CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 582 of 1998.

Dated this the 20th day of June, 2002.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

Hon'ble Shri Shankar Raju, Member (J).

Shri Jagannath Shankar Kekan,
E.D.D.A., Kusegaon,
(Patas S.C.), Tal. Daund,
Pune Mofussil Division,
Dist. Pune.
Residing at - At Post Kusegaon,
Madhukar Nagar, Tal. Daund,
Dist. Pune (Via. Patas Sub Post
Office) Pune - 412 219. ... *Applicant*

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. *Union of India through*
The Assistant Superintendent
Of Post Offices, (Daund)
Sub Division, East Sub-Divn.,
At P.O. Daund,
District Pune 413 801.

2. *Superintendent of Post Offices,*
Pune Mofussil Division,
Swargate, Pune 411 042.

3. *Member (Personnel),*
O/o. the Director General (Posts),
Department of Posts,
Ministry of Communication,
Government of India, Dak Bhavan,
Parliament Street,
New Delhi - 110 001. ... *Respondents.*

(By Advocate Shri V. S. Masurkar)

O R D E R (ORAL)

Sh. Shanker Raju:

Applicant, an Extra Departmental Delivery Agent, impugns respondents' order of removal dated 26.9.95, the appellate order dated 14.2.96 and revisional order dated 13.5.97, upholding the penalty and has sought his re-instatement with all consequential benefits.

2. Applicant who was employed as EDDA on 1.4.84 was put off duty in November, 1993 and was served with the articles of charge, under Rule 8 of the P & T E.D. Agents (Conduct and Service) Rules, 1964, for the following charges:

"CHARGE No.1:

While functioning as E.D.D.A. Kusegaon, (Varavand) (Now M.N. Patas) during 01.12.1993 to 31.12.1993, he has failed to effect delivery of 47 letters or did not pass remakr as to why he could not effect delivery (on them) and he avoided delivering them till 02.09.1994 and thereby violatred Rule-115 and 129 (1) and (2) of Post Office Rules, Volume-VI (Volume-6) Part-III (6th Edition).

CHARGE No.2

While working as E.D.D.A. Kusegaon Shri Jagannath Shankar Kekan during 01.08.1994 to 31.08.1994, failed to pay Pune M.O. No.1976 dated 19.08.1994 for Rupees 142-00 to Shri Balasaheb Bhausaheb Narsale on 23.08.1994, and he took (his) Signature only on M.O. Form on 28.08.1994 without paying Rs.142/- actually on that day (i.e. 28.0.8.1994), and thereby on account of his non-paying (in time) M.O. given to him for payment during 23.08.1994 to 31.8.94 Shri Jagannath Shankar Kekan violated Rule-121 of P.O. Manual Volume 6 Part-III (6th Edition).

CHARGE No.3

Shri Jagannath Shankarkekan E.D.D.A. Kusegaon, while working as aforesaid during 24.08.1994 to 02.08.1994 failed to write up Postman Book and thereby violated provisions of Rule-110 of Post Office Manual Vol VI Part-III (6th Edition).

CHARGE No.4

Due to his failure as mentioned in Charge No.1 to 3 Shri jagannath Shankar Kekan, while working as E.D.D.A. Kusegaon, failed to maintain Honesty and integrity in his conduct as well as devotion to duty and thereby violated Rule 17 of P & T E.D. Agents, (Conduct and Services) Rules, 1984." (As per translation filed Exh.A-2 of the paperbook).

3. Inquiry Officer proved charge Nos. 2 to 4 and partly proved Charge No.1. Applicant preferred a representation against the finding and the disciplinary authority by disagreeing with the finding on charge No.1 proved this charge fully and imposed a punishment of removal from service.

4. Applicant preferred an appeal against theorder of punishment,wherein the punishment was upheld and thereupon filing a revision the same was also dismissed, giving rise to the present OA.

