came in the Branch Post Office to record the statement of the applicant regarding the delivery of the insured letter delivered to Sri Gulli Sharma on 23.4.1987, who informed the applicant that he was appointed as Enquiry Officer for conducting the preliminary enquiry against him as Sri Gulli Sharma had made a complaint to Senior Superintendent of Post Offices on 24.4.1987 regarding short receipt of Rs. 2000/- in the insured letter delivered to him. As per direction of Sri Ram Sabad Misra, the applicant gave his statement and the statement of Sri Gulli Sharma was also recorded on 5.5.1987. Sri Ram Sabad Mishra also recorded the statement of Sri Kaushal Kishore, EDMP on 5.5.1987 behind the back of the applicant. The applicant was put off duty from 14.5.1987 and F.I.R. was lodged under section 409/420



of IPC by the respondents. An enquiry was conducted against the applicant. The Additional Munsif II Hatakasiya, Deoria, acquitted him of the charges in the criminal case. The Enquiry officer submitted his report and the charges were partly proved. The Enquiry officer submitted his report on 13.10.88 to the disciplinary authority. The disciplinary authority did not agree with the findings of the Enquiry Officer and recorded the note of dis-agreement. Thereafter, the disciplinary authority passed an order imposing the penalty of dismissal from service of the applicant. Thereafter, the applicant had submitted an appeal to the appellate authority, which was rejected and, therefore, he filed a review petition, which was also rejected. Aggrieved by this, he has filed this O.A.

4. The respondents have contested the case of the applicant and have stated that one Sri Gulli Sharma made a complaint against the applicant regarding one insured letter no. 188 dated 13.4.1987 for Rs. 6000/-. After enquiry on the said complaint, it was found that Sri Gulli Sharma, addressee visited the post office during 18.4.1987 to 23.4.1987 repeatedly to receive the said insured letter, but the said insured letter was not delivered to him on one pretext or other. The said insured letter was delivered to addressee on 24.4.1987 after calling him from his residence. On opening the said insured letter the addressee found only Rs. 4000/- instead of Rs. 6000/- with 16 blank papers. In the departmental enquiry, the applicant was found guilty of tampering and mis-appropriation and as such he was dismissed from service vide order dated 30/31.1.1989. The applicant preferred an appeal to the respondent no.3, who rejected the same vide order dated 12.2.1990. Thereafter, the applicant made a representation to the respondent no.2, which was also rejected on 19.11.1990. According to the respondents, the dismissal order was passed against the applicant, taking into consideration all the relevant facts and circumstances of



the case, by the disciplinary authority. According to them, the Tribunal cannot look into the evidence as the court of appeal and, as such, the conclusion arrived at by the disciplinary authority cannot be interfered with. The respondents have further submitted that the grounds taken by the applicant in the O.A. are not tenable in the eyes of law. In view of the aforesaid reasons, the applicant is not entitled to any relief claimed in the O.A. and the O.A. is liable to be dismissed.

5. We have heard the learned counsel for the parties and have perused the pleadings on record.


6. During the course of arguments, the learned counsel of the applicant submits that the applicant was not given a reasonable opportunity to defend his case. He submitted that the disciplinary authority had <sup>not &</sup> forwarded a copy of the inquiry report alongwith a note of dis-agreement with the findings of the enquiry officer and the applicant was denied an opportunity of making a representation against the punishment proposed to be imposed by the disciplinary authority. The disciplinary authority had dis-agreed with the findings of the enquiry officer's report and passed an order on the back of the applicant. The learned counsel for the applicant has also drawn our attention to the order of dismissal passed by the respondents. On perusal of the dismissal order dated 30.12.88/3.1.89, we find that the disciplinary authority had taken into account certain complaints against the applicant of the earlier period, which did not form part of the chargesheet. The relevant part of the punishment order is as under:-

“इसके पूर्व भी आरोपित कर्मचारी को रु० 800/- के गवन के मामले में इस कार्यालय के ज्ञापन सं० एफ-2/केश/76-77 दिनांक 29-1-77 द्वारा भी कार्य विलंग किया था तथा जांच में आरोप सिद्ध भी पाये गये तथा दि० 24-5-83 को सरकारी क्षति की वसूली कर्मचारी के भत्ते से करने का आदेश दिया गया था तथा यह चेतावनी कड़ी स्वर में दी गयी थी कि श्री चारसी भविष्य में इस प्रकार का अवसर नहीं प्रदान करेंगे। परन्तु वे अपनी गवन युक्ति कार्य पद्धति में सुधार न कर पुनरावृत्ति ही किये। इस प्रकार कर्मचारी का पूर्व कार्य प्रणाली एवं चरित्र संतोष-प्रद नहीं रहा है। उसकी कार्य पद्धति गवनयुक्त होने से विभागीय तथा जनहित में नहीं है।”



7. After perusal of the above paragraph of the dismissal order, it is clear that the disciplinary authority had taken into account the charges against the applicant which did not form part of the chargesheet. It appears that the disciplinary authority had not annexed any document which related to the earlier period and ~~did not~~<sup>with</sup> formed<sup>Part 2</sup> of the enquiry. It further shows that the applicant was not given an opportunity to controvert those charges, which is against the principles of natural justice. It is an established law by the apex court that the disciplinary authority cannot take into consideration the allegations for which the applicant has not been given an opportunity of hearing, while passing the punishment order. On this ground alone, the orders of the disciplinary authority, appellate authority and review authority are liable to be quashed and are quashed. The case<sup>is</sup> remitted back to the disciplinary authority to pass fresh order of punishment in accordance with the rules and regulations after giving ~~ample~~<sup>due</sup> opportunity of hearing to the applicant.

8. The O.A. stands disposed of as above with no order as to costs.

  
MEMBER (A)

  
MEMBER (J)

LUCKNOW: DATED: 16.2.2001.

GIRISH/-