5. Although the learned counsel for the applicant Shri Kulkarni has assailed the impugned orders on various grounds, including no evidence, non-examination of witnesses, not proving the documents, non reasoned finding, at the outset stated that although charge No.1 which pertains to failure to effect delivery of 47 letters during the period 1.12.93 to 31.12.93 was partly proved, the disciplinary authority in its order disagreed with the conclusion of the inquiry officer on the finding related to charge No.1 and after recroding his reasons imposed a major punishment of removal from service. It is in this backdrop stated that the aforesaid action of the disciplinary authority is not in consonance with the principles of natural justice. Applicant has been deprived of an opportunity to rebut the disagreement arrived at by the disciplinary authority neither any tentative reasons were recorded earlier to imposition of the punishment nor were they communicated to him prior to imposition of the penalty. No show cause notice was issued which resulted in grave prejudice to him. It is stated that the applicant has been greatly prejudiced, as according to substitution under Rule 7 of the nature of penalties under EDA Conduct Rules ibid apart from removal other punishments have been prescribed and the same were effective as the penalty was imposed upon the applicant on

26.9.95. It is stated that the applicant could have persuaded the disciplinary authority to have taken a lenient view as other punishments were also available and the aforesaid charge which has been fully proved has weighed heavily in the mind of the disciplinary authority to inflict an extreme punishment upon the applicant. By taking resort to the Constitutional Bench decision of the Apex Court in E.C.I.L. v. B. Karunakar, AIR 1994 SCW 1050 it is contended that the finding of the inquiry officer is an additional material which is to be served upon the delinquent official before a final decision is taken by the disciplinary authority to controvert the findings arrived at by the inquiry officer and to persuade the disciplinary authority to take a different view from what has been taken by the inquiry officer. By referring to a decision of the Apex Court in Punjab National Bank v. Kunj Behari Mishra, AIR 1988 SC 2713, it is contended that even though there is no such provision for according an opportunity before disagreement it has to be read in the rules in consonance with the principles of natural justice. It is stated that not only tentative reasons are to be recorded for disagreement, nonetheless, the same are to be served upon the delinquent official with an opportunity to represent before the disciplinary authority records a finding and imposes and passes a final order in the prceedings. As, admittedly, in the instant case, the partly proved charge has been fully proved by the disciplinary authority without following the aforesaid procedure the action of the respondents is not in consonance with the principles of natural justice, causing great prejudice and the same is not legally sustainable. Applicant re-iterating the aforesaid plea further placed reliance on the decision of the Apex Court in Yogi Nath Bagde v. State of Maharashtra & Anr., 2000 (1) ATJ 208 (SC) to contend that in case of disagreement if

no opportunity of hearing is given before taking a final decision this violates principles of natural justice, rendering the enquiry bad in law.

6. Respondents in their reply denied the contentions and stated that Articles 3 and 5 have been admitted as such no opportunity is required. It is stated that in a disciplinary proceeding strict rules of evidence are not applicable. In a judicial review it is not open for the Tribunal to reapprise the quantum of evidence or to reapprise it. It is stated that applicant exercised undue influence upon the witnesses to prevail upon them to give testimony in his favour. Apart from it, sufficient opportunities have been accorded to the applicant and there is no infirmity in the procedure followed and the orders passed by the disciplinary, appellate and revisional authorities are speaking with due application of mind and are in accordance with the rules.

7. It is further stated that as per EDA Conduct Rules, 1964 and as per Article 311 (2) only punishment which could have been imposed upon applicant was removal and there is no other penalty like reduction in rank even if the enquiry goes back the same punishment would be imposed upon him on the charges duly proved without dealing with Article 1 of the charge and no prejudice would be caused to him. As the orders passed do not suffer from any legal infirmity and the action of the respondents is well within the principles of natural justice the punishment awarded to the applicant cannot be interfered with by this Tribunal.

8. We have carefully considered the rival contentionsof the parties and perused the material on record. Without exposing other contentions of the applicant on merits, the OA is liable to be allowed on the first contention of denial of reasonable

opportunity to the applicant to show cause which is not in consonance with the principles of natural justice. We find that vide a substitution throutgh D.G. Posts, letter No.17-78/92-ED & Trg. dated 22.4.93 several punishments, viz., censure, debarring of ED Agents from appearing in the recruitment examiantion etc. have been incorporated under Rule 7 of the EDA (Conduct & Service) Rules. As the penalties in the instant OA has been inflicted upon applicant on 26.9.95 the aforesaid rule was very much in vogue and would have application and covers the case of the applicant. In so far as prejudice is concerned, contention of the respondents that as per Article 311 (2) having alleged that no other alternative except to impose upon a penalty of removal even if the case is remanded back the only punsishment available is removal would not change the fate, as such no prejudice is being caused to the applicant, cannot be countenanced. After this substitution ibid as various other penalties have been incorporated the applicant could have persuaded the disciplinary authority to arrive at a different punishment.

9. The Apex Court in ECIL's case (supra) while stressing upon the necessity of furnishing enquiry report to the delinquent has gone to the extent of observing that this finding which is arrived at behind the back of the delinquent official constitutes additional material, which without being put to him and without seeking his explanation which could have persuaded the disciplinary authority to take a different view from the fiding of the inquiry officer as that might have not based on the evidence cited in the enquiry it is incumbent upon the disciplinary authroity to serve upon the delinquent official his tentative reasons before taking a final deicsion. Aforesaid ratio was reiterated by the Apex Court in Kunj Behari's case (supra) where despite Regulation-6 does not incorporate a

provision for according a prior opportunity to comment upon the disagreement has made the principles of natural justice read and treated as part and parcel of the rules in consonance with the doctrine of fair play and equity. Having laid down that before disagreement tentative reasons are to be recorded by the disciplinary authority in case he chooses to disagree the same are to be communicated to the delinquent official and thereafter on receipt of his comments a final order is to be passed, which is the compliance and in consonance with the principles of natural justice and reiteration of the settled principles in Yogi Nath Bagde's case (supra) leaves no doubt that before arriving at the disagreement the disciplinary authority has to record its tentative reasons and the same should be communicated to the delinquent official, with a view to accord him an opportunity to rebut the same.

10. As in the instant case Article 1 of the charge which has been fully proved has not been communicated to the applicant with tentative reasons and he has also not been accorded an opportunity to show cause or to comment upon the same, the action of the respondents is patently illegal and violative of principles of natural justice as well as the law of the land.

11. As regards the contention that charges 2, 3 and 5 were admitted by the applicant and the serious charge in Article 1 having been proved, no prejudice has been caused to him and the finding can be maintained on this part of the charge, the plea is not well founded. We cannot apply the doctrine of severability in such a situation. From the perusal of the disciplinary authority's order it transpires that the charge in Article 1 of not delivering 47 letters has weighed fully in his mind while imposing an extreme punishment upon the applicant. This cannot

be segregated and it cannot be observed that the disciplinary authority has imposed the punishment only on other charges but not taken into consideration this part of the charge.

12. From the detailed reasons it transpires that the disciplinary authroity has taken into consideration as well this part of the charge while imposing punishment upon applicant. In this view of the matter, as the disagreement arrived at is not in consonance with the principles of natural justice, the impugned order of removal and subsequent orders in appeal and revision, upholding the punishment order are not legally sustainable in the eye of law.

13. In the result, having regard to the reasons recorded above and discussion made above, the OA is partly allowed. Impugned order of removal, appellate as well as revisional orders are quashed and set aside. Respondents are directed to re-instate the applicant in service forthwith, with all consequential benefits. However, this will not preclude the respondents from taking up the proceedings from the appropriate stage, if so advised, in accordance with law. No costs.

S. Raju

(Shanker Raju)
Member (J)

Shanta

(Smt. Shanta Shastry)
Member(A)

